

**MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY PLANNING
OFFICE OF HIGHWAY SAFETY**

Selected Alcohol Beverage Control (ABC) Statutes

MISSISSIPPI CODE of 1972 ANNOTATED
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*** Current through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions ***

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TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS  
CHAPTER 1. DRIVER'S LICENSE  
ARTICLE 1. DRIVER'S LICENSE

Miss. Code Ann. § 63-1-55 (2014)

**§ 63-1-55. Suspension of license of minor by trial judge; requirement of completion of defensive driving course; costs and assessments; procedure upon appeal of suspension**

A trial judge, in his discretion, if the person so convicted or who has entered a plea of guilty for any traffic violation, except the offenses enumerated in paragraphs (a) through (e) of subsection (1) of Section 63-1-51 and violations of the Implied Consent Law and the Uniform Controlled Substances Law, is a minor and dependent upon and subject to the care, custody and control of his parents or guardian, may, in lieu of the penalties otherwise provided by law and the provision of said section, suspend such minor's driver's license by taking and keeping same in custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering such suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. The trial judge also may require the minor to successfully complete a defensive driving course approved by the judge as a condition of the suspension. Costs of court and penalty assessment for driver education and training program may be imposed in such actions within the discretion of the court. Should a minor appeal, in the time and manner as by law provided, the decision whereby his license is suspended, the trial judge shall then return said license to the minor and impose the fines and/or penalties that he would have otherwise imposed and same shall constitute a conviction.

HISTORY: SOURCES: Codes, 1942, § 8106; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1956, ch. 379, § 1; Laws, 1968, ch. 373, § 1; Laws, 1971, ch. 515, § 26; Laws, 1992, ch. 323, § 1; Laws, 1996, ch. 527, § 2, eff from and after July 2, 1996.

NOTES: CROSS REFERENCES. --Prohibition against suspending or revoking a person's driver's license for violations of laws and ordinances in regard to the parking of vehicles, see § 21-23-19.

Driver training penalty assessment fund generally, see § 37-25-17.

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Non-commercial Drivers Licenses

ATTORNEY GENERAL OPINIONS

Miss. Code Section 63-1-55 provides that justice court judge may suspend minor's driver's license in lieu of conviction, and in addition "may require the minor to successfully complete defensive driving course approved by the judge as a condition of the suspension." Ferguson, June 9, 1993, A.G. Op. #93-0331.

Judge has the discretion over approval of the defensive driving school to be completed by a minor. Hood, Mar. 11, 2005, A.G. Op. 05-0032.

Miss. Code Ann. § 63-9-11(3)(d) clearly and unequivocally requires instruction of an approved traffic safety violator course by a human being when it specifies that the course "provide minimum qualifications for instructors." This requirement does not conflict with Miss. Code Ann. § 63-1-55 allowing computerized defensive driving instruction for minors. Dearing, March 2, 2007, A.G. Op.

#07-00091, 2007 Miss. AG LEXIS 80.

ALR. What amounts to adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license. 79 A.L.R.2d 866.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo. 97 A.L.R.2d 1367.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

CJS. 60 C.J.S., Motor Vehicles §§ 353 et seq.

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Miss. Code Ann. § 63-1-57 (2014)

§ 63-1-57. Driving while license or driving privilege cancelled, suspended or revoked

Any person whose license issued pursuant to this article or driving privilege as a nonresident has been canceled, suspended or revoked as provided in this title or in Section 93-11-157 or 93-11-163, as the case may be, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two (2) days or more than six (6) months. There may be imposed in addition thereto a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00) for each offense.

HISTORY: SOURCES: Codes, 1942, § 8110; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 22; Laws, 1988, ch. 563, § 2; Laws, 1996, ch. 507, § 13, eff from and after July 1, 1996.

NOTES: CROSS REFERENCES. --Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

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JUDICIAL DECISIONS

1. AFFIDAVIT.

The gravamen of the crime under this section [Code 1942, § 8110] is the driving when the driver has no license to drive and the fact that the driver could not tell from the affidavit whether he was charged with so driving when his license had been suspended or when it had been revoked is immaterial. *Middleton v. State*, 214 Miss. 697, 59 So. 2d 320 (1952).

2. --DEFECT CURED BY AMENDMENT.

Where the original affidavit did not charge the defendant for driving motor vehicle without license upon a public highway in Mississippi the defect was cured by an amendment to the affidavit alleging that defendant was driving in District 5 of Marion County upon Highway No. 24 of the State of Mississippi. *Middleton v. State*, 214 Miss. 697, 59 So. 2d 320 (1952).

ATTORNEY GENERAL OPINIONS

Amending a charge of violation of § 63-11-40 to a violation of this section when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

ALR. Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended. 61 A.L.R.3d 1041.

AM JUR. 7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 260, 261.
CJS. 61A C.J.S., Motor Vehicles §§ 1632-1635.

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Miss. Code Ann. § 63-1-71 (2014)

**§ 63-1-71. Revocation or suspension of driving privilege of person convicted of violation of Uniform Controlled Substance Law or violation of similar law of another jurisdiction; reduction of suspension in hardship cases**

(1) In addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of, or entering a plea of nolo contendere to, or adjudicated delinquent in a court of this state for a violation of any offense defined in the Uniform Controlled Substances Law, and every person convicted of, or entering a plea of nolo contendere to, or adjudicated delinquent under the laws of the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico of a violation for the use, distribution, possession, manufacture, sale, barter, transfer or dispensing of a "controlled substance," "counterfeit substance," "narcotic drug" or "drug," as such terms are defined under Section 41-29-105, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of six (6) months. Notwithstanding the provisions of Section 63-11-30(2)(a) and in addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, in a court of this state, and every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, under the laws of the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of not less than six (6) months. In the case of any person who at the time of the imposition of sentence does not have a driver's license or is less than fifteen (15) years of age, the period of the suspension of driving privileges authorized herein shall commence on the day the sentence is imposed and shall run for a period of not less than six (6) months after the day the person obtains a driver's license or reaches the age of fifteen (15) years. If the driving privilege of any person is under revocation or suspension at the time of any conviction or adjudication of delinquency for a violation of any offense defined in the Uniform Controlled Substances Law, the revocation or suspension period imposed herein shall commence as of the date of termination of the existing revocation or suspension.

(2) The court in this state before whom any person is convicted of or adjudicated delinquent for a violation of an offense under subsection (1) of this section shall collect forthwith the Mississippi

driver's license of the person and forward such license to the Department of Public Safety along with a report indicating the first and last day of the suspension or revocation period imposed pursuant to this section. If the court is for any reason unable to collect the license of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Commissioner of Public Safety. That report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or revocation period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or revocation imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in Section 63-11-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of Section 63-11-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the Commissioner of Public Safety who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's nonresident driving privilege in this state.

(3) The county court or circuit court having jurisdiction, on petition, may reduce the suspension of driving privileges under this section if the denial of which would constitute a hardship on the offender. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Twenty Dollars (\$ 20.00) for each year, or portion thereof, of license revocation or suspension remaining under the original sentence, which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

HISTORY: SOURCES: Laws, 1991, ch. 468 § 1; Laws, 1993, ch 487, § 2, eff from and after July 1, 1993.

NOTES: EDITOR'S NOTE. --Laws, 1993, ch. 487, § 3, effective July 1, 1993, provides as follows:  
"SECTION 3. The amendments to the sections of law contained in this act shall apply only to convictions occurring from and after July 1, 1993."

CROSS REFERENCES. --Fee for reinstatement of license suspended or revoked for violation of Uniform Controlled Substances Law, see § 63-1-46.

Authority of commissioner to suspend operator's license without preliminary hearing for violation of Uniform Controlled Substances Law, see § 63-1-53.

Applicability of subsection (3) of this section to defendant who holds commercial driver's license or was operating commercial motor vehicle when violation occurred and who is charged with violating state of local traffic law other than parking violation, see § 63-1-222.

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Non-commercial Drivers Licenses

ATTORNEY GENERAL OPINIONS

This section applies to everyone pleading nolo to, convicted, or adjudicated delinquent of a controlled substances violation. Hankins, Oct. 30, 1991, A.G. Op. #91-0798.

Section 63-1-71(2) and Section 41-29-139(c)(2)(A) are not in conflict; report of conviction for less than one ounce of marijuana must be sent to the Bureau of Narcotics pursuant to 41-29-139, and, if court is unable to collect the license of person convicted, court shall also cause report of conviction to be sent to Commissioner of Public Safety, Driver Improvement Division. Lowe, Sept. 16, 1992, A.G. Op. #92-0680.

A defendant's driver's license will be suspended for a conviction of possession of marijuana or for possession of marijuana in a motor vehicle or for possession of paraphernalia and a conviction for any of these should be reported to the Department of Public Safety. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

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Miss. Code Ann. § 63-1-73 (2014)

§ 63-1-73. Use of wireless communication device by person authorized to drive under intermediate license or temporary learning or driving permit while vehicle in motion or by person operating a passenger bus with minor passenger on bus prohibited; exceptions; penalties

(1) For purposes of this section, the following terms shall have the meanings ascribed in this subsection, unless the context clearly indicates otherwise:

(a) "Cellular telephone" means an analog or digital wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radiophones.

(b) "Personal digital assistant" means a wireless electronic communication device that provides for data communication other than by voice.

(c) The term "E911" shall have the meaning ascribed in Section 19-5-303.

(d) "Wireless communication device" means a device that uses a commercial mobile service, as defined by 47 USC Section 332, including a cellular telephone or personal digital assistant.

(2) (a) A person who is authorized to drive under an intermediate license, a temporary learning permit or a temporary driving permit shall not operate a motor vehicle on a highway while using a wireless communication device to send or receive a written message while the motor vehicle is in motion.

(b) A person shall not use a wireless communication device while operating a passenger bus with a minor passenger on the bus, except for an emergency or in the case of a school bus driver for official school business or in an emergency.

(3) This section does not apply to any of the following:

(a) Law enforcement and safety personnel;

- (b) Drivers of authorized emergency vehicles;
- (c) A person who is reporting reckless or negligent behavior;
- (d) A person who believes that the person or another person is in physical danger;
- (e) Written messages sent or received while the vehicle is parked;
- (f) The use of a wireless communication device for the sole purpose of communicating with any of the following regarding an emergency situation:
 - (i) An emergency response or E911 operator;
 - (ii) A hospital, physician's office or health clinic;
 - (iii) A provider of ambulance services;
 - (iv) A provider of fire fighting services;
 - (v) A law enforcement agency;
- (g) The use of technology utilizing a cellular connection to a vehicle to relay vehicle operational information between the vehicle and a call center or repair facility; and
- (h) A vehicle navigation system utilizing a cellular connection to update databases and provide real-time traffic information.

(4) (a) A violation of this section is a misdemeanor, and upon conviction, is punishable by a fine not to exceed Five Hundred Dollars (\$ 500.00).

(b) If the person violates this section at the time that he is involved in a motor vehicle accident, then the violation is punishable by a fine not to exceed One Thousand Dollars (\$ 1,000.00).

(c) A law enforcement officer investigating a motor vehicle accident in which a person is cited for violating subsection (2)(a) or (b) of this section shall indicate on the written accident report the use of a wireless communication device in violation of this section at the time of the accident.

HISTORY: SOURCES: Laws, 2009, ch. 488, § 5; Laws, 2011, ch. 481, § 2, eff from and after July 1, 2011.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (4)(c) by substituting "subsection (2)(a) or (b) of this section" for "subsection (2)(b) or (c) of this section." The Joint Committee ratified the correction at its July 13, 2011, meeting.

EDITOR'S NOTE. --A former § 63-1-73 [Laws, 1989, ch. 482, § 1, eff from and after January 1, 1990; Repealed by Laws, 2009, ch. 560, § 27, effective July 1, 2009] provided the short title for former Article 2 of this chapter pertaining to commercial driver's licensing. For present provisions relating to commercial driver's licensing, see the Commercial Driver's License Act, §§ 63-1-201 et seq.

Laws of 2009, ch. 488, § 6, provides:

"SECTION 6. The provisions of Section 5 of this act shall be codified in Chapter 1, Title 63, Mississippi Code of 1972."

Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

AMENDMENT NOTES. --The 2011 amendment added (1)(c) and (d); rewrote (2), and (3); and rewrote (4)(c).

CROSS REFERENCES. --Intermediate licenses and temporary permits, see §§ 63-1-9, 63-1-10 and 63-1-21.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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Distracted Driving and Cell Phones

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TITLE 67. ALCOHOLIC BEVERAGES  
CHAPTER 1. LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL

Miss. Code Ann. § 67-1-9 (2014)

**§ 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.

HISTORY: 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.

NOTES: CROSS REFERENCES. --Possession of alcoholic beverages, light wine and beer by person holding alcohol processing permit, see § 67-9-1.

Exceptions to rules prohibiting alcoholic beverages, see §§ 97-31-23 et seq.

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Alcohol Manufacture, Distribution & Sales

JUDICIAL DECISIONS

1. IN GENERAL.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v. State*, 501 So. 2d 1124 (Miss. 1987).

RESEARCH REFERENCES

ALR. Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors. 116 A.L.R.5th 149.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 276 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 311 et seq., 380.

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Miss. Code Ann. § 67-1-37 (2014)

§ 67-1-37. Powers and duties of Department of Revenue with respect to Alcoholic Beverage Control Division

(1) The Department of Revenue, under its duties and powers with respect to the Alcoholic Beverage Control Division therein, shall have the following powers, functions and duties:

(a) To issue or refuse to issue any permit provided for by this chapter, or to extend the permit or

remit in whole or any part of the permit monies when the permit cannot be used due to a natural disaster or act of God.

(b) To revoke, suspend or cancel, for violation of or noncompliance with the provisions of this chapter, or the law governing the production and sale of native wines, or any lawful rules and regulations of the department issued hereunder, or for other sufficient cause, any permit issued by it under the provisions of this chapter. The department shall also be authorized to suspend the permit of any permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a permit suspended for that purpose, shall be governed by Section 93-11-157 or Section 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or Section 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or Section 93-11-163, as the case may be, shall control.

(c) To prescribe forms of permits and applications for permits and of all reports which it deems necessary in administering this chapter.

(d) To fix standards, not in conflict with those prescribed by any law of this state or of the United States, to secure the use of proper ingredients and methods of manufacture of alcoholic beverages.

(e) To issue rules regulating the advertising of alcoholic beverages in the state in any class of media and permitting advertising of the retail price of alcoholic beverages.

(f) To issue reasonable rules and regulations, not inconsistent with the federal laws or regulations, requiring informative labeling of all alcoholic beverages offered for sale within this state and providing for the standards of fill and shapes of retail containers of alcoholic beverages; however, such containers shall not contain less than fifty (50) milliliters by liquid measure.

(g) Subject to the provisions of subsection (3) of Section 67-1-51, to issue rules and regulations governing the issuance of retail permits for premises located near or around schools, colleges, universities, churches and other public institutions, and specifying the distances therefrom within which no such permit shall be issued. The Alcoholic Beverage Control Division shall not issue a package retailer's or on-premises retailer's permit for the sale or consumption of alcoholic beverages in or on the campus of any public school, community or junior college, college or university.

(h) To adopt and promulgate, repeal and amend, such rules, regulations, standards, requirements and orders, not inconsistent with this chapter or any law of this state or of the United States, as it deems necessary to control the manufacture, importation, transportation, distribution and sale of alcoholic liquor, whether intended for beverage or nonbeverage use in a manner not inconsistent with the provisions of this chapter or any other statute, including the native wine laws.

(i) To call upon other administrative departments of the state, county and municipal governments, county and city police departments and upon prosecuting officers for such information and assistance as it may deem necessary in the performance of its duties.

(j) To prepare and submit to the Governor during the month of January of each year a detailed report of its official acts during the preceding fiscal year ending June 30, including such recommendations as it may see fit to make, and to transmit a like report to each member of the Legislature of this state upon the convening thereof at its next regular session.

(k) To inspect, or cause to be inspected, any premises where alcoholic liquors intended for sale are manufactured, stored, distributed or sold, and to examine or cause to be examined all books and records pertaining to the business conducted therein.

(l) To investigate the administration of laws in relation to alcoholic liquors in this and other states and any foreign countries, and to recommend from time to time to the Governor and through him to the Legislature of this state such amendments to this chapter, if any, as it may think desirable.

(m) To designate hours and days when alcoholic beverages may be sold in different localities in the state which permit such sale.

(n) To assign employees to posts of duty at locations where they will be most beneficial for the control of alcoholic beverages and to take any other action concerning persons employed under this chapter as authorized by law and taken in accordance with the rules, regulations and procedures of the State Personnel Board.

(o) To enforce the provisions made unlawful by Sections 67-3-13, 67-3-15, 67-3-53, 67-3-57 and 67-3-70.

(p) To delegate its authority under this chapter to the Alcoholic Beverage Control Division, its director or any other officer or employee of the department that it deems appropriate.

(2) No alcoholic beverage shall be sold or consumed at any public athletic event at any public school, community or junior college, college or university.

HISTORY: SOURCES: Codes, 1942, § 10265-17; Laws, 1966, ch. 540, § 17; Laws, 1970, ch. 549, § 1; Laws, 1971, ch. 358, § 1; Laws, 1976, ch. 467, § 14; Laws, 1988, ch. 383, § 1; Laws, 1988, ch. 562, § 1; Laws, 1992, ch. 459, § 1; Laws, 1996, ch. 507, § 15; Laws, 1997, ch. 558, § 2; reenacted and amended, Laws, 1998, ch. 520, § 1; Laws, 2002, ch. 570, § 6; Laws, 2003, ch. 392, § 1; Laws, 2005, ch. 462, § 1; Laws, 2006, ch. 529, § 3; Laws, 2007, ch. 462, § 3; Laws, 2009, ch. 492, § 131; Laws, 2011, ch. 379, § 1, eff from and after July 1, 2011.

NOTES: EDITOR'S NOTE. --For provisions of this section in effect from and after July 1, 1988, until January 1, 1989, see Laws, 1988, ch. 562, § 1.

Laws of 1998, ch. 520, § 5, provides as follows:

"SECTION 5. Section 5, Chapter 558, Laws of 1997, which repeals, effective July 1, 1998, Sections 67-1-37, 67-3-31, 67-3-37 and 67-3-75, Mississippi Code of 1972, is repealed."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or

forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

AMENDMENT NOTES. --The 2003 amendment substituted "July 1, 2005" for "July 1, 2003" in the bracketed language appearing at the beginning of each version of the section.

The 2005 amendment extended the repeal date of the first version from "July 1, 2005" until "July 1, 2007"; and extended the effective date of the second version from "July 1, 2005" until "July 1, 2007."

The 2006 amendment deleted former (q), which read "To adopt and promulgate rules and regulations for suspension or revocation of identification cards of employees of permittees for violations of the alcoholic beverage control laws, rules or regulations" in both versions of the section; and in the first version, effective until July 1, 2007, redesignated former (r) to be present (q).

The 2007 amendment, in both versions of the section, substituted "2011" for "2007" in the bracketed effective date language, added (2) and redesignated the former undesignated introductory language as present (1), made minor stylistic changes, and in (1)(g), substituted "shall not issue a package retailer's or on-premises retailer's permit for the sale" for "shall not allow the sale" and "public school, community or junior college, college or university" for "public school or college, and no alcoholic beverage shall be for sale or consumed at any public athletic event at any grammar or high school or any college"; and in the version effective until July 1, 2011, inserted "67-3-57" in (1)(q).

The 2009 amendment, in both the version effective from and after July 1, 2010, and until July 1, 2011, and the version effective from and after July 1, 2011, substituted "Department of Revenue" for "State Tax Commission" in the introductory language of (1); in (1)(b), in the first sentence, substituted "department" for "commission," and deleted "however, no such permit shall be revoked, suspended or cancelled except after a hearing of which the permit holder shall have been given reasonable notice and an opportunity to be heard" from the end, and substituted "The department shall also be authorized" for "The board shall be authorized" in the second sentence; deleted former (l), and redesignated former (m) through (o) as present (l) through (n); in addition, in the version effective from and after July 1, 2010, and until July 1, 2011, deleted former (p), redesignated former (q) as present (o), and added (p); and in the version effective from and after July 1, 2011, deleted former (p), and added present (o).

The 2011 amendment deleted the version effective from and after July 1, 2011.

CROSS REFERENCES. --Department of revenue generally, see §§ 27-3-1 et seq.

Annual privilege taxes for permits, see § 27-71-5.

Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Alcoholic beverage permits, generally, see §§ 67-1-51 et seq.

Application of this section to the qualifications for a Class 1 or Class 2 Temporary retailer's permit, see § 67-1-51.

Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

Sales after hours, see § 67-3-53.

Native Wines Law, see §§ 67-5-1 et seq.

Possession or sale of light wine or beer before permit secured or during time of revocation or suspension prohibited, see § 67-3-57.

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Alcohol Manufacture, Distribution & Sales

JUDICIAL DECISIONS

1. IN GENERAL.

Sufficient-cause language within subsection (b) was an express grant of power that did not grant to the State Tax Commission arbitrary and capricious discretion; the commission was given authority to revoke, suspend or cancel a permit for noncompliance or other sufficient cause, and there was sufficient cause to find the business to have disregarded the authority and power of the Alcohol Beverage Control division. *D. J. Koenig & Assocs. v. Miss. State Tax Comm'n*, 838 So. 2d 246 (Miss. 2003).

Business was given due process consisting of notice and an opportunity to be heard; the statute was discussed in the first hearing, and this put the owner on notice that it was at issue in the second hearing. *D. J. Koenig & Assocs. v. Miss. State Tax Comm'n*, 838 So. 2d 246 (Miss. 2003).

Chancery Court jurisdiction in case under local option alcoholic beverage control law (§§ 67-1-1 et seq.) is appellate only; Chancery Court has no original authority to initially hear and determine merits of case under law and may not issue order quashing subpoena duces tecum issued by Alcoholic Beverage Control Division. *Mississippi State Tax Comm'n v. Elks Lodge No. 553*, 471 So. 2d 1225 (Miss. 1985).

A chancery court order, removing the disabilities of a 19-year-old woman and empowering her to engage "in any profession or avocation which she could do if she were 21 years of age", as decreed pursuant to Code 1972 § 93-19-9, would take precedence over an Alcoholic Beverage Control Division regulation prohibiting the employment of persons under age 21 from the handling of alcoholic beverages, since the regulatory authority vested in the Division by Code 1972 § 67-1-37(h) requires that such regulations not be inconsistent with other laws of the state. *Mississippi State Tax Comm'n v. Reynolds*, 351 So. 2d 326 (Miss. 1977).

Although this section, gives the state tax commission authority to designate hours when alcoholic beverages may be sold indifferent localities in the state which permit such sale, and the state tax commission did in fact approve the sale of alcoholic beverages in a certain municipality by hotels, restaurants, and clubs between the hours of 9 o'clock a.m. and 2 o'clock a.m. on all days except Sundays and election days, the allegation in a restaurant owners' bill of complaint alleging that the sheriff of the county had publicly stated that he would repeatedly arrest the complainant if he continued to sell alcoholic beverages between midnight and 2 a.m. was not sufficient to show that complainant's property rights were in danger of repeated arrest and prosecution by the sheriff, and was insufficient to support an injunction. *Watkins v. Navarrette*, 227 So. 2d 853 (Miss. 1969).

The state tax commission not only has the authority as a legislative administrative agency to hold a hearing upon the application of a county board of supervisors to determine "resort areas" but it was the commission's duty to hold a public hearing upon the application; and a failure to conduct a hearing which is required by statute would have been unlawful, arbitrary, and capricious. *Graves v. Rhoden*, 218 So. 2d 424 (Miss. 1969).

Inasmuch as Code 1942, § 10265-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight, the authority conferred upon agents of the alcoholic beverage commission under this section and Code 1942, § 10265-11 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. *Jolliff v. State*, 215 So. 2d 234 (Miss. 1968), but see *Cumbest v. Commissioners of Election*, 416 So. 2d 683 (Miss. 1982).

1.5. DUE PROCESS.

Due process was afforded the business owner pursuant to the statute via notice and an opportunity to be heard. *D. J. Koenig & Assocs. v. Miss. State Tax Comm'n*, 838 So. 2d 246 (Miss. 2003).

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 A.L.R.4th 668.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 126 et seq.

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Miss. Code Ann. § 67-1-81 (2014)

### **§ 67-1-81. Sales to minors prohibited; penalties**

(1) Any permittee or other person who shall sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than One Thousand Dollars (\$ 1,000.00) for a first offense. For a second or subsequent offense, such permittee or other person shall be punished by a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Two Thousand Dollars (\$ 2,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment in the discretion of the court. Upon conviction of a second offense under the provisions of this section the permit of any permittee so convicted shall be automatically and permanently revoked.

(2) Any person under the age of twenty-one (21) years who purchases, receives, or has in his or her possession in any public place, any alcoholic beverages, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00). Provided, that clearing or busing tables that have glasses or other containers that contain or did contain alcoholic beverages, or stocking, bagging or otherwise handling purchases of alcoholic beverages shall not be deemed possession of alcoholic beverages for the purposes of this section. Provided further, that a person who is at least eighteen (18) years of age but under the age of twenty-one (21) years who waits on tables by taking orders for or delivering orders of alcoholic beverages shall not be deemed to unlawfully possess or furnish alcoholic beverages if in the scope of his employment by the holder of an on-premises retailer's permit. This exception shall not

authorize a person under the age of twenty-one (21) to tend bar or act in the capacity of bartender. Any person under the age of twenty-one (21) who knowingly makes a false statement to the effect that he or she is twenty-one (21) years old or older or presents any document that indicates he or she is twenty-one (21) years of age or older for the purpose of purchasing alcoholic beverages from any person engaged in the sale of alcoholic beverages shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00), and a sentence to not more than thirty (30) days' community service.

(3) The term "community service" as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(4) If a person under the age of twenty-one (21) years is convicted or enters a plea of guilty of purchasing, receiving or having in his or her possession in any public place any alcoholic beverages in violation of subsection (2) of this section, the trial judge, in lieu of the penalties otherwise provided under subsection (2) of this section, shall suspend the minor's driver's license by taking and keeping it in the custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering the suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under subsection (2) of this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties or both, that he would have otherwise imposed, and such action shall constitute a conviction.

HISTORY: SOURCES: Codes, 1942, § 10265-31; Laws, 1966, ch. 540, § 31; Laws, 1979, ch. 380; Laws, 1992, ch. 460, § 1; Laws, 2009, ch. 350, § 1, eff from and after July 1, 2009.

NOTES: AMENDMENT NOTES. --The 2009 amendment, in the last sentence of (2), inserted "or presents any document that indicates he or she is twenty-one (21) years of age or older for the purpose of purchasing alcoholic beverages from," deleted "for the purpose of obtaining the same" preceding "shall be guilty of a misdemeanor," and made a minor stylistic change.

CROSS REFERENCES. --Definition of term "minor," see § 1-3-27.

Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Prohibition against sale of light wine or beer to persons under the age of 21, see § 67-3-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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Collateral Consequences of Delinquency

## JUDICIAL DECISIONS

### 1. IN GENERAL.

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been

referred to as the Mississippi Dram Shop Law, such references are misleading because true dram shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

ATTORNEY GENERAL OPINIONS

Since possession of alcohol or light wine or beer by a minor is not a delinquent act, the youth court does not have original jurisdiction over such offenses. Wiggins, Sept. 19, 2003, A.G. Op. 03-0424.

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 345-350.

LAW REVIEWS. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

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Miss. Code Ann. § 67-1-83 (2014)

§ 67-1-83. Other prohibited sales; penalty

(1) It shall be unlawful for any permittee or other person to sell or furnish any alcoholic beverage to any person who is visibly intoxicated, or to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs. It shall also be unlawful for the holder of any package retailer's permit to sell any alcoholic beverages except by delivery in person to the purchaser at the place of business of the permittee.

(2) It shall be unlawful for any permittee or other person to sell or furnish any alcoholic beverage to any person to whom the commission has, after investigation, decided to prohibit the sale of those beverages because of an appeal to the commission so to do by the husband, wife, father, mother, brother, sister, child, or employer of the person. The interdiction in those cases shall last until removed by the commission, but no person shall be held to have violated this subsection unless he has been informed by the commission, by registered letter, that it is forbidden to sell to that individual or unless that fact is otherwise known to the permittee or other person.

(3) It shall be unlawful for any holder of a package retailer's permit, or any employee or agent thereof, engaged solely in the business of package retail sales under this chapter to sell or furnish any alcoholic beverage before 10:00 a.m. and after 10:00 p.m. or to sell alcoholic beverages on Sunday and Christmas Day.

(4) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail for a term of not more than six (6) months or by both that fine and imprisonment, in the discretion of the court. In addition, the commission shall immediately revoke the permit of any permittee who violates the provisions of this section.

HISTORY: SOURCES: Codes, 1942, § 10265-32; Laws, 1966, ch. 540, § 32; Laws, 1972, ch. 508, § 1; Laws, 1977, ch. 485; Laws, 1986, ch. 486, § 2; Laws, 1989, ch. 384, § 2; Laws, 2008, ch. 442, § 18, eff from and after July 1, 2008.

NOTES: AMENDMENT NOTES. --The 2008 amendment deleted "to any person who is known to be insane or mentally defective, or" following "furnish any alcoholic beverage" in the first sentence of (1); substituted "shall immediately revoke" for "shall forthwith revoke" near the end of (4); and made minor stylistic changes throughout.

CROSS REFERENCES. --Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Immunity from liability of persons who lawfully furnished or sold intoxicating beverages to one causing damage, see § 67-3-73.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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Alcohol Manufacture, Distribution & Sales

JUDICIAL DECISIONS

1. IN GENERAL.

Prohibition in Mississippi's dram shop statute created liability for the permit holder and any employees of the permit holder, and the parent company, as the sole shareholder of the permit holder, the casino owner, was neither; the family failed to allege any facts to suggest that the corporation had either disregarded corporate formalities or used the corporate form to commit misfeasance, and thus the family did not assert a viable claim against the parent company as required by Miss. R. Civ. P. 12(b). *Penn Nat'l Gaming v. Ratliff*, -- So. 2d --, 2007 Miss. LEXIS 1 (Miss. Jan. 4, 2007), opinion withdrawn by, substituted opinion at, remanded by 954 So. 2d 427, 2007 Miss. LEXIS 229 (Miss. 2007).

There was no indication that the decedent (an adult), was visibly intoxicated in the terms of Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, in the terms of Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. *Estate of White v. Rainbow*

Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

There was no indication that the decedent (an adult), was visibly intoxicated, as defined in Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, as defined in Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. *Estate of White v. Rainbow Casino-Vicksburg P'ship*, 910 So. 2d 713 (Miss. Ct. App. 2005).

Customer who suffered injuries after voluntarily consuming alcohol is not part of the protected class of Miss. Code Ann. § 67-3-73; therefore, a casino's motion to dismiss a negligence action was properly granted since there was no liability under either § 67-3-73 or Miss. Code Ann. § 67-1-83. *Bridges v. Park Place Entm't, Inc.* 860 So. 2d 811 (Miss. 2003).

One selling alcohol on the premises, though not an insurer of its guest's safety, has a duty to exercise reasonable care to protect its patrons from reasonably foreseeable injury at the hands of another. *Grisham v. John Q. Long VFW Post, No. 4057, Inc.* 519 So. 2d 413 (Miss. 1988).

A dispenser of intoxicants is not liable to an adult individual who voluntarily consumes intoxicants and then, by reason of his inebriated condition, injures himself. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986); *Gregg v. Four Squires, Ltd.* 498 So. 2d 362 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

The public, for example, a third-party class whether minor or adult, is protected under the statute from the negligent acts of an intoxicated person, and has a claim against a person or business furnishing alcoholic beverages in violation of the statute. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been referred to as the Mississippi Dram Shop Law, such references are misleading because true dram shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

Host who provides alcoholic beverage to visibly intoxicated social guest is not liable when guest subsequently causes automobile collision as result of intoxication. *Boutwell v. Sullivan*, 469 So. 2d 526 (Miss. 1985).

An indictment or affidavit for a violation of a local option law must clearly aver facts showing that the offense was committed in a county or locality where such law was in effect. *Benward v. State*, 308 So. 2d 94 (Miss. 1975).

A state statute under which various persons, by forbidding in writing the sale or gift of intoxicating liquors to one who, by excessive drinking, produced described conditions or exhibited certain traits, such as exposing himself or his family to want or becoming a danger to the peace of the community, could cause a notice to be posted in local retail liquor outlets prohibiting sales or gifts of liquor to the named person, was violative of procedural due process because of failure to provide for advance notice of such posting and an opportunity to be heard, such posting being to many a stigma or badge of disgrace, exposing an individual to public embarrassment and ridicule. *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971).

2. NO LIABILITY.

Accident victim's claims against a bar failed because the drunk driver testified at his deposition that he was not served any alcohol by any employee of the bar and did not recall purchasing any "set ups" that night. A bartender testified that she did not see any employee serve the driver any beer that night. *Pontillo v. Warehouse Bar & Grill, L.L.C.* 19 So. 3d 797 (Miss. Ct. App. 2009).

Parent company of an alcohol permit holder should have been dismissed from a personal injury case because it was not liable under Miss. Code Ann. § 67-1-83 since it was not a permit holder itself or an employee of such; moreover, the pleadings did not adequately state a claim showing that the corporate veil should have been pierced. *Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427 (Miss. 2007).

There was no indication that the decedent (an adult), was visibly intoxicated, as defined in Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, as defined in Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. *Estate of White v. Rainbow Casino-Vicksburg P'ship*, 910 So. 2d 713 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR. Admissibility, in prosecution for illegal sale of intoxicating liquor, of other sales. 40 A.L.R.2d 817.

Sale and use of intoxicating liquors at public dance as nuisance. 44 A.L.R.2d 1401.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damages Act proceeding. 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act. 64 A.L.R.3d 882.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

Recovery under Civil Damage (Dram Shop) Act for intangibles such as mental anguish, embarrassment, loss of affection or companionship, or the like. 78 A.L.R.3d 1199.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 A.L.R.3d 528.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 A.L.R.3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 A.L.R.4th 16.

Validity, construction, and effect of statute limiting amount recoverable in dram shop action. 78 A.L.R.4th 542.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 216 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 299.1 (Head-on collision -- Intoxicated driver driving in wrong direction -- By decedent's representative -- Against tavern).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 151 et seq. (civil incidents and

liabilities).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 151.1 (complaint, petition, or declaration -- against liquor dealer -- wrongful death -- defendant driver intoxicated).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 167.1 (Complaint, petition, or declaration -- Against sponsor of function where alcohol was served -- Collision between intoxicated attendee and another car -- For personal injuries).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 181.1 (Complaint, petition, or declaration -- Against liquor dealer -- Death caused by illegal sale of intoxicating liquor -- Automobile collision -- Another form).

32 Am. Jur. Proof of Facts 2d 357, Tavern Keeper's Liability Under Dramshop Act.

CJS. 48 C.J.S., Intoxicating Liquors §§ 341 et seq.

LAW REVIEWS. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

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TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER 3. SALE OF LIGHT WINE, BEER, AND OTHER ALCOHOLIC BEVERAGES

Miss. Code Ann. § 67-3-53 (2014)

**§ 67-3-53. Unlawful acts**

In addition to any act declared to be unlawful by this chapter, or by Sections 27-71-301 through 27-71-347, and Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be unlawful for the holder of a permit authorizing the sale of beer or light wine at retail or for the employee of the holder of such a permit:

(a) To sell or give to be consumed in or upon any licensed premises any beer or light wine between the hours of midnight and seven o'clock the following morning or during any time the licensed premises may be required to be closed by municipal ordinance or order of the board of supervisors; however, in areas where the sale of alcoholic beverages is legal under the provisions of the Local Option Alcoholic Beverage Control Law and the hours for selling those alcoholic beverages have been extended beyond midnight for on-premises permittees under Section 67-1-37, the hours for selling beer or light wines are likewise extended in areas where the sale of beer and light wines is legal in accordance with the provisions of this chapter.

(b) To sell, give or furnish any beer or light wine to any person visibly or noticeably intoxicated, or to any habitual drunkard, or to any person under the age of twenty-one (21) years.

(c) To permit in the premises any lewd, immoral or improper entertainment, conduct or practices.

(d) To permit loud, boisterous or disorderly conduct of any kind upon the premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community in which the business is located.

(e) To permit persons of ill repute, known criminals, prostitutes or minors to frequent the licensed premises, except minors accompanied by parents or guardians, or under proper supervision.

(f) To permit or suffer illegal gambling or the operation of illegal games of chance upon the licensed premises.

(g) To receive, possess or sell on the licensed premises any beverage of any kind or character containing more than five percent (5%) of alcohol by weight except any beer containing not more than eight percent (8%) of alcohol by weight, unless the licensee also possesses an on-premises permit under the Local Option Alcoholic Beverage Control Law.

(h) To accept as full or partial payment for any product any coupons that are redeemed directly or indirectly from a manufacturer, wholesaler or distributor of light wine or beer.

HISTORY: SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4; Laws, 1974, ch. 568; Laws, 1985, ch. 431, § 1; Laws, 1991, ch. 368, § 3; Laws, 1995, ch. 398, § 1; Laws, 1998, ch. 306, § 10; Laws, 2008, ch. 442, § 19; Laws, 2012, ch. 323, § 11; Laws, 2012, ch. 369, § 1, eff from and after July 1, 2012.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Section 11 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), amended this section. Section 1 of Chapter 369, Laws of 2012, effective July 1, 2012 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

AMENDMENT NOTES. --The 2008 amendment deleted "or to any insane person" following "noticeably intoxicated" in (b); and made minor stylistic changes.

The first 2012 amendment (ch. 323) inserted "except any beer containing not more than eight percent (8%) of alcohol by weight" following "of alcohol by weight" near the end of (g).

The second 2012 amendment (ch. 369), added (h).

CROSS REFERENCES. --Tax Commission's regulatory powers, see § 67-1-37.

Exemption for persons over age of 18 with parental consent, or who are military personnel, or who are employees of establishments licensed to sell light wine or beer, see § 67-3-54.

Penalty for sale to underaged customer, see § 67-3-69.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

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Liquor Licenses

## JUDICIAL DECISIONS

### 1. IN GENERAL.

In an action arising from a motor vehicle accident caused by an intoxicated minor who allegedly smoked marijuana and drank beer purchased other than at the defendant restaurant, the defendant could be found liable if its negligence in selling beer consumed by the minor was a contributing cause to the accident; it was not necessary that the defendant's negligence be the sole proximate cause of the accident. *Delahoussaye v. Mary Mahoney's, Inc.* 783 So. 2d 666 (Miss. 2001).

In an action arising from a motor vehicle accident caused by a minor who alleged that he did not purchase beer from the defendant restaurant, judgment for the defendant restaurant was reversed based on inadequate jury instruction; the jury should have been instructed that it could find negligence per se if it found that the restaurant sold alcohol to another minor and that it could then hold the restaurant liable if it concluded that it was foreseeable that the minor to whom the alcohol was sold would share that alcohol with other minors. *Delahoussaye v. Mary Mahoney's, Inc.* 783 So. 2d 666 (Miss. 2001).

Genuine issue of material fact existed as to whether restaurant had illegally sold beer to minor who subsequently struck two other vehicles with truck, injuring motorist; thus, summary judgment for restaurant owner in motorist's negligence action was precluded. *Delahoussaye v. Mary Mahoney's, Inc.* 696 So. 2d 689 (Miss. 1997).

Ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m., which defined "consumption" to include possession in open containers as well as ingestion, was not preempted by statute expressly permitting possession of alcoholic beverages in "wet" municipalities absent clear expression of legislative intent to permit consumption, as opposed to mere possession, without limitation in wet areas, given broad grant of authority to municipalities to regulate impact of alcoholic beverages upon public health, morals, and safety and public policy favoring prevention of alcohol-related altercations and motor vehicle accidents, as limiting possession of opened containers was reasonable and necessary to enforce limitations on consumption. *Maynard v. City of Tupelo*, 691 So. 2d 385 (Miss. 1997).

Plaintiff, who had been injured in accident caused by drunk driver, and who had obtained default judgment against tavern that had allegedly violated § 67-3-53 by providing beer to driver, could not collect judgment from tavern's insurance company where insurance policy specifically excluded coverage for bodily injury resulting from violation of any statute or by reason of selling, serving, or giving any alcoholic beverage to person under influence of alcohol or that contributes to person becoming intoxicated. *Williams v. United States Fid. & Guar. Co.* 854 F.2d 106 (5th Cir. 1988).

Policy of liability insurance covering convenience store, which policy excluded coverage for bodily injury for which insured may be held liable by reason of selling, serving or giving of any alcoholic beverage to minor, excludes coverage for bodily injury by reason of selling, serving or giving of "beer", even though definition of alcoholic beverage under state law excludes beer, as common and ordinary meaning of beer is beverage containing alcohol; liability policy which excluded coverage for bodily injury for which store was liable by reason of selling of alcoholic beverage to minor did not cover bodily injuries sustained in accident caused by underaged motorist's intoxication from drinking beer which he bought at store, despite statute which excluded beer from definition of alcoholic beverages. *Wilson ex rel. Wilson v. United States Fid. & Guar. Ins. Co.*, 659 F. Supp. 553 (S.D. Miss. 1987), *aff'd*, 830 F.2d 588 (5th Cir. 1987).

Sale of beer to minor in violation of statute constitutes negligence per se and trial court errs in refusing to grant such jury instruction. *Bryant v. Alpha Entertainment Corp.* 508 So. 2d 1094 (Miss. 1987).

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been referred to as the Mississippi Dram Shop Law, such references are misleading because true dram

shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

The statute which prohibits the sale of beer or wine to a minor was adopted for the protection of the general public and a minor is a member of the protected class. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986).

In a wrongful death action alleging that defendant market was negligent in selling beer to a minor who was subsequently killed in an automobile accident, the trial court did not err in overruling defendant's demurrer where the complaint alleged a violation of the statute prohibiting the sale of beer to minors and that such negligence had contributed to the car wreck and decedent's death; although such statute was enacted for the legalization and regulation of the manufacture and sale of beer and wine, it was also adopted for the protection of the general public. *Munford, Inc. v. Peterson*, 368 So. 2d 213 (Miss. 1979).

An indictment charging the holder of a permit for the sale of beer and wine at retail with selling, giving or furnishing beer to a person under 18 years of age, was not defective in failing to charge the defendant with knowledge that his employee sold or gave beer to the minor, since the defendant's lack of knowledge of the acts of his employee was a defense and a question of fact for submission to the jury, and neither matters of evidence nor matters of defense need be averred in an indictment or information. *State v. Labella*, 232 So. 2d 354 (Miss. 1970).

An indictment under the wording of the statute making it unlawful for the holder of a permit for the sale of beer or wine at retail to sell, give or furnish any beer or wine to a person under the age of 18 years, was not defective for failing to charge the defendant with knowing that his employee sold or gave beer to a minor, where the statute itself does not use the word "knowing" and where the indictment was based upon an affidavit so worded as to show that the defendant knew of his employee's activities in selling beer to a minor. *State v. Labella*, 232 So. 2d 354 (Miss. 1970).

Subsection (a) of this section, when read in conjunction with Code 1942, § 10224, as a whole, and one section in context with the other, merely makes for the conclusion that though Code 1942, § 10224 refers to the authority of municipalities to prescribe hours opening or closing of businesses selling light wines and beer, those hours prescribed by the municipality must come within the limits of the hours established by state law. *Watkins v. Navarrette*, 227 So. 2d 853 (Miss. 1969).

Subsection (a) of this section means that municipalities have the authority to regulate the hours in which beer can be sold within the hours of 7:00 a.m. to midnight, and a municipal ordinance extending the hours in which beer can be sold beyond midnight and before 7:00 a.m. the following morning would be in conflict with this subparagraph; and it is well established that any conflict between an ordinance and a statute, the latter must prevail. *Watkins v. Navarrette*, 227 So. 2d 853 (Miss. 1969).

A charge under this section is supported by a finding of guilty of any one of the elements specified. *Ellard v. State*, 248 Miss. 313, 158 So. 2d 690 (1963).

## List2. MINORS.

When a reasonable inference from the evidence is that a person exhibiting identification that he

or she was an adult ordered drinks for minors to be consumed on a bar's premises, this inference is sufficient to create a fact question on the issue of the bar's tort liability under Miss. Code Ann. § 67-3-53(b). *Moore v. K&J Enters.* 856 So. 2d 621 (Miss. Ct. App. 2003), remanded by 2004 Miss. LEXIS 39 (Miss. Jan. 22, 2004), writ of certiorari dismissed en banc by 2004 Miss. LEXIS 198 (Miss. Feb. 12, 2004).

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court properly excluded evidence of prior sales of alcohol to minors by the bar, as there was no purpose for such evidence other than to show that the bar had a propensity to sell alcohol to minors. *Moore v. K&J Enters.* 856 So. 2d 621 (Miss. Ct. App. 2003), remanded by 2004 Miss. LEXIS 39 (Miss. Jan. 22, 2004), writ of certiorari dismissed en banc by 2004 Miss. LEXIS 198 (Miss. Feb. 12, 2004).

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court erred by directing a verdict for the bar, as the evidence created a fact question as to whether the bar knew or should have known that the buyer of drinks (who presented a false Mississippi driver's license showing he was 21) was giving them to minors. *Moore v. K&J Enters.* 856 So. 2d 621 (Miss. Ct. App. 2003), remanded by 2004 Miss. LEXIS 39 (Miss. Jan. 22, 2004), writ of certiorari dismissed en banc by 2004 Miss. LEXIS 198 (Miss. Feb. 12, 2004).

A municipal ordinance which made it a misdemeanor for any permit holder to allow persons under 21 years of age to enter on-premises retailers even if such persons were accompanied by parents, guardians, or under proper supervision was properly adopted under § 67-3-65 and was not invalid on the basis of its conflict with § 67-3-53. *Collins v. City of Hazlehurst*, 709 So. 2d 408 (Miss. 1997), cert. denied, 524 U.S. 904, 118 S. Ct. 2061, 141 L. Ed. 2d 138 (1998).

#### ATTORNEY GENERAL OPINIONS

Section 67-3-53(a) provides that a holder of a permit for the sale of beer and light wine may not sell or give to be consumed in or upon any licensed premises beer or light wine between the hours of midnight and seven o'clock the following morning. The statute applies only to businesses where beer or light wine is sold or given to be consumed in or upon the premises and does not apply to businesses where beer and light wine are sold for off premises consumption, such as grocery stores and convenience stores with permits for the sale of beer and light wine. *Baker*, November 1, 1996, A.G. Op. #96-0737.

An ordinance regulating the hours of sale of beer and light wines falls within the authority of a municipality to regulate hours of opening and closing pursuant to § 67-3-65; however, any specific hours prescribed by the municipality for the sale of such beverages must come within the limits of this section. *Tyner*, March 5, 1999, A.G. Op. #99-0074.

Section 67-3-53(a) allows the on-premises sale of beer and light wine beyond midnight by anyone who has a permit to sell beer or light wine in areas where the Alcoholic Beverage Control Division (ABC) of the State Tax Commission has extended the hours of on-premises sale for alcoholic beverages beyond midnight. *Parker*, May 12, 2003, A.G. Op. 03-0219.

Because, based on the language of Section 67-3-53, the Legislature has shown a clear intent to allow the on-premises sale of beer and light wine beyond midnight in areas where the on-premises sale of alcoholic beverages have been extended beyond midnight, therefore, the Legislature has preempted this area with a specific statute that would make any local ordinance to the contrary void. *Parker*, May 12, 2003, A.G. Op. 03-0219.

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises

as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 226 et seq.  
45 Am. Jur. Proof of Facts 2d 631, Age of Person.

CJS. 48 C.J.S., Intoxicating Liquors §§ 376 et seq.

LAW REVIEWS. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

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Miss. Code Ann. § 67-3-54 (2014)

§ 67-3-54. Exemption for person over age 18 but less than 21; parental consent; military personnel; employee of establishment licensed to sell light wine or beer

(1) A person who is at least eighteen (18) years of age but under the age of twenty-one (21) years may possess and consume light wine or beer with the consent of his parent or legal guardian in the presence of his parent or legal guardian, and it shall not be unlawful for the parent, legal guardian or spouse of such person to furnish light wine or beer to such person who is at least eighteen (18) years of age.

(2) A person who is at least eighteen (18) years of age and who is serving in the armed services of the United States may lawfully possess and consume light wine or beer on military property where the consumption of light wine or beer is allowed.

(3) A person who is under twenty-one (21) years of age shall not be deemed to unlawfully possess or furnish light wine or beer, if in the scope of his employment such person:

(a) Clears or buses tables that have glasses or other containers that contain or did contain light wine or beer;

(b) Waits on tables by taking orders for light wine or beer; or

(c) Stocks, bags or otherwise handles purchases of light wine or beer at a store.

HISTORY: SOURCES: Laws, 1985, ch. 431, § 4, eff from and after October 1, 1986.

NOTES: CROSS REFERENCES. --Sale to underaged customer, see § 67-3-53.

Penalty for sales to underaged customers, see § 67-3-69.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

LexisNexis 50 State Surveys, Legislation & Regulations
Liquor Licenses

RESEARCH REFERENCES

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises

as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

1 Am. Jur. Proof of Facts 315, Age.

CJS. 48 C.J.S. Intoxicating Liquor §§ 345-350, 460.

LAW REVIEWS. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

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Miss. Code Ann. § 67-3-69 (2014)

**§ 67-3-69. Penalty**

(1) Except as to Sections 67-3-17, 67-3-23, 67-3-27, 67-3-55 and 67-3-57, any violation of any provision of this chapter or of any rule or regulation of the commissioner, shall be a misdemeanor and, where the punishment therefor is not elsewhere prescribed in this section, shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or imprisonment for not more than six (6) months, or both, in the discretion of the court. If any person so convicted shall be the holder of any permit or license issued by the commissioner under authority of this chapter, the permit or license shall from and after the date of such conviction be void and the holder thereof shall not thereafter, for a period of one (1) year from the date of such conviction, be entitled to any permit or license for any purpose authorized by this chapter. Upon conviction of the holder of any permit or license, the appropriate law enforcement officer shall seize the permit or license and transmit it to the commissioner.

(2) (a) Any person who shall violate any provision of Section 67-3-17, 67-3-23, 67-3-27 or 67-3-55 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(b) Any person who shall violate any provision of Section 67-3-57 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$ 1,000.00) or by imprisonment in the county jail for not more than one (1) year, or by both, in the discretion of the court. Any person convicted of violating any provision of the sections referred to in this subsection shall forfeit his permit, and shall not thereafter be permitted to engage in any business taxable under the provisions of Sections 27-71-301 through 27-71-347.

(3) If the holder of a permit, or the employee of the holder of a permit, shall be convicted of selling any beer or wine to anyone who is visibly intoxicated from the licensed premises or to any person under the age of twenty-one (21) years from the licensed premises in violation of Section 67-3-53(b), then, in addition to any other penalty provided for by law, the commissioner may impose the

following penalties against the holder of a permit:

(a) For the first offense on the licensed premises, by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than One Thousand Dollars (\$ 1,000.00) and/or suspension of the permit for not more than three (3) months.

(b) For a second offense occurring on the licensed premises within twelve (12) months of the first offense, by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Two Thousand Dollars (\$ 2,000.00) and/or suspension of the permit for not more than six (6) months.

(c) For a third offense occurring on the licensed premises within twelve (12) months of the first, by a fine of not less than Two Thousand Dollars (\$ 2,000.00) nor more than Five Thousand Dollars (\$ 5,000.00) and/or suspension or revocation of the permit to sell beer or light wine.

(d) For a fourth or subsequent offense occurring on the licensed premises within twelve (12) months of the first, by a fine of not less than Two Thousand Dollars (\$ 2,000.00) nor more than Five Thousand Dollars (\$ 5,000.00) and/or suspension or revocation of the permit to sell beer or light wine.

(4) A person who sells any beer or wine to a person under the age of twenty-one (21) years shall not be guilty of a violation of Section 67-3-53(b) if the person under the age of twenty-one (21) years represents himself to be twenty-one (21) years of age or older by displaying an apparently valid Mississippi driver's license containing a physical description consistent with his appearance or by displaying some other apparently valid identification document containing a picture and physical description consistent with his appearance for the purpose of inducing the person to sell beer or wine to him.

(5) If the holder of a permit to operate a brewpub is convicted of violating the provisions of Section 67-3-22(3), then, in addition to any other provision provided for by law, the holder of the permit shall be punished as follows:

(a) For the first offense, the holder of a permit to operate a brewpub may be fined in an amount not to exceed Five Hundred Dollars (\$ 500.00).

(b) For a second offense occurring within twelve (12) months of the first offense, the holder of a permit to operate a brewpub may be fined an amount not to exceed One Thousand Dollars (\$ 1,000.00).

(c) For a third or subsequent offense occurring within twelve (12) months of the first offense, the holder of a permit to operate a brewpub may be fined an amount not to exceed Five Thousand Dollars (\$ 5,000.00) and the permit to operate a brewpub shall be suspended for thirty (30) days.

HISTORY: SOURCES: Codes, 1942, §§ 10226, 10264; Laws, 1934, chs. 127, 171; Laws, 1985, ch 431, § 2; Laws, 1997, ch. 499, § 12; Laws, 1998, ch. 308, § 13; Laws, 2000, ch. 435, § 11; Laws, 2005, ch. 462, § 5, eff from and after passage (approved Mar. 29, 2005.)

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (5). The reference to "Section 14(3) of Senate Bill No. 2826, 1998 Regular Session" was changed to "Section 67-3-22(3)". The Joint Committee ratified the correction at its April 28, 1999 meeting.

AMENDMENT NOTES. --The 2005 amendment, in (1), inserted "in this section" following "not elsewhere prescribed" in the first sentence, and made a minor stylistic change in the second sentence; and rewrote (3).

CROSS REFERENCES. --Taxation of light wines and beer, see §§ 27-71-301 et seq.

License applicant's oath not to violate alcohol control laws, see § 67-3-17.

Issuance, transfer and display of permits, see § 67-3-23.

Application for license, see § 67-3-27.

Sale to under-age customer, see § 67-3-53.

Exemption for persons over age of 18 with parental consent, or who are military personnel, or who are employees of establishments licensed to sell light wine or beer, see § 67-3-54.

Possession for sale of light wine or beer not acquired from licensed wholesaler or distributor, see § 67-3-55.

Possession or sale of untaxed light wine or beer, see § 67-3-57.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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Alcohol Manufacture, Distribution & Sales

## JUDICIAL DECISIONS

### 1. IN GENERAL.

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court erred by directing a verdict for the bar, as the evidence created a fact question as to whether the bar knew or should have known that the buyer of drinks (who presented a false Mississippi driver's license showing he was 21) was giving them to minors. *Moore v. K&J Enters.* 856 So. 2d 621 (Miss. Ct. App. 2003), remanded by 2004 Miss. LEXIS 39 (Miss. Jan. 22, 2004), writ of certiorari dismissed en banc by 2004 Miss. LEXIS 198 (Miss. Feb. 12, 2004).

Where a statute making it unlawful to sell beer was repealed by statute which authorized sale within the state and permitted counties to prohibit such sales, and where a majority of qualified electors in county determined that the sale of beer should not be permitted within the county, such a sale of beer thereafter was prohibited and punishable as violation of chapter relating to wine and beer. *Hays v. State*, 219 Miss. 808, 69 So. 2d 845 (1954).

In beer election case, if judgment is affirmed, all offenses against law during time appeal was pending are punishable as if no appeal had been taken, regardless of supersedeas. *Early v. Board of Suprvs.*, 182 Miss. 636, 181 So. 132 (1938).

## RESEARCH REFERENCES

AM JUR. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition,

or declaration -- by license holder -- against administrative agency -- to enjoin further proceedings to suspend or revoke license -- attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

LAW REVIEWS. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

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Miss. Code Ann. § 67-3-70 (2014)

§ 67-3-70. Purchase of light wine or beer by person under age of 21; penalties; expungement of conviction

(1) Except as otherwise provided by Section 67-3-54, any person under the age of twenty-one (21) years who purchases or possesses any light wine or beer shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00) and a sentence to not more than thirty (30) days community service.

(2) Any person under the age of twenty-one (21) years who falsely states he is twenty-one (21) years of age or older or presents any document that indicates he is twenty-one (21) years of age or older for the purpose of purchasing or possessing any light wine or beer shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00) and a sentence to not more than thirty (30) days community service.

(3) Except as otherwise provided by Section 67-3-54, any person who knowingly purchases light wine or beer for, or gives light wine or beer to a person under the age of twenty-one (21) years, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars (\$ 200.00) nor more than Five Hundred Dollars (\$ 500.00) and a sentence to not more than thirty (30) days community service. The punishment provided under this subsection shall not be applicable to violations of Section 97-5-49.

(4) The term "community service" as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(5) If a person under the age of twenty-one (21) years is convicted or enters a plea of guilty of violating subsection (1) or subsection (2) of this section, the trial judge, in lieu of the penalties otherwise provided under this section, shall suspend the minor's driver's license by taking and keeping it in the custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering the suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties, or both, that he would have otherwise imposed,

and such action shall constitute a conviction.

(6) Any person who has been charged with a violation of subsections (1) or (2) of this section may, not sooner than one (1) year after the dismissal and discharge or completion of any sentence and/or payment of any fine, apply to the court for an order to expunge from all official records all recordation relating to his arrest, trial, finding or plea of guilty, and dismissal and discharge. If the court determines that such person was dismissed and the proceedings against him discharged or that such person had satisfactorily served his sentence and/or paid his fine, it shall enter such order.

HISTORY: SOURCES: Laws, 1985, ch. 431, § 3; Laws 2002, ch. 570, § 5; Laws, 2011, ch. 435, § 2; Laws, 2011, ch 472, § 2, eff from and after July 1, 2011.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Section 2 of ch. 435, Laws of 2011, effective from and after July 1, 2011 (approved March 23, 2011), amended this section. Section 2 of ch. 472, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 472, Laws of 2011, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

AMENDMENT NOTES. --The first 2011 amendment (ch. 435), in (3), deleted "or makes available" preceding "light wine or beer to a person under the age of twenty-one (21)" in the first sentence, and added the last sentence.

The second 2011 amendment (ch. 472), in (3), deleted "or makes available" preceding "light wine or beer to a person under the age of twenty-one (21)" in the first sentence, and added the last sentence; and made minor stylistic changes.

CROSS REFERENCES. --Expungement of records of youth court, see §§ 43-21-159, 43-21-265.

Transfer of cases to youth court, see § 43-21-159.

Sale to underaged customer, see § 67-3-53.

Exemption from prohibition of possession of light wine or beer by certain persons less than 21 years of age, see § 67-3-54.

Penalty for sales to underaged customers, see § 67-3-69.

Knowingly allowing party at residence or premises if minor at party obtains, possesses or consumes alcoholic beverage prohibited, see § 97-5-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

LexisNexis 50 State Surveys, Legislation & Regulations
Collateral Consequences of Delinquency

JUDICIAL DECISIONS

1. IN GENERAL.

In order to establish liability by proving negligence on the part of a licensee, the plaintiff must prove, in addition to negligence per se (that the licensee violated Miss. Code Ann. § 67-3-70 (Rev.

2001) by furnishing alcohol to a minor), that it was foreseeable that the minor to whom the alcohol was furnished would negligently cause injury to the plaintiff. *Moore v. K&J Enters.* 856 So. 2d 621 (Miss. Ct. App. 2003), remanded by 2004 Miss. LEXIS 39 (Miss. Jan. 22, 2004), writ of certiorari dismissed en banc by 2004 Miss. LEXIS 198 (Miss. Feb. 12, 2004).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. *Caldwell v. State*, 564 So. 2d 1371 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2) offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation; (4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. *Spann*, Jan. 24, 2000, A.G. Op. #99-0694.

Since possession of alcohol or light wine or beer by a minor is not a delinquent act, the youth court does not have original jurisdiction over such offenses. *Wiggins*, Sept. 19, 2003, A.G. Op. 03-0424.

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

1 Am. Jur. Proof of Facts 315, Proof of age.

CJS. 48 C.J.S. Intoxicating Liquor §§ 345-350, 460.

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Miss. Code Ann. § 67-3-73 (2014)

### **§ 67-3-73. Immunity from liability of persons who lawfully furnished or sold intoxicating**

### **beverages to one causing damage**

(1) The Mississippi Legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

(2) Notwithstanding any other law to the contrary, no holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder, who lawfully sells or serves intoxicating beverages to a person who may lawfully purchase such intoxicating beverages, shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the licensed premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

(3) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off such social host's premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished. No social host who owns, leases or otherwise lawfully occupies a premises on which, in his absence and without his consent, intoxicating beverages are consumed by a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol, or to any holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder when it is shown that the person making a purchase of an alcoholic beverage was at the time of such purchase visibly intoxicated.

HISTORY: SOURCES: Laws, 1987, ch. 451, eff from and after April 3, 1987 (became law without Governor's signature on April 3, 1987).

NOTES: CROSS REFERENCES. --Prohibition against sale of liquor to persons visibly intoxicated, as well as to certain other persons, see § 67-1-83.

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Dram Shop Liability

### **JUDICIAL DECISIONS**

#### **1. EVIDENCE.**

Where plaintiff sued a casino and a bar for wrongful death pursuant to Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73, expert testimony that the driver who killed decedent was visibly intoxicated when he was served alcohol precluded the entry of summary judgment for defendants under Miss. R. Civ. P. 56. Expert's testimony was based on Intoxilyzer results taken an hour after the accident indicating that the driver's BAC was 0.088% and a blood sample indicating a BAC of

0.07%. *Treasure Bay Corp. v. Ricard*, 967 So. 2d 1235 (Miss. 2007).

Casino offered assistance to the adult invitee who had been drinking for hours and the record reflected that she was attended by casino staff after she fell to the floor. A casino staff member suggested that she seek the attention of a physician and further offered to summon an ambulance, however the adult invitee refused that suggestion as well; thus, the casino did not breach a duty of care, and in any event, where the record showed the invitee became voluntarily intoxicated (she later died at home as a result of aspirating on her own vomit), she was not a member of the class protected by Miss. Code. Ann. § 67-3-73 and summary judgment for the casino was proper. *Estate of White v. Rainbow Casino-Vicksburg P'ship*, 910 So. 2d 713 (Miss. Ct. App. 2005).

In an action against a retail business that sold beer to a visibly intoxicated driver about two hours before an accident which killed a five year old child, the defendant was not entitled to summary judgment on the basis of an affidavit by the driver that she did not drink the alcoholic beverages purchased from it on the day of the accident and an affidavit by the driver's boyfriend and future husband which corroborated that statement where (1) the driver had reason to lie, given her pending criminal trial arising from the same accident, (2) the credibility of the driver's boyfriend and future husband was suspect given his relationship to the driver, and (3) the plaintiff presented circumstantial evidence that the driver's level of intoxication increased throughout the day, that she must have consumed a large volume of alcohol to have been as visibly drunk as she was by the time of the accident, and that such volume must have consisted in significant part of some beer purchased from the defendant. *Thomas v. Great Atl. & Pac. Tea Co.* 233 F.3d 326 (5th Cir. 2000).

### 1.5. LIABILITY.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. *Robinson Prop. Group, Ltd. P'ship v. McCalman*, 51 So. 3d 946 (Miss. 2011).

### 2. NO LIABILITY.

Casino patron's claim of negligence per se in connection with injuries she allegedly sustained when a cocktail waitress dropped a tray of drinks on or near the patron, while attempting to serve another customer, failed because there was no evidence that the casino violated Mississippi's dram shop act, Miss Code Ann. § 67-3-73, where there was nothing to show that the customer was visibly intoxicated. *Callender v. Imperial Palace of Miss., LLC*, -- F. Supp. 2d --, 2008 U.S. Dist. LEXIS 71292 (S.D. Miss. Sept. 19, 2008).

Customer who suffered injuries after voluntarily consuming alcohol is not part of the protected class of Miss. Code Ann. § 67-3-73; therefore, a casino's motion to dismiss a negligence action was properly granted since there was no liability under either § 67-3-73 or Miss. Code Ann. § 67-1-83. *Bridges v. Park Place Entm't, Inc.* 860 So. 2d 811 (Miss. 2003).

### 3. NO EXEMPTION FOR DISTINCTION BASED ON "MAKING A PURCHASE".

Legislature does not intend to exempt businesses from liability under Miss. Code Ann. § 67-3-73(4) based on a distinction of "making a purchase" as opposed to "being furnished" alcoholic beverages; therefore, it did not matter that a casino did not directly sell alcohol to a customer, but

the casino was still not liable to a customer that was injured after voluntarily drinking alcohol. *Bridges v. Park Place Entm't, Inc.* 860 So. 2d 811 (Miss. 2003).

#### 4. CONSTRUCTION.

Under the Mississippi Supreme Court's holdings in *Bridges v. Park Place Entertainment*, 860 So. 2d 811 (Miss. 2003), and *Cuevas v. Royal D'Iberville Hotel*, 498 So. 2d 346 (Miss. 1986), if an "adult" voluntarily consumes intoxicants and subsequently injures himself or herself due to her intoxicated condition, he or she is not a member of the class protected by Miss. Code. Ann. § 67-3-73. In the context of summary judgment, the question becomes whether there exists an issue of fact as to the voluntariness of said person's intoxication; if a genuine issue of material fact exists, summary judgment is improper. *Estate of White v. Rainbow Casino-Vicksburg P'ship*, 910 So. 2d 713 (Miss. Ct. App. 2005).

#### RESEARCH REFERENCES

ALR. What statute of limitations applies to action under dramshop or civil damage act. 55 A.L.R.2d 1286.

Right to recover under civil damage or dramshop act for death of intoxicated person. 64 A.L.R.2d 705.

Liability of liquor furnisher under civil damage or dramshop act for injury or death of intoxicated person from wrongful act of a third person. 65 A.L.R.2d 923.

Liability of innkeeper, restaurateur, or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 A.L.R.2d 628.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business. 8 A.L.R.3d 1412.

Who is, as "owner" of premises on which intoxicating liquor is sold, liable under civil damage or dram shop acts. 18 A.L.R.3d 1323.

Third person's participating in or encouraging drinking as barring him from recovery under civil damage or similar acts. 26 A.L.R.3d 1112.

Intoxicating liquors: right of one liable under Civil Damage Act to contribution or indemnity from intoxicated person, or vice versa. 31 A.L.R.3d 438.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act. 64 A.L.R.3d 882.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

Carrier's liability based on serving intoxicants to passenger. 76 A.L.R.3d 1218.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 A.L.R.3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 A.L.R.3d 528.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 A.L.R.3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Liability of hotel or motel operator for injury to guest resulting from assault by third party. 28 A.L.R.4th 80.

Tavernkeeper's liability to patron for third person's assault. 43 A.L.R.4th 281.  
Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion. 51 A.L.R.4th 1048.  
Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 A.L.R.4th 16.  
Validity, construction, and effect of statute limiting amount recoverable in dram shop action. 78 A.L.R.4th 542.  
Social host's liability for death or injuries incurred by person to whom alcohol was served. 54 A.L.R.5th 313.

AM JUR. 45 Am. Jur. 2d, Intoxicating Liquors §§ 458-520.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 299.1 (Head-on collision -- Intoxicated driver driving in wrong direction -- By decedent's representative -- Against tavern).

14A Am. Jur. Pl & Pr Forms (Rev), Negligence, Form 78.1 (Complaint, petition, or declaration -- By valet -- Against social hosts and intoxicated minor driver -- For injuries sustained when struck by vehicle at party).

CJS. 48A C.J.S., Intoxicating Liquors § 635, 645, 652, 653.

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Miss. Code Ann. § 67-3-74 (2014)

§ 67-3-74. Enforcement of certain provisions by officers of the division

(1) In addition to peace officers within their jurisdiction, all enforcement officers of the Alcoholic Beverage Control Division of the Department of Revenue are authorized to enforce the provisions made unlawful by Sections 67-3-13, 67-3-15, 67-3-53, 67-3-57 and 67-3-70; provided, however, that the provisions prohibiting the sale of light wine or beer to persons under the age of twenty-one (21) years shall be enforced by the division as provided for in this section.

(2) (a) The Alcoholic Beverage Control Division shall investigate violations of the laws prohibiting the sale of light wine or beer to persons under the age of twenty-one (21) years upon receipt of a complaint or information from a person stating that they have knowledge of such violation.

(b) Upon receipt of such complaint or information, the Alcoholic Beverage Control Division shall notify the permit holder of the complaint by certified mail to the primary business office of such permit holder or by hand delivery of the complaint or information to the primary business office of such holder, except in cases where the complaint or information is received from any law enforcement officer.

(c) If an enforcement officer of the Alcoholic Beverage Control Division enters the business of the holder of the permit to investigate a complaint and discovers a violation, the agent shall notify the person that committed the violation and the holder of the permit:

(i) Within ten (10) days after such violation, Sundays and holidays excluded, if the business sells light wine or beer for on-premises consumption; and

(ii) Within seventy-two (72) hours after such violation, Sundays and holidays excluded, if the business does not sell light wine or beer for on-premises consumption.

HISTORY: SOURCES: Laws, 2002, ch. 570, § 1; Laws, 2003, ch. 392, § 4; Laws, 2005, ch. 462, § 4; Laws, 2007, ch. 462, § 6; Laws, 2011, ch. 379, § 4, eff from and after July 1, 2011.

NOTES: AMENDMENT NOTES. --The 2003 amendment extended the date of the repealer in (3) from July 1, 2003 until July 1, 2005.

The 2005 amendment extended the date of the repealer provision in (3) from "July 1, 2005" until "July 1, 2007."

The 2007 amendment inserted "67-3-57" following "67-3-53" in (1); and extended the date of the repealer in (3) from July 1, 2007, until July 1, 2011.

The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" in (1); and deleted former (3) which repealed the section July 1, 2011.

CROSS REFERENCES. --Prohibition against possession of light wine and beer in dry counties, see § 67-3-13.

Prohibition against the brewing, manufacture or sale of any beer or light wine without first securing permit and/or license from commissioner, see § 67-3-15.

Additional unlawful acts by holder of a permit authorizing the sale of beer or light wine at retail, see § 67-3-53.

Prohibition against possessing or selling light wine or beer before permit secured or during time of revocation or suspension, see § 67-3-57.

Penalties for purchase of light wine or beer by person under the age of 21, see § 67-3-70.

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Alcohol Manufacture, Distribution & Sales

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TITLE 97. CRIMES  
CHAPTER 5. OFFENSES AFFECTING CHILDREN

Miss. Code Ann. § 97-5-49 (2014)

**§ 97-5-49. Knowingly allowing party where minor obtains, possesses or consumes alcoholic beverage; definitions; applicability of section; penalties**

(1) As used in this section:

(a) "Adult" means a person over the age of twenty-one (21) years.

(b) "Alcoholic beverage" has the meaning as defined in Section 67-1-5.

(c) "Beer" has the meaning as defined in Section 67-3-3.

(d) "Light wine" means wine containing five percent (5%) or less of alcohol by weight.

(e) "Minor" means a person under the age of twenty-one (21) years.

(f) "Party" means a gathering or event at which a group of two (2) or more persons assembles for a social occasion or activity at a private residence or a private premises.

(g) "Private premises" means privately owned land, including any appurtenances or improvements on the land.

(h) "Private residence" means the place where a person actually lives or has his or her home.

(i) "Wine" has the meaning as defined in Section 67-1-5.

(2) No adult who owns or leases a private residence or private premises shall knowingly allow a party to take place or continue at the residence or premises if a minor at the party obtains, possesses or consumes any alcoholic beverage, light wine or beer if the adult knows that the minor has obtained, possesses or is consuming alcoholic beverages, light wine or beer.

(3) This section shall not apply to legally protected religious activities or gatherings of family members or to any of the exemptions set forth in Section 67-3-54.

(4) Each incident in violation of subsection (2) of this section or any part of subsection (2) constitutes a separate offense.

(5) Any person who violates subsection (2) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of One Thousand Dollars (\$ 1,000.00) or by imprisonment in the county jail for not more than ninety (90) days, or by both the fine and imprisonment, in the discretion of the court.

HISTORY: SOURCES: Laws, 2011, ch. 435; Laws, 2011, ch. 472, § 1, eff from and after July 1, 2011.

NOTES: CROSS REFERENCES. --Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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