

33:1-12.31

March 4, 1971

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LEGISLATIVE HISTORY OF R.S. 33:1-12.31  
(Acquisition of beneficial interest in more than two retail  
licenses prohibited)

Previous bills 1501 - A509 - Died in Committee.

1962, Chapter 152 - R415  
February 13 - Introduced by Policastro.  
April 9 - Passed in Assembly, amended.  
May 14 - Passed in Senate under emergency  
resolution.  
August 3 - Approved, Chapter 152.  
Amended during passage (copy enclosed of original  
bill and amendment).  
No statement on bill.  
Governor's message on signing (copy enclosed).

No hearings or reports were located.

Also note the case Grand Union Co. v. Sills, 43 NJ 390,  
81 NJ Super 65.

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ASSEMBLY, No. 415

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 13, 1962

By Assemblyman POLICASTRO

Referred to Committee on Judiciary

AN ACT concerning alcoholic beverages and supplementing Title 33 of the Revised Statutes.

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

1 1. On and after the effective date of this act no person, as the same is  
2 defined in section 33:1-1 of the Revised Statutes, shall, except as herein-  
3 after provided, acquire an interest in more than a total of 2 alcoholic bev-  
4 erage retail licenses, but nothing herein shall require any such person who  
5 has, on the effective date of this act, an interest in more than 2 such licenses  
6 to surrender, dispose of, or release his interest in any such license or licenses.

1 2. The provisions of this act shall not apply to the acquisition of an ad-  
2 ditional license or licenses or an interest therein, when such license is issued  
3 to a person for use in connection with the operation of a hotel containing at  
4 least 50 sleeping rooms, nor shall the provisions of this act affect the right  
5 of any person to dispose of an interest in a license or licenses by will or to  
6 the transfer of such an interest by descent and distribution.

1 3. Whenever a person shall acquire an interest in a retail license from  
2 the estate of a decedent which results in such person having an interest in  
3 more than 2 licenses, the Director of Alcoholic Beverage Control shall, by  
4 order, prescribe a reasonable time within which such person shall comply  
5 with the provisions of this act and the holding of any such license or in-

6 terest during the time permitted under such an order shall not constitute a  
7 violation of this act.

1 4. Membership in any organization which is or may become the holder  
2 of a club license shall not constitute acquisition of an interest in a retail  
3 license.

1 5. Nothing in this act shall affect the right of any holder of retail  
2 licenses heretofore acquired to continue to hold, use and renew such licenses.

1 6. Any person violating any provision of this act or of any rule or reg-  
2 ulation issued pursuant to this act shall be punished by a fine of not less  
3 than \$50.00 and not more than \$250.00 and to the revocation of any license  
4 issued in violation of this act, in accordance with section 33:1-33.1 of the  
5 Revised Statutes.

1 7. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO  
ASSEMBLY, No. 415

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STATE OF NEW JERSEY

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ADOPTED APRIL 2, 1962

Amend page 1, section 1, line 3, omit "an", insert "a beneficial".

Amend page 1, section 1, line 5, before "an", insert "such".

Amend page 1, section 3, line 1, omit "an", insert "a beneficial".

Amend page 1, section 3, line 2, omit "an", insert "a beneficial".

Amend page 2, section 5, line 2, after "section 5." insert:

"6. Nothing in this act shall affect the right of any person having a beneficial interest in a retail license or licenses to hold or acquire an interest of not more than 10% of any corporation the shares of which are traded on a national securities exchange or regularly traded in an over-the-counter market by one or more members of a national or affiliated securities association."

Amend page 2, section 6, line 1, omit "6.", insert "7."

Amend page 2, section 6, line 4, omit "33:1-33.1", insert "33:1-31.1".

Amend page 2, section 7, line 1, omit "7.", insert "8."

FOR IMMEDIATE RELEASE  
August 3, 1962

Office of the Governor

STATEMENT BY GOVERNOR RICHARD J. HUGHES  
ON SIGNING ASSEMBLY BILL NO. 415

After long and deliberate consideration, I today have signed Assembly Bill No. 415. I have done so in full confidence that I thus carry out the public policy of New Jersey expressed, not only by the action taken by the Legislature in passing this bill, but as recorded in the history of almost 30 years of legislative and administrative control of alcoholic beverages in our State since repeal of the 18th Amendment.

The effect of this bill is to prohibit any person from acquiring a "beneficial interest" in more than two alcoholic beverage retail licenses. In fairness and in recognition of existing rights, it does not affect the status of any current holder of multiple licenses. Nor does the general limitation of the bill extend to hotels containing more than 50 sleeping rooms, a category long deemed special under existing law.

My close study of this bill has resolved my early reservations as to the legal status of the term "beneficial interest". I have found that such term has had common acceptance and traditional usage in the administration of the alcoholic beverage control law of New Jersey. And the Courts apparently have had little difficulty in determining its meaning.

Among the misimpressions current as to the effect of this bill, is the belief that its enactment would somehow make unavailable "private brands", sold at a price lower than comparable standard brands. Another apparent misimpression is that such "private brands" are available only in chain stores. Thus it is implied that this bill would disadvantage the consumer. In general, such private brands continue to be available and authorized in all types of package stores. Assembly Bill No. 415 in no way alters this condition.

The public philosophy of New Jersey in regard to the sale of alcoholic beverages has often been expressed since repeal. It has been recognized universally as soundly conceived in the interest of public temperance, a goal enunciated in the basic law in 1933:

"It shall be the duty of the commissioner to supervise the . . . distribution and sale of alcoholic beverages in such a manner as to promote temperance . . ."

This policy was declared again by the Legislature in approving Chapter 208 of the Laws of 1938 which gave the Commissioner of Alcoholic Beverage Control the right to establish minimum prices. Said the preamble to this law:

"Whereas, Alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse, with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages . . ."

In the early years following Repeal there was no statutory restriction on the number of licenses issued. This, combined with the full play of what was called "free enterprise", led to frequent and widespread "price wars". In 1938, when the Legislature granted the Commissioner the power to establish minimum consumer prices, the thinking behind this grant of power was interpreted by the late D. Frederick Burnett, New Jersey's distinguished first Commissioner of Alcoholic Beverage Control. He said:

"When the commodity is liquor, price cutting is an evil. The ensuing competition is not healthy but malignant and contagious. It results in greater and still greater bargains designed to lessen and overcome consumer sales resistance. Whatever does that is not in the public interest. 'Bargains' in liquor are not good public policy. . ."

And the highest court in the land has spoken to this point. In United States v. Frankfort Distilleries, Inc., 324 U. S. 293 (1945), Mr. Justice Frankfurter wrote:

"If a State for its own sufficient reasons deems it a desirable policy to standardize the price of liquor within its borders either by a direct price-fixing statute or by permissive sanction of such price-fixing in order to discourage the temptations of cheap liquor due to cutthroat competition, the Twenty-first Amendment gives it that power and the Commerce Clause does not gainsay it."

In further expression of this philosophy our Legislature in 1947 passed a law limiting the number of licenses on the basis of population. This law, as amended in 1960 and as it now stands permits one retail consumption license for 2,000 population and one retail distribution (package) store for 5,000 population. This law permitted the continuance and renewal of existing licenses; and since the number of licenses in effect is much greater than these statutory maximums, the

practical effect of the measure is to outlaw new licenses in almost all New Jersey municipalities. This presents, in a very real sense, a condition of monopoly: those who now hold licenses need not fear competition through the granting of new licenses.

In recent years, the trend to chain ownership of these licenses has increased markedly. For example, in Essex and Union Counties more than 15% of the active package store licenses are held by chains. Thus, we see a concentration of the monopoly that was established for the other, and better, purpose of temperance in the 1947 and 1960 statutes.

In signing this bill my main consideration has been to assure that this socially necessary monopoly at least remains as widely diffused as practicable. I would not like to see, and I do not think that the people of New Jersey would like to see, this area of business opportunity concentrated in the hands of a few large corporations and denied to the many people of moderate means seeking their livelihood in the operation of the liquor store. And if this be deemed artificial interference with the ebb and flow of free enterprise generally applicable to business, it should be remembered that from the earliest history of our State the sale of intoxicating liquors has been treated in an exceptional manner by the Legislature.

"It is a subject by itself, to the treatment of which all the analogies of the law appropriate to other topics cannot be applied.' Paul v. Gloucester County, 50 N. J. L. 585, 595 (E. & A. 1888). 'The sale of intoxicating liquor is in a class by itself.' Bumball v. Burnett, 115 N. J. L. 254, 255 (Sup. Ct. 1935). 'As it is a business attended with danger to the community it may \* \* \* be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils.' Crowley v. Christensen, 137 U. S. 86, 91, 11 S. Ct. 13, 15, 34 L. Ed. 620, 624 (1890).'' Mazza v. Cavicchia, 15 N. J. 498, 505.

If free enterprise were to be allowed full sway with respect to the liquor business a logical sequence would be the discarding of any limitation upon the number of licenses in ratio to the population, the elimination of minimum price controls, the removal of the regulation of the hours of sale, and the relinquishment of other controls unknown to the general trade in other commodities, but yet necessary to the fabric of alcoholic beverage control. To the extent that free enterprise, in its full theoretical sense, collides with effective alcoholic beverage control, it manifestly must yield to the public welfare.

While the fulfillment of executive responsibility with respect to a bill  
rousing such wide public controversy is one of difficult decision, the touchstone  
must be a consideration of the ultimate public interest, with its many ramifica-  
tions. It is in the public interest that I approve this legislation.

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