

ASSEMBLY OVERSIGHT, REFORM AND FEDERAL  
RELATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3494**

**STATE OF NEW JERSEY**

DATED: MAY 17, 2018

The Assembly Oversight, Reform and Federal Relations Committee reports favorably Assembly Bill No. 3494.

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.