

ASSEMBLY, No. 4925

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
Assemblyman BRIAN BERGEN
District 25 (Morris and Somerset)

SYNOPSIS

Establishes restricted beer, wine, and cider license; 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.



1 AN ACT concerning alcoholic beverage licensing, amending
2 R.S.33:1-12 and P.L.1999, c.90, and supplementing P.L.1945,
3 c.162 (C.54:10A-1 et seq.) and chapter 4 of Title 54A of the New
4 Jersey Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. R.S.33:1-12 is amended to read as follows:
10 33:1-12. Class C licenses shall be subdivided and classified as
11 follows:

12 Plenary retail consumption license. 1. The holder of this license
13 shall be entitled, subject to rules and regulations, to sell any
14 alcoholic beverages for consumption on the licensed premises by
15 the glass or other open receptacle, and also to sell any alcoholic
16 beverages in original containers for consumption off the licensed
17 premises; but this license shall not be issued to permit the sale of
18 alcoholic beverages in or upon any premises in which a grocery,
19 delicatessen, drug store or other mercantile business is carried on,
20 except as hereinafter provided. The holder of this license shall be
21 permitted to conduct consumer wine, beer and spirits tasting events
22 and samplings for a fee or on a complimentary basis pursuant to
23 conditions established by rules and regulations of the Division of
24 Alcoholic Beverage Control, provided however, that the holder of
25 this license complies with the terms and conditions set forth in
26 section 3 of P.L.2009, c.216 (C.33:1-12d). Subject to such rules
27 and regulations established from time to time by the director, the
28 holder of this license shall be permitted to sell alcoholic beverages
29 in or upon the premises in which any of the following is carried on:
30 the keeping of a hotel or restaurant including the sale of mercantile
31 items incidental thereto as an accommodation to patrons; the sale, at
32 an entertainment facility as defined in R.S.33:1-1, having a seating
33 capacity for no less than 4,000 patrons, of mercantile items
34 traditionally associated with the type of event or program held at
35 the site; the sale of distillers', brewers' and vintners' packaged
36 merchandise prepacked as a unit with other suitable objects as gift
37 items to be sold only as a unit; the sale of novelty wearing apparel
38 identified with the name of the establishment licensed under the
39 provisions of this section; the sale of cigars, cigarettes, packaged
40 crackers, chips, nuts and similar snacks and ice at retail as an
41 accommodation to patrons, or the retail sale of nonalcoholic
42 beverages as accessory beverages to alcoholic beverages; or, in
43 commercial bowling establishments, the retail sale or rental of
44 bowling accessories and the retail sale from vending machines of
45 candy, ice cream and nonalcoholic beverages. The fee for this

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.

1 license shall be fixed by the governing board or body of the
2 municipality in which the licensed premises are situated, by
3 ordinance, at not less than \$250 and not more than \$2,500. No
4 ordinance shall be enacted which shall raise or lower the fee to be
5 charged for this license by more than 20% from that charged in the
6 preceding license year or \$500.00, whichever is the lesser. The
7 governing board or body of each municipality may, by ordinance,
8 enact that no plenary retail consumption license shall be granted
9 within its respective municipality.

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

16 Seasonal retail consumption license. 2. (1) The holder of this
17 license shall be entitled, subject to rules and regulations, to sell any
18 alcoholic beverages for consumption on the licensed premises by
19 the glass or other open receptacle, and also to sell any alcoholic
20 beverages in original containers for consumption off the licensed
21 premises, during the summer season from May 1 until November
22 14, inclusive, or during the winter season from November 15 until
23 April 30, inclusive.

24 (2) In addition, the director shall issue to the holder of this
25 license, upon request by the licensee, one-day permits that shall
26 entitle the license holder to sell alcoholic beverages for
27 consumption on the licensed premises during the season when the
28 license holder is not authorized to sell alcoholic beverages pursuant
29 to subparagraph (1) of this subsection. The number of one-day
30 permits issued to a licensee pursuant to this subsection shall not
31 exceed an aggregate of 14 permits in one calendar year. A one-day
32 permit issued pursuant to this subsection shall be valid for 24
33 consecutive hours. The fee for each one-day permit shall be \$500.

34 The governing body of the municipality in which the licensed
35 premises is situated may place reasonable conditions upon a one-
36 day permit for the purpose of maintaining public safety on the
37 licensed premises and immediately surrounding area. The costs
38 associated with the reasonable conditions placed on the one-day
39 permit shall be assumed by the holder of this license.

40 (3) This license shall not be issued to permit the sale of
41 alcoholic beverages in or upon any premises in which a grocery,
42 delicatessen, drug store or other mercantile business is carried on,
43 except as hereinafter provided. Subject to such rules and
44 regulations established from time to time by the director, the holder
45 of this license shall be permitted to sell alcoholic beverages in or
46 upon the premises in which any of the following is carried on: the
47 keeping of a hotel or restaurant including the sale of mercantile
48 items incidental thereto as an accommodation to patrons; the sale of

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

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

25 The governing board or body of each municipality may, by
26 ordinance, enact that this license shall not be issued to permit the
27 sale of alcoholic beverages in or upon any premises in which any
28 other mercantile business is carried on, except that any such
29 ordinance, heretofore or hereafter adopted, shall not prohibit the
30 retail sale of distillers', brewers' and vintners' packaged
31 merchandise prepacked as a unit with other suitable objects as gift
32 items to be sold only as a unit; the sale of novelty wearing apparel
33 identified with the name of the establishment licensed under the
34 provisions of this act; cigars, cigarettes, packaged crackers, chips,
35 nuts and similar snacks, ice, and nonalcoholic beverages as
36 accessory beverages to alcoholic beverages. The fee for this license
37 shall be fixed by the governing board or body of the municipality in
38 which the licensed premises are situated, by ordinance, at not less
39 than \$125 and not more than \$2,500. No ordinance shall be enacted
40 which shall raise or lower the fee to be charged for this license by
41 more than 20% from that charged in the preceding license year or
42 \$500.00, whichever is the lesser. The governing board or body of
43 each municipality may, by ordinance, enact that no plenary retail
44 distribution license shall be granted within its respective
45 municipality.

46 Limited retail distribution license. 3. b. The holder of this
47 license shall be entitled, subject to rules and regulations, to sell any
48 unchilled, brewed, malt alcoholic beverages in quantities of not less

1 than 72 fluid ounces for consumption off the licensed premises, but
2 only in original containers; provided, however, that this license
3 shall be issued only for premises operated and conducted by the
4 licensee as a bona fide grocery store, meat market, meat and
5 grocery store, delicatessen, or other type of bona fide food store at
6 which groceries or other foodstuffs are sold at retail; and provided
7 further that this license shall not be issued except for premises at
8 which the sale of groceries or other foodstuffs is the primary and
9 principal business and at which the sale of alcoholic beverages is
10 merely incidental and subordinate thereto. The fee for this license
11 shall be fixed by the governing body or board of the municipality in
12 which the licensed premises are situated, by ordinance, at not less
13 than \$31 and not more than \$63. The governing board or body of
14 each municipality may, by ordinance, enact that no limited retail
15 distribution license shall be granted within its respective
16 municipality.

17 Plenary retail transit license. 4. The holder of this license shall
18 be entitled, subject to rules and regulations, to sell any alcoholic
19 beverages, for consumption only, on railroad trains, airplanes,
20 limousines and boats, while in transit. The fee for this license for
21 use by a railroad or air transport company shall be \$375, for use by
22 the owners of limousines shall be \$31 per vehicle, and for use on a
23 boat shall be \$63 on a boat 65 feet or less in length, \$125 on a boat
24 more than 65 feet in length but not more than 110 feet in length,
25 and \$375 on a boat more than 110 feet in length; such boat lengths
26 shall be determined in the manner prescribed by the Bureau of
27 Customs of the United States Government or any federal agency
28 successor thereto for boat measurement in connection with issuance
29 of marine documents. A license issued under this provision to a
30 railroad or air transport company shall cover all railroad cars and
31 planes operated by any such company within the State of New
32 Jersey. A license for a boat or limousine issued under this
33 provision shall apply only to the particular boat or limousine for
34 which issued, and shall permit the purchase of alcoholic beverages
35 for sale or service in a boat or limousine to be made from any Class
36 A and B licensee or from any Class C licensee whose license
37 privilege permits the sale of alcoholic beverages in original
38 containers for off-premises consumption. An interest in a plenary
39 retail transit license issued in accordance with this section shall be
40 excluded in determining the maximum number of retail licenses
41 permitted under P.L.1962, c.152 (C.33:1-12.31 et seq.).

42 Club license. 5. The holder of this license shall be entitled,
43 subject to rules and regulations, to sell any alcoholic beverages but
44 only for immediate consumption on the licensed premises and only
45 to bona fide club members and their guests. The fee for this license
46 shall be fixed by the governing board or body of the municipality in
47 which the licensed premises are situated, by ordinance, at not less
48 than \$63 and not more than \$188. The governing board or body of

1 each municipality may, by ordinance, enact that no club licenses
2 shall be granted within its respective municipality. Club licenses
3 may be issued only to such corporations, associations and
4 organizations as are operated for benevolent, charitable, fraternal,
5 social, religious, recreational, athletic, or similar purposes, and not
6 for private gain, and which comply with all conditions which may
7 be imposed by the Director of the Division of Alcoholic Beverage
8 Control by rules and regulations.

9 The provisions of section 23 of P.L.2003, c.117 amendatory of
10 this section shall apply to licenses issued or transferred on or after
11 July 1, 2003, and to license renewals commencing on or after July
12 1, 2003.

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

19 Notwithstanding any other provision of Title 33 of the Revised
20 Statutes and subject to conditions established by the director, the
21 holder of this license may share direction and control of the
22 premises to be licensed and share proceeds and profits from the sale
23 of alcoholic beverages with the owner, operator, concessionaire, or
24 lessee of the facility. The holder of this license shall be permitted
25 to conduct consumer wine, beer, and spirits tasting events and
26 samplings for a fee or on a complimentary basis provided, however,
27 the license holder complies with the provisions of section 3 of
28 P.L.2009, c.216 (C.33:1-12d) and rules and regulations promulgated
29 thereto. Notwithstanding any law, rule or regulation to the
30 contrary, the holder of this license shall be entitled to establish an
31 all-inclusive area within the licensed sporting facility, provided the
32 all-inclusive area is limited to one area within the sporting facility
33 for each game or event and the capacity of the all-inclusive area
34 does not exceed 500 persons.

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

41 For the purposes of this subsection:

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

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

1 Restricted beer, wine, and cider license. 7. The holder of this
2 license shall be entitled, subject to rules and regulations, to sell any
3 malt alcoholic beverage, wine, or cider by the glass or other open
4 receptacle in or upon the premises of a restaurant with a full-service
5 kitchen regularly and principally used for the purpose of providing
6 food to customers.

7 The holder of this license only shall sell alcoholic beverages in
8 connection with the sale of food and served at a table by an
9 employee of the restaurant. The holder of this license shall not
10 provide a bar area for customers of the restaurant to congregate and
11 consume alcoholic beverages, but may provide a service bar at
12 which alcoholic beverages are prepared for service to customers at a
13 table. An employee of the restaurant may be stationed at the
14 service bar to prepare drinks for customers, but only shall transfer
15 alcoholic beverages to wait staff employed by the restaurant to be
16 delivered to restaurant patrons who are seated or are waiting to be
17 seated at a table; an employee preparing drinks at the service bar
18 shall be prohibited from directly transferring alcoholic beverages to
19 restaurant patrons.

20 The holder of this license may not sell or transfer the license.
21 The governing board or body of the municipality shall not limit the
22 number of restricted beer, wine, and cider licenses issued within the
23 municipality, and the restriction in section 2 of P.L.1947, c.94
24 (C.33:1-12.14) concerning the number of retail consumption
25 licenses that may be issued in a municipality shall not be applicable
26 to the license issued under this paragraph. A municipality that
27 prohibits the sale of alcoholic beverages within its borders may
28 establish by ordinance or resolution that a restricted beer and wine
29 license may be issued in the municipality.

30 The initial fee and annual renewal fee for this license shall be:
31 \$2,000 until the first day of the 25th month following the date of
32 enactment of P.L. , c. (pending before the Legislature as this
33 bill); \$3,000 until the first day of the 61st month following the date
34 of enactment of P.L. , c. (pending before the Legislature as this
35 bill); and \$5,000 thereafter.

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

41 The provisions of section 23 of P.L.2003, c.117 amendatory of
42 this section shall apply to licenses issued or transferred on or after
43 July 1, 2003, and to license renewals commencing on or after July
44 1, 2003.

45 (cf: P.L.2018, c.147, s.1)

46
47 2. Section 5 of P.L.1999, c.90 (C.2C:33-27) is amended to read
48 as follows:

1 5. Consumption of alcohol in restaurants.

2 a. **【No】** A person who owns or operates a restaurant, dining
3 room or other public place where food or liquid refreshments are
4 sold or served to the general public, and for which premises a
5 license or permit authorizing the sale of alcoholic beverages for on-
6 premises consumption has not been issued shall not:

7 (1) **【Shall】** allow the consumption of alcoholic beverages, other
8 than wine or a malt alcoholic beverage, in a portion of the premises
9 which is open to the public; **【or】**

10 (2) **【Shall】** charge any admission fee or cover, corkage₂ or
11 service charge **【or** advertise inside or outside of such premises that
12 patrons may bring and consume their own wine or malt alcoholic
13 beverages in a portion of the premises which is open to the
14 public.**】** , except as provided in subsection d. of this section; or

15 (3) **【Shall】** allow the consumption of wine or malt alcoholic
16 beverages at times or by persons to whom the service or
17 consumption **【or】** of alcoholic beverages on a licensed premises is
18 prohibited by State or municipal law or regulation.

19 b. Nothing in this act shall restrict the right of a municipality
20 or an owner or operator of a restaurant, dining room or other public
21 place where food or liquid refreshments are sold or served to the
22 general public from prohibiting the consumption of alcoholic
23 beverages on those premises.

24 c. A person who violates any provision of this act is a
25 disorderly person, and the court, in addition to the sentence imposed
26 for the disorderly person violation, may by its judgment bar the
27 owner or operator from allowing consumption of wine or malt
28 alcoholic beverages in his premises as authorized by this act.

29 d. Notwithstanding the provisions of paragraph (2) of
30 subsection a. of this section, the holder of a restricted beer, wine,
31 and cider license issued pursuant to R.S.33:1-12 may charge a
32 corkage fee for patrons who bring and consume their own malt
33 alcoholic beverages, wine, or cider on the licensed premises which
34 is open to the public.

35 (cf: P.L.1999, c.90, s.5)

36

37 3. (New section) a. A taxpayer that is certified as a qualified
38 holder of a plenary retail consumption license shall be allowed a
39 credit against the corporation business tax imposed pursuant to
40 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the
41 credit shall be equal to 50 percent of the purchase price of the
42 taxpayer's license prior to the date of enactment of P.L. ,
43 c. (C.) (pending before the Legislature as this bill), and shall
44 be taken over a 10 year period, in 10 annual installments, at the rate
45 of one-tenth the total amount of the taxpayer's credit for each
46 privilege period of the taxpayer, beginning with the privilege period
47 in which the taxpayer is certified as a qualified holder of a plenary

1 retail consumption license by the Director of the Division of
2 Alcoholic Beverage Control in the Department of Law and Public
3 Safety in accordance with subsection b. of this section.

4 b. (1) To be certified as a qualified holder of a plenary retail
5 consumption license, a taxpayer shall make and file an application
6 for certification with the Director of the Division of Alcoholic
7 Beverage Control within 360 days of the effective date of P.L. ,

8 c. (C.) (pending before the Legislature as this bill). The
9 application shall be made on forms furnished by the Director of the
10 Division of Alcoholic Beverage Control, and shall require the
11 taxpayer to demonstrate: the location of the premises operated in
12 connection with the license; the original amount paid by the
13 taxpayer for the privilege of holding the license; and the purpose to
14 which the license has been used by the taxpayer.

15 (2) The Director of the Division of Alcoholic Beverage Control
16 shall review each application made and filed in accordance with
17 paragraph (1) of this subsection and make a determination regarding
18 the issuance of a certification within 180 days of the date a
19 complete application is filed. The determination shall be made
20 based upon the Director of the Division of Alcoholic Beverage
21 Control's finding that: the taxpayer acquired the license prior to the
22 date of enactment of P.L. , c. (pending before the Legislature as
23 this bill) and the license is used directly by the taxpayer to sell
24 alcoholic beverages for consumption on a licensed premises in
25 accordance with the provisions of R.S.33:1-12.

26 (3) The Director of the Division of Alcoholic Beverage Control
27 shall issue a written certification to each taxpayer that has made and
28 filed an application that has been reviewed and approved in
29 accordance with paragraph (2) of this subsection within 10 days of
30 the date the determination is made. Each taxpayer issued a
31 certification shall include a copy of the written certification, along
32 with the detailed explanation of the sale price of the taxpayer's
33 license, when filing a return that includes a claim for the credit
34 allowed in accordance with this section.

35 (4) The Director of the Division of Alcoholic Beverage Control
36 shall provide a copy of each written certification issued in
37 accordance with paragraph (4) of this subsection to the Director of
38 the Division of Taxation in the Department of the Treasury within
39 10 days of the date the certification is issued, and shall prepare a
40 report regarding the administration of the certification process
41 established in accordance with this subsection. The report shall
42 specify: the number of applications made and filed; the number of
43 certifications issued; and the fair market value of each license for
44 which a certification is issued. The report shall be submitted to the
45 Governor, the State Treasurer, and the Legislature, in accordance
46 with section 2 of P.L.1991, c.164 (C.52:14-19.1), within 450 days
47 of the effective date of P.L. , c. (C.) (pending before the
48 Legislature as this bill).

1 c. The order of priority of the application of an annual
2 installment of the credit allowed pursuant to this section and any
3 other credit allowed against the corporation business tax for a
4 privilege period shall be as prescribed by the Director of the
5 Division of Taxation in the Department of the Treasury. The
6 amount of an annual installment of the credit applied under this
7 section against the corporation business tax for a privilege period,
8 together with any other annual installment and any other credits
9 allowed against the corporation business tax, shall not reduce the
10 tax liability of the taxpayer to an amount less than the statutory
11 minimum provided in subsection (e) of section 5 of P.L.1945, c.162
12 (C.54:10A-5). The amount of an annual installment of the credit
13 allowable under this section which cannot be applied for a privilege
14 period due to the limitations of this subsection may be carried
15 forward, if necessary, to the earliest available use within the 20
16 privilege periods immediately following the privilege period for
17 which the credit is allowed.

18 d. A taxpayer may, upon issuance of a certification as a
19 qualified holder of a plenary retail consumption license by the
20 Director of the Division of Alcoholic Beverage Control in
21 accordance with subsection b. of this section, make and file an
22 application to the Director of the Division of Taxation for a tax
23 credit transfer certificate in lieu of the taxpayer being allowed an
24 annual installment of the credit or any amount of an annual
25 installment of the credit that may be taken against the corporation
26 business tax liability of the taxpayer. The Director of the Division
27 of Taxation may prescribe the form and manner by which a
28 taxpayer may make and file a separate application in connection
29 with each annual installment of the credit or any amount of each
30 annual installment of the credit, and may consult with the Director
31 of the Division of Alcoholic Beverage Control in reviewing and
32 approving any application for a tax credit transfer certificate of a
33 taxpayer. The tax credit transfer certificate, upon issuance thereof
34 by the Director of the Division of Taxation, may be sold or
35 assigned, in whole or in part, to any other taxpayer that may have a
36 corporation business tax or a gross income tax liability, in exchange
37 for private financial assistance to be provided by the purchaser or
38 assignee to the taxpayer that is allowed a credit under this section.

39 The certificate issued to the taxpayer shall include a statement
40 waiving the taxpayer's right to claim that amount of the annual
41 installment of the credit against the corporation business tax that the
42 taxpayer has elected to sell or assign. The sale or assignment of any
43 amount of a tax credit transfer certificate allowed under this
44 subsection shall not be exchanged for consideration received by the
45 taxpayer of less than 75 percent of the transferred credit amount.
46 Any amount of a tax credit transfer certificate used by a purchaser
47 or assignee against a corporation business tax liability shall be
48 subject to the same limitations and conditions that apply to the use

1 of a credit pursuant to subsection c. of this section. Any amount of a
2 tax credit transfer certificate obtained by a purchaser or assignee
3 under this section may be applied against the purchaser's or
4 assignee's gross income tax liability and shall be subject to the same
5 limitations and conditions that apply to the use of a credit pursuant
6 to subsection c. of section 7 of P.L. , c. (C.) (pending
7 before the Legislature as this bill).

8 e. (1) If, in the 10 year period beginning with the privilege
9 period in which the taxpayer is certified as a qualified holder of a
10 plenary retail consumption license, the taxpayer sells or transfers
11 any part of the taxpayer's interest in the license to another person,
12 the taxpayer shall forfeit that portion of the taxpayer's credit that is
13 equal to the amount of consideration received by the taxpayer from
14 the sale or transfer of the license. The forfeited portion shall first
15 reduce the balance of any annual installment of a credit of the
16 taxpayer that is allowed but that has not been applied against the tax
17 liability of the taxpayer, or converted into a tax credit transfer
18 certificate and sold or assigned to another taxpayer in accordance
19 with subsection d. of this section, during the privilege period in
20 which the sale or transfer of the license occurs, and then shall
21 reduce the balance of any future annual installment of a credit of a
22 taxpayer that is allowed but that has not been applied, or converted
23 and sold or assigned to another taxpayer, beginning with future
24 annual installments allowed during the privilege period immediately
25 following the privilege period in which the sale or transfer occurs.
26 If, after being used to reduce future annual installments, the
27 forfeited portion exceeds the amount of any allowable credit
28 remaining, the taxpayer shall repay the amount of that excess to the
29 Director of the Division of Taxation; provided however, that if the
30 taxpayer converted an annual installment of the credit or any
31 amount of an annual installment of the credit into a tax credit
32 transfer certificate in accordance with subsection d. of this section,
33 the amount of the excess required to be repaid to the Director of the
34 Division of Taxation shall be reduced, if necessary, in proportion to
35 the amount of consideration received by the taxpayer from the sale
36 or assignment of the tax credit transfer certificate.

37
38 4. (New section) a. A taxpayer that is certified as a qualified
39 holder of a plenary retail consumption license shall be allowed a
40 credit against the tax imposed pursuant to the "New Jersey Gross
41 Income Tax Act," N.J.S.54A:1-1 et seq. The amount of the credit
42 shall be equal to 50 percent of the purchase price of the taxpayer's
43 license prior to the date of enactment of P.L. , c. (C.)
44 (pending before the Legislature as this bill), and shall be taken over
45 a 10 year period, in 10 annual installments, at the rate of one-tenth
46 the total amount of the taxpayer's credit for each privilege period of
47 the taxpayer, beginning with the privilege period in which the
48 taxpayer is certified as a qualified holder of a plenary retail

1 consumption license by the Director of the Division of Alcoholic
2 Beverage Control in the Department of Law and Public Safety in
3 accordance with subsection b. of this section.

4 b. (1) To be certified as a qualified holder of a plenary retail
5 consumption license, a taxpayer shall make and file an application
6 for certification with the Director of the Division of Alcoholic
7 Beverage Control within 360 days of the effective date of P.L. , c.
8 (C.) (pending before the Legislature as this bill). The
9 application shall be made on forms furnished by the Director of the
10 Division of Alcoholic Beverage Control, and shall require the
11 taxpayer to demonstrate: the location of the premises operated in
12 connection with the license; the original amount paid by the
13 taxpayer for the privilege of holding the license; and the purpose to
14 which the license has been used by the taxpayer.

15 (2) The Director of the Division of Alcoholic Beverage Control
16 shall review each application made and filed in accordance with
17 paragraph (1) of this subsection and make a determination regarding
18 the issuance of a certification within 180 days of the date a
19 complete application is filed. The determination shall be made
20 based upon the Director of the Division of Alcoholic Beverage
21 Control's finding that: the taxpayer acquired the license following
22 the date of enactment of P.L. , c. (pending before the
23 Legislature as this bill) and the license is used directly by the
24 taxpayer to sell alcoholic beverages for consumption on a licensed
25 premises in accordance with the provisions of R.S.33:1-12.

26 (3) The Director of the Division of Alcoholic Beverage Control
27 shall issue a written certification to each taxpayer that has made and
28 filed an application that has been reviewed and approved in
29 accordance with paragraph (2) of this subsection within 10 days of
30 the date the determination is made. Each taxpayer issued a
31 certification shall include a copy of the written certification, along
32 with the detailed explanation of the sale price of the taxpayer's
33 license, when filing a return that includes a claim for the credit
34 allowed in accordance with this section.

35 (4) The Director of the Division of Alcoholic Beverage Control
36 shall provide a copy of each written certification issued in
37 accordance with paragraph (4) of this subsection to the Director of
38 the Division of Taxation in the Department of the Treasury within
39 10 days of the date the certification is issued, and shall prepare a
40 report regarding the administration of the certification process
41 established in accordance with this subsection. The report shall
42 specify: the number of applications made and filed; the number of
43 certifications issued; and the fair market value of each license for
44 which a certification is issued. The report shall be submitted to the
45 Governor, the State Treasurer, and the Legislature, in accordance
46 with section 2 of P.L.1991, c.164 (C.52:14-19.1), within 450 days
47 of the effective date of P.L. , c. (C.) (pending before the
48 Legislature as this bill).

1 c. The order of priority of the application of an annual
2 installment of the credit allowed pursuant to this section and any
3 other credit allowed against the corporation business tax for a
4 privilege period shall be as prescribed by the Director of the
5 Division of Taxation. The amount of an annual installment of the
6 credit applied under this section against the corporation business tax
7 for a privilege period, together with any other annual installment
8 and any other credits allowed against the corporation business tax,
9 shall not reduce the tax liability of the taxpayer to an amount less
10 than the statutory minimum provided in subsection (e) of section 5
11 of P.L.1945, c.162 (C.54:10A-5). The amount of an annual
12 installment of the credit allowable under this section which cannot
13 be applied for a privilege period due to the limitations of this
14 subsection may be carried forward, if necessary, to the earliest
15 available use within the 20 privilege periods immediately following
16 the privilege period for which the credit is allowed.

17 d. A taxpayer may, upon issuance of a certification as a
18 qualified holder of a plenary retail consumption license by the
19 Director of the Division of Alcoholic Beverage Control in
20 accordance with subsection b. of this section, make and file an
21 application to the Director of the Division of Taxation for a tax
22 credit transfer certificate in lieu of the taxpayer being allowed an
23 annual installment of the credit or any amount of an annual
24 installment of the credit that may be taken against the corporation
25 business tax liability of the taxpayer. The Director of the Division
26 of Taxation may prescribe the form and manner by which a
27 taxpayer may make and file a separate application in connection
28 with each annual installment of the credit or any amount of each
29 annual installment of the credit, and may consult with the Director
30 of the Division of Alcoholic Beverage Control in reviewing and
31 approving any application for a tax credit transfer certificate of a
32 taxpayer. The tax credit transfer certificate, upon issuance thereof
33 by the Director of the Division of Taxation, may be sold or
34 assigned, in whole or in part, to any other taxpayer that may have a
35 corporation business tax or a gross income tax liability, in exchange
36 for private financial assistance to be provided by the purchaser or
37 assignee to the taxpayer that is allowed a credit under this section.

38 The certificate issued to the taxpayer shall include a statement
39 waiving the taxpayer's right to claim that amount of the annual
40 installment of the credit against the corporation business tax that the
41 taxpayer has elected to sell or assign. The sale or assignment of any
42 amount of a tax credit transfer certificate allowed under this
43 subsection shall not be exchanged for consideration received by the
44 taxpayer of less than 75 percent of the transferred credit amount.
45 Any amount of a tax credit transfer certificate used by a purchaser
46 or assignee against a corporation business tax liability shall be
47 subject to the same limitations and conditions that apply to the use
48 of a credit pursuant to subsection c. of this section. Any amount of a

1 tax credit transfer certificate obtained by a purchaser or assignee
2 under this section may be applied against the purchaser's or
3 assignee's gross income tax liability and shall be subject to the same
4 limitations and conditions that apply to the use of a credit pursuant
5 to subsection c. of section 4 of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7 e. (1) If, in the 10 year period beginning with the privilege
8 period in which the taxpayer is certified as a qualified holder of a
9 plenary retail consumption license, the taxpayer sells or transfers
10 any part of the taxpayer's interest in the license to another person,
11 the taxpayer shall forfeit that portion of the taxpayer's credit that is
12 equal to the amount of consideration received by the taxpayer from
13 the sale or transfer of the license. The forfeited portion shall first
14 reduce the balance of any annual installment of a credit of the
15 taxpayer that is allowed but that has not been applied against the tax
16 liability of the taxpayer, or converted into a tax credit transfer
17 certificate and sold or assigned to another taxpayer in accordance
18 with subsection d. of this section, during the privilege period in
19 which the sale or transfer of the license occurs, and then shall
20 reduce the balance of any future annual installment of a credit of a
21 taxpayer that is allowed but that has not been applied, or converted
22 and sold or assigned to another taxpayer, beginning with future
23 annual installments allowed during the privilege period immediately
24 following the privilege period in which the sale or transfer occurs.
25 If, after being used to reduce future annual installments, the
26 forfeited portion exceeds the amount of any allowable credit
27 remaining, the taxpayer shall repay the amount of that excess to the
28 Director of the Division of Taxation; provided however, that if the
29 taxpayer converted an annual installment of the credit or any
30 amount of an annual installment of the credit into a tax credit
31 transfer certificate in accordance with subsection d. of this section,
32 the amount of the excess required to be repaid to the Director of the
33 Division of Taxation shall be reduced, if necessary, in proportion to
34 the amount of consideration received by the taxpayer from the sale
35 or assignment of the tax credit transfer certificate.

36
37 5. This act shall take effect on the first day of the nineteenth
38 month following enactment.

41 STATEMENT

42
43 This bill establishes a restricted alcoholic beverage license that
44 allows the licensee to sell beer, wine, and cider by the glass or other
45 open receptacle on the premises of a restaurant with a full service
46 kitchen.

47 The holder of a beer, wine, and cider license only would be
48 entitled to sell alcoholic beverages in connection with the sale of

1 food and served at a table by an employee of the restaurant. Under
2 the bill, the licensee would be prohibited from providing a bar area
3 for restaurant customers to congregate and consume alcoholic
4 beverages. However, the licensee may provide a service bar at
5 which alcoholic beverages are prepared for service to customers at a
6 table.

7 Under current law, a municipality may issue plenary retail
8 consumption licenses until the combined total number in the
9 municipality is fewer than one license for each 3,000 municipal
10 residents. Because of this restriction, there is a shortage of these
11 licenses in some municipalities. This bill addresses this shortage by
12 allowing a municipality to issue these limited beer, wine, and cider
13 licenses. The bill prohibits a municipal governing body from
14 limiting the number of these licenses that may be issued. A
15 municipality that prohibits the sale of alcoholic beverages within its
16 borders-also known as a dry town-may establish by ordinance that
17 the beer, wine, and cider license may be issued in the municipality.
18 The licenses would be non-transferable.

19 The initial and annual renewal fee for the license would be:

20 1) \$2,000 until the two years following the date of bill's
21 enactment;

22 2) \$3,000 until five years following the date of the bill's
23 enactment; and

24 3) \$5,000 after five years following the date of the bill's
25 enactment.

26 In addition, the bill allows the licensee to charge a service or
27 corkage fee to patrons who bring their own beer, wine, or cider for
28 consumption on the licensed premises. The bill also removes the
29 prohibition on advertising that a restaurant is BYOB in response to
30 a recent decision by the United States District Court for the District
31 of New Jersey, GJJM Enterprises, LLC v. City of Atlantic City,
32 holding that the State's prohibition on BYOB advertising is an
33 unconstitutional violation of the First Amendment right to free
34 speech.

35 This bill also provides a tax credit against the corporation
36 business tax and gross income tax to compensate license holders for
37 the expected loss in value resulting from the creation of the new
38 restricted licenses. Under the bill, the tax credit is equal to 50
39 percent of the purchase price of taxpayer's plenary retail
40 consumption license. The tax credit is required to be taken over a
41 10 year period, in 10 annual installments, at the rate of 1/20 the
42 total amount of the taxpayer's allowable credit.

43 The bill permits qualified license holders to convert allowable
44 tax credits to tax credit transfer certificates upon application to and
45 approval by the Director of the Division of Taxation in the
46 Department of the Treasury. The bill authorizes qualified license
47 holders to sell any amount of the credit that is converted to a tax
48 credit transfer certificate to another taxpayer in exchange for private

1 financial consideration, but stipulates that the consideration
2 received by the qualified license holder from the sale cannot be less
3 than 75 percent of the transferred credit amount.

4 The bill provides that a qualified license holder who is allowed a
5 credit is permitted to maintain the plenary retail consumption
6 license and operate a licensed premises in this State. However, the
7 bill provides that taxpayers who sell their interest in the
8 consumption license during the 10 year tax period in which they are
9 eligible to receive annual installments of the credit, must forfeit that
10 portion of the qualified licensee's credit that is equal to the amount
11 of consideration received from the sale or transfer of the license.
12 The bill provides that the forfeited amount will reduce any unused
13 credit of the taxpayer that has not been used, sold, or assigned to
14 another taxpayer and, if after the forfeited amount is used to reduce
15 any allowable credit of the taxpayer, the balance of the forfeited
16 portion remaining must be repaid to the Director of the Division of
17 Taxation.

18 Additionally, the bill provides that taxpayers who sell their
19 interest in the consumption license during a 15 year period
20 following the 10 year tax period in which they are eligible to
21 receive annual installments of the credit, must similarly forfeit that
22 portion of the qualified licensee's credit that is equal to the amount
23 of consideration received from the sale or transfer of the license.
24 The bill provides that the forfeited amount will reduce any tax
25 credit carryover that is allowed but has not been used by the
26 taxpayer, and, if after the forfeited amount is used to reduce any
27 allowable credit of the taxpayer, the balance of the forfeited portion
28 remaining must be repaid to the Director of the Division of
29 Taxation, at reduced amounts based upon when the sale or transfer
30 of the license occurs.