

CHAPTER 436

AN ACT concerning alcoholic beverages.

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

1. For the purpose of this act, the following words and terms shall be deemed to have the meanings herein given to them:
- Terms defined: (a) "Alcoholic Beverage." Any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcoholic content of more than one-half of one per centum by volume, including beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same, and fruit juices.
- Alcoholic beverage; (b) "Building." A structure of which licensed premises are or may be a part, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards, attics, and every part of the structure of which the licensed premises are a part, and of any other structure to which there is a common means of access, and any other appurtenances.
- Building; (c) "Civil Service Act." The act entitled "An act regulating the employment, tenure and discharge of certain officers and employes of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight, and all acts amendatory thereof and supplementary thereto.
- Civil Service Act; (d) "Commissioner." The State Commissioner of Alcoholic Beverage Control.
- Commissioner; (e) "Container." Any glass, can, bottle, vessel or receptacle of any material whatsoever used for
- Container;

holding alcoholic beverages, which container is covered, corked or sealed in any manner whatsoever.

(f) "Eligible." The status of a person who is a citizen of the United States, a resident of this State, of good moral character and repute, and of legal age. Eligible;

(g) "Governing board or body or other controlling authority." The board or body which governs a municipality, including a board of aldermen in municipalities so governed. Governing board, etc.;

(h) "Importing." The act of bringing or of causing to be brought any alcoholic beverage into this State. Importing;

(i) "Illicit Beverage." Any alcoholic beverage manufactured, distributed, bought, sold, or transported in violation of this act, or on which any Federal tax or tax imposed by the laws of this State has not been paid. Illicit beverage;

(j) "Licensed Building." Any building containing licensed premises. Licensed building;

(k) "Licensed Premises." Any premises for which a license under this act is in force and effect. Licensed premises;

(l) "Magistrate." A judge of the court of quarter sessions in and for any county, or a judge of a city or district criminal court, or a police judge or justice or recorder of any municipality, and all justices of the peace; *provided, however*, that no justice of the peace shall sit as a magistrate under this act within the corporate limits of a municipality having a police judge or justice or recorder, or a city criminal court or within the corporate limits of any municipality included in any criminal district in which there shall be a district criminal court; *and further provided*, that no magistrate shall take any complaint or hear any cause arising out of the limits of the particular municipality in and for which he may have been appointed or elected. Magistrate;

(m) "Manufacturer." Any person who, directly or indirectly, personally or through any agency whatsoever, engages in the making or other processing whatsoever of alcoholic beverages. Proviso; Manufacturer;

- Municipality;** (n) "Municipality." Any city, town, township, village, or borough, including a municipality governed by a board of commissioners or improvement commission, but excluding a county.
- Municipal board;** (o) "Municipal Board." The municipal board of alcoholic beverage control as established by this act.
- Officer;** (p) "Officer." Any sheriff, deputy sheriff, constable, police officer, member of the Department of State Police, or any other person having the power to execute a warrant for arrest or any inspector of the Department of Alcoholic Beverage Control.
- Original container;** (q) "Original Container." Any container in which an alcoholic beverage has been delivered to a retail licensee.
- Person;** (r) "Person." Any natural person or association of natural persons, association, trust, company, partnership, corporation, organization, or the manager, agent, servant, officer, or employee of any of them.
- Premises;** (s) "Premises." The physical place at which a licensee is or may be licensed to conduct and carry on the manufacture, distribution or sale of alcoholic beverages, but not including vehicular transportation.
- Retailer;** (t) "Retailer." Any person who sells alcoholic beverages to consumers.
- Rules and regulations;** (u) "Rules and Regulations." The rules and regulations established from time to time by the commissioner.
- Sale;** (v) "Sale." Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee.
- Unlawful alcoholic beverage activity;** (w) "Unlawful alcoholic beverage activity." The manufacture, sale, distribution or transportation of any alcoholic beverage in violation of this act, or the importing, owning, possessing, keeping

or storing in this State of alcoholic beverages with intent to manufacture, sell, distribute or transport alcoholic beverages in violation of this act, or the owning, possessing, keeping or storing in this State of any implement or paraphernalia for the manufacture, sale, distribution or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution or transportation of alcoholic beverages in violation of this act, or to aid or abet another in the manufacture, sale, distribution or transportation of alcoholic beverages in violation of this act, or the aiding or abetting of another in any of the foregoing activities.

(x) "Unlawful property." All illicit beverages and all implements and paraphernalia for the manufacture, sale, distribution or transportation of illicit beverages used in the manufacture, sale, distribution or transportation of illicit beverages or owned, possessed, kept or stored with intent to use the same in the manufacture, sale, distribution or transportation of illicit beverages, whether such use be by the person owning, possessing, keeping, or storing the same, or by another with the consent of such person.

Unlawful
property;

(y) "Wholesaler." Any person who sells an alcoholic beverage for the purpose of resale either to a licensed wholesaler or to a licensed retailer, or both.

Wholesaler.

Any definition herein contained shall apply to the same word in any other form. Thus "sell" means to make a "sale" as above defined.

Use of
words.

2. It shall be unlawful to manufacture, sell, transport, rectify, blend, treat, fortify, mix, process or distribute alcoholic beverages in this State, except in accordance with this act, and except for personal consumption.

Unlawful
action.

3. There is hereby established a State Department to be known as the Department of Alcoholic Beverage Control. The chief executive of said department shall be the State Commissioner of Alcoholic Beverage Control. His term shall commence upon the effective date of this act and shall termi-

State de-
partment.

Chief.

Term.

Successor.	nate on the first day of April, in the year nineteen hundred and forty, but he shall serve until his successor has been elected and qualified. His successor shall be elected by a joint session of the Legislature for a term of seven years beginning on the first day of April, nineteen hundred and forty, and every seven years thereafter.
Salary.	The commissioner shall receive compensation at the rate of \$13,000 per annum.
Bond.	Before entering upon the discharge of his duties, he shall give bond, to be approved by the Governor, in the sum of \$30,000.
Duty.	It shall be the duty of the commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger.
Commissioner.	The first State Commissioner of Alcoholic Beverage Control shall be D. Frederick Burnett, of the village of South Orange, in the county of Essex, who shall hold said office until the first day of April, nineteen hundred and forty, or until his successor is elected and qualified as aforesaid. Any vacancy in said office shall be filled by joint session of the Legislature for the unexpired term only.
Term of office.	
Commissioner empowered to:	4. The commissioner is hereby empowered:
Maintain offices, etc.;	(a) To maintain suitable headquarters for said department and such other offices and establishments within the State as he may determine necessary.
Appoint deputy commissioners;	(b) To appoint and have at all times three deputy commissioners who shall each receive compensation at the rate of \$4,000 per annum, and who shall be removable by the commissioner at will, and who shall be respectively in charge of the divisions hereby created in said department, to wit: Administration, Licensing and Investigation, and Inspection and Compliance. Each such deputy shall, before entering upon the duties of his office, give bond, to be approved by the commissioner, in the sum of \$8,000. Deputy commissioners shall not be subject to the civil service act.
Bond;	
Appoint clerical force;	(c) To appoint such clerical force and employees as he may deem necessary and to fix their duties, all of whom shall be subject to the civil service act.

(d) To appoint such inspectors and investigators as he may deem necessary and to fix their duties, terms of service and compensation. Inspectors and investigators shall (1) not be subject to the civil service act, (2) not receive a salary in excess of \$3,500 per annum, and (3) be removable by the commissioner at will. Each inspector and investigator, before entering upon the duties of his office, shall give bond, to be approved by the commissioner, in the sum of \$7,000. Inspectors shall have authority to arrest, without warrant, for violations of this act committed in their presence, and shall have all the authority and powers of peace officers to enforce this act. Investigators shall have full authority to conduct any investigation ordered by the commissioner.

Appoint
inspectors and
investigators;

Bond.

(e) To appoint for short-time employment or for the purpose of performing specified expert or specialist service such experts and specialists as from time to time he shall deem necessary to carry out the provisions of this act, and to determine the specified duty, salary or fee and term of service. Such experts or specialists shall not be subject to the civil service act.

Appoint
specialists
and experts.

5. Each municipality having a population of fifteen thousand (15,000) or more, as determined by the last federal census, is hereby authorized to establish in and for such municipality, by resolution or ordinance of the governing board or body or other controlling authority now established by law in respect to said municipality, a municipal board of alcoholic beverage control, which shall consist of three persons, who shall be chosen and appointed by said governing board or body or other controlling authority of said municipality, for a term of three years; *provided, however*, that one of the initial appointments shall be for one year, another for two years, and the third for three years; *provided, further*, that in the case of any vacancy occurring before the expiration of any term, the appointment to fill such vacancy shall be only for the unexpired term. Each member of such

Municipal
beverage
control
board.

Proviso.

Proviso.

Salary.

Member removable.	municipal board shall receive an annual salary in an amount to be determined by the governing board or body or other controlling authority of said municipality. Each such member shall be removable by the appointing authority for cause and before entering upon his duties shall give a bond, to be approved by the appointing authority, in twice the amount of his annual salary. Such members shall not be subject to the civil service act and may be members of said governing board or body or other controlling authority of said municipality; <i>provided, however</i> , that in any such municipality wherein there is no board of aldermen but wherein there is a board of public works, all licenses shall be granted by such board of public works.
Bond.	
Members not subject to Civil Service.	
Proviso.	
Municipal board to appoint in- spectors, etc.	6. Each municipal board is hereby empowered to appoint such inspectors, investigators, employees and agents as it may deem necessary and to fix their duties and terms of service. The salaries of such appointees shall be determined by the governing board or body or controlling authority of said municipality in and for which they are appointed. Such appointees shall be subject to the provisions of the civil service act, in all municipalities in which said civil service act has or shall have been adopted. Each such appointee shall be removable by the municipal board for cause, and before entering upon his duties shall give a bond, to be approved by the municipal board, in a sum equal to twice the amount of his annual salary.
Salaries.	
Appointees removable.	
Persons eligible.	7. No person shall be appointed to any office, position or employment under this act unless he is eligible as hereinbefore defined; <i>provided, however</i> , that clerical employees need not be of legal age.
Proviso.	
Employees not to have interest in manufacture, etc.	8. No person appointed to any office, position or employment under this act while holding said office, position or employment, shall directly or indirectly, individually or as a member of a partnership or as a stockholder of a corporation or any other association have any interest whatsoever in the manufacture, sale or distribution of alcoholic beverages, or in any enterprise or industry dealing or connected

with alcoholic beverages or kindred or cognate thereto; nor shall any such person accept any gift, gratuity, or anything of value whatsoever from any licensee or applicant for a license, directly or indirectly; *provided, however*, that it shall not be a violation of this act for such person to purchase or possess for consumption and not for resale any alcoholic beverages. Proviso.

9. All bonds made or furnished by any person appointed to any office, position or employment under this act shall be given to the State of New Jersey and be conditioned for the faithful performance of the duties of such appointee and for his compliance with all the provisions of this act and shall remain in force and effect notwithstanding expiration of office or appointment or employment or removal therefrom. Form of bonds.

10. Licenses shall be of the following classes: Classes of licenses:
 Class A—Manufacturer's license
 Class B—Wholesaler's license
 Class C—Retailer's license
 Class D—Transportation license.

11. Class A licenses shall be subdivided and classified as follows: Class A. licenses:

(1) Brewery license. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages and to distribute and sell his products to wholesalers and retailers licensed respectively in accordance with this act, and to maintain a warehouse. The fee for this license shall be three thousand five hundred dollars (\$3,500.00). Brewery license;
Fee;

(2) a. Plenary winery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this act, and to maintain a warehouse. The fee for this license shall be five hundred dollars (\$500.00). Plenary winery license;
Fee;

(2) b. Limited winery license. The holder of this license shall be entitled, subject to rules and Limited winery license;

regulations, to manufacture for sale any naturally fermented wines and fruit juices in a quantity dependent upon the following fees and not in excess of five thousand gallons per year and to be expressed in said license and to distribute and sell his said products to wholesalers and retailers respectively licensed in accordance with this act, and to consumers, and to maintain a warehouse. The fee for this license shall be graduated as follows: to so manufacture between twenty-five hundred (2,500) and five thousand (5,000) gallons per annum, two hundred dollars (\$200.00); to so manufacture between one thousand (1,000) and twenty-five hundred (2,500) gallons per annum, one hundred dollars (\$100.00); to so manufacture between two hundred (200) and one thousand (1,000) gallons per annum, twenty-five dollars (\$25.00); to so manufacture less than two hundred (200) gallons per annum, one dollar (\$1.00).

Fee;

Plenary
distillery
license;

(3) a. Plenary distillery license. The holder of this license, shall be entitled, subject to rules and regulations, to manufacture any distilled alcoholic beverages and rectify, blend, treat and mix, and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this act, and to maintain a warehouse. The fee for this license shall be seven thousand five hundred dollars (\$7,500.00).

Fee;

Limited
distillery
license;

(3) b. Limited distillery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture, in a quantity dependent upon the following fees and not in excess of ten thousand (10,000) gallons per year and to be expressed in said license, any alcoholic beverages distilled from fruit juices and rectify, blend, treat and mix, and to distribute and sell his said products to wholesalers and retailers respectively licensed in accordance with this act and to maintain a warehouse. The fee for this license shall be graduated as follows: To so manufacture not more than five thousand (5,000) gallons per annum, one thousand dollars (\$1,000.00); and to so manufacture not

Fee;

more than ten thousand (10,000) gallons per annum, twenty-five hundred dollars (\$2,500.00).

(4) Rectifier and blender license. The holder of this license shall be entitled, subject to rules and regulations, to rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend and treat fermented alcoholic beverages, and prepare mixtures of alcoholic beverages, and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this act, and to maintain a warehouse. The fee for this license shall be one thousand five hundred dollars (\$1,500.00).

Rectifier
and blender
license;

Fee;

12. Class B licenses shall be subdivided and classified as follows:

Class B.
licenses:

(1) Plenary wholesale license. The holder of this license shall be entitled, subject to rules and regulations, to distribute to retailers, licensed in accordance with this act, alcoholic beverages, and to maintain a warehouse and salesroom. The fee for this license shall be one thousand five hundred dollars (\$1,500.00).

Plenary
wholesale
license;

Fee;

(2) Limited wholesale license. The holder of this license shall be entitled, subject to rules and regulations, to distribute to retailers, licensed in accordance with this act, brewed malt alcoholic beverages and naturally fermented wines, and to maintain a warehouse and salesroom. The fee for this license shall be seven hundred and fifty dollars (\$750.00).

Limited
wholesale
license;

Fee.

13. Class C licenses shall be subdivided and classified as follows:

Class C.
licenses:

(1) Plenary retail consumption license. The holder of this license shall be entitled, subject to rules and regulations, to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises. The fee for this license shall be fixed by the governing board or body or other controlling authority of the municipality in which the licensed premises are

Plenary
retail
consumption
license;

Fee;

situated, by resolution or ordinance, at not less than three hundred and fifty dollars (\$350.00) and not more than one thousand five hundred dollars (\$1,500.00).

Plenary retail
distribution
license;

Fee;

(2) Plenary retail distribution license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers. The fee for this license shall be fixed by the governing board or body or other controlling authority of the municipality in which the licensed premises are situated by resolution or ordinance at not less than two hundred dollars (\$200.00), and not more than one thousand dollars (\$1,000.00).

Plenary retail
transit
license;

Fee.

Proviso;

Proviso;

Class D
license:

Transporta-
tion license.

(3) Plenary retail transit license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption only on railroad trains, airplanes and boats, while in transit. The fee for this license shall be one hundred and fifty dollars (\$150.00), except for boats under five (5) tons gross tonnage and for each such boat the fee shall be ten dollars (\$10.00); *provided, however*, that a license issued under this provision to a railroad or air transport company shall cover all dining and club cars and planes operated by any such company within the State of New Jersey; *and provided, further*, that a license for a boat issued under this provision shall apply only to the particular boat for which issued.

14. Class D licenses shall be as follows:

Transportation license. The holder of this license shall be entitled, subject to rules and regulations, to transport alcoholic beverages into, out of, through and within the State of New Jersey and to maintain a warehouse. The fee for this license shall be two hundred dollars (\$200.00). Vehicles transporting alcoholic beverages shall carry a transit receipt specifying the names and addresses of the owner of the alcoholic beverages, of the consignor, and of the consignee, and the destination.

15. Any licensee entitled to maintain a warehouse or salesroom shall, if approved by the commissioner, secure a separate license for each additional warehouse or salesroom desired, and pay the fee therefor, each additional warehouse or salesroom being deemed a separate place of business.

Separate
license for
each ware-
house.

16. Before any Class A, Class B or Class D license shall be issued, each such licensee shall give a bond to the State of New Jersey, to be approved by the State Tax Commissioner as to form and amount, conditioned for the payment of all taxes and penalties imposed upon alcoholic beverages or the manufacture, sale or distribution thereof by the laws of this State.

Bond.

17. It shall be the duty of the commissioner to administer the issuance of manufacturers', wholesalers', plenary retail transit, and transportation licenses, in accordance with this act.

Commissioner
to administer
issuance of
certain
licenses.

18. It shall be the duty of the governing board or body or controlling authority, as the case may be, of each municipality, except in such municipalities as shall have created municipal boards pursuant to this act, in which latter event it shall be the duty of such respective municipal boards, to administer the issuance of plenary retail consumption and plenary retail distribution licenses within their respective municipalities, in accordance with this act, and forthwith to report the issuance of all such licenses to the commissioner. The issuing authorities constituted by this section are sometimes hereinafter referred to as "other issuing authority."

Municipal
board, etc.,
to administer
issuance of
certain
licenses.

19. If the commissioner or other issuing authority shall refuse to issue any license, the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Said applicant or any taxpayer opposing such application may within thirty days after the date of service or of mailing of said notice appeal to the Board of Alcoholic Beverage Appeals from the action of the

Upon refusal
to grant
license.

Appeal.

Hearing.	commissioner or other issuing authority. The Board of Alcoholic Beverage Appeals shall thereupon fix a time for the hearing of the appeal and before hearing the same shall give at least five days' notice of the time so fixed to both said applicant, such taxpayer, the commissioner and other issuing authority.
Commissioner's duties; Enforcement;	20. It shall be the duty of the commissioner to administer and enforce this act and administer the Department of Alcoholic Beverage Control; to
Report;	make an annual report to the Governor of the ac-
Investigate;	tivities of his department; to investigate applicants for Class A, Class B, Class D and plenary retail transit licenses, and all licensees, and to inspect all licensed premises; to conduct hearings in accordance with this act; to make and conduct searches, seizures and forfeitures in accordance with this act; to dispose of articles seized and forfeited; to
Make searches;	maintain proper records; to maintain a petty cash fund not in excess of one thousand dollars (\$1,000); to requisition the purchase of necessary supplies and equipment; to co-operate with municipalities and municipal boards in enforcing this act; to keep full and correct minutes; to publish lists of all li-
Records;	licenses issued; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this act. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this act to the commissioner.
Requisition supplies;	
Minutes;	21. It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this act and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes;
Publish list of licenses;	
Administer act;	
Construing.	
Duties of issuing authority.	

and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this act. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this act to each said other issuing authority.

22. Applicants for licenses shall answer such questions and make such declarations as shall be prescribed by rules and regulations. No retail license shall be issued to a natural person unless he shall have been a resident of the State of New Jersey for at least five years, continuously, immediately prior to the submission of the application. No license of any class shall be issued to any alien; to any person under legal age; or to any person who has been convicted of a crime involving moral turpitude or of two or more violations of this act. In case of applications by corporations, the names and addresses of all stockholders, holding one (1) or more per centum of any of the stock thereof, of all officers, and of all members of the board of directors must be stated in the application, and if one or more of such officers or members or any holder, directly or indirectly, of ten (10) per centum or more in beneficial interest of the capital stock of the corporation would fail to qualify as an individual applicant in all respects, except as to residence and age, no license of any class shall be granted.

In the case of application by a partnership, the application shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

A photostatic copy of all federal licenses, permits and/or stamps necessary to the lawful conduct of the business for which a State license is sought must accompany the license application, together with a deposit of the full amount of the required license fee, which deposit to the extent of ninety per centum thereof shall be returned to the ap-

License requirements:

Residence;

Citizenship;

In case applicant is a corporation.

In case applicant is a partnership.

Photostatic copy of Federal licenses, etc., to accompany application.

Deposit full amount of fee.

plicant by the commissioner or other issuing authority if the application is denied, and the remaining ten per centum shall constitute an investigation fee and be disposed of as hereinafter provided.

Notice of
intention
published.

Every applicant for a license shall cause a notice of intention to make such application to be published, in a form prescribed by rules and regulations, once a week for two weeks successively in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located; *provided, however*, that if there shall be no such newspaper, then such notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located; *provided, further*, that no publication shall be required with respect to applications for transportation licenses.

Proviso.

Proviso.

Applications
sworn to.

All applications shall be duly sworn to by each of the applicants, except in cases of applications by corporations, which shall be duly sworn to by the president or vice-president. All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor and punished accordingly. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation.

Term of
license.

Proviso.

Proviso.

Not trans-
ferable.

23. All licenses shall be for a term of one year from the first day of July in each year; *provided, however*, that all such licenses issued prior to July first, one thousand nine hundred and thirty-four, shall expire at midnight on June thirtieth, one thousand nine hundred and thirty-four; *and further provided*, that the respective fees for any such license shall be prorated according to the date of such license and based on the respective annual fee as in this act provided. Licenses are not transferable. A separate license is required for each specific

place of business and the operation and effect of every license is confined to the licensed premises. No retail license of any class shall be issued to any holder of manufacturer's or wholesaler's license, and no manufacturer's or wholesaler's license shall be issued to the holder of a retail license of any class. Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor.

Each place licensed.

License regulation.

False representation a misdemeanor.

In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this act.

License may be extended in case of death, etc.

License not deemed property.

On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license as to said premises, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to said premises, the commissioner or other issuing authority may transfer any license issued by him or it respectively to a different place of business than that specified therein, by endorsing permission upon such license.

Transfer license.

No person who would fail to qualify as a licensee under this act shall be knowingly employed by or

Employment regulations.

- connected in any business capacity whatsoever with the licensee; *provided, however*, that specialized technical workers required in any business may, with the approval of the commissioner, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship.
- Proviso.**
- Disposition of fees.** 24. License and investigation fees collected by the commissioner shall be promptly paid, when earned, to the State Treasurer, and thereupon shall become part of the free treasury funds of this State.
- No fee exemption.** Any statute or exemption to the contrary, notwithstanding, no license shall be issued to any person except upon payment of the full fee therefor or as above prorated; *provided, however*, that no license shall be required and no fee charged in connection with the retail sale of alcoholic beverages for consumption on the premises where sold, when sold at any camp, post or regimental exchange duly organized under the regulations of the United States Army or Navy or Marine Corps or, if the consent of the State Military Board shall have been first obtained, under the State National Guard regulations.
- Proviso.**
- Delivery of beverage by licensee.** 25. Licensees may deliver alcoholic beverages in their own vehicles, solely, however, for their own respective business in connection with and as defined in their respective licenses, without possessing a transportation license; *provided, however*, that the vehicles while so used shall be marked in the manner prescribed for all vehicles authorized to transport alcoholic beverages under a transportation license, as shall be provided in rules and regulations.
- Proviso.**
- Regulation of use by druggists, etc.** 26. Druggists and pharmacists duly registered under the laws of the State of New Jersey as such may, upon their respective registered premises as aforesaid, without license hereunder, purchase and use alcoholic beverages for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages, and sell same after being so compounded or prepared, subject to rules and regulations; *pro-*
- Proviso.**

vided, however, that they may not sell alcoholic beverages otherwise than as aforesaid and particularly shall not sell the same in either original containers or by glass or other open containers, except under a license obtained under this act permitting the same. Hospitals may purchase and use alcoholic beverages for the compounding of physicians' prescriptions, and for the preparation of mixtures and medicines unfit for use as beverages, and for dispensing to patients in accordance with physicians' orders and prescriptions, without license therefor, subject to rules and regulations.

Use by
hospitals.

Wholesale licensees may sell alcoholic beverages directly to druggists and pharmacists, registered as aforesaid, and to hospitals, for use as herein authorized, subject to rules and regulations.

Wholesale
licensees
may sell to
hospitals, etc.

27. This act is not designed to prohibit sales of industrial alcohol, denatured alcohol, alcoholic mixtures or compositions unfit for use as beverages, or articles of commerce containing alcohol which are unfit for use as beverages without license hereunder. To prevent violations of and secure the better enforcement of this act, the commissioner shall have and exercise the same powers of investigation with respect to all the matters in this paragraph set forth as are by this act accorded to him in connection with sales of alcoholic beverages.

In reference
to sale of
alcohol.

Prevention of
violations.

28. Any license may be suspended or revoked by the commissioner or by the other issuing authority who issued such license, as the case may be, for any of the following causes: violation of any of the provisions of this act; manufacture, transportation, distribution or sale of alcoholic beverages in a manner or to an extent not permitted by the license or by law; nonpayment of any excise tax or other payment required by law to be paid to the State Tax Commissioner; failure to have at all times a valid, unrevoked permit, license or special tax stamp, or other indicia of payment, of all fees, taxes, penalties and payments required by any law of the United States; failure to have at all times proper stamps or other proper evidence of

License may
be revoked,
etc., for:

Violation of
act;
Exceeding
limits of
license;

Nonpayment
of taxes;

Failure to
have Federal
permit, etc.;

Failure to
have stamps;

Violation of rules and regulations.	payment of any tax required to be paid by any law of this State; any violation of rules and regulations; any other act or happening occurring after the time of making of an application for a license which if it had occurred before said time would have prevented the issuance of the license; or for
Notice given before suspension.	any other cause designated by this act. No suspension or revocation of any license shall be made until a five-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him. A suspension or revocation of li-
How suspension of license effected.	cense shall be effected by a notice in writing of such suspension or revocation, designating the effective date thereof, and in case of suspension, the term of such suspension, which notice may be served upon the licensee personally or by mailing the same by registered mail addressed to him at the licensed premises. Such suspension or revocation shall apply to the licensee and to the licensed premises.
Revocation effective.	Any revocation shall render the licensee ineligible to receive any other license, of any kind or class under this act, for a period of two years from the effective date thereof and may, in the discretion of the commissioner or the other issuing authority as the case may be, render the licensed premises ineligible to become the subject of any further license, of any kind or class under this act, during said period of two years. No refund shall be made of any portion of a license fee after issuance of a license. In the event of any suspension or revocation of any license, the licensee may, within thirty (30) days after the date of service or of mailing of said notice of suspension or of revocation, appeal to the Board of Alcoholic Beverage Appeals from the action of the commissioner or other issuing authority, as the case may be, in suspending or revoking such license. The Board of Alcoholic Beverage Appeals shall thereupon fix a time for the hearing of the appeal and before hearing the same
No refund of fees.	
Appeal.	
Hearing.	

shall give at least five (5) days' notice of the time so fixed to both said licensee and to the commissioner or the other issuing authority, as the case may be, who effected such suspension or revocation.

29. Subject to rules and regulations, the commissioner and other issuing authority as the case may be, by resolution, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this act and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof.

Sundry
regulations.

30. No license shall be issued to any person to whom a license shall have been issued under an act entitled "An act concerning the manufacture, distribution and sale of certain beverages having an alcoholic content and providing for licenses, regulations and fees in connection therewith and penalties for violations thereof," approved April twelfth, one thousand nine hundred and thirty-three, as amended and supplemented, and who shall have failed to pay to the State of New Jersey or to any municipality of this State any tax, license fee or penalty which shall have accrued pursuant to the provisions of said act, unless such person shall have posted with the State Tax Commissioner, or the municipality, as the case may be, a cash deposit in an amount, or a bond in form, with sureties and in an amount satisfactory to the State Tax Commissioner, or the municipality; as the case may be, to secure the payment of said tax, license fee or penalty, and this provision shall remain in force and effect notwithstanding the repeal of the aforesaid act.

License re-
fused for
failure to pay
obligations un-
less bonded.

31. Whenever any change shall occur in the facts as set forth in any application for license, the licensee shall file with the commissioner or other issuing authority, as the case may be, a notice in writing of such change within ten days after the occurrence thereof; said change, when so notified,

Licensee to
notify in
event of
change.

shall thereupon become part of said application for license to the end that subsequent changes must likewise be so notified; *providing, however, that no* notice need be given by corporate licensees of changes in stockholdings therein unless and until the aggregate of such changes, if made before the time of said application, would have prevented the issuance of the license.

Investiga-
tions.

May examine
under oath.

32. The commissioner and each other issuing authority is hereby authorized and empowered to make, or cause to be made, such investigations as he or it shall deem proper in the administration of this act and of any and all other acts now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution or sale thereof, or the collection of taxes thereon, including the inspection of premises for which the license is sought, of any building containing the same, of licensed buildings, examination of the books, records, accounts, documents and papers of the licensees or on the licensed premises, and every applicant for a license, and every licensee, and every director, officer, agent and employee of every licensee, shall, on demand, exhibit to the commissioner or other issuing authority, as the case may be, or to his or its deputies or investigators, or inspectors or agents all of the matters and things which the commissioner or other issuing authority, as the case may be, is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever. For the purpose of any investigation, examination or inspection, the commissioner and each other issuing authority is hereby authorized and empowered to examine, under oath, any and all persons whatsoever and to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers and documents of any person or persons and to take

any oath or affirmation of any person to any deposition, statement, report or application required in the administration of this act, or of any and all other acts now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution and sale thereof, or the collection of taxes thereon. The fees of witnesses required to attend before the commissioner or other issuing authority shall be the same as those allowed to witnesses in the Supreme Court.

Witness' fees.

If a person subpoenaed to attend any hearing refuses or fails to appear or to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered so to do by the commissioner, the commissioner or other issuing authority, as the case may be, may apply to the Supreme Court, or any justice thereof, who shall have the power of the court for that purpose, to make an order returnable not less than two nor more than ten days, directing such person to show cause before the court or a justice thereof why he should not comply with the subpoena or direction or order of the commissioner or of the other issuing authority, as the case may be, and upon the return of such order the court or justice shall examine such person, under oath, and thereupon make such order as may be required, and any refusal or failure to obey such order of the court or such justice may be punished by said court or by said justice as a contempt of the Supreme Court.

Failure to obey subpoena.

Each deputy commissioner shall have and exercise all the powers conferred by this act upon the commissioner to the extent that the same shall be delegated to him by the commissioner by rules and regulations.

Deputy commissioners' powers.

One of such deputy commissioners shall be designated by the commissioner with power to perform all of the duties of the commissioner in case of his absence or inability to act for any cause and who shall also have authority to so act in the event of the death of the commissioner until a successor has been appointed and qualified.

Deputy to act for commissioner.

Service of
subpœnas.

33. It shall be the duty of each chief of police, or of other official who for the time being shall exercise the functions of the office of chief of police, of each municipality, upon request of the commissioner, to cause to be served any subpœna which may be directed to any person residing or being within said municipality. No fee shall be charged for this service by said chief of police or by the members of any municipal police department.

No fee.

Service by
other officers.

Subpœnas may also be served by any officer as hereinbefore defined, or by any deputy, agent or employee of the commissioner or of the issuing authority, as the case may be.

Official
seal.

34. The commissioner shall adopt an official seal. Copies of any act, rule, regulation, order or decision made by him and of any paper or papers filed in any office maintained by him, may be authenticated under said seal and when so authenticated shall be evidence in all courts of this State of the same weight and force as the originals thereof. For authenticating any such copy he shall receive a fee of one dollar, to be accounted for by him as in case of license fees, as hereinbefore provided. All records and files of the department shall be open for inspection, pursuant to rules and regulations.

Fee for
authenticating.

Records and
files open to
inspection.

Alcoholic
Beverage
Appeals
Board.

35. The Governor, the President of the Senate and the Speaker of the House of Assembly shall constitute the Alcoholic Beverage Appeals Board, and they shall serve without additional compensation.

Board empow-
ered to hear
appeals.

The said board is hereby empowered and it is its duty to hear and conduct all appeals provided for by this act, and thereupon to render written decisions stating conclusions and reasons therefor upon each matter so appealed, and said decisions shall be binding upon all persons and shall be honored and forthwith executed by the commissioner and other issuing authority, as the case may be. The said board is hereby authorized to order the commissioner or other issuing authority, as the case may be, to issue a license when and if, after a hearing on the appeal of an applicant therefor, the

May au-
thorize com-
missioner to
issue license.

board shall decide that a license was improperly refused by the commissioner or other issuing authority, as the case may be; to order the commissioner or other issuing authority, as the case may be, to suspend or revoke a license, or to forthwith terminate the suspension or cancel the revocation of a license, when and if, after a hearing on appeal, the board shall reverse the decision of the commissioner or other issuing authority, as the case may be; to establish procedure and rules; and to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this act.

Establish
procedure
and rules.

36. The commissioner is hereby authorized and empowered to make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act, in addition thereto, and not inconsistent therewith, and to alter, amend, repeal and publish the same from time to time. Such rules and regulations may cover the following subjects: specification of duties of holders of any office, position or employment in the Department of Alcoholic Beverage Control; instructions for municipalities and municipal boards; all forms necessary or convenient in the administration of this act; tax paid, licensed vehicle and other insignia; inspections, investigations, searches, seizures, findings and such activities as may become necessary from time to time; hours of sale; sales on credit; sales to defectives and habitual drunkards; out-of-door sales; limitation of sales; unfair competition; racketeering; prostitution; solicitation; disorderly houses; criminals; disreputable characters; gambling, slot machines and gambling devices; control of signs and other displays on licensed premises; use of screens; identification of licensees and their employees; employment of aliens, minors and females; storage; warehouses; transportation; health and sanitary requirements; standards of cleanliness, orderliness

Commissioner
empowered to
make rules
and regula-
tions.

Subjects
covered by
rules and
regulations.

and decency; sampling and analysis of products; standards of purity and labeling; records to be kept by licensees and availability thereof; practices unduly designed to increase consumption of alcoholic beverages; gifts of equipment, products and things of value; and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this act.

May limit
number of
licenses and
hours of sale.

37. Each issuing authority, other than the commissioner, may as regards each respective municipality limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sales of alcoholic beverages at retail may be made and regulate the conduct of any business licensed to sell alcoholic beverages at retail, and the nature and condition of the premises upon which any such business is to be conducted, all subject, however, to appeal to the Board of Alcoholic Beverage Appeals, as hereinafter provided.

Local
control.

The governing board or body or other controlling authority of each municipality may by resolution prohibit within its respective municipality either (1) the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wines for consumption on the licensed premises by the glass or other open receptacle, or (2) the retail sale of all kinds of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, or (3) the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, or (4) the sale of all alcoholic beverages on Sundays. Any such resolution shall be instantly effective in and for such municipality and shall not be subject to appeal to the Board of Alcoholic Beverage Appeals; *provided, however,* that any such resolution shall be subordinate to any referendum subsequently held pursuant to this act.

Proviso.

Person
affected by
rule or regu-
lation may
appeal.

38. If any person affected or who might be affected by any rule or regulation made by the commissioner or by any condition imposed by the com-

missioner or other issuing authority upon the issuance of any license, or by any limitation of the number of licenses or of the hours between which sales of alcoholic beverages at retail may be made or by any regulation affecting the conduct of any business licensed to sell alcoholic beverages at retail or the nature and condition of the premises upon which any such business is to be conducted, shall consider himself aggrieved thereby, he may appeal to the Board of Alcoholic Beverage Appeals in respect to the form, content or subject matter of said rule or regulation or condition, and thereupon the board, after public hearing, may set aside, vacate and repeal the rule or regulation or condition complained of or change, alter, amend or otherwise modify the same.

39. No sales of alcoholic beverages shall be made in any public buildings belonging to or under the control of the State or any political subdivision thereof except as to the National Guard as hereinbefore provided, and except as permitted by the commissioner in specified cases and subject to rules and regulations.

Sale on
State prop-
erty pro-
hibited.

40. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this act. And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery or rectifying and blending plant, except as provided for in this act, or with any manufacturing, wholesaling or import-

Unlawful
for owner,
etc., of dis-
tillery, etc., to
be interested
in retail
sale.

ing interests of any kind whatsoever outside of the State.

Referendum.

41. If, at any time after this act becomes effective, a petition, signed by at least fifteen per centum of the qualified electors of any municipality as evidenced by the total number of votes cast at the then next preceding election for members of the General Assembly in such municipality, shall be presented to the governing board or body or other controlling authority thereof, requesting a referendum on the question hereinafter stated, such governing board, body or authority shall adopt forthwith a resolution directing the clerk of the county in which such municipality is situated to print, pursuant to the act entitled "An act to regulate elections" (Revision 1930), and the acts amendatory thereof and supplementary thereto (which last mentioned act and its amendments and supplements is hereinafter referred to as the general election law), upon the official ballot to be used in said municipality at the next ensuing general election a question to read: "Shall the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wine, for consumption on the licensed premises by the glass or other open receptacle pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" Thereupon the clerk or secretary of said governing board, body, or other controlling authority of such municipality shall forthwith deliver to such county clerk a certified copy of such resolution. If said copy shall be delivered to said county clerk not less than thirty days before said general election, he shall cause such question to be printed in an appropriate place on the ballot to be used in said municipality at the next ensuing general election pursuant to said general election law and thereupon all proceedings with respect to the referendum on said question shall be subject to and governed by said general election law as in other cases of the submission of public questions to the electorate.

Proposition.

Certified copy
sent to
county
clerk.

Proposition
printed on
ballot.

If a majority of the legal voters voting upon said question shall vote "Yes", the retail sales as aforesaid of said alcoholic beverages and the issuing of licenses pursuant to this act shall continue in said municipality as if no such election had been held.

Canvass.

If a majority of the legal voters voting upon said question shall vote "No", then the clerk of the governing board, body or other controlling authority of said municipality shall forthwith in writing notify the commissioner and municipal board, if any, as the case may be, having authority to issue such licenses, of the action taken by the legal voters of said municipality, and after thirty days have elapsed after the date of said vote the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wines, for consumption on the licensed premises by the glass or other open receptacle (such retail sale being sometimes hereinafter called "prohibited sale"), shall be unlawful in said municipality and constitute a violation of this act, and it shall forthwith upon said vote be unlawful for the other issuing authority of said municipality, having authority to issue licenses, to issue any license in respect to such municipality which shall permit such prohibited sale, and all licenses theretofore issued in respect to such municipality which shall have licensed such prohibited sale shall, to the extent that they permitted such prohibited sale, become void and inoperative thirty days after the date of said vote.

Determining
result of
referendum.

Whenever a referendum shall have been had in any municipality pursuant to this section, no further referendum on the same question shall be held therein prior to the general election to be held in said municipality in the third year thereafter.

Limited
referendum.

42. If, at any time after this act becomes effective, a petition, signed by at least fifteen per centum of the qualified electors of any municipality as evidenced by the total number of votes cast at the then next preceding election for members of the General Assembly in such municipality, shall be presented to the governing board or body or other

Referendum.

controlling authority thereof, requesting a referendum on the question hereinafter stated, such governing board, body or authority shall adopt forthwith a resolution directing the clerk of the county in which such municipality is situated to print, pursuant to the act entitled "An act to regulate elections" (Revision 1930), and the acts amendatory thereof and supplementary thereto (which last mentioned act and its amendments and supplements is hereinafter referred to as the general election law), upon the official ballot to be used in said municipality at the next ensuing general election a question to read: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?"

Proposition. Thereupon the clerk or secretary of said governing board, body or other controlling authority of such municipality shall forthwith deliver to such county clerk a certified copy of such resolution. If said copy shall be delivered to said county clerk not less than thirty days before said general election, he shall cause such question to be printed in an appropriate place on the ballot to be used in said municipality at the next ensuing general election pursuant to said general election law and thereupon all proceedings with respect to the referendum on said question shall be subject to and governed by said general election law as in other cases of the submission of public questions to the electorate.

Certified copy sent to county clerk. Proposition printed on ballot.

Canvass. If a majority of the legal voters voting upon said question shall vote "Yes", the retail sales as aforesaid of said alcoholic beverages and the issuing of licenses pursuant to this act shall continue in said municipality as if no such election had been held.

Determining result of referendum. If a majority of the legal voters voting upon said question shall vote "No", then the clerk of the governing board, body or other controlling authority of said municipality shall forthwith in writing notify the commissioner and municipal board, if any, as the case may be, having authority to

issue such licenses, of the action taken by the legal voters of said municipality, and after thirty days have elapsed after the date of said vote, the retail sale of all kinds of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle (such retail sale being sometimes hereinafter called "prohibited sale"), shall be unlawful in said municipality and constitute a violation of this act, and it shall forthwith upon said vote be unlawful for the other issuing authority of said municipality having authority to issue licenses to issue any license in respect to such municipality which shall permit such prohibited sale and all licenses theretofore issued in respect to such municipality which shall have licensed such prohibited sale shall, to the extent that they permitted such prohibited sale, become void and inoperative thirty days after the date of said vote.

Whenever a referendum shall have been had in any municipality pursuant to this section, no further referendum on the same question shall be held therein prior to the general election to be held in said municipality in the third year thereafter. Limited referendum.

43. If, at any time after this act becomes effective, a petition, signed by at least fifteen per centum of the qualified electors of any municipality as evidenced by the total number of votes cast at the then next preceding election for members of the General Assembly in such municipality, shall be presented to the governing board or body or other controlling authority thereof, requesting a referendum on the question hereinafter stated, such governing board, body or authority shall adopt forthwith a resolution directing the clerk of the county in which such municipality is situated to print, pursuant to the act entitled "An act to regulate elections" (Revision 1930), and the acts amendatory thereof and supplementary thereto (which last mentioned act and its amendments and supplements is hereinafter referred to as the general election law), upon the official ballot to be used in said municipality at the next ensuing general Referendum.

Certified copy
sent to
county
clerk.

Proposition
printed on
ballot.

Canvass.

Determining
result of
referendum.

election, a question to read: "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" Thereupon the clerk or secretary of said governing board, body or other controlling authority of such municipality, shall forthwith deliver to such county clerk a certified copy of such resolution. If said copy shall be delivered to said county clerk not less than thirty days before said general election, he shall cause such question to be printed in an appropriate place on the ballot to be used in said municipality at the next ensuing general election, pursuant to said general election law and thereupon all proceedings with respect to the referendum on said question shall be subject to and governed by said general election law as in other cases of the submission of public questions to the electorate.

If a majority of the legal voters voting upon said question shall vote "Yes," retail sales of alcoholic beverages and the issuing of retail licenses pursuant to this act shall continue in said municipality as if no such election had been held.

If a majority of the legal voters voting upon said question shall vote "No," then the clerk of the governing board, body or other controlling authority of said municipality shall forthwith in writing notify the commissioner and municipal board, if any, as the case may be, having authority to issue such licenses, of the action taken by the legal voters of said municipality and thereupon it shall be unlawful for the other issuing authority of said municipality, having authority to issue plenary retail consumption, plenary retail distribution and limited retail consumption licenses, to issue any such licenses in respect to such municipality, and all such licenses therefor issued in respect to such municipality shall become void and inoperative thirty days after the date of said vote, and thereupon the municipal board of such municipality shall

be dissolved, and the offices of its members shall terminate and all its activities hereunder shall cease; *provided, however*, that if in a later referendum held pursuant to this act a majority of the legal voters voting upon the same question last above stated shall vote "Yes," a municipal board for such municipality may forthwith be appointed in the same manner and with the same effect as when this act first became effective.

Proviso.

Whenever a referendum shall have been had in any municipality pursuant to this section, no further referendum on the same question shall be held therein prior to the general election to be held in said municipality in the third year thereafter.

Limited referendum.

44. If, at any time after this act becomes effective, a petition, signed by at least fifteen per centum of the qualified electors of any municipality as evidenced by the total number of votes cast at the then next preceding election for members of the General Assembly in such municipality, shall be presented to the governing board or body or other controlling authority thereof, requesting a referendum on the question hereinafter stated, such governing board, body or authority shall adopt forthwith a resolution directing the clerk of the county in which such municipality is situated to print, pursuant to the act entitled "An act to regulate elections" (Revision 1930), and the acts amendatory thereof and supplementary thereto (which last mentioned act and its amendments and supplements is hereinafter referred to as the general election law), upon the official ballot to be used in said municipality at the next ensuing general election, a question to read: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" Thereupon the clerk or secretary of said governing board, body or other controlling authority of such municipality shall forthwith deliver to such county clerk a certified copy of such resolution. If said copy shall be delivered to said county clerk not less than thirty days before said general election, he shall cause such question to be printed in an appropriate place

Referendum on Sunday sales.

Proposition.

Certified copy sent to county clerk.

Proposition printed on ballot.

on the ballot to be used in said municipality at the next ensuing general election, pursuant to said general election law and thereupon all proceedings with respect to the referendum on said question shall be subject to and governed by said general election law as in other cases of the submission of public questions to the electorate.

Canvass.

If a majority of the legal voters voting upon said question shall vote "Yes," the sale of alcoholic beverages on Sundays pursuant to the provisions of this act shall continue in said municipality as if no such election had been held.

Determining
result of
referendum.

If a majority of the legal voters voting upon said question shall vote "No," then the clerk of the governing board, body or other controlling authority of said municipality shall forthwith in writing notify the commissioner and municipal board, if any, as the case may be, having authority to issue such licenses of the action taken by the legal voters of said municipality, and thereupon it shall be unlawful for any person to sell alcoholic beverages in said municipality on Sundays.

Limited
referendum.

Whenever a referendum shall have been had in any municipality pursuant to this section, no further referendum on the same question shall be held therein prior to the general election to be held in said municipality in the third year thereafter.

County
boards certi-
fied to com-
missioner.

45. All municipal boards created under this act shall be certified to the commissioner in writing under seal of the municipality, if any, and attested by the clerk thereof, or person performing for the time being the duties of clerk, and all appointments thereto shall become effective upon filing of a certificate of an acceptance thereof by each member thereof with the commissioner.

Temporary
licenses.

46. Anything hereinbefore to the contrary notwithstanding, during the two (2) months immediately following the effective date of this act, it shall be lawful, subject to rules and regulations, for the commissioner and for each other issuing authority to issue a temporary license to any person who shall file an application for license completely executed

on forms prescribed by the commissioner, and who shall deposit the properly prorated annual fee for such license, without any investigation or advertisement, and pursuant to such temporary license it shall be lawful for such licensee to conduct thereafter and carry on until the termination of said two (2) months' period or until revocation of such temporary license, whichever shall first occur, on the premises prescribed in the application, the business for which the temporary license shall be issued in accordance with all the provisions of this act, applicable to the kind and class of license applied for. No temporary retail license, however, shall be issued in and for any municipality in which the governing board or body or controlling authority thereof shall have prohibited by resolution the business sought to be conducted within such municipality pursuant to the power hereinbefore reserved to the governing board, body or other controlling authority of any municipality.

No temporary license issued where municipality prohibits sale.

47. No person shall knowingly purchase, receive or procure any illicit beverage. Any person who shall violate this provision shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), or imprisonment for not less than two days and not more than ten days, or by both such fine and imprisonment, in the discretion of the court.

Purchase of illicit beverage a misdemeanor.

Fine. Penalty.

48. Any person who shall manufacture, sell, distribute or transport any alcoholic beverage in violation of this act, or who shall import, own, possess, keep or store in this State alcoholic beverages with intent to manufacture, sell, distribute or transport alcoholic beverages in violation of the provisions of this act, or who shall own, possess, keep or store in this State any implement or paraphernalia for the manufacture, sale, distribution or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution or transportation of alcoholic beverages in violation of this act, or to aid or abet another in the manufacture, sale,

Manufacture, etc., in violation of act a misdemeanor.

- distribution or transportation of alcoholic beverages in violation of this act, all of which shall be violations of this act, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) or imprisonment for not less than thirty days and not more than six months, or by both such fine and imprisonment, in the discretion of the court.
- Fine. Penalty.**
- Violation of act a misdemeanor.**
49. Any person who shall knowingly violate any of the other provisions of this act shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred fifty dollars (\$250.00) or imprisonment for not less than ten days and not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.
- Fine. Penalty.**
- To aid in violation of act a misdemeanor.**
50. Any person who shall knowingly aid or abet another in the violation of this act shall be guilty of a misdemeanor punishable in the same manner as the violation aided or abetted.
- Second offenses.**
51. In case any person shall, after conviction of an offense under this act, be convicted of another offense under this act, such other and subsequent offense shall be punishable by a fine or imprisonment, the maximum and minimum limits of which shall be twice the limits otherwise by this act imposed, or by both such fine and imprisonment, in the discretion of the court.
- Lease terminated upon 5 days' notice after violation.**
52. Any violation of this act upon any leased premises by any lessee or sublessee, or by any other person with the knowledge and consent of the lessee or sublessee, shall, at the option of lessor, immediate or remote, upon five days' written notice to such lessee or sublessee of the exercise of said option and the cause therefor, cause the term of said lease forthwith, at the expiration of said five days, to cease and come to an end, and the right to possession of the leased premises shall thereupon revert to the lessor, together with such further rights in the lessor as may be reserved to him by the terms of said lease and/or by law, noncom-

pliance with this act and the exercise of lessor's option being a limitation upon the term of the lease. The lessor may enforce his right of possession hereunder by summary proceedings as for term ended, as prescribed by an act entitled "An act concerning landlords and tenants," approved March twenty-seventh, one thousand eight hundred and seventy-four, and the acts amendatory thereof and supplementary thereto. *Provided, however,* this section shall not affect any lease made and entered into prior to the effective date of this act.

Lessor may enforce rights.

Proviso.

53. No person shall knowingly keep, occupy or maintain any premises, building, vehicle or place whatsoever wherein unlawful property is owned, possessed, kept, stored, manufactured, sold, distributed or transported, and all unlawful property may be seized by any officer and be confiscated and disposed of as in this act provided.

Unlawful property may be confiscated.

54. Any magistrate, hereinafter termed the issuing magistrate, may issue a search warrant in the manner hereinafter provided, to search any premises, building, vehicle or place whatsoever containing, or believed upon probable cause, to contain unlawful property; *provided, however,* no search warrant shall issue to search any private dwelling, occupied exclusively as such, unless there is probable cause to believe it is being used for, or in connection with, unlawful alcoholic beverage activity and provided that such use be evidenced by oath of some person, on his own knowledge.

Issuing search warrant.

Proviso.

55. A search warrant shall only issue after (1) proof under oath, which may be by written affidavit or deposition, has been produced before the issuing magistrate setting forth facts tending to establish the grounds of the application, or probable cause for believing that such grounds exist, and (2) naming or describing the person or describing the premises, building, vehicle or other place to be searched. If the issuing magistrate is satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by

When search warrant may be issued.

Service of warrant.	him with the title of his office, to any officer, or officers, stating the particular grounds, or probable cause, for its issuance, and the name or names of the person or persons sworn in support thereof, and commanding him forthwith to search the person, or the premises, building, vehicle or place to be searched. A search warrant shall be served by the officer, or any of the officers, to whom the same is directed, but by no other person excepting in aid of said officer, he being present and acting in its execution.
Execution of warrant.	56. The officer or officers to whom the search warrant is directed may break open any outer or inner door or window of any premises, building, vehicle or other place, or anything contained therein, to execute the warrant if, after pronouncement of his authority and purpose, he does not receive admission, and also when necessary for his own liberation or that of any person aiding him in the execution of the warrant.
Searching at night.	57. No search warrant shall be served in the nighttime except for special cause shown to the satisfaction of the issuing magistrate and upon insertion in the warrant of a direction that it may be served in the nighttime.
Return of warrant.	58. Every search warrant shall be executed and returned to the issuing magistrate within ten days after its date, after which time, unless executed, it shall be void.
Inventory made of property seized.	59. Any officer who shall seize any property under a search warrant shall give a copy of the warrant, together with an itemized receipt for the property, to the person from whom it was taken or in whose possession it was found or, in the absence of any person, such officer shall leave said copy and receipt in the place where he found the property.
Officer to make return to issuing magistrate.	The officer who executes a search warrant shall return the same to the issuing magistrate, together with a written inventory of the property taken, made in the presence of at least one credible person other than the officer. The magistrate shall, upon request, exhibit the inventory to
Inventory exhibited upon request.	

any person claiming the property and to the applicant for the warrant and allow copies to be made thereof.

60. In case any person shall be deprived of any property, or the possession of any property, under color of any search warrant, except substantially in accordance with the procedure herein set forth, the issuing magistrate, upon timely application therefor, shall require the return of said property, except such property as shall be proven beyond a reasonable doubt to be unlawful property.

Return of
illegally
seized
property.

61. Any person who shall knowingly and wilfully obstruct, resist or oppose any officer or person assisting an officer, in serving or executing, or attempting to serve or execute, any search warrant authorized by this act shall be guilty of a misdemeanor and punished accordingly.

Resisting
officer a
misdemeanor.

62. Any person who shall maliciously and without probable cause procure a search warrant to be issued and executed shall be guilty of a misdemeanor and punished accordingly.

Procuring
warrant with-
out cause a
misdemeanor.

63. Any person who shall intentionally search any private dwelling occupied exclusively for dwelling purposes, without a warrant therefor, or who shall maliciously and without probable cause, and without a warrant therefor, search any other building, premises, vehicle or place, shall be guilty of a misdemeanor and punished accordingly.

Search
without war-
rant a
misdemeanor.

64. Any officer knowing, or having reasonable cause to believe that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, except the vehicle of a common carrier, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this act and to make complaint against such

Officer to
make com-
plaint.

Seized
property.

Seized prop-
erty returned
upon execu-
tion of bond.

In lieu of bond
may pay re-
tail value to
commissioner.

May replevin.

persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the commissioner subject to this act. Any seized property shall be returned to any person claiming the same upon execution and delivery by him to the commissioner of a bond in a form and with sureties satisfactory to the commissioner in a sum double the retail value of the property, as appraised by the commissioner, conditioned, (1) to pay to the commissioner for the use of the State the full retail value of said property in case the same shall appear to have been unlawful property, and (2) in case it shall appear that said property was not unlawful property, to pay such part of the retail value thereof as may represent the value of the outstanding right, title, interest, lien or claim of any other person, to such other person, which bond shall be enforceable, as other obligations for payment of money, by civil action in any court of competent jurisdiction, first by the commissioner, to be instituted within one year from the date thereof, and, secondly, by such other person as third party beneficiaries, at any time after final judgment in such action by the commissioner, or after the expiration of said year in case no such action shall have been instituted by the commissioner in the meantime. In lieu of such bond, the claimant to the said seized property may pay to the commissioner for the use of the State the retail value thereof in cash, as appraised by the commissioner, under protest, subject to the right of the person making the payment to recover said sum upon establishing that the property was not unlawful property by an action to be commenced within one year from the date of such payment, and not thereafter, in any court of competent jurisdiction. Said claimant may, in lieu of either remedy, bring an action of replevin for the said property against the commissioner in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of said court, said action to be commenced within thirty days from the

seizure of such property and not thereafter. If the commissioner shall be satisfied that property seized was not unlawful property he may return the same to the person or place from whom the same were taken. If any seized property, other than illicit beverages, shall not be reclaimed within thirty days, the commissioner shall, subject to rules and regulations, sell the same at public sale for the use of the State. All monies received by the commissioner hereunder shall be reserved during the time allowed any person an opportunity of establishing a right thereto and shall immediately thereafter be accounted for by the commissioner as in the case of license fees received hereunder.

Goods not
claimed.

All seized illicit beverages shall be held by the commissioner for thirty days after seizure and unless reclaimed within that time as authorized by this act shall be destroyed at the expiration of said time, or upon a final determination of a replevin suit for the same, favorable to the commissioner, if such suit shall have been instituted and delivery of possession of the property thereunder shall not have been required. The commissioner shall cause an advertisement of all seized property, with a description thereof, to be published in a newspaper, printed in the English language, published and circulating in the municipality wherein the property was seized, or if there be no such newspaper in said municipality then in a newspaper printed in the English language published and circulating in the county where said property was seized, once a week for two weeks successively commencing within ten days after said seizure, and shall cause notice of such seizure, with a description of the property, to be posted in three public places convenient to the place of seizure, including, if reasonably possible, the premises, building or place from which the seized property was taken, within ten days from the date of such seizure. Property seized and released shall thereafter be subject to further seizure because of ownership, possession or use thereof in connection with further unlawful alcoholic beverage activities.

Disposition
of seized
beverages

Advertising
seized prop-
erty.

Released prop-
erty subject to
further
seizure.

Liens, etc., on
seized
property.

Commissioner's
rights subject
to lien, etc.

Innocent
party to file
statement.

Right of
preference
established.

Proviso.

65. No person bona fide having a title, lien or other right or interest in any unlawful property other than illicit beverages and unlawful property suited to the manufacture, sale, distribution, storage or transportation of alcoholic beverages, and no other purpose, shall be deprived by reason of this act of such title, lien or other right or interest unless it shall appear that such person had knowledge of the unlawful use to which such property was put or a knowledge of such facts and circumstances as would have led a person of ordinary prudence to discover such use, or unless such person having either such knowledge shall have failed to report said knowledge to the commissioner, and furnished the commissioner a notice of said title, lien or other right or interest within a reasonable time. The right of the commissioner shall be subject to the title, lien or other right or interest as existing at the time of seizure of the property and shall be saved to the innocent party having such title, lien or other right or interest, as follows: Such innocent party shall, at any time before sale of the seized property by the commissioner file with him a statement setting forth the nature of the title, lien or other right, or interest so held and the amount or value thereof. The validity of said title, lien or other right or interest, and the right of the person asserting the same to preference and payment hereunder and the amount or value thereof shall thereupon be established by such person to the satisfaction of the commissioner or established by a suit against the commissioner for the recovery of such amount or value, not exceeding the net proceeds of sale after deduction of the expense of the seizure and sale, including storage and all court costs, in a court of competent jurisdiction, to be instituted within thirty days after the sale of said property by the commissioner and not thereafter. Such amount or value, so established, shall thereupon be paid to such innocent person out of the net proceeds of sale by the commissioner; *provided, however,* that the commissioner may, prior to a sale

of such seized property, surrender the same in specie to such innocent person, if satisfied of the validity of the claim, of the right of the person asserting the same to preference as aforesaid, and that the amount or value of the said title, lien or other right or interest exceeds the value of the property. All sales by the commissioner shall convey the commissioner's right, title and interest which shall be that of sole and absolute ownership, free and clear of all outstanding title, rights, interest and liens, which outstanding title, rights, interest and liens shall in the cases herein provided, be transferred and attached to the proceeds of sale to be availed of as herein provided, but otherwise shall be extinguished and void. No delivery of seized property by the commissioner, except after sale thereof by him, shall affect or impair any right, title or interest therein or thereto, or lien thereon.

Sales to convey commissioner's rights.

Delivery of property to impair lien.

Detention of evidence.

66. Nothing in this act contained shall prohibit the detention of evidence pursuant to law.

67. No seized property shall be sold or destroyed except upon order of a magistrate. Any magistrate may, upon showing of facts tending to establish the right of the commissioner to sell or destroy any seized property, and upon such notice, if any, in the discretion of the magistrate, as the circumstances of the case may admit, make an order for sale or destruction hereunder. In case any alcoholic beverage shall be subject to be destroyed hereunder, any magistrate may, in lieu of ordering such destruction, direct the State Department of Health to analyze such alcoholic beverage, and upon being satisfied by the certificate of the State Department of Health or otherwise, that the alcoholic beverage is of a standard suitable for medicinal purposes, may order that the same be retained by the commissioner for the use of State institutions and all free hospitals. Such use shall be subject to rules and regulations and in accord with the recommendations and approval of the State Department of Health.

Order by magistrate.

Seized alcoholic beverages given to hospitals.

Place of
sale.

68. In case of sale of an alcoholic beverage in which a delivery is accompanied by transportation, whether by a common carrier or otherwise, the sale shall be deemed to be made in the county wherein the delivery was made or in the county where the transfer of title, or agreement for sale, was made, or in the county from or to which the shipment was made, and prosecution for said sale may be had in any one of said counties.

Each violation
a separate
offense.

69. Every violation of this act shall constitute a separate offense. In any affidavit, information, complaint or indictment for a violation of this act, separate offenses may be united, and the defendant may be tried on one or more counts at one trial, and the penalty for each separate offense may be imposed. It shall not be necessary in any affidavit, information, complaint or indictment involving a sale of alcoholic beverages to give the name of the purchaser thereof, and it shall not in any affidavit, information, complaint or indictment be necessary to include any defensive negative averments, but it shall be sufficient to state the act or acts constituting the violation and that the same was or were then and there prohibited by law, saving, however, to all defendants the right to require a bill of particulars as in other cases.

Unnecessary
to name pur-
chaser in
affidavit.

Officers to
exercise
diligence.

70. It shall be the duty of all officers to use all due diligence to detect violations of this act and to apprehend the offenders and to make a proper complaint before a magistrate. Arrests may be made as in other cases of misdemeanors.

Constitu-
tionality.

71. In case for any reason any section or part of any section or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or any part of a section or provision of this act.

Appropriation.

72. There is hereby appropriated out of the fees to be collected by the commissioner under this act the sum of one hundred thousand dollars (\$100,000.00) for the expenses of administering this act during the fiscal year ending June thirtieth, nine-

teen hundred and thirty-four. Thereafter, provision shall be made for the maintenance of this department in the annual or supplemental appropriation bills.

73. For the purposes of this act, a sale of a warehouse receipt given upon the storage of an alcoholic beverage shall not be construed as a sale of the beverage represented by the receipt. Sale of warehouse receipt.

74. This act is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed. Act remedial.

75. To provide for contingencies where it would be appropriate and consonant with the spirit of this act to issue a license but the contingency has not been expressly provided for, the commissioner may for special cause shown, subject to rules and regulations, issue a temporary permit for a specific sale during a limited time of a specified quantity of alcoholic beverages, the fee for which permit shall be ten dollars (\$10.00), payable to the commissioner and to be accounted for by him as are license fees. This provision is intended to apply to such contingencies as where a licensee shall have stock on hand at the expiration of his license and cannot otherwise lawfully dispose of it, or where a licensee dies having such stock on hand and the license expires before the alcoholic beverages are disposed of by his personal representative, or in the case of the foreclosure of a chattel mortgage covering alcoholic beverages. The expression of the foregoing specific contingencies is designed merely to illustrate the intention of this provision and the enumeration of these contingencies shall not by implication exclude any other application of this provision otherwise falling within its true intent and meaning or in anywise limit the general power to cover emergencies herein given. Providing for contingencies.

76. Anything to the contrary hereinbefore notwithstanding, no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or public school house, except to hotels, clubs and fraternal organizations which Limiting places that may be licensed.

own or are actually in possession of the licensed premises at the time this act becomes effective.

Sale to minor
a misdemeanor.

77. Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor and punished accordingly.

Bottling for
sale without
license a
misdemeanor

78. Any person, except a person holding a brewery, distillery, winery or rectifier's license under this act, who shall bottle alcoholic beverages for sale or resale shall be guilty of a misdemeanor and punished accordingly.

Act
effective.

79. This act shall take effect immediately, but no licenses shall be granted hereunder until legal promulgation shall have been made of the ratification of the Twenty-first Amendment to the Constitution of the United States of America.

Passed December 6, 1933.

CHAPTER 437

AN ACT to amend an act entitled "A supplement to an act entitled 'An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof' (Revision of 1907), approved May twentieth, one thousand nine hundred and seven," approved June twenty-first, one thousand nine hundred and thirty-three.

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

Section 2
amended.

1. Section two of the act of which this act is amendatory be and the same is hereby amended so that the same shall read as follows:

Punctuation.

After the word "sherbet" and preceding the word "ice" insert a comma (,).