Sponsored by:
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District 3 (Cumberland, Gloucester and Salem)
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SYNOPSIS
Creates new liquor licenses for certain restaurants and permits issuance of additional liquor licenses; provides tax credit under corporate business tax and gross income tax for loss in value to certain alcoholic beverage licenses.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning the sale of alcoholic beverages in certain restaurants, creating tax credits, supplementing and amending various sections of Title 33 of the Revised Statutes, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

1. (New section) The Legislature finds and declares that:
   a. Under current law, a municipality may not issue a new plenary retail consumption license unless and until the combined total number of such licenses existing in the municipality is fewer than one for each 3,000 of its population according to the most recent estimates issued by the U.S. Bureau of the Census.
   b. As a result of this restriction, there is an insufficient number or complete lack of available plenary retail consumption licenses in many municipalities, thereby unnecessarily inflating the value of existing consumption licenses and forcing prospective restaurateurs to purchase a license at an exorbitant price or operate without a license.
   c. The presence of new restaurants serving alcoholic beverages in a municipality often promotes real estate development, contributes to the municipal revitalization, and enhances the overall quality of life for residents and visitors.
   d. However, the introduction of a new restaurant license that is not subject to a population formula may cause existing plenary retail consumption licenses to lose value, thus creating the need to compensate certain existing license holders by issuing tax credits.
   e. The State of New Jersey has a legitimate government interest in promoting business by issuing tax credits to the holders of plenary retail consumption licenses to compensate them for the devaluation of their licenses.
   f. In order to foster and encourage economic development and growth in this State, it is appropriate to create a new restaurant license that would permit the licensee to sell alcoholic beverages for consumption on the premises and to provide financial compensation to certain plenary retail consumption licensees who already have established businesses and paid market value for their licenses.

2. R.S.33:1-12 is amended to read as follows:
   33:1-12. Class C licenses shall be subdivided and classified as follows:
   Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages.

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 thus is new matter.
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 $500.00, whichever
charged in the preceding license year or $500, 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.
Seasontal 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 percent from that charged in the preceding license year or $500, 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.

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.

Restricted restaurant license (R1). 6. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption by the glass or other open receptacle in or upon the premises of a restaurant with a minimum square footage of 1,500 and a maximum square footage of 6,000 and maintains a full-service kitchen with a minimum square footage of 500 regularly and principally used for the purpose of providing food to customers. The full-service kitchen shall be adequately equipped for the preparation and serving of food and shall have, at minimum, a dishwasher, range, sink, oven, refrigerator, and countertop. A licensed premises under the provisions of this paragraph shall encompass not more than one physical address. Alcoholic beverages only shall be sold in connection with the sale of food and served at a table by an employee of the restaurant.

The holder of this license shall not provide a bar area for customers of the restaurant to congregate and consume alcoholic beverages but may provide a service bar at which alcoholic beverages are prepared for service to customers at a table. An employee of the restaurant may be stationed at the service bar to prepare drinks for customers, but shall only transfer alcoholic
beverages to wait staff employed by the restaurant to be delivered to restaurant patrons who are seated or are waiting to be seated at a table; an employee preparing drinks at the service bar shall be prohibited from directly transferring alcoholic beverages to restaurant patrons. The restaurant operated by the licensee shall offer to customers a standard printed menu or menu board system or similar signage featuring a list of meals with separate prices listed adjacent to each meal, or for parties of 10 restaurant patrons or greater, the restaurant may offer a full course menu with a limited number of meal choices for a fixed price. The holder of this license may not sell or transfer the license.

Prior to issuing licenses pursuant to this paragraph, the governing board or body of the municipality shall adopt an ordinance or resolution authorizing the issuance of restricted restaurant licenses within its borders. The ordinance or resolution may establish the days and times during which the licensee is permitted to sell alcoholic beverages for consumption on the licensed premises and shall limit the sale of alcoholic beverages to one hour prior to the service of food until one hour after the service of food has ended. The hours during which the ordinance permits the holder of a restricted restaurant license to sell alcoholic beverages may differ from the hours during which other consumption or distribution licensees within the municipality are permitted to sell alcoholic beverages.

The governing board or body of the municipality shall issue restricted restaurant licenses for use in connection with a restaurant in accordance with this subsection. The issuance of a restricted beer and wine license shall not permit the licensee to operate without complying with all applicable zoning ordinances.

The restriction in section 2 of P.L.1947, c.94 (C.33:1-12.14) concerning the number of retail consumption licenses that may be issued in a municipality shall not be applicable to the license issued under this subsection. A municipality that prohibits the sale of alcoholic beverages within its borders may establish by ordinance or resolution that a restricted restaurant license may be issued in the municipality.

The initial fee and annual renewal fee for this license shall be $3,000 for a restaurant with a square footage of 1,500 to 3,000, and $10,000 for a restaurant with a square footage of 3,001 to 6,000. The initial fee and annual renewal fee for this license shall be distributed in the following manner:

(1) $2,500 shall be paid to the municipality wherein the restaurant is located and if the restaurant is located within the boundaries of two or more municipalities, the fee shall be divided equally among those municipalities;

(2) The remainder of the fee shall be paid to the Director of the Division of Taxation to be used solely for the purposes of offsetting the costs associated with issuing tax credits pursuant to section 6 of
and section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). After the Division of Taxation is reimbursed for costs associated with issuing tax credits pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) and section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), the full fee shall be paid to the municipality in the same manner as provided under paragraph (1) of this subsection.

In addition, the holder of a restricted restaurant license shall pay upon renewal of the license any applicable renewal fees which are otherwise required to be paid to the Director of the Division of Alcoholic Beverage Control by the holder of a plenary retail consumption license.

Restricted beer and wine license (R2). 7. The holder of this license shall be entitled, subject to rules and regulations, to sell any beer or wine by the can, bottle or other sealed receptacle used for holding alcoholic beverages for consumption in or upon the premises of a restaurant with a minimum square footage of 1,500 and a maximum square footage of 6,000 and maintains a full-service kitchen with a minimum square footage of 500 regularly and principally used for the purpose of providing food to customers. The full-service kitchen shall be adequately equipped for the preparation and serving of food and shall have, at a minimum, a dishwasher, range, sink, oven, refrigerator, and countertop. A licensed premises under the provisions of this paragraph shall encompass not more than one physical address.

The holder of this license shall not provide a bar area for customers of the restaurant to congregate and consume alcoholic beverages. In addition, the holder of this license shall not provide a service bar. Alcoholic beverages only may be sold in connection with the service of food and served at a table by an employee of the restaurant. The restaurant operated by the licensee shall offer to customers a standard printed menu or menu board system or similar signage featuring a list of meals with separate prices listed adjacent to each meal, or for parties of 10 restaurant patrons or greater, the licensee may offer a full course menu with a limited number of meal choices for a fixed price. The holder of this license may not sell or transfer the license.

Prior to issuing licenses pursuant to this paragraph, the governing board or body of the municipality shall adopt an ordinance or resolution authorizing the issuance of restricted restaurant licenses within its borders. The ordinance or resolution may establish the days and times during which the licensee is permitted to sell alcoholic beverages for consumption on the licensed premises and shall limit the sale of alcoholic beverages to one hour prior to the service of food until one hour after the service of food has ended. The hours during which the ordinance permits the holder of a restricted restaurant license to sell alcoholic
beverages may differ from the hours during which other consumption or distribution licensees within the municipality are permitted to sell alcoholic beverages.

The governing board or body of the municipality shall issue restricted beer and wine licenses for use in connection with a restaurant in accordance with this subsection. The issuance of a restricted beer and wine license shall not permit the licensee to operate without complying with all applicable zoning ordinances. The restriction in section 2 of P.L.1947, c.94 (C.33:1-12.14) concerning the number of retail consumption licenses that may be issued in a municipality shall not be applicable to the license issued under this paragraph. A municipality that prohibits the sale of alcoholic beverages within its borders may establish by ordinance or resolution that a restricted beer and wine license may be issued in the municipality.

The initial fee and annual renewal fee for this license shall be $1,500 for a restaurant with a square footage of 1,500 to 3,000 and $5,000 for a restaurant with a square footage of 3,001 to 6,000. The initial fee and annual renewal fee for this license shall be distributed in the following manner:

1. $1,250 shall be paid to the municipality wherein the restaurant is located, and if the restaurant is located within the boundaries of two or more municipalities, the fee shall be divided equally among those municipalities;

2. The remainder of the fee shall be paid to the Director of the Division of Taxation to be used solely for the purposes of offsetting the costs associated with issuing tax credits pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) and section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). After the Division of Taxation is reimbursed for costs associated with issuing tax credits pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) and section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), the full fee shall be paid to the municipality in the same manner as provided under paragraph (1) of this subsection.

In addition, the holder of a restricted beer and wine license shall pay upon renewal of the license any applicable renewal fees which are otherwise required to be paid to the Director of the Division of Alcoholic Beverage Control by the holder of a plenary retail consumption license.

Sporting facility license. 6. The holder of this license shall be entitled, subject to rules and regulations, to sell at retail or to serve any alcoholic beverages as the owner, operator, lessee, or concessionaire of a sporting facility by the glass or other receptacle or in original containers only on the premises of the sporting facility.

Notwithstanding any other provision of Title 33 of the Revised Statutes and subject to conditions established by the director, the
holder of this license may share direction and control of the
premises to be licensed and share proceeds and profits from the sale
of alcoholic beverages with the owner, operator, concessionaire, or
lessee of the facility. 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 provided, however,
the license holder complies with the provisions of section 3 of
P.L.2009, c.216 (C.33:1-12d) and rules and regulations promulgated
thereto. Notwithstanding any law, rule or regulation to the
contrary, the holder of this license shall be entitled to establish an
all-inclusive area within the licensed sporting facility, provided the
all-inclusive area is limited to one area within the sporting facility
for each game or event and the capacity of the all-inclusive area
does not exceed 500 persons.

The fee for this license shall be $2,500 for venues with a
capacity of less than 7,500 persons; $5,000 for venues with a
capacity of not less than 7,500 persons but not more than 14,999
persons; $7,500 for venues with a capacity of not less than 15,000
persons but not more than 22,499 persons; and $10,000 for venues
with a capacity of 22,500 persons or more.

For the purposes of this subsection:

"Sporting facility" means a stadium, arena, team training facility,
or similar venue located on public property where alcoholic
beverages are served or sold at retail for consumption on the
premises by the glass or other open receptacle or in original
containers.

"Team training facility" shall include team offices and team
headquarters.

(cf: P.L.2015, c.86, s.1)

3. Section 2 of P.L.1947, c.94 (C.33:1-12.14) is amended to
read as follows:

2. a. Except as otherwise provided in this [act] title, no new
plenary retail consumption or seasonal retail consumption license
shall be issued in a municipality unless and until the combined total
number of such licenses existing in the municipality is fewer than
one for each 3,000 of its population according to the most recent
estimates issued by the U.S. Bureau of the Census; provided,
however, in the year that the official federal decennial counts are
received by the Governor, those federal decennial counts shall be
used. No new plenary retail distribution license shall be issued in a
municipality unless and until the number of such licenses existing
in the municipality is fewer than one for each 7,500 of its
population according to the most recent estimates issued by the U.S.
Bureau of the Census; provided, however, in the year that the
official federal decennial counts are received by the Governor,
those federal decennial counts shall be used.
b. (1) A municipality which has adopted a master plan pursuant to the provisions of section 19 of P.L.1975, c.291 (C.40:55D-28) may issue a plenary retail consumption license based upon the population projections for that municipality contained in the master plan and the schedule set forth in this subsection.

(2) A municipality may issue additional plenary retail consumption licenses based upon the peak population projection in the master plan. If the projected peak population supports the issuance of one or more additional plenary retail consumption licenses, the municipality may issue one additional license. The municipality may issue another plenary retail consumption license whenever there is an increase of 3,000 or more in the population of the municipality, according to the most recent estimates issued by the U.S. Bureau of the Census or the official federal decennial counts in the years those counts are issued, until the maximum number of licenses supported by the projected peak population have been issued.

(cf: PL.1999, c.189, s.1)

4. (New section) a. The holder of a restricted restaurant license or restricted beer and wine license who violates subsections a. through j. of R.S.33:1-31:
(1) for a first offense, shall be subject to a mandatory license suspension in an amount of time determined by the director and be liable for a civil penalty of $5,000 which shall be imposed on a restricted restaurant licensee, and $2,500 which shall be imposed on a restricted beer and wine license.

(2) for a second offense, shall be subject to a permanent revocation of the restricted restaurant license or restricted beer and wine license and be liable for a civil penalty of three times the fair market value of a plenary retail consumption license. The fair market value shall be based upon the average sales price of plenary retail consumption licenses in the municipality in which the licensed premises is located during the five years immediately preceding the effective date of P.L. , c. (pending before the Legislature as this bill). If the licensed premises is located within the boundaries of two or more municipalities, the highest average sale price of the two or more municipalities shall be used. If less than three plenary retail consumption licenses have been sold in the municipality or municipalities, as the case may be, within the previous five years, the municipality or municipalities shall obtain an appraisal, at the applicant’s expense, to determine the appropriate fair market value of the license. The appraisal process shall include an examination of previous transactions in the municipality or municipalities, as the case may be, and shall reflect what a willing buyer, under no pressure to buy, would pay a willing seller, under no pressure to sell, for a plenary retail consumption license in that municipality or municipalities.
b. The fines imposed pursuant to this section shall be collected by the director and forwarded to the State Treasurer in accordance with subsection b. of section 14 of P.L.1992, c.188 (C.33:1-4.1).

5. Section 14 of P.L.1992, c.188 (C.33:1-4.1) is amended to read as follows:

14. a. All fees and penalties collected by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Title 33 of the Revised Statutes shall be forwarded to the State Treasurer for deposit in a special nonlapsing fund. Monies in the fund shall be used exclusively for the operation of the Alcoholic Beverage Control Enforcement Bureau in the Division of State Police and the Division of Alcoholic Beverage Control and for reimbursement of all additional costs of enforcement of the provisions of Title 33 incurred by the Department of Law and Public Safety.

b. Notwithstanding the provisions of subsection a. of this section, the fines imposed pursuant to section 4 of P.L. , c. (pending before the Legislature as this bill) shall be collected by the director and forwarded to the State Treasurer to be used for the purposes of offsetting the costs associated with issuing tax credits pursuant to section 6 of P.L. , c. (pending before the Legislature as this bill) and section 7 of P.L. , c. (pending before the Legislature as this bill). After the Division of Taxation is reimbursed for up to 75 percent of the projected estimated cost associated with issuing tax credits pursuant to section 6 of P.L. , c. (pending before the Legislature as this bill) and section 7 of P.L. , c. (pending before the Legislature as this bill), the fines shall be used exclusively for the operation of the Alcoholic Beverage Control Enforcement Bureau in accordance with subsection a. of this section.
( cf: P.L.1992, c.188, s.14)

6. (New section) a. As used in this act, “qualified loss in value” means the loss in value to a taxpayer’s plenary retail consumption license calculated pursuant to paragraph (3) of subsection c. of this section.

b. A taxpayer who is certified as a qualified holder of a plenary retail consumption license shall be allowed a credit against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit shall be equal to the qualified loss in value to the taxpayer’s license, and shall be taken over a five-year period, in five annual installments, at the rate of one-fifth the total amount of the taxpayer’s credit for each privilege period of the taxpayer, beginning with the privilege period in which the taxpayer is certified as a qualified holder of a plenary retail consumption license by the Director of the Division of Alcoholic
Beverage Control in the Department of Law and Public Safety in accordance with subsection b. of this section.

c. (1) To be certified as a qualified holder of a plenary retail consumption license, a taxpayer shall make and file an application for certification with the Director of the Division of Alcoholic Beverage Control within five years of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). The application shall be made on forms furnished by the Director of the Division of Alcoholic Beverage Control, and shall require the taxpayer to demonstrate: the location of the premises operated in connection with the license; the number of years the taxpayer has held the license; the original amount paid by the taxpayer for the privilege of holding the license; and the purpose to which the license has been used by the taxpayer.

(2) The Director of the Division of Alcoholic Beverage Control shall review each application made and filed in accordance with paragraph (1) of this subsection and make a determination regarding the issuance of a certification within 180 days of the date a complete application is filed. The determination shall be made based upon the Director of the Division of Alcoholic Beverage Control’s finding that: the taxpayer acquired the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill); the taxpayer held the license in an active status prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill); and the license is used directly by the taxpayer to sell alcoholic beverages for consumption on a licensed premises in accordance with the provisions of R.S.33:1-12.

(3) The Director of the Division of Alcoholic Beverage Control shall, at the time a determination regarding the issuance of a certification is made, establish the qualified loss in value to the taxpayer’s license. To establish the qualified loss in value, the taxpayer shall issue to the director two separate independent appraisals of the taxpayer’s plenary retail consumption license. The appraisals shall demonstrate the fair market value of the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and the fair market value of the license at the time taxpayer files an application for certification with the Director of the Division of Alcoholic Beverage Control. The difference between fair market value of the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and the fair market value of the license at the time the taxpayer files an application for certification shall represent the qualified loss in value to the taxpayer’s license.

To assist in assessing the qualified loss in value to a license, the Director of the Division of Alcoholic Beverage Control may appoint an advisory committee composed of representatives with knowledge and experience in the appraisal of alcoholic beverage licenses in this State. The director or the advisory committee, as the
The fair market value of the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be based upon the average sales price of plenary retail consumption licenses in the municipality in which the licensed premises is located during the five years immediately preceding the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill). If the licensed premises is located within the boundaries of two or more municipalities, the fair market value shall be based on the average sale price of plenary retail consumption licenses issued in the municipality in which the structure of licensed premises is primarily situated. If less than three plenary retail consumption licenses have been sold in the municipality or municipalities, as the case may be, within the previous five years, the taxpayer shall obtain an appraisal, at the taxpayer’s expense, to determine the appropriate fair market value of the license. The appraisal process shall include an examination of previous transactions in the municipality or municipalities, as the case may be, and shall reflect what a willing buyer, under no pressure to buy, would pay a willing seller, under no pressure to sell, for a plenary retail consumption license in that municipality or municipalities, as the case may be.

The fair market value of the license at the time that the taxpayer files an application for certification shall be based on an appraisal, obtained at the taxpayer’s expense, to determine the appropriate value of the license. The appraisal shall include, but not be limited to, an examination of the following:

(a) the average sales price of plenary retail consumption licenses in the municipality in which the licensed premises is located following the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill);
(b) the number of restricted restaurant licenses and restricted beer and wine licenses issued the municipality in which the licensed premises is located following the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill); and
(c) whether the in municipality in which the licensed premises is located has undertaken comprehensive plans for future development that would most likely necessitate the issuance of restricted restaurant licenses and restricted beer and wine licenses.

If a single plenary retail consumption license is used in connection with the operation of multiple restaurants or other establishments located on the same licensed premises, the qualified loss in value established under this paragraph shall be divided by the number of restaurants or establishments operating in connection with that plenary retail consumption license.

(4) The Director of the Division of Alcoholic Beverage Control shall issue a written certification to each taxpayer that has made and
filed an application that has been reviewed, approved, or
disapproved in accordance with paragraphs (2) and (3) of this
subsection within 10 days of the date the determination is made.
The written certification shall include a detailed explanation of the
fair market value of the taxpayer’s license established in accordance
with paragraph (3) of this subsection. The division shall submit to a
taxpayer whose application is disapproved a detailed statement
explaining the reasons for which the appraisals did not adequately
reflect the qualified loss in value. Each taxpayer issued a
certification shall include a copy of the written certification, along
with the detailed explanation of the qualified loss in value to the
taxpayer’s license, when filing a return that includes a claim for the
credit allowed in accordance with this section.

(5) The Director of the Division of Alcoholic Beverage Control
shall provide a copy of each written certification issued in
accordance with paragraph (4) of this subsection to the Director of
the Division of Taxation in the Department of the Treasury within
10 days of the date the certification is issued, and shall prepare a
report regarding the administration of the certification process
established in accordance with this subsection. The report shall
specify: the number of applications made and filed; the number of
certifications issued; and the qualified loss in value to each license
for which a certification is issued. The report shall be submitted to
the Governor, the State Treasurer, and the Legislature, in
accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), within
450 days of the effective date of P.L. , c. (C. ) (pending
before the Legislature as this bill).

d. The order of priority of the application of an annual
installment of the credit allowed pursuant to this section and any
other credit allowed against the corporation business tax for a
privilege period shall be as prescribed by the Director of the
Division of Taxation in the Department of the Treasury. The
amount of an annual installment of the credit applied under this
section against the corporation business tax for a privilege period,
together with any other annual installment and any other credits
allowed against the corporation business tax, shall not reduce the
tax liability of the taxpayer to an amount less than the statutory
minimum provided in subsection (e) of section 5 of P.L.1945, c.162
(C.54:10A-5). No amount of the qualified loss in value to the
taxpayer’s license that is used as the basis of the credit allowed
pursuant to this section shall be allowed as an amount used to
calculate a loss or expense of the taxpayer or otherwise reduce or
offset that taxpayer’s liability for tax pursuant to any other
exclusion, deduction, or credit allowed under the corporation
business tax. The amount of an annual installment of the credit
allowable under this section which cannot be applied for a privilege
period due to the limitations of this subsection may be carried
forward, if necessary, to the earliest available use within the 20
privilege periods immediately following the privilege period for which the credit is allowed.

e. A taxpayer may, upon issuance of a certification as a qualified holder of a plenary retail consumption license by the Director of the Division of Alcoholic Beverage Control in accordance with subsection c. of this section, make and file an application to the Director of the Division of Taxation for a tax credit transfer certificate in lieu of the taxpayer being allowed an annual installment of the credit or any amount of an annual installment of the credit that may be taken against the corporation business tax liability of the taxpayer. The Director of the Division of Taxation may prescribe the form and manner by which a taxpayer may make and file a separate application in connection with each annual installment of the credit or any amount of each annual installment of the credit, and may consult with the Director of the Division of Alcoholic Beverage Control in reviewing and approving any application for a tax credit transfer certificate of a taxpayer. The tax credit transfer certificate, upon issuance thereof by the Director of the Division of Taxation, may be sold or assigned, in whole or in part, to any other taxpayer that may have a corporation business tax or a gross income tax liability, in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that is allowed a credit under this section. The certificate issued to the taxpayer shall include a statement waiving the taxpayer’s right to claim that amount of the annual installment of the credit against the corporation business tax that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a corporation business tax liability shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this section may be applied against the purchaser’s or assignee’s gross income tax liability and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection d. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

f. (1) If, in the five-year period beginning with the privilege period in which the taxpayer is certified as a qualified holder of a plenary retail consumption license, the taxpayer sells or transfers any part of the taxpayer’s interest in the license to another person, the taxpayer shall forfeit that portion of the taxpayer’s credit that is equal to the amount of consideration received by the taxpayer from the sale or transfer of the license. The forfeited portion shall first reduce the balance of any annual installment of a credit of the
taxpayer that is allowed but that has not been applied against the tax liability of the taxpayer, or converted into a tax credit transfer certificate and sold or assigned to another taxpayer in accordance with subsection e. of this section, during the privilege period in which the sale or transfer of the license occurs, and then shall reduce the balance of any future annual installment of a credit of a taxpayer who is allowed but that has not been applied, or converted and sold or assigned to another taxpayer, beginning with future annual installments allowed during the privilege period immediately following the privilege period in which the sale or transfer occurs.

If, after being used to reduce future annual installments, the forfeited portion exceeds the amount of any allowable credit remaining, the taxpayer shall repay the amount of that excess to the Director of the Division of Taxation; provided however, that if the taxpayer converted an annual installment of the credit or any amount of an annual installment of the credit into a tax credit transfer certificate in accordance with subsection d. of this section, the amount of the excess required to be repaid to the Director of the Division of Taxation shall be reduced, if necessary, in proportion to the amount of consideration received by the taxpayer from the sale or assignment of the tax credit transfer certificate.

(2) If, in the 15-year period beginning with the fifth privilege period immediately following the privilege period in which the taxpayer is certified as a qualified holder of a plenary retail consumption license, the taxpayer sells or transfers any part of the taxpayer’s interest in the license to another person, the taxpayer shall forfeit that portion of the taxpayer’s credit that is equal to the amount of consideration received by the taxpayer from the sale or transfer of the license. The forfeited portion shall first reduce the balance of any tax credit carryforward from a prior privilege period that is allowed but that has not been applied against the tax liability of the taxpayer during the privilege period in which the sale or transfer of the license occurs, and then shall reduce the balance of any tax credit carryforward from a prior privilege period that otherwise would have been applied against future tax liabilities of the taxpayer. If, after being used to reduce carryforwards from prior privilege periods, the forfeited portion exceeds the amount of any allowable credit remaining, the taxpayer shall repay the amount of that excess to the Director of the Division of Taxation subject to the following limitations:

(a) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring in the first five years of the 15-year period, the amount of the excess shall be multiplied by 0.75 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation;

(b) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring
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in the second five years of the 15-year period, the amount of the excess shall be multiplied by 0.50 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation; and

(c) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring in the third five years of the 15-year period, the amount of the excess shall be multiplied by 0.25 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation.

In addition, if the taxpayer converted the credit or any amount of the credit into a tax credit transfer certificate in accordance with subsection d. of this section, the amount of the excess required to be repaid to the Director of the Division of Taxation shall be further reduced, if necessary, in proportion to the amount of consideration received by the taxpayer from the sale or assignment of the tax credit transfer certificate.

(3) The amount of excess required to be repaid to the Director of the Division of Taxation pursuant to paragraph (1) or (2) of this subsection shall be a deficiency with respect to the payment of a State tax. The Director of the Division of Taxation shall have all rights, powers and duties authorized under the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., to ensure payment, collection, or recovery of the deficiency, and the taxpayer shall be afforded all protections, rights, and remedies allowed under R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or any determination or decision made in connection with the deficiency.

The holder of a plenary retail consumption license that has been inactive for more than two years immediately preceding the effective date of P.L.   , c.   (pending before the Legislature as this bill) shall not be eligible for the tax credit issued pursuant to this section.

7. (New section) a. As used in this act, “qualified loss in value” means the loss in value to a taxpayer’s plenary retail consumption license calculated pursuant to paragraph (3) of subsection c. of this section.

b. A taxpayer who is certified as a qualified holder of a plenary retail consumption license shall be allowed a credit against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. The amount of the credit shall be equal to the qualified loss in value to the taxpayer’s license and shall be taken over a five-year period, in five annual installments, at the rate of one-fifth the total amount of the taxpayer’s credit for each taxable year of the taxpayer, beginning with the taxable year in which the taxpayer is certified as a qualified holder of a plenary retail consumption license by the Director of the Division of Alcoholic
Beverage Control in the Department of Law and Public Safety in accordance with subsection b. of this section.

c. (1) To be certified as a qualified holder of a plenary retail consumption license, a taxpayer shall make and file an application for certification with the Director of the Division of Alcoholic Beverage Control within five years of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). The application shall be made on forms furnished by the Director of the Division of Alcoholic Beverage Control, and shall require the taxpayer to demonstrate: the location of the premises operated in connection with the license; the number of years the taxpayer has held the license; the original amount paid by the taxpayer for the privilege of holding the license; and the purpose to which the license has been used by the taxpayer.

(2) The Director of the Division of Alcoholic Beverage Control shall review each application made and filed in accordance with paragraph (1) of this subsection and make a determination regarding the issuance of a certification within 180 days of the date a complete application is filed. The determination shall be made based upon the Director of the Division of Alcoholic Beverage Control’s finding that: the taxpayer acquired the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill); the taxpayer held the license in an active status prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill); and the license is used directly by the taxpayer to sell alcoholic beverages for consumption on a licensed premises in accordance with the provisions of R.S. 33:1-12.

(3) The Director of the Division of Alcoholic Beverage Control shall, at the time a determination regarding the issuance of a certification is made, establish the loss in value to the taxpayer’s license. To establish the qualified loss in value, the taxpayer shall issue to the director two separate independent appraisals of the taxpayer’s plenary retail consumption license. The appraisals shall demonstrate the fair market value of the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and the fair market value of the license at the time the taxpayer files an application for certification with the Director of the Division of Alcoholic Beverage Control. The difference between the fair market value of the license prior to the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and the fair market value of the license at the time the taxpayer files an application for certification shall represent the qualified loss in value to the taxpayer’s license.

To assist in assessing the qualified loss in value to a license, the Director of the Division of Alcoholic Beverage Control may appoint an advisory committee composed of representatives with knowledge and experience in the appraisal of alcoholic beverage licenses in this State. The director or the advisory committee, as the
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case may be, shall have the authority to review, approve, or
disapprove appraisals issued by the taxpayer.

The fair market value of the license prior to the date of
enactment of P.L. , c. (C. ) (pending before the Legislature
as this bill) shall be based upon the average sales price of plenary
retail consumption licenses in the municipality in which the
licensed premises is located during the five years immediately
preceding the date of enactment of P.L. , c (C. ) (pending
before the Legislature as this bill). If the licensed premises is
located within the boundaries of two or more municipalities, the fair
market value shall be based on the average sale price of plenary
retail consumption licenses issued in the municipality in which the
structure of licensed premises is primarily situated. If less than
three plenary retail consumption licenses have been sold in the
municipality or municipalities, as the case may be, within the
previous five years, the taxpayer shall obtain an appraisal, at the
taxpayer’s expense, to determine the appropriate fair market value
of the license. The appraisal process shall include an examination
of previous transactions in the municipality or municipalities, as the
case may be, and shall reflect what a willing buyer, under no
pressure to buy, would pay a willing seller, under no pressure to
sell, for a plenary retail consumption license in that municipality or
municipalities, as the case may be.

The fair market value of the license at the time that the taxpayer
files an application for certification shall be based on an appraisal,
obtained at the taxpayer’s expense, to determine the appropriate
value of the license. The appraisal shall include, but not be limited
to, an examination of the following:

(a) the average sales price of plenary retail consumption
licenses in the municipality in which the licensed premises is
located following the date of enactment of P.L. , c. (C. )
(pending before the Legislature as this bill);
(b) the number of restricted restaurant licenses and restricted
beer and wine licenses issued in the municipality in which the
licensed premises is located following the date of enactment of
P.L. , c. (C. ) (pending before the Legislature as this bill);
and
(c) whether the municipality in which the licensed premises is
located has undertaken comprehensive plans for future development
that would most likely necessitate the issuance of restricted
restaurant licenses and restricted beer and wine licenses.

If a single plenary retail consumption license is used in
connection with the operation of multiple restaurants or other
establishments located on the same licensed premises, the qualified
loss in value established under this paragraph shall be divided by
the number of restaurants or establishments operating in connection
with that plenary retail consumption license.
(4) The Director of the Division of Alcoholic Beverage Control shall issue a written certification to each taxpayer that has made and filed an application that has been reviewed, approved, or disapproved in accordance with paragraphs (2) and (3) of this subsection within 10 days of the date the determination is made. The written certification shall include a detailed explanation of the qualified loss in value to the taxpayer’s license established in accordance with paragraph (3) of this subsection. The division shall submit to a taxpayer whose application is disapproved a detailed statement explaining the reasons for which the appraisals did not adequately reflect the qualified loss in value. Each taxpayer issued a certification shall include a copy of the written certification, along with the detailed explanation of the fair market value of the taxpayer’s license, when filing a return that includes a claim for the credit allowed in accordance with this section.

(5) The Director of the Division of Alcoholic Beverage Control shall provide a copy of each written certification issued in accordance with paragraph (4) of this subsection to the Director of the Division of Taxation in the Department of the Treasury within 10 days of the date the certification is issued, and shall prepare a report regarding the administration of the certification process established in accordance with this subsection. The report shall specify: the number of applications made and filed; the number of certifications issued; and the qualified loss in value to each license for which a certification is issued. The report shall be submitted to the Governor, the State Treasurer, and the Legislature, in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), within 450 days of the effective date of P.L.  , c. (C. ) (pending before the Legislature as this bill).

d. (1) The order of priority of the application of an annual installment of the credit allowed pursuant to this section and any other credit allowed against the gross income tax for a taxable year shall be as prescribed by the Director of the Division of Taxation in the Department of the Treasury. The amount of an annual installment of the credit applied under this section against the gross income tax for a taxable year, together with any other annual installment and any other credits allowed against the gross income tax, shall not reduce the tax liability of the taxpayer to an amount less than zero. No amount of the qualified loss in value to the taxpayer’s license that is used as the basis of the credit allowed pursuant to this section shall be allowed as an amount used to calculate a loss or expense of the taxpayer or otherwise reduce or offset that taxpayer’s liability for tax pursuant to any other exclusion, deduction, or credit allowed under the gross income tax. The amount of an annual installment of the credit allowable under this section which cannot be applied for a taxable year due to the limitations of this subsection may be carried forward, if necessary,
to the earliest available use within the 20 taxable years immediately
following the taxable year for which the credit is allowed.

(2) A business entity classified as a partnership for federal
income tax purposes shall not be allowed a credit under this section
directly, but the amount of credit of a taxpayer in respect of a
distributive share of entity income, shall be determined by
allocating to the taxpayer that proportion of the credit acquired by
the entity that is equal to the taxpayer's share, whether or not
distributed, of the total distributive income or gain of the entity for
its taxable year ending within or with the taxpayer's taxable year
except as otherwise provided by law. A New Jersey S Corporation
shall not be allowed a credit under this section directly, but the
amount of credit of a taxpayer in respect of a pro rata share of S
Corporation income, shall be determined by allocating to the
taxpayer that proportion of the credit acquired by the New Jersey S
Corporation that is equal to the taxpayer's share, whether or not
distributed, of the total pro rata share of S Corporation income of
the New Jersey S Corporation for its privilege period ending within
or with the taxpayer's taxable year.

e. A taxpayer may, upon issuance of a certification as a
qualified holder of a plenary retail consumption license by the
Director of the Division of Alcoholic Beverage Control in
accordance with subsection c. of this section, make and file an
application to the Director of the Division of Taxation for a tax
credit transfer certificate in lieu of the taxpayer being allowed an
annual installment of the credit or any amount of an annual
installment of the credit that may be taken against the gross income
tax liability of the taxpayer. The Director of the Division of
Taxation may prescribe the form and manner by which a taxpayer
may make and file a separate application in connection with each
annual installment of the credit or any amount of each annual
installment of the credit, and may consult with the Director of the
Division of Alcoholic Beverage Control in reviewing and approving
any application for a tax credit transfer certificate of a
taxpayer. The tax credit transfer certificate, upon issuance thereof
by the Director of the Division of Taxation, may be sold or
assigned, in whole or in part, to any other taxpayer that may have a
corporation business tax or a gross income tax liability, in exchange
for private financial assistance to be provided by the purchaser or
assignee to the taxpayer that is allowed a credit under this section.
The certificate issued to the taxpayer shall include a statement
waiving the taxpayer’s right to claim that amount of the annual
installment of the credit against the gross income tax that the
taxpayer has elected to sell or assign. The sale or assignment of any
amount of a tax credit transfer certificate allowed under this
subsection shall not be exchanged for consideration received by the
taxpayer of less than 75 percent of the transferred credit amount.
Any amount of a tax credit transfer certificate used by a purchaser
or assignee against a gross income tax liability shall be subject to
the same limitations and conditions that apply to the use of a credit
pursuant to subsection d. of this section. Any amount of a tax credit
transfer certificate obtained by a purchaser or assignee under this
section may be applied against the purchaser's or assignee's
corporation business tax liability and shall be subject to the same
limitations and conditions that apply to the use of a credit pursuant
to subsection d. of section 6 of P.L. , c. (C. ) (pending
before the Legislature as this bill).

f. (1) If, in the five-year period beginning with the taxable year
in which the taxpayer is certified as a qualified holder of a plenary
retail consumption license, the taxpayer sells or transfers any part of
the taxpayer’s interest in the license to another person, the taxpayer
shall forfeit that portion of the taxpayer’s credit that is equal to the
amount of consideration received by the taxpayer from the sale or
transfer of the license. The forfeited portion shall first reduce the
balance of any annual installment of a credit of the taxpayer that is
allowed but that has not been applied against the tax liability of the
taxpayer, or converted into a tax credit transfer certificate and sold
or assigned to another taxpayer in accordance with subsection e. of
this section, during the taxable year in which the sale or transfer of
the license occurs, and then shall reduce the balance of any future
annual installment of a credit of a taxpayer who is allowed but that
has not been applied, or converted and sold or assigned to another
taxpayer, beginning with future annual installments allowed during
the taxable year immediately following the taxable year in which
the sale or transfer occurs. If, after being used to reduce future
annual installments, the forfeited portion exceeds the amount of any
allowable credit remaining, the taxpayer shall repay the amount of
that excess to the Director of the Division of Taxation; provided
however, that if the taxpayer converted an annual installment of the
credit or any amount of an annual installment of the credit into a tax
credit transfer certificate in accordance with subsection e. of this
section, the amount of the excess required to be repaid to the
director shall be reduced, if necessary, in proportion to the amount
of consideration received by the taxpayer from the sale or
assignment of the tax credit transfer certificate.

(2) If, in the 15-year period beginning with the fifth taxable year
immediately following the taxable year in which the taxpayer is
certified as a qualified holder of a plenary retail consumption
license, the taxpayer sells or transfers any part of the taxpayer’s
interest in the license to another person, the taxpayer shall forfeit
that portion of the taxpayer’s credit that is equal to the amount of
consideration received by the taxpayer from the sale or transfer of
the license. The forfeited portion shall first reduce the balance of
any tax credit carryforward from a prior taxable year that is allowed
but that has not been applied against the tax liability of the taxpayer
during the taxable year in which the sale or transfer of the license
occurs, and then shall reduce the balance of any tax credit carryforward from a prior taxable year that otherwise would have been applied against future tax liabilities of the taxpayer. If, after being used to reduce carryforwards from prior taxable years, the forfeited portion exceeds the amount of any allowable credit remaining, the taxpayer shall repay the amount of that excess to the Director of the Division of Taxation subject to the following limitations:

(a) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring in the first five years of the 15-year period, the amount of the excess shall be multiplied by 0.75 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation;

(b) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring in the second five years of the 15-year period, the amount of the excess shall be multiplied by 0.50 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation; and

(c) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer’s license occurring in the third five years of the 15-year period, the amount of the excess shall be multiplied by 0.25 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation.

In addition, if the taxpayer converted the credit or any amount of the credit into a tax credit transfer certificate in accordance with subsection d. of this section, the amount of the excess required to be repaid to the Director of the Division of Taxation shall be further reduced, if necessary, in proportion to the amount of consideration received by the taxpayer from the sale or assignment of the tax credit transfer certificate.

(3) The amount of excess required to be repaid to the Director of the Division of Taxation pursuant to paragraph (1) or (2) of this subsection shall be a deficiency with respect to the payment of a State tax. The Director of the Division of Taxation shall have all rights, powers and duties authorized under the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., to ensure payment, collection, or recovery of the deficiency, and the taxpayer shall be afforded all protections, rights, and remedies allowed under R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or any determination or decision made in connection with the deficiency.

The holder of a plenary retail consumption license that has been inactive for more than two years immediately preceding the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be eligible for the tax credit issued pursuant to this section.
8. R.S.33:1-76 is amended to read as follows:

33:1-76. Anything to the contrary hereinbefore notwithstanding, and for the benefit not of property but of persons attendant therein, no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit, except to manufacturers, wholesalers, hotels, clubs and fraternal organizations which owned or were actually in possession of the licensed premises on December sixth, one thousand nine hundred and thirty-three December 6, 1933. The protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school, such waiver to be effective until the date of the next renewal of the license. [Said two hundred] The 200 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed.

The prohibition contained in this section shall not apply to restricted restaurant licenses or restricted beer and wine licenses issued pursuant to R.S.33:1-12. In addition, the prohibition contained in this section shall not apply to the renewal of any license where no such church or schoolhouse was located within two hundred feet of the licensed premises as aforesaid at the time of the issuance of the license, nor to the issuance or renewal, or both, of any license where such the premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such the church or schoolhouse was constructed or established, or both, during the time such the premises were operated under such the previous license.

(cf: R.S.33:1-76)

9. This act shall take effect on the first day of the nineteenth month following enactment.

STATEMENT

This bill creates two new licenses which would allow restaurant owners to sell alcoholic beverage for on-premises consumption. The first license is a restricted restaurant license (R1) which permits the holder to sell beer, wine, and spirits. The second license is a restricted beer and wine license (R2) which permits the holder to sell only beer and wine by the bottle or can.

These licenses would only be available for use in connection with restaurants that occupy a square footage of between 1,500 and 6,000 and maintain a full-service kitchen with a minimum square footage of 500 feet. The governing body of a municipality would
be permitted to issue an unlimited number of these licenses within
the municipality.

Under the bill, alcoholic beverages only may be sold in
connection with the sale of food at a table by an employee of the
restaurant. A license holder is prohibited from providing a bar area
for customers of the restaurant to congregate and consume alcoholic
beverages. However, the holder of a restricted restaurant license
(R1) may provide a service bar at which alcoholic beverages are
prepared for customers at a table. An employee of the restaurant
may be stationed at the service bar to prepare drinks for customers,
but may only transfer alcoholic beverages to the wait staff at the
restaurant. The bill prohibits the employee stationed at the service
bar from serving drinks directly to restaurant patrons. The holder of
a restricted beer and wine license (R2) is prohibited from having a
service bar.

The license holder is required to offer a standard printed menu or
menu board system or similar signage featuring a list of meals with
separate prices listed adjacent to each meal. For parties of 10
restaurant patrons or greater, the bill allows a licensee to offer a
full-course menu with a limited number of meal choices for a fixed
price.

Under the bill, the governing body of a municipality would be
required to adopt an ordinance or resolution authorizing the
issuance of the restricted R1 and R2 licenses. The bill allows the
ordinance to establish the days and times during which the licensee
may sell alcoholic beverage. The ordinance may set different hours
during which the R1 and R2 licensees may sell alcoholic beverages
from other licensees operating in the municipality.

The bill establishes a fee schedule for the initial issuance and
annual renewal fee for the restricted restaurant license and restricted
beer and wine license based on the square footage of the restaurant.
The initial fee and annual renewal fee for this for the restricted
restaurant license is $3,000 for a restaurant with a square footage of
1,500 to 3,000, and $10,000 for a restaurant with a square footage
of 3,001 to 6,000. The fees imposed for the restricted beer and wine
license are half the amount imposed for the restricted restaurant
license, and are set at $1,500 for a restaurant with a square footage
of 1,500 to 3,000 and $5,000 for a restaurant with a square footage
of 3,001 to 6,000.

The initial fee and renewal fee are to be paid in the following
manner: $2,500 of the fee for the restricted restaurant license and
$1250 for the fee for the restricted beer and wine license is to be paid
to the municipality where the restaurant is located and if the restaurant
is located within the boundaries of two or more municipalities, the fee
is to be divided equally among those municipalities; the remainder of
the fee is to be paid to the to the Director Division of Taxation to be
used solely for the purposes of offsetting the costs associated with
issuing tax credits provided under the bill. After the Division of
Taxation is reimbursed for costs associated with issuing tax credits, the full fee is to be paid to the municipality. In addition, the bill requires licensees to pay to the Director of the Division of Alcoholic Beverage Control any applicable renewal fees that the holder of a plenary retail consumption license is required to pay under current law.

The bill imposes certain penalties on the holders of the restricted restaurant license or restricted beer and wine license who violate the law. For a first offense, a restricted restaurant licensee is required to pay a civil penalty of $5,000 and a restricted beer and wine licensee is required to pay $2,500. Both licensees are subject to a mandatory license suspension for a period of time determined by the ABC director for a first time offense. For a second offense, both licensees are subject to a permanent license revocation and are required to pay a fine that is equal to three times the amount of the fair market value of a plenary retail consumption license in that municipality. Any fine money collected is to be paid to the Director of the Division of Taxation to be used solely for the purposes of offsetting the costs associated with issuing tax credits provided under the bill. After the Division of Taxation is reimbursed for up to 75 percent of the projected estimated cost associated with issuing tax credits, the full fee is to be paid to the municipality.

This bill further provides for the issuance of additional plenary retail consumption licenses by municipalities that have adopted a master plan pursuant to the provisions of section 19 of P.L.1975, c.291 (C.40:55D-28). These municipalities may issue the additional plenary retail consumption licenses based upon the population projections for that municipality contained in the master plan and the schedule set forth under the bill. The schedule relies upon the population projection in the master plan. If the projected peak population supports the issuance of one or more additional plenary retail consumption licenses, the municipality immediately may issue one additional license. The municipality may issue another plenary retail consumption license whenever an additional 3,000 or more persons are added to the municipality’s population, until the maximum number of licenses supported by the projected peak population in the master plan has been issued.

The bill allows R1 and R2 licensees to sell alcohol within 200 feet of places of worship and schools. This practice is prohibited for other businesses that sell alcoholic beverages.

The bill also provides a tax credit to existing consumption licensees for “the qualified loss in value” resulting from the creation of the new restaurant licenses. The tax credit is required to be taken over a five-year period, in five annual installments, at the rate of one-fifth the total amount of the taxpayer’s allowable credit. In order to calculate the qualified loss in value, a consumption licensee would be required to obtain an appraisal - at the licensee’s expense - of the fair market value of the license prior
to the bill’s enactment, and a separate appraisal of the license’s value after the bill’s enactment. The “qualified loss in value” would be based on the following calculation: Appraisal prior to bill’s enactment - Appraisal after bill’s enactment = “Qualified loss in value”

The first appraisal would be based upon the average sales price of plenary retail consumption licenses in the municipality in which the licensed premises is located during the five years prior to the bill’s enactment. The second appraisal would be based on a number of factors including: the average sale price of a license after the bill’s effective date; the number of R1 and R2 licenses issued in the municipality; and whether the municipality has undertaken plans for future development that would necessitate the issuance of new R1 and R2 licenses. Under the bill, a consumption licensee would have five years from the date of the bill’s enactment to obtain the appraisals and file for the tax credit. The bill allows the Director of ABC to appoint an advisory committee composed of representatives with knowledge and experience in the appraisal of alcoholic beverage licenses in this State.

The bill permits qualified license holders to convert allowable tax credits to tax credit transfer certificates upon application to and approval by the Director of the Division of Taxation in the Department of the Treasury. The bill authorizes qualified license holders to sell any amount of the credit that is converted to a tax credit transfer certificate to another taxpayer in exchange for private financial consideration, but stipulates that the consideration received by the qualified license holder from the sale cannot be less than 75 percent of the transferred credit amount.

The bill provides that a qualified license holder who is allowed a credit is permitted to maintain the plenary retail consumption license and operate a licensed premises in this State. However, the bill provides that taxpayers who sell their interest in the consumption license during the five year tax period in which they are eligible to receive annual installments of the credit, must forfeit that portion of the qualified licensee’s credit that is equal to the amount of consideration received from the sale or transfer of the license. The bill provides that the forfeited amount will reduce any unused credit of the taxpayer that has not been used, sold, or assigned to another taxpayer and, if after the forfeited amount is used to reduce any allowable credit of the taxpayer, the balance of the forfeited portion remaining must be repaid to the Director of the Division of Taxation.

Additionally, the bill provides that taxpayers who sell their interest in the consumption license during a fifteen-year period following the five-year tax period in which they are eligible to receive annual installments of the credit, must similarly forfeit that portion of the qualified licensee’s credit that is equal to the amount of consideration received from the sale or transfer of the license.
The bill provides that the forfeited amount will reduce any tax credit carryover that is allowed but has not been used by the taxpayer, and, if after the forfeited amount is used to reduce any allowable credit of the taxpayer, the balance of the forfeited portion remaining must be repaid to the Director of the Division of Taxation, at reduced amounts based upon when the sale or transfer of the license occurs.

The holder of a plenary retail consumption license which has been inactive for two years prior to the bill’s effective date would not be eligible for a tax credit.

It is the sponsor’s intent to foster and encourage economic development and growth in this State by creating a new less-costly restaurant license that permits the licensee to sell alcoholic beverages and to provide financial compensation to certain plenary retail consumption licensees who already have established businesses and paid market value for their licenses.