



Still The Law

The Legislature is taking another crack at reforming the state's essentially decades-old liquor laws

By: Daniel J. Munoz, April 8, 2019

New Jersey's liquor laws remain substantially similar to those enacted at the end of Prohibition in 1933, though provisions have been grafted onto the statutes over the years. The serial additions created a set of rules that are both outdated and complex.

It's a scheme that cries out for reform; in fact, lawmakers have attempted to streamline and update the laws periodically over the years. But no one has been able to overcome a significant hurdle: businesses that paid dearly for liquor licenses rendered scarce by the state's archaic legal limitations.

"That cost of the license is the result of an artificial marketplace, the law of supply and demand," Sal Risalvato, executive director of the New Jersey Gasoline, C-Store and Automotive Association, told the Assembly Oversight, Reform and Federal Relations Committee during a March 21 hearing on updating the state's liquor license laws. **And estimates suggest the existence of about 2,000 inactive or so-called pocketed licenses that critics such as Risalvato said owners are sitting on and not using so as to inflate the prices of the license.**

The Legislature is now taking another shot at reformulating the laws. In October, the Assembly Appropriations Committee approved a measure from Assembly Appropriations Chair John Burzichelli, D-3rd District, aimed at allowing more businesses to sell alcoholic beverages while compensating existing license holders.

"For the privilege of serving an alcoholic beverage, you've got to come up with a million dollars in some places. What chances does the little guy have of going into the business?" Burzichelli told NJBIZ. "We're going to be a state dominated by chain eateries. That's to nobody's benefit because the little guy doesn't have a chance."

But the old obstacles remain. "The challenge we have is ... how do we somehow, to whatever extent we can, hold harmless the people who have made a previous investment

under the old rules,” Burzichelli said. “The old rules are not serving New Jersey now, the old rules are serving the license holders. But in fairness to them they played by the rules.”

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– *John Burzichelli.*

The legislation has not advanced since it gained committee approval and the state Senate has yet to take it up.

Liquor labyrinth

New Jersey issues five types of liquor licenses. The first is a Class A license for manufacturers. The second is a Class B license for wholesale distribution, that is, the sale of large quantities of alcohol from one business to the next.

The third is Class C Retail and among the most valuable are the Plenary Retail Consumption License — which is needed to run a bar or sell liquor at a restaurant — and the Plenary Retail Distribution License, needed to run a liquor store.

The Class D Transportation license and the Class E public warehouse license round out the list.

The retail licenses receive the most attention and for good reason: the business owners who hold those licenses interact most with the general public, through restaurants, bars or liquor stores.

Retailers now hold more than 9,000 retail licenses, which are issued according to municipal populations. Towns are granted one consumption license per 3,000 residents and one distribution license per 7,500 residents. Because of those limits, business owners can end up shelling out hundreds of thousands of dollars for a license.

Burzichelli’s measure, Assembly Bill 3494, would create limited and much cheaper liquor “permits” to those seeking a foothold in the state’s food and beverage industry. The bill would also provide tax credits that would help soften any financial blows that businesses absorb after applying for and financing their purchases of traditional licenses.

The legislation does not address pocket licenses, save for making them ineligible for any of the tax credits. Burzichelli told NJBIZ he would like to set up a process to take back those licenses. And the limited permits his bill calls for would have to be renewed annually so they could not be held out of the market.

Too many licenses?

With the exorbitant cost of obtaining a liquor license, the cheaper permits could be viable alternatives for smaller businesses.

One type of permit would be restricted to restaurants and would allow the holder to sell wine, beer and spirits. With the second permit, restricted to beer and wine, the holder can only sell either product by the bottle or can.

Restricted restaurant permits would cost \$7,500 annually for establishments between 800 and 2,000 square feet and \$10,000 for eateries between 2,001 and 4,500 square feet. Restricted beer and wine permits would cost \$3,000 annually for restaurants between 800 and 2,000 square feet and \$5,000 for restaurants between 2,001 and 4,500 square feet.

Burzichelli said restaurant owners would benefit the most because the cash flow from liquor sales could make or break a business.

“We’re not talking about a license or a new permit of any kind that would cause more shops and beer joints to be opened up. This is all tied to food and food is big business today,” he explained.

Owners and operators of established food and beverage businesses are wary of the proposed permits. The New Jersey Licensed Beverage Association suggested the glut of new businesses would severely undervalue current establishments.

“For \$5,000, you might be able to get a license for a little while and something bad happens and you’re out \$5,000. You don’t have the same skin in the game,” said NJLBA Executive Director Diane Weiss.

On top of the half a million dollars spent on a liquor license, many business owners also incur expenses such as liability insurance and overhead, Weiss added.

“There’s got to be a way for the Legislature to come up with a new change to accommodate this growth and add new licenses without just dumping new inexpensive licenses into the mix, all over the entire state,” Weiss added.

Burzichelli’s legislation calls for license holders to be reimbursed through tax breaks over a set period of years, and he maintains that no license’s value would be reduced to \$0.

“If they can demonstrate that the value of the license was impacted by us introducing either new licenses or a combination of licenses and permits, there should be a venue for them to get some relief,” Burzichelli said. “I’m not sure if in all cases they’ll be able to demonstrate that.”

Other critics such as Marilou Halvorsen, president and CEO of the New Jersey Restaurant and Hospitality Association, argued that even with an increase of alcohol for

sale, the purchasing capacity of consumers would stay the same, meaning an increasing number of businesses would have to fight over the same pool of dollars.

“Just because we have more liquor available to consumers does not mean that more liquor is being sold,” Halverson said at the March hearing.

Assemblyman Joe Danielsen, D-17th District, who chaired the March 21 hearing, said that not all communities would benefit from an influx of liquor-selling establishments. “We shouldn’t paint [this] with a broad brush, and maybe we should identify areas of opportunity to improve, that might be geographically defined,” he said after the hearing. Danielsen suggested launching a “limited pilot program” to test the effects of the permits.

“Older New Jersey downtowns have a better chance of revival with a selection of restaurants than they have any hope of having new shoe stores open up,” Burzichelli acknowledged.

Impulse shopping

Placing beer in grocery carts is common in other parts of the country, but still rare in New Jersey.

Risalvato said he would want some sort of limited liquor license for convenience store owners, “so that when you’re filling at the gas pump, you can fill up and get your cup of coffee, bag of chips and a six-pack to go and take home and have with your dinner.

“In the other states of the country, 80 percent of convenience stores ... sell beer and wine, we’re not asking to be able to become a liquor store and sell all kinds of liquor,” he added.

Risalvato pointed to impulse buying — shoppers buying more than they originally intended — as a major driver of revenue.

One grocer testified in March that the cap of two liquor licenses per corporate entity stifles such sales and should be raised to 10 licenses.

“Back in 2015, we acquired 71 A&P stores, the company went bankrupt, they were going out of business, five of which had grandfathered liquor licenses,” said Bill Crosby, vice president of operations for Acme Markets.

“We purchased those stores with the anticipation of being able to activate the licenses,” Crosby said. But Acme was unable to use the A&P licenses because it already held two liquor licenses.

“You go to the grocery store to buy steak, milk and bread. That’s all you’re going there for, but then what do you have right at the registers? Items that you had no intention of buying,” Danielsen said. “When you go to McDonalds, you’re going to buy a soda, a

shake, a sandwich and fries. But what did they make billions of dollars on? Hot apple pies, 'would you like a hot apple pie with that', and that is an extra sale that would have never happened."