SENATE, No. 1904

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED MAY 13, 2010

Sponsored by:
Senator JAMES BEACH
District 6 (Camden)
Senator RAYMOND J. LESNIAK
District 20 (Union)

Co-Sponsored by:
Senator Kyrillos

SYNOPSIS

Removes plenary retail distribution license limit for certain stores.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/11/2010)

AN ACT concerning certain alcoholic beverage licenses, amending R.S.33:1-12, and supplementing Title 33 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) a. For the purposes of this act:

"Retail food store" means any retail establishment where groceries and other foodstuffs are regularly and customarily sold in a bona fide manner for off premises consumption.

"Groceries and other foodstuffs" means dairy products; meat and delicatessen products; produce products; seafood products; carbonated beverages; coffee and other beverages; snack foods; candy products; baked products; paper products; household cleaning items; health and beauty products; frozen foods; pet foods and supplies; and any other edible product not previously listed.

b. The provisions of section 1 of P.L.1962, c.152 (C.33:1-12.31) shall not apply to the acquisition of an additional plenary retail distribution license or licenses or an interest therein when that license is issued to a person:

(1) for use in connection with the operation of a retail food store at which the retail sale of groceries and other food stuffs is the primary and principal business and constitutes at least 65 percent of the store's total annual sales in dollars in the last full calendar year preceding that person's initial acquisition of the additional plenary retail distribution license or licenses or 65 percent of the total annual sales of the New Jersey food stores if the additional plenary distribution license or licenses is for a newly constructed or acquired store; or

(2) who certifies to the licensing authority that the additional plenary retail distribution license or licenses is to be used in connection with the operation of a premises at which the sale of alcoholic beverages is the primary and principal business and will constitute at least 90 percent of the store's annual sales.

c. Upon application for renewal of a plenary retail distribution license acquired pursuant to paragraph 1 of subsection b. of this section, a licensee that has used the plenary retail distribution license in connection with a retail food store for at least 18 months prior to the renewal date shall furnish adequate proof to the licensing authority that the combination of groceries or other food stuffs and alcoholic beverages constitutes at least 65 percent of the retail food store's total annual sales in dollars in the last full calendar year.

d. Upon application for renewal of a plenary retail distribution

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

license acquired pursuant to paragraph 2 of subsection b. of this section, the licensee shall furnish adequate proof to the licensing authority that the sale of alcoholic beverages constitutes at least 90 percent of the store's annual sales.

e. Immediately following the effective date of this act until the first day of the 61st month following the effective date of this act, a licensee who acquires an additional plenary retail distribution license pursuant to this section shall be prohibited from acquiring or owning all or part of an interest in more than five plenary retail distribution licenses issued in this State, which number shall include any plenary retail distribution license issued prior to the effective date of this act.

f. On the first day of the 61st month following the effective date of this act until the first day of the 121st month following the effective date of this act, a licensee who acquires an additional plenary retail distribution license pursuant to this section shall be prohibited from acquiring or owning all or part of an interest in more than seven plenary retail distribution licenses issued in this State, which number shall include any plenary retail distribution license issued prior to the effective date of this act.

g. On the first day of the 121st month following the effective date of this act, a licensee who acquires an additional plenary retail distribution license pursuant to this section shall be prohibited from acquiring or owning all or part of an interest in more than 10 plenary retail distribution licenses issued in this State, which number shall include any plenary retail distribution license issued prior to the effective date of this act.

h. Nothing in this section shall be construed to authorize the issuance of any new plenary retail distribution license in addition to those currently permitted in a municipality pursuant to sections 2 and 3 of P.L.1947, c.94 (C.33:1-12.14 and 33:1-12.15).

2. R.S.33:1-12 is amended to read as follows:

33:1-12. Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, except as hereinafter provided. The holder of this license shall be permitted to conduct consumer wine, beer and spirits tasting events and samplings for a fee or on a complimentary basis pursuant to conditions established by rules and regulations of the Division of Alcoholic Beverage Control, provided however, that the holder of this license complies with the terms and conditions set forth in section 3 of P.L.2009, c.216 (C.33:1-12d). Subject to such rules

and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale, at an entertainment facility as defined in R.S.33:1-1, having a seating capacity for no less than 4,000 patrons, of mercantile items traditionally associated with the type of event or program held at the site; the sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages; or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than $250 and not more than $2,500. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or $500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality.

The holder of this license shall be permitted to obtain a restricted brewery license issued pursuant to subsection 1c. of R.S.33:1-10 and to operate a restricted brewery immediately adjoining the licensed premises in accordance with the restrictions set forth in that subsection. All fees related to the issuance of both licenses shall be paid in accordance with statutory law.

Seasonal retail consumption license. 2. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer season from May 1 until November 14, inclusive, or during the winter season from November 15 until April 30, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on:

the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons; or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at 75% of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

Plenary retail distribution license. 3. a. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers; except that licensees shall be permitted to conduct consumer wine, beer, and spirits tasting events and samplings on a complimentary basis pursuant to conditions established by rules and regulations of the Division of Alcoholic Beverage Control, provided however, that the holder of this license complies with the terms and conditions set forth in section 3 of P.L.2009, c.216 (C.33:1-12d).

The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, except that any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this act; cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice, and nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than $125 and not more than $2,500. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or $500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality.

A license transfer fee shall be imposed on the initial transfer of each plenary retail distribution license, which pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill), is transferred to a licensee holding two or more licenses. This license transfer fee, which shall be equal to 10 percent of the price paid for the plenary retail distribution license, shall be paid by the acquiring licensee, at the time that the plenary retail distribution license is transferred, to the municipality in which the licensed premises is situated.

Limited retail distribution license. 3. b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than 72 fluid ounces for consumption off the licensed premises, but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by ordinance, at not less than $31 and not more than $63. The governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality.

Plenary retail transit license. 4. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages, for consumption only, on railroad trains, airplanes, limousines and boats, while in transit. The fee for this license for use by a railroad or air transport company shall be $375, for use by the owners of limousines shall be $31 per vehicle, and for use on a boat shall be $63 on a boat 65 feet or less in length, $125 on a boat more than 65 feet in length but not more than 110 feet in length, and $375 on a boat more than 110 feet in length; such boat lengths shall be determined in the manner prescribed by the Bureau of Customs of the United States Government or any federal agency successor thereto for boat measurement in connection with issuance of marine documents. A license issued under this provision to a railroad or air transport company shall cover all railroad cars and planes operated by any such company within the State of New Jersey. A license for a boat or limousine issued under this provision shall apply only to the particular boat or limousine for which issued, and shall permit the purchase of alcoholic beverages for sale or service in a boat or limousine to be made from any Class A and B licensee or from any Class C licensee whose license

privilege permits the sale of alcoholic beverages in original containers for off-premises consumption. An interest in a plenary retail transit license issued in accordance with this section shall be excluded in determining the maximum number of retail licenses permitted under P.L.1962, c.152 (C.33:1-12.31 et seq.).

Club license. 5. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than $63 and not more than $188. The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Director of the Division of Alcoholic Beverage Control by rules and regulations.

The provisions of section 23 of P.L.2003, c.117 amendatory of this section shall apply to licenses issued or transferred on or after July 1, 2003, and to license renewals commencing on or after July 1, 2003.

(cf: P.L.2009, c.216, s.1)

3. This act shall take effect immediately.

STATEMENT

Currently, the law prohibits any person or corporate entity from holding more than two retail licenses to sell alcoholic beverages. This bill increases the number of plenary retail distribution licenses that a person may acquire when the license or licenses are used in connection with the operation of a retail food store, or in connection with the operation of a liquor store when the licensee certifies that at least 90 percent of the store's annual sales are alcoholic beverages.

While the bill increases the number of retail licenses that one person may acquire, the total number of licenses held by one person is still restricted and gradually increases over time. Immediately following the effective date of the bill, a person may own or have an interest in a maximum of five retail licenses, including any retail license acquired prior to the bill's effective date. Five years following the effective date of the bill, a person may hold no more than a total of seven retail licenses. Finally, 10 years following the

bill's effective date, a person may hold no more than a total of 10 retail licenses.

Individuals who acquire more than two licenses under the provisions of the bill are required to pay a license transfer fee on each additional license that they acquire. The transfer fee is set at 10 percent of the amount the entity paid for the license and is payable to the municipality in which the licensed premises is situated.

It is important to note that this bill does not increase the number of licenses that a municipality may issue.