

Legislative Affairs Report

By

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2011 has started with the same frenetic pace with which 2010 ended. The year 2010 witnessed the longest list of highly destructive alcoholic beverage bills since the Repeal of Prohibition. From the Direct Mail Shipment of alcoholic beverages to grocery store domination of the package goods business to proposed new wine and beer licenses to the ability to freely move “pocket licenses” from town to town, the 214th Legislature is truly filled to the brim with difficult challenge. Just to make sure 2010 went out with a bang, a major Federal Third Circuit court case on NJ’s direct shipment ban was decided on December 17, 2010. To the specifics:

S766/A1702 - Direct Shipment

These identical bills, sponsored in the Senate by Senate President Steve Sweeney (D-Gloucester) and in the General Assembly by Assemblyman John Burzichelli (D-Gloucester), allows the full throttle direct shipment of wine to NJ consumers. Experts predict that a minimum of 10% - and growing - of NJ’s wine gallonage - now sold by wholesalers and retailers - will be diverted to Internet sales. A *Wine Economist* magazine published study reported that most out-of-state shippers do not remit excise or sales tax. The revenue loss to NJ is significant. Remaining in-state licensees will be left holding the tax bag.

Senator Sweeney’s bill passed the floor of the Senate in February, 2010 and has seen no action in the General Assembly despite consistent pleas from Assemblyman Burzichelli for action on direct shipping. Please contact your Assembly Members and Speaker Oliver and Assembly Majority Leader Cryan and indicate your opposition to S766/A1702.

On December 17, 2010, the Federal Third Circuit Court issued its opinion in the *Freeman v. Corzine* case - which was filed back in 2002 to challenge NJ’s ban on direct shipment and to claim that the privileges that NJ accords in-state wineries is discriminatory in that the same benefits are not accorded out-of-state wineries. In its *Freeman* opinion, the Third Circuit upheld as constitutional NJ’s across-the board ban on direct shipment, while declaring NJ’s in-state winery privileges to be discriminatory and violative of the Commerce Clause.

The bottom-line? The case has been remanded to the Federal District Court in Newark to fashion a remedy with respect to the unconstitutional in-state privileges. Meanwhile, the NJABC has filed an appeal with the Third Circuit and would not agree to a stay of the Third Circuit ruling. Stay tuned and keep your powder dry; this has all of the elements of a real battle.

S1904/A2591 - Big Box Domination of NJ’s Package Goods Business

These identical bills, sponsored in the Senate by Senator Jim Beach (D-Camden) and by Assemblyman Lou Greenwald (D-Camden) in the General Assembly, removes the two-license limitation on distribution licenses and raises the limit to 10 licenses total over a five-year period. In states that allow this, within a few years the Big Box grocery chains and convenience stores totally dominate the marketplace, displacing the small family-owned package store, damaging downtowns all over NJ and consumers suffer because of the substantial reduction in the number of brands sold per store.

Neither of these bills has, thankfully, seen any legislative action to date. The NJLBA must remain vigilant on this issue.

S1903/A2924 – Creation of New Class of Licenses: Beer & Wine Licenses

Senator Beach (D-Camden) and Assemblyman Burzichelli have once again teamed up to sponsor a bill to create wine and beer licenses for an annual fee of no more than 75% of the cost for a retail licensee to renew their license with their local issuing authority. Under current law where a municipality can charge licensees no more than \$2200 for the annual renewal fee, the fee for a wine and beer license would be no more than \$1650.00 per year – a fraction of the typical cost to purchase an existing plenary retail consumption license.

This bill, which has seen no action to date, is bad for consumers who will forever lose their ability to enjoy the fun and savings of NJ's many fine BYOB establishments. It is devastatingly bad for licensed bars, restaurants and package stores that will find new competitors all around them with much lower overhead. The NJLBA must maintain vigilance on this very dangerous bill. If this bill passes, it is another nail in the coffin of New Jersey small businesses.

S1905/S1906/A3078/S2661/A3718 – Bills to Radically Change Pocket License Privileges

S1905/S1906, both sponsored by Senator Jim Beach (D-Camden) – Hey folks...sensing a trend here with the good Senator from Camden County? – allows pocket licenses to be transferred from a sending town to a receiving town, provided that both towns agree by resolution. People are calling this proposed practice “wheeling,” referring to the discredited, political fundraising technique whereby monies raised in one political region of the State are “wheeled” to another campaign fund – often used in a blitz-type of campaign attack. We can talk about this being a radical “game-changer,” but this is no game; this industry is struggling for survival in historically tough times. Under these bills, existing licensees could find themselves suddenly surrounded by freshly wheeled pocket licenses, which originated in another town! The unfairness of this proposed policy is manifest and this bill must not advance one step in either house. Please make sure you contact your legislators and other political contacts and voice your opposition to these highly damaging bills.

In the last few weeks, a new stripe of pocket license activation bill has also been introduced: S2661/A3718(Whelan/Vitale/Coughlin) are identical companion bills to permit pocket licenses to move across town lines as long as the license-receiving town will activate the new pocket license as part of a “smart-growth” project. Like the other pocket license “wheeling” bills, these bills are highly problematic hospitality industry wrecking balls. NJLBA members should contact their legislators on these bills.

In the midst of a very sour 2010, there are a couple of good news items to report: New Jersey on-premises licensees can now serve alcohol during Bingo games and the OTB bill was amended prior to the Governor signing it into law requiring OTB parlor operators to first verify that they have offered to buy any and all existing consumption licenses in the impacted town and the OTB law allows existing consumption licensees to fictionally expand their licensed premises to include the OTB facility – even if the OTB facility is on the other side of town. Great work was done by the NJLBA to achieve these two accomplishments.

Stay tuned and stay connected.