

33:1-43

LEGISLATIVE HISTORY CHECKLIST

NJSA: 33:1-43 (Alcoholic beverages--sales by certain hotel and motel owners--amend statute)

LAWS OF: 1983 CHAPTER: 572

Bill No: A3667

Sponsor(s): Bocchini and Patero

Date Introduced: June 23, 1983

Committee: Assembly: Judiciary, Law, Public Safety and Defense

Senate: -----

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: December 12, 1983

Senate: January 9, 1984

Date of Approval: January 17, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: No

974.901 New Jersey. Alcoholic Beverage Control Study Commission.
~~458~~ Report...December 31, 1983.
1983 (see especially pp. 11,37-39a)

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ASSEMBLY, No. 3667

[CORRECTED COPY]

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1983

By Assemblymen BOCCHINI and PATERO

AN ACT concerning alcoholic beverages and amending R. S. 33:1-43.

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

1 1. R. S. 33:1-43 is amended to read as follows:

2 33:1-43. *a.* It shall be unlawful for any owner, part owner, stock-
 3 holder or officer or director of any corporation, or any other person
 4 whatsoever interested in any way whatsoever in any brewery,
 5 winery, distillery or rectifying and blending plant, or any wholesal-
 6 er of alcoholic beverages, to conduct, own either in whole or in part,
 7 or be directly or indirectly interested in the retailing of any alco-
 8 holic beverages except as provided in this chapter, and such inter-
 9 est shall include any payments or delivery of money or property by
 10 way of loan or otherwise accompanied by an agreement to sell the
 11 product of said brewery, winery, distillery, rectifying and blending
 12 plant or wholesaler. [Prior to June 6, 1941, the ownership of or
 13 mortgage upon or any other interest in licensed premises if such
 14 ownership, mortgage or interest existed on December 6, 1933, shall
 15 not be deemed to be an interest in the retailing of alcoholic bever-
 16 ages. On and after June 6, 1941, the ownership of or mortgage
 17 upon or any other interest in licensed premises if such ownership,
 18 mortgage or interest existed on December 6, 1933, shall not be
 19 deemed to be an interest in the retailing of alcoholic beverages;
 20 provided, none of the products of the brewery, winery, distillery,
 21 rectifying and blending plant, or wholesaler, is sold directly or
 22 indirectly at the licensed premises.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendment adopted November 21, 1983.

**—Assembly amendments adopted December 8, 1983.

23 It shall be unlawful for any owner, part owner, stockholder or
24 officer or director of any corporation, or any other person or corpo-
25 ration whatsoever interested in any way whatsoever in any winery,
26 distillery, or rectifying and blending plant, to conduct, own either
27 whole or in part, or be directly or indirectly interested in the
28 business of any licensee for the sale at wholesale to licensed retail-
29 ers in New Jersey of any alcoholic beverages, other than malt
30 alcoholic beverages, and such interest shall include any payments
31 or delivery of money or property by way of loan or otherwise
32 accompanied by an agreement to sell the product of said winery,
33 distillery or rectifying and blending plant; except that the foregoing
34 shall not apply in the case of a licensee for the sale at wholesale
35 who on July 1, 1965, and thereafter until the effective date of this
36 act, shall have filed for publication by the Division of Alcoholic
37 Beverage Control price listings for brands of alcoholic beverages
38 pursuant to the rules and regulations of the Division of Alcoholic
39 Beverage Control.】

40 *b.* It shall be unlawful for any owner, part owner, stockholder or
41 director of any corporation, or any other person whatsoever, inter-
42 ested in any way whatsoever in the retailing of alcoholic beverages
43 to conduct, own either whole or in part, or to be a shareholder,
44 officer or director of a corporation or association, directly or
45 indirectly, interested in any brewery, winery, distillery, rectifying
46 and blending plant, or wholesaling or importing interests of any
47 kind whatsoever 【outside of the State】.

48 No interest in the retailing of alcoholic beverages shall be deemed
49 to exist by reason of the ownership, delivery or loan of interior
50 signs designed for and exclusively used for advertising the product
51 of or product offered for sale by such brewery, winery, distillery
51A or rectifying and blending plant or wholesaler.

52 【It shall be unlawful for any owner, part owner, stockholder or
53 officer or director of any corporation, or any other person or corpo-
54 ration whatsoever interested in any way whatsoever in the whole-
55 saling of alcoholic beverages, other than malt alcoholic beverages,
56 to own either in whole or in part, or to be a stockholder, officer or
57 director of a corporation or association, directly or indirectly,
58 interested in, any winery, distillery or rectifying and blending
59 plant, or wholesaling or importing interests of any kind whatsoever
60 outside of the State, unless such relationship with respect to such
61 winery, distillery or rectifying and blending plant or wholesaling
62 or importing interests of any kind whatsoever outside the State
63 shall have been in existence on July 1, 1965 and shall have contin-
64 ued to be in effect on the effective date of this act.】

65 *c. Nothing in this section shall prohibit:*

66 (1) *the exercise of limited retail privileges by Class A or Class B*
 67 *licensees conferred pursuant to R. S. 33:1-10, R. S. 33:1-11, by*
 68 *rule or regulation or by special permit issued by the director;*

69 (2) *any owner, part owner, stockholder, officer or director of any*
 70 *corporation, or any other person whatsoever interested in any way*
 71 *whatsoever in any brewery, winery, distillery, rectifying and*
 72 *blending plant or any wholesaler of alcoholic beverages, from*
 73 *conducting, owning, either in whole or in part, or being directly*
 74 *or indirectly interested in the retailing of any alcoholic beverages,*
 75 *under any retail consumption license or State issued permit, in*
 76 *conjunction with and as a part of the operations of a hotel or motel;*
 77 *or*

78 (3) *any owner, part owner, stockholder or officer or director of*
 79 *any corporation, or any other person or corporation interested in*
 80 *any way whatsoever in the retailing of alcoholic beverages, under*
 81 *a retail consumption license or State issued permit, in conjunction*
 82 *with and as a part of the operations of a hotel or motel from con-*
 83 *ducting, owning, either in whole or in part, or being a shareholder,*
 84 *officer or director of a corporation or association, directly or indi-*
 85 *rectly, interested in any brewery, winery, distillery, rectifying and*
 86 *blending plant, or wholesaling or importing interest of any kind*
 87 *whatsoever.*

88 *No more than 20% of the total gross annual revenues of a hotel*
 89 *or motel described in paragraphs (2) and (3) shall be derived from*
 90 *the sale of alcoholic beverages by the hotel or motel. A retail*
 91 *licensee described in paragraphs (2) and (3) shall not purchase or*
 92 *sell any alcoholic beverage product produced or sold by the brew-*
 93 *ery, winery, distillery, rectifying and blending plant or wholesaler*
 94 *that has any interest in the retail license of the hotel or motel*, and*
 95 *shall, within 30 days following the effective date of this act, file with*
 96 *the Division of Alcoholic Beverage Control a list of all alcoholic*
 97 *beverage products which shall not be purchased or sold by the hotel*
 98 *or motel. Thereafter, the retail licensee shall file a new or amended*
 99 *list with the division within 30 days of any changed circumstances*
 100 *which affect the information on the list. This list shall be made*
 101 *available to the public upon request.**

102 *For purposes of this subsection "hotel" or "motel" means an*
 103 *establishment containing at least **[150]** **100** quest room*
 104 *accommodations where the relationship between the occupants*
 105 *thereof and the owner or operator of the establishment is that of*
 106 *innkeeper and guest.*

1 **2. This act shall take effect immediately.**

66 (1) the exercise of limited retail privileges by Class A or Class B
 67 licensees conferred pursuant to R. S. 33:1-10, R. S. 33:1-11, by
 68 rule or regulation or by special permit issued by the director;

69 (2) any owner, part owner, stockholder, officer or director of any
 70 corporation, or any other person whatsoever interested in any way
 71 whatsoever in any brewery, winery, distillery, rectifying and
 72 blending plant or any wholesaler of alcoholic beverages, from
 73 conducting, owning, either in whole or in part, or being directly
 74 or indirectly interested in the retailing of any alcoholic beverages,
 75 under any retail consumption license or State issued permit, in
 76 conjunction with and as a part of the operations of a hotel or motel;
 77 or

78 (3) any owner, part owner, stockholder or officer or director of
 79 any corporation, or any other person or corporation interested in
 80 any way whatsoever in the retailing of alcoholic beverages, under
 81 a retail consumption license or State issued permit, in conjunction
 82 with and as a part of the operations of a hotel or motel from con-
 83 ducting, owning, either in whole or in part, or being a shareholder,
 84 officer or director of a corporation or association, directly or indi-
 85 rectly, interested in any brewery, winery, distillery, rectifying and
 86 blending plant, or wholesaling or importing interest of any kind
 87 whatsoever.

88 No more than 20% of the total gross annual revenues of a hotel
 89 or motel described in paragraphs (2) and (3) shall be derived from
 90 the sale of alcoholic beverages by the hotel or motel. A retail
 91 licensee described in paragraphs (2) and (3) shall not purchase or
 92 sell any alcoholic beverage product produced or sold by the brew-
 93 ery, winery, distillery, rectifying and blending plant or wholesaler
 94 that has any interest in the retail license of the hotel or motel.

95 For purposes of this subsection "hotel" or "motel" means an
 96 establishment containing at least 150 guest room accommodations
 97 where the relationship between the occupants thereof and the
 98 owner or operator of the establishment is that of innkeeper and
 99 guest.

1 2. This act shall take effect immediately.

STATEMENT

R. S. 33:1-43, the "tied house" statute, generally prohibits entities engaged in alcoholic beverage manufacturing or wholesaling from being interested in alcoholic beverage retailing in New Jersey. The purpose of this statute, enacted after the repeal of

A3667 (1983)

Prohibition, is to carry out the public policy of promoting temperance by preventing manufacturers or wholesalers from unfairly influencing retailers or the consuming public by promoting consumption of their own products at the retail level.

The statute in its current form is broadly written and could be read to prohibit certain business activities and relationships which, subject to proper conditions, would not violate the public policy embodied in the "tied house" statute. Specifically, because expansion and acquisitions by large diversified corporations many hotels and motels are subsidiaries of holding companies with other sister subsidiaries dealing in the manufacturing or wholesaling of alcoholic beverages. The statute now prohibits new development or acquisition of hotels in this State by a large corporation which might have a subsidiary wholesaler, winery or distillery outside the State or country. The public policy embodied in the "tied house" statute is not aimed at preventing future growth of the hotel industry in New Jersey but rather, an elimination of "controlled" or "tied" exclusive retail outlets.

This amendment to R. S. 33:1-43 would correct these problems and would enhance the State's interest without infringing on the public policy behind the statute. The amendment, under specific conditions, allows the product supplier or wholesaler to have an interest in a retail license. The amendment only provides an exception for retail licenses operated in conjunction with hotels or motels having at least 150 guest rooms and limits alcoholic beverage sales to 20% or less of gross receipts. This assures that the primary operation is the hotel or motel and the sale of alcoholic beverages is only a small part. The amendment also prohibits the retail licensee from selling the alcoholic beverage products produced or sold by the supplier or wholesaler. This preclusion retains the basic intent of the statute which is to deter exclusive outlets or tied sales.

There are also limited retail privileges conferred on certain Class A licensees (wineries) and on certain Class B licensees (state beverage distributors) by the licensing statutes themselves, R. S. 33:1-10 and 11, or which are permitted for certain functions by regulation or special permit issued by the director. There is a technical conflict between limited retail privileges conferred on manufacturers or wholesalers of alcoholic beverages and the "tied house" statute in its present form. The amendment harmonizes the technical conflict by recognizing this exception.

A further technical amendment is made to the third paragraph of the existing act concerning retail interests by eliminating the

last four words "outside of the State." This limitation is not consistent with the scope of the first paragraph's provisions as they relate to product suppliers and wholesalers. The general Tied House provisions apply whether the prohibited interest is inside or outside the State of New Jersey.

The balance of the amendment deletes the last part of the current statute's first paragraph as the dates and exceptions surrounding those dates are no longer applicable. Also, the current second and fifth paragraphs, which were amendments added to the statute by P. L. 1966, c. 58, and which attempted to prohibit any manufacturer from having any interest in the wholesaling of alcoholic beverages, and vice versa, are deleted by this amendment since the second paragraph was held invalid by the Supreme Court in *Affiliated Distillers Brands Corp. v. Sills*, 60 N. J. 342 (1972) and the fifth paragraph, being the corollary of the second paragraph, was by implication also invalidated.

These proposed amendments are supported by the Director of the Division of Alcoholic Beverage Control.
