

- **Behind the Bar**
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by Scott N. Silver

March/April 2006

Volume 27 Number 2

MAY IS TAVERN MONTH

The month of May is the time of the year to celebrate and salute the important place that bars and taverns hold in America's history and heart. The traditions of local bars and taverns embody the individualism and entrepreneurial courage that is the American spirit. While the faces of bars and taverns may have changed over the years, the constants have remained. The warm smile of the owner and staff, the comfortable stool, the familiar company, the fulfilling meal and drink and the friendly faces of friends make taverns unique. It is the environment offered by these taverns that puts people at ease and allows them to step away from the clutter of our increasingly hectic world.

In proclaiming May is Tavern Month, Governor Corzine recognized that "taverns have been a centerpiece of American society since the country's beginnings" and is "a place where locals and travelers could meet and exchange news and political views".

Even with all of the traditions that tavern owners enjoy, they are always aware of the challenges they face in a rapidly evolving political and social atmosphere. As responsible members of their communities, tavern owners are dedicated to the responsible sale of beverage alcohol, fighting drunk driving and preventing underage access to alcohol. Tavern owners are on the front line of these battles.

Take a moment to hoist your glass and toast the "friendliest place in town".

SMOKING BAN LAWSUIT

One of the hardest lessons to learn is that Courts are bound by precedents not logic. Based on logic, the smoking ban legislation that allowed smoking on the casino gambling floor while banning smoking in other hospitality venues is unfair, discriminatory and arbitrary. The statute was challenged in Court by the New Jersey Hospitality Coalition for Fairness on those grounds and on the additional grounds that the legislation violated the equal protection clause of the Constitution by treating one on-premise licensee, the casinos, differently than the other Atlantic City licensees.

Application was made to Judge Stanley Chesler of the U.S. District Court for an injunction to delay the enforcement of the smoking ban until the Court heard the matter. The Court must consider certain criteria before an injunction can be issued. One element to be considered is the likelihood that the constitutional challenge will prevail. Judge Chesler, citing precedents and case law decided by the United States Supreme Court, stated that in the Court's opinion that the Coalition would not prevail in the lawsuit and therefore denied the application. The smoking ban went into effect at midnight, April 15, 2006.

The attorneys representing the Coalition are currently studying the opinion to determine what course of action should be taken.

**Drink
Responsibly.
Drive
Responsibly.**

TAXES TAXES TAXES

Facing a 5 billion dollar deficit in the state budget for the fiscal year starting July 1, Governor Corzine proposed several new taxes to help balance the state budget.

An increase in the excise tax on beer, wine and spirits directly increases the price retailers pay for product and will affect the price you charge your customers.

The proposal to raise the sales tax to 7%, a 16% raise, can be more troublesome. The sales tax was always intended to be a "pass through" tax to be paid by the consumer at the point of sale. Due to a ruling by the Division of Taxation, the sales tax could be included in the price and many retailers took advantage of that ruling.

Proposed increases in the tax on water and on waste material will also have an impact on your bottom line. Due to the fact that state aid to municipalities and education will remain flat, it is anticipated that real estate taxes will increase.

The Association is continually meeting with Legislators in an attempt to defeat these proposed taxes. The alcoholic beverage industry has been hard hit by recent no smoking legislation, .08 legislation and tougher DWI enforcement.

Now is the time to make those phone calls to your legislators and explain to them how harmful new taxes and fees are to the business community. Explain how hard and expensive it is to do business in New Jersey and how many small businesses will be put out of business with the enactment of these new taxes. Your voice counts. Make that phone call today.

"Representing the on-premise licensed beverage retailers, the heart of the hospitality industry"

WHAT YOU NEED TO KNOW ABOUT NEW JERSEY'S SMOKING BAN

PREPARED BY NEW JERSEY LICENSED BEVERAGE ASSOCIATION

The New Jersey "Smoke Free Air Act" went into effect on Saturday, April 15, 2006 which prohibits smoking in indoor public places and workplaces.

Q. What does the Act require me to do as a bar and restaurant owner:

A. You may not allow smoking in your establishment. If you see customers smoking, you or your staff must tell them not to smoke *indoors*.

Q. What do I do about a Customer who refuses to comply?

A. Use your normal protocol for removing a customer from the premises.

Q. Must I post "No-Smoking" Signs?

A. Yes. It is the responsibility of the owner of the establishment to post signs for customers to see at all entrances.

Q. Should I remove all ashtrays from my premises?

A. Yes. Although the law does not specify that you do so, it is good evidence that you are complying with the law.

Q. Is it true that my customers have to be 25 ft. from the establishment in order to smoke outside?

A. No! The Commissioner of Health in their proposed regulations is attempting to establish a 25-ft barrier for smoking outside. However, it is not the law! The "Smoke Free" legislation did not mention a 25-ft barrier; and the Department of

Health's regulations are only proposed. They have not been adopted, and are, therefore, unenforceable!

Q. How will the Act be Enforced?

A. Compliance is the responsibility of the person having control or ownership of an indoor establishment. Enforcement will also be achieved by a "complaint system". Employees and the public may report violations of the Act to their local health departments, or to the local police.

Q. What happens if I choose not to comply with the law.

A. Then you will be in violation of the law, and will be fined.

Q. What are the Penalties?

A. A person who smokes in violation of the Act is subject to a fine of not less than \$250 for first offense; \$500 for the second offense; and \$1,000 for each subsequent offense. The same penalties apply to the owner or person in charge of an indoor public place who refuses or fails to comply with the Act.

Q. How can I file a complaint?

A. To file a complaint, contact your local health department.

Q. Can I provide a smoking room for my employees who wish to smoke?

A. No.

Q. How can I find more information on the Act?

A. Go to www.smokefree.nj.gov or visit our website at www.njlba.org

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Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION
TRENTON, NEW JERSEY
by Barbara McConnell

News from Trenton

On Tuesday, March 21, 2006, Governor Jon Corzine addressed a Joint Session of the Legislation, and said, *"I know I was elected in part because of my strong business and financial background. I'm sorry to disappoint you, but even I can't fix New Jersey's financial problems in one year." "It's simply, we spent more than we made; used financial gimmicks; and borrowed far too long. Now it has to stop."* He told the Joint Session, "I have analyzed all department budgets; made cuts where I could, and called for several new taxes and budget cuts to support this \$30.9 billion budget."

Immediately, both democrat and republican leaders had something to say. The colleges, universities and NJEA – the powerful teachers' union – and the Communication Workers of America are saying that any reduction in tuition aid, or funding for schools, pensions or benefits will be a disaster. These groups have formed "The Fairness Alliance" and are calling for nearly \$800 million more in higher taxes to restore cuts in higher education and other areas targeted by Corzine.

Jon Shure, President of New Jersey Policy Perspective, a liberal think tank and alliance leader, has been hired to advise the group. Shure is saying more taxes on the right groups would "add a further measure of equity to New Jersey's overall tax structure and call upon those among the most able to pay to contribute more of their fair share." Of course, he is talking about business! Shure said it, *"strains the notion of fairness to continue tax breaks for businesses at a time of crisis when college students, Medicaid enrollees, property taxpayers and others are called on to sacrifice."*

This gives us a very good perspective of the debate that will follow in the months ahead. The business community, in commenting on the budget, has said, "it could have been worse..." and those that don't want to see their budgets cut are calling for more taxes on business, and those making over \$200,000. Already, Corzine's budget is meeting resistance in the Legislature because of its tax increases, so I don't see how the "Policy Perspective" group thinks more taxes will meet with approval.

Currently, the Legislature is in "budget session", and their regular schedule probably won't resume until sometime in May. Meanwhile, the following issues and proposals are ones of great priority and concern to NJLBA. This is where we will be focusing and placing our resources:

Budget Issues

Increased Sales Tax Rate – The proposed increase in sales tax from 6% to 7% would generate roughly \$1.1 billion in new revenue. The proposal does not include food and clothing. There is already talk about reducing that to one-half cent, but collecting a half cent by retailers appears more onerous than the 1 cent. *It is doubtful if the business community will attempt to oppose this proposal. It could be worse!*

Corporate Business Tax Surcharge – The budget calls for a 2.5% surcharge for three years on the corporate business tax. Expected to generate roughly \$60 million. *Again, the business community won't oppose this too strenuously.*

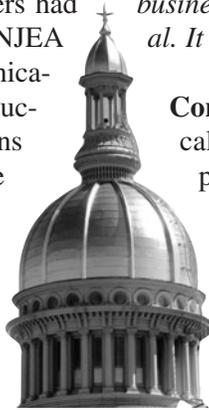
Cigarette and Liquor Taxes – The Governor proposed to boost the cigarette tax another 35 cents to a national high of \$2.75. This will represent the fourth increase in 5 years. Expected revenue: \$12 million. **Liquor Taxes:** Tax on beer will increase to 17 cents from 12 cents a gallon. Tax on wine will increase to 80 cents from 70 cents a gallon. Tax on liquor will increase to \$4.50 from \$4.40. **New revenue:** \$12 million.

NJLBA opposes both proposals.

Alternate Minimum Assessment (AMA) – The AMA was added as part of plans by the McGreevey Administration to increase the amount of taxes paid by employers. The AMA was set to expire this year. **Corzine honors that pledge.**

NJLBA supports.

Net Operating Losses (NOL) – The McGreevey Administration suspended NOL's in his first budget. This budget allows companies to once again deduct 100% of their NOLs and keeps a commitment made in previous budgets.



Behind the Bar

by David T. Kratt

HOW MAY I HELP YOU FROM YOUR PERSPECTIVE



their drinks and left.

I know. It's a boring story.

But it was important to her.

Put yourself in their barstool –

My friend's question was about the bar's barstools because her bar was replacing their worn out barstools. Though both bars bought their barstools about the same time, his barstools had very little wear and tear. In fact, they looked brand new. That's why she picked that bar to have a drink.

Let's look at another situation. Say a friend came in to see you but, for some reason, other being busy, you gave this friend about as much attention as you would give some guy who walked into your bar from off the street for the first time. How would that make your friend feel? On the other hand, you say you spent all your time with your friend and basically ignored that one customer who walked in from off the street for, let's say, a quick bacon cheeseburger, medium rare with French fries instead of potato chips and that customer couldn't even get his ice water refilled – which is just one example in a long list – because he couldn't get that bartender's attention. Did I mention I – I mean – that customer wanted a quick burger?

Your attentiveness please –

I know the bartender that my friend was talking about. He's in your face with a good-to-see-you attitude the moment you sit down. But then that's it. After you get your drink, it's up to you to get his attention for anything else. He'll also be the first to tell you about the great service he gives customers and how many drinks he had to memorize in order to graduate from bartending school.

Apparently, they didn't teach him attentiveness there.

My friend got served but that bartender failed on the attentiveness end of things, in fact, from her perspective, he

blew her off. And I was pressed for time. Though the burger wasn't bad, I probably will not go back because of that lack of attentiveness.

So, the moral of the story – to get back to my friend's story – is, "If you want your barstools to look brand new for a long time then –"

No, that would be a mean moral.

Let's say the moral of the story is, "Sit in a barstool for a while and you will know the secret of attentiveness and the path to better tips." Or what do you think of, "One customer at your bar is worth two in the –"?

Never mind.

Please send correspondence to dtkratt@chartermi.net or P.O. Box 638, Grand Haven, Michigan 49417.

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INSURANCE CORNER

by Renee Cherowitz and Russ Emrick
Insurance Management Group Inc.

With all of the changes going on today in the bar and tavern industry, there are things that each owner can do to save premium dollars and increase their bottom line. The steps to save premiums can be done without jeopardizing your coverage. And, the information needed to take these steps is most likely at your finger tips.

First, verify that the gross sales figures you are using are accurate. This will not only save you on your current policy but will save you from an additional premium at the expiration due to an audit. If your carrier charges you with an audit they will also increase your base premium on the renewal; therefore, you will have a double hit.

Second, be sure that all of your employees are Tip or TAM certified, this can save you up to 15% of your liquor liability coverage. Third, be sure you know what you are paying in premium and fees. Recently, while reviewing the insurance coverage of many of your members, I have found that agents are charging additional fees. These fees are legal, as long as you sign and agree to them. These have added \$3,000 to \$5,200 to the member's insurance costs.

Our office has been working with your members for the past five years, providing quotes without compromising coverage. Call us at 609-702-7222 or email me at renee@insurancemanagement-groupinc.com so that we may review your insurance coverage and help you increase your bottom line.

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MVC TO ISSUE 6 YEAR LICENSE

The NJ Motor Vehicle Commission (DMV) has announced that it will be issuing a limited number of 6 year driver licenses.

In total, only about 700,000 randomly pre-selected motorists will receive the 6 year driver license between May 2006 and December 2007. Renewal notices sent to these motorists will note that selection. This program only applies to NJ residents who are due to renew during this designated 20 month time period. A small number of motorists have already received a 6 year driver license because they chose to renew early.

MVC is issuing a 6 year driver license to a limited number of motorists to achieve an even distribution of driver license renewals over each year of NJ's standard four-year license cycle.

For instance, in 2006 and 2007, MVC will average more than two million renewal applicants each year. In contrast, in 2004 and 2005, only 1.2 million renewal applicants visited MVC's 45 agencies each year.

MVC's goal is to average 1.5 million license renewals each year. By reaching this goal, MVC will have succeeded in its ongoing effort to improve customer service.

The 6 year driver license fee will be \$33, while the standard 4 year driver license is \$24.

For benefit of businesses that check licenses on a regular basis, NJ MVC has provided a downloadable notice for posting to inform employees of this important license variation. It is available at www.state.nj.us/mvc/citlicenses/6yearddl.html.

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LEGAL CORNER

by Scott N. Silver

Every once in a while, a matter comes along that challenges a fundamental principle of alcoholic beverage regulation. *Division of Alcoholic Beverage Control v Maynards, Inc.* is such a case. On April 28, 2006, the State Supreme Court agreed to hear the matter (Docket No. 59212). The court's decision will likely have a direct effect on every retail licensee in New Jersey.

Maynard's is a restaurant and bar located in Margate (Atlantic County). It has held a liquor license for over fifty years and enjoys an excellent reputation in the local community. In 2002, the County Narcotics strike force conducted an undercover investigation of a cook employed by Maynard's. On six different occasions, the cook sold cocaine to an undercover police officer at the licensed premises. The ABC filed disciplinary charges against Maynard's for "allowing, permitting or suffering" unlawful activity concerning controlled dangerous substances on the licensed premises. (Additional charges were filed for serving three underage patrons in an unrelated incident). Maynard's established that it had no knowledge of the illegal activity occurring on its premises and could not have reasonably discovered it, despite having a sophisticated surveillance system. The Director found the licensee "suffered" the illegal activities and thereby committed the violations charged. A license suspension of 390 days was imposed for all of the violations, of which at least 130 were to be served.

The Appellate Division of Superior Court upheld and affirmed the Director's findings and conclusions in an unpublished decision dated February 22, 2006 (A05571-04T5)

In this appeal the Supreme Court will have the opportunity to review the ABC regulation holding licensees responsible for the acts of employees, even when the employee acts illegally or directly contrary to the instructions given by the licensee (N.J.A.C. 13:2-23.28). It may also reconsider, for the first time in over 45 years, the fairness of holding licensees to what is essentially a "strict liability" standard for the unauthorized activities of its employees.

The court may address these issues in a broad or narrow way. If the court restricts its ruling to illegal drug activity by employees, the effect of the decision will be limited. However, the court could use the case as an opportunity to more broadly define the meaning of the word "suffer", and the liability of licensees for illegal or unauthorized acts of employees. It may reaffirm the current practice and policy of the ABC, or it may find that something more than strict liability is required before a licensee can be held accountable for disciplinary violations committed by employees. In any event, the case is one well worth watching, as it has the potential to change your liability for regulatory violations.

JUNE 21ST - WELLHOFFER/WILINSKI PICNIC

Picnic Chairman George Pappa, owner of the Tropical Pub in Belmar, has announced that the annual Wellhofer/Wilinski pool party/ picnic is scheduled for Wednesday, June 21st from 2 pm to 7 pm at the Oak Tree Lodge in Wall Township.

"There is no better facility to hold a picnic than the Oak Tree Lodge, with its swimming pool, tennis courts, 9 hole miniature golf course, softball fields, horseshoe pits, volleyball, bocci and basketball courts", stated Chairman Pappa, "and the food is always top shelf".

Located right off route 33 in Wall Township, the Oak Tree Lodge has been the site of the annual Wellhofer/Wilinski Scholarship Foundation fundraiser for the past five years. Each time the picnic returns, new pavilions and facilities have been added to make the day more enjoyable. Rain or shine, this is one event you won't want to miss.

The Scholarship Foundation was established in 1945 as a memorial in the memory of William Wellhofer for his foresight and drive in founding the Association to represent the interests and ideals of the on-premise licensees. The Robert Wilinski Scholarship was established as a lasting memorial to an attorney and friend who represented the Association for over thirty years. The scholarships are reserved for the sons, daughters and grandchildren of present dues paying members of the Association and children and grandchildren of retired members who had paid their dues for the last five years prior to retirement. Two scholarships are awarded annually.

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