

ASSEMBLY, No. 2692

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1997

By Assemblyman GREENWALD

1 AN ACT providing for the creation of a security interest in certain
2 liquor licenses and supplementing Title 33 of the Revised Statutes.

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

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7 1. As used in this act:

8 "Debt-repayment interest" means a security interest in a license,
9 which interest is created and limited solely to secure the payment of an
10 obligation or obligations of the licensee to the holder of the obligation.

11 "Division" means the Division of Alcoholic Beverage Control.

12 "Holder" means a financial institution which has a right to a
13 repayment obligation of credit supplied to a licensee and includes only
14 those financial institutions with authority to make commercial loans
15 and which are subject to regulation by the Department of Banking and
16 Insurance or, for federally chartered financial institutions, subject to
17 regulation by the Office of the Comptroller of the Currency or the
18 Office of Thrift Supervision.

19 "License" means a Class C retail license issued pursuant to
20 R.S.33:1-12.

21 "Licensee" means a person who has a license.

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23 2. A holder may obtain a debt-repayment interest in a license upon
24 application to and approval of the division as set forth in this act.

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26 3. The rights of the holder of a debt-repayment interest shall be
27 limited to the right to transfer the license to the holder upon default of
28 the licensee in payment of an obligation, which obligation shall be
29 evidenced by a writing signed by the licensee and containing the
30 following information:

31 a. The names and addresses of the holder and the licensee;

32 b. A designation of the licensed premises;

33 c. The amount of the indebtedness; and

34 d. Language that indicates that the licensee grants to the holder the
35 interest in the license in order to secure the repayment of any unpaid
36 balance of the indebtedness.

1 4. In order to obtain a valid and perfected debt-repayment interest,
2 the holder shall be eligible to be a licensee and shall apply to and be
3 approved by the issuing authority as a person with an interest in the
4 license in substantially the same manner and pursuant to the same
5 application and notice provisions as all other interests in a license are
6 approved. The annual renewal application for each license subject to
7 a debt-repayment interest shall contain that information which the
8 division requires.

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10 5. Any license which is subject to a debt-repayment interest shall
11 so indicate on the face of the license, in the format the division
12 prescribes.

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14 6. a. The division shall keep an index of all debt-repayment
15 interests, indexed by the name of the licensee, and shall note on the
16 index the date on which the debt-repayment interest was approved.
17 The information in the index shall be made available to the public,
18 upon application and payment of a fee, the amount of which shall be
19 determined by the division in relation to the information requested.

20 b. A holder may, by the holder's signed statement, release the debt-
21 repayment interest in a license. The statement of release is sufficient
22 if it contains the name of the licensee, the address of licensed premises
23 and the name and address of the holder, and requests the division to
24 delete the debt-repayment interest from the index. Upon presentation
25 to the division, the division shall amend its index accordingly.

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27 7. a. If a licensee is in default of an obligation to a holder secured
28 by a debt-repayment interest in the license, the holder shall have the
29 right to:

30 (1) Have the license transferred to it in full satisfaction of the debt,
31 provided that the holder has given at least ten day's prior notice of the
32 proposed transfer to the division, the licensee and any other holder of
33 a debt-repayment interest in the license; and

34 (2) Dispose of the license at a public or private sale provided that
35 every aspect of the sale including the method, manner, time, place and
36 terms shall be commercially reasonable and provided further that no
37 rights in the license shall be transferred to the successful bidder, other
38 than the holder, unless and until the transfer is approved as a person-
39 to-person transfer of the license to the successful bidder in the same
40 manner as other person-to-person transfers are considered and
41 approved. All holders of any subordinate debt-repayment interest in
42 the license shall be entitled to notice of the sale.

43 b. The transfer of a license pursuant to this section shall not
44 remove or eliminate any restrictions on the license imposed by the
45 issuing authority or by the division.

1 8. A debt-repayment interest shall become perfected and
2 enforceable upon approval by the issuing authority pursuant to this
3 act. If there is more than one debt-repayment interest in the same
4 license, the priority of each interest shall be determined by the time
5 and date of its approval.

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7 9. Nothing in this act shall be deemed to create a property or other
8 right in any license for any purpose except for the limited debt-
9 repayment interest to secure the repayment of debt by the licensee, nor
10 shall anything in this act be deemed to limit revocation of a license or
11 other sanctions imposed against the license pursuant to any applicable
12 law or regulation.

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14 10. A debt-repayment interest shall not be deemed to be a
15 beneficial interest in a license pursuant to section 1 of P.L.1962, c.152
16 (C.33:1-12.31). The holder of a debt-repayment interest shall not be
17 responsible for violations of law or regulation committed by the
18 licensee.

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20 11. The division shall promulgate regulations pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.), necessary to effectuate the provisions of this act, including
23 regulations establishing fees for applications, filings and searches
24 authorized pursuant to this act and, without limitation, fees for
25 compliance with sections 4 and 6 of this act and regulations adopting
26 forms and procedures.

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28 12. This act shall take effect on the 120th day following enactment.
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31 STATEMENT

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33 This bill would permit a financial institution authorized to make
34 commercial loans to obtain a debt-repayment interest in certain Class
35 C retail liquor licenses to secure repayment of an obligation of a
36 licensee to the lender. In order to obtain such an interest, the lender
37 must be eligible to be a licensee and must apply and be approved by
38 the issuing authority. The application procedure would be the same
39 as for any person wishing to have an interest in a license approved.
40 Once approved, the debt-repayment interest is perfected and
41 enforceable. The rights of a holder of a debt-repayment interest are
42 limited to the right to transfer the license upon default of the licensee
43 with respect to payment of an obligation to the holder. Upon default
44 of an obligation to a holder by a licensee, the holder may: (1) have the
45 license transferred to the holder in full satisfaction of the debt,
46 provided that the holder has given notice at least 10 days in advance

1 of the transfer to the division, the licensee and to any other holders of
2 a debt-repayment interest in the license; and (2) dispose of the license
3 at a public or private sale with every aspect of the sale to be
4 commercially reasonable. No transfer to a successful bidder shall be
5 complete until that bidder is approved in the same manner as other
6 person-to-person transfers are considered and approved. A debt-
7 repayment interest is not deemed to create a property interest or a
8 beneficial interest in a license. A holder of a debt-repayment interest
9 is not responsible for violations of law or regulation committed by the
10 licensee.

11 The bill requires the Division of Alcoholic Beverage Control to set
12 up an index of all debt-repayment interests, indexed by the name of the
13 licensee. This information is to be made available to the public upon
14 application and payment of a fee to be set by the division by
15 regulation. The division is authorized to promulgate regulations
16 necessary to effectuate the provisions of this bill, including regulations
17 establishing fees and adopting forms and procedures.

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22 Provides for the creation of a security interest in Class C retail liquor
23 licenses.