

November 27, 2023

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 3038  
(First Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill No. 3038 (First Reprint) with my recommendations for reconsideration.

Senate Committee Substitute for Senate Bill No. 3038 (First Reprint) establishes sales and events privileges for certain alcoholic beverage manufacturers. This bill will allow for craft breweries, wineries, and others in the craft alcohol industry to sell food, including de minimis items like chips, non-alcoholic beverages, and in partnership with local vendors; attend 25 off-site events per year, like festivals and races; and unlimited on-site events, including private parties, trivia and quiz games, and live music.

I applaud the sponsors of this legislation for recognizing the need to afford additional privileges to our craft alcohol industries. One of my goals in calling for comprehensive liquor license reform was to ensure that our liquor laws are both modern and fair. Our craft alcohol industry continues to grow throughout the State, and our beer and wine manufacturers, distilleries, and meaderies deserve our support to help them succeed. Allowing these industries to expand their events privileges and to partner with other local businesses, like food vendors, will bolster local downtown economies across the State.

However, I believe that this legislation, standing alone, does not sufficiently enhance our antiquated liquor license laws. For the last year, I have called for a more modern approach to these Prohibition-era laws to reflect the current economy and to better support present and future business owners. More equitable access to liquor licenses will primarily benefit small family-owned restaurants, who are the heart and soul of many of our communities and downtowns and deserve our support as policy makers.

Following the Coronavirus disease 2019 (COVID-19) pandemic, states across the country, including Florida, Michigan, and New Mexico, have passed legislation that waives population caps or quotas on liquor licenses in an effort to make more licenses available to small businesses. As in these other states, reforming liquor license laws in New Jersey will help small business owners, support economic development, and promote economic growth throughout our local downtowns. As I have mentioned before, overhauling our liquor license regime will create upwards of 10,000 jobs annually and generate up to \$10 billion in new economic activity over ten years. In addition, a new comprehensive liquor law structure will create up to \$1 billion in new State and local revenues. This is not just a win for businesses' bottom-lines, but also a win for all New Jersey towns and residents.

I remain committed and will continue to advocate for liquor license reform that addresses accessibility and affordability for all New Jersey businesses. To that end, I am recommending that Senate Committee Substitute for Senate Bill No. 3038 (First Reprint) be amended to inject inactive "pocket" licenses into the market, and to provide more opportunities for shopping mall-bound businesses to partake in alcohol sales. I believe that these revisions have the support of my partners in the Legislature at this time and I am hopeful that the changes will be adopted. While these changes are an important step forward in liquor license reform, I look forward to continuing to work with my colleagues in the Legislature to pass even broader and more comprehensive reform.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 3038 (First Reprint) and recommend that it be amended as follows:

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| <u>Page 4, Section 2, Line 39:</u> | After "malt" insert "or malt substitute"                                            |
| <u>Page 4, Section 2, Line 47:</u> | Delete "\$10,625" and insert "established by the director in rules and regulations" |

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| <u>Page 5, Section 2, Line 2:</u>      | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 5, Section 2, Line 32:</u>     | Delete "graduated as follows:" and insert "established by the director in rules and regulations and graduated based on the number of barrels produced by the licensee per annum."                                       |
| <u>Page 5, Section 2, Lines 33-40:</u> | Delete in their entirety                                                                                                                                                                                                |
| <u>Page 5, Section 2, Line 43:</u>     | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 5, Section 2, Line 44:</u>     | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 5, Section 2, Line 48:</u>     | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 6, Section 2, Line 21:</u>     | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 6, Section 2, Line 25:</u>     | Delete "\$1,250, which fee shall entitle the"                                                                                                                                                                           |
| <u>Page 6, Section 2, Line 26:</u>     | Delete "holder to brew up to 1,000 barrels of 31 liquid gallons" and insert "established by the director in rules and regulations and graduated based on the number of gallons produced by the licensee"                |
| <u>Page 6, Section 2, Line 26:</u>     | Delete "The"                                                                                                                                                                                                            |
| <u>Page 6, Section 2, Line 27:</u>     | Delete in its entirety                                                                                                                                                                                                  |
| <u>Page 6, Section 2, Line 28:</u>     | Delete "barrels of 31 fluid gallons produced."                                                                                                                                                                          |
| <u>Page 7, Section 2, Line 1:</u>      | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 7, Section 2, Line 2:</u>      | After "malt" insert "or malt substitute"                                                                                                                                                                                |
| <u>Page 7, Section 2, Line 17:</u>     | Delete "\$938" and insert "established by the director in rules and regulations"                                                                                                                                        |
| <u>Page 7, Section 2, Line 22:</u>     | Delete "graduated as follows: a licensee who manufactures more than" and insert "established by the director in rules and regulations and graduated based on the number of barrels produced by the licensee per annum." |
| <u>Page 7, Section 2, Lines 23-27:</u> | Delete in their entirety                                                                                                                                                                                                |
| <u>Page 7, Section 2, Line 28:</u>     | Delete "or less per annum, \$100."                                                                                                                                                                                      |

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| <u>Page 7, Section 2, Line 32:</u>      | Delete "of \$250" and insert "established by the director in rules and regulations"                                                                                                                                       |
| <u>Page 8, Section 2, Line 35</u>       | Delete "graduated as" and insert "established by the director in rules and regulations and graduated based on the number of gallons produced by the licensee per annum."                                                  |
| <u>Page 8, Section 2, Lines 36-39:</u>  | Delete in their entirety                                                                                                                                                                                                  |
| <u>Page 8, Section 2, Line 40:</u>      | Delete "\$63."                                                                                                                                                                                                            |
| <u>Page 8, Section 2, Line 47:</u>      | Delete "\$100" and insert "established by the director in rules and regulations"                                                                                                                                          |
| <u>Page 9, Section 2, Line 3:</u>       | Delete "of \$250" and insert "established by the director in rules and regulations"                                                                                                                                       |
| <u>Page 9, Section 2, Line 33:</u>      | Delete "\$625" and insert "established by the director in rules and regulations"                                                                                                                                          |
| <u>Page 10, Section 2, Line 14:</u>     | Delete "\$1,000" and insert "established by the director in rules and regulations"                                                                                                                                        |
| <u>Page 10, Section 2, Line 26:</u>     | Delete "of \$250" and insert "established by the director in rules and regulations"                                                                                                                                       |
| <u>Page 10, Section 2, Line 28:</u>     | Delete "\$938" and insert "established by the director in rules and regulations"                                                                                                                                          |
| <u>Page 10, Section 2, Line 33:</u>     | Delete "graduated as" and insert "established by the director in rules and regulations and graduated based on the number of gallons produced by the licensee per annum."                                                  |
| <u>Page 10, Section 2, Lines 34-39:</u> | Delete in their entirety                                                                                                                                                                                                  |
| <u>Page 11, Section 2, Line 36:</u>     | Delete "\$938" and insert "established by the director in rules and regulations"                                                                                                                                          |
| <u>Page 12, Section 2, Line 28:</u>     | Delete "\$12,500" and insert "established by the director in rules and regulations"                                                                                                                                       |
| <u>Page 12, Section 2, Line 37:</u>     | Delete "\$3,750" and insert "established by the director in rules and regulations"                                                                                                                                        |
| <u>Page 12, Section 2, Line 47:</u>     | Delete "graduated as follows: to so bottle and rebottle not more than" and insert "established by the director in rules and regulations and graduated based on the number of gallons produced by the licensee per annum." |

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| <u>Page 12, Section 2, Line 48:</u>   | Delete in its entirety                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <u>Page 13, Section 2, Lines 1-2:</u> | Delete in their entirety                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <u>Page 13, Section 2, Line 38:</u>   | Delete "\$938" and insert "established by the director in rules and regulations"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>Page 13, Section 2, Line 47:</u>   | Delete "\$7,500" and insert "established by the director in rules and regulations"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <u>Page 14, Section 2, Line 5:</u>    | Delete "\$625" and insert "established by the director in rules and regulations"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>Page 14, Section 3, Line 13:</u>   | <p>Delete "This act shall take effect immediately." and insert "Section 6 of P.L.1947, c.94 (C.33:1-12.18) is amended to read as follows:</p> <p>C.33:1-12.18 Issuance of new license permitted to applicants filing within one year of expiration; fee.</p> <p>6. a. Except as provided in subsection d. of this section, in any case in which a timely renewal was not filed, nothing in this act shall be deemed to prevent the issuance of a new license to a person who files an application therefor within one year following the expiration of the license renewal period, but who pays the municipal and State renewal fees for the year for which a timely renewal application was not filed, if the director shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control or other extraordinary circumstances.</p> <p>b. Any request for relief under this section shall be filed not later than one year following the expiration of the license renewal period for the license which was not renewed in a timely manner and shall be accompanied by a nonreturnable filing fee of \$100 payable to the director for each license term.</p> <p>c. A new license issued pursuant to this section shall be assigned the same license number as the license which was not renewed in a timely manner.</p> <p>d. [Notwithstanding subsection a. of this section, a person</p> |

with an] An expired Class C license, as to which [was] a timely renewal was not filed and as to which relief pursuant to subsection a. of this section was either not timely requested or was denied, shall not [renewed within the five years immediately preceding the enactment of P.L.2010, c.14, but who pays the municipal and State renewal fees for each year for which a timely renewal application was not filed, may file for issuance of a new license in accordance with subsection a. of this section within six months of the effective date of P.L.2010, c.14] be subject to renewal once the time period set forth in subsections a. and b. of this section has elapsed and the time for appeal from the director's determination has expired or, if an appeal from the director's determination has been taken, such relief has been denied.

e. Notwithstanding the limitation set forth in section 2 of P.L.1947, c.94 (C.33:1-12.14) concerning the number of licenses that may be issued within a municipality, a Class C license that has not been renewed pursuant to this section within eight years immediately preceding the enactment of P.L.2023, c. (C. ) (pending before the Legislature as this bill) may be reissued at a public sale in a manner consistent with the provisions of P.L.1975, c.275 (C.33:1-19.1 et seq.) for use at a licensed premises located within the municipality, or transferred to another municipality in accordance with regulations promulgated by the division for issuance at a public sale in a manner consistent with the provisions of P.L.1975, c.275 (C.33:1-19.1 et seq.) and for use at a licensed premises located within the acquiring municipality.

f. Any Class C license issued pursuant to subsection d. of this section shall be of the same license type as the expired license and shall be used in a manner consistent with the provisions of Title 33 of the Revised Statutes and any regulation promulgated by the director.

(cf: P.L.2010, c.14, s.1)

4. Section 1 of P.L.1977, c.246 (C.33:1-12.39) is amended to read as follows:

1. [No] a. The governing board or body of a municipality may renew a Class C license [,] as [the same is] defined in R.S.33:1-12, [shall be renewed if the same] regardless of whether the license has been actively used in connection with the operation of a licensed premises.

b. The governing board or body of a municipality may deny the renewal of a Class C license that has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed [unless the director, for good cause and] if, after a hearing, [authorizes a further application for one or more renewals within a stated period of years ; provided, however that,] it finds that the holder of the license has not made a good faith effort to resume active use of the license.

c. The governing board or body of a municipality shall not deny the renewal of an inactive Class C license pursuant to subsection b. of this section if the licensee establishes by affidavit filed with and approved by the governing board or body that the licensee has been deprived of the use of the licensed premises as a result of eminent domain [,] or fire or other casualty [,] and establishes by affidavit filed with the that is making a good faith effort to resume active use of the license in connection with the operation of a licensed premise then the period of two years provided for in this section shall be automatically extended for an additional period of]. A governing board or body that approves an affidavit for relief filed pursuant to this subsection shall extend the renewal period of the license for an additional two years.

[Any request for relief under this section shall be accompanied by a nonreturnable filing fee of \$100.00 payable to the director.]

d. Notwithstanding the limitation set forth in section 2 of P.L.1947, c.94 (C.33:1-12.14) concerning the number of licenses that may be issued within a municipality, a Class C license that has not been renewed pursuant to this section within eight years immediately preceding the enactment of P.L.2023, c. (C. ) (pending before the Legislature as this bill) may be reissued at public sale in a manner consistent with the provisions of P.L.1975, c.275 (C.33:1-19.1 et seq.) for use at a licensed premises located within the municipality. The use of a plenary retail consumption license issued pursuant to this subsection shall be in a manner consistent with the provisions of Title 33 of the Revised Statutes and regulations promulgated by the director.

e. Nothing in this section shall be construed to restrict the authority of a governing board or body of a municipality or the director to issue, renew, or deny a renewal of a license, including but not limited to an inactive Class C license, on any other grounds.

(cf: P.L.1996, c.127, s.1)

5. (New section) a. As used in this section:

"Food court area" means a communal seating area designated by the shopping mall in which patrons may consume food and beverages purchased from one or more establishments.

"Shopping mall" means a standalone, enclosed publicly accessible building with a gross square footage of not less than 500,000 and a fully enclosed walkway or hall area that serves to connect retail, entertainment, and food and beverage establishments, and office space.

"Special permit" means a permit issued by a municipal governing body pursuant to this section to

sell any alcoholic beverage for consumption on the shopping mall premises by the glass or other open receptacle.

"Strip mall" means a retail shopping complex that consists of stores, restaurants, or other businesses in adjacent spaces or storefronts in one or more buildings that are connected by a doorway or open onto a common parking lot or outdoor pedestrian walkway.

b. The governing body of a municipality may, by ordinance or resolution, issue special permits to a person or other legal entity for use in connection with a food and beverage establishment located within a shopping mall. The permit shall be issued at a public sale in a manner consistent with the provisions of P.L.1975, c.275 (C.33:1-19.1 et seq.). The holder of this special permit shall be entitled to sell any alcoholic beverage for consumption on the premises of the retail food establishment or food court area.

The governing body may issue up to four special permits for use in connection with a food and beverage establishment located within a shopping mall with a minimum gross square footage of not less than 500,000 and one additional special permit for each 150,000 square feet greater than the 500,000 minimum square footage established pursuant to this section.

c. A special permit issued pursuant to this section shall not be transferred for use in connection with any premises other than a premises that is operated as a food and beverage establishment located within the same shopping mall. The holder of this special permit shall not be entitled to transfer the special permit for use in connection with a premises located on the shopping mall property which is not physically connected to the enclosed walkway or hall area that serves to connect retail, entertainment, and food and beverage establishments, and office space.

A person who acquires a special permit in a private transaction pursuant to this subsection shall pay to the governing body of the municipality in which the premises is situated a \$5,000 special permit transfer fee. A special permit that is not transferred pursuant to this section and expires because it is no longer sited at the food and beverage establishment may be reissued by the governing body pursuant to this section.

d. A special permit shall not be issued for use in connection with a premises operating within a strip mall as defined in subsection a. of this section or a premises in which 25 percent of the gross square footage is comprised of office space that is not open to the public as a retail, entertainment, or food and beverage establishment.

e. A special permit issued pursuant to this subsection shall not be subject to the population limitation established pursuant to section 2 of P.L.1947, c.94 (C.33:1-12.14). An interest in a special permit issued pursuant to this section shall be excluded in determining the maximum number of plenary retail consumption licenses issued to a person pursuant to P.L.1962, c.152 (C.33:1-12.31 et seq.). The limitation on the number of special permits issued for use in connection with a shopping mall based on square footage pursuant to subsection b. of this section shall not limit the number of plenary retail consumption licenses that may be issued pursuant to R.S.33:1-12 for use in connection with a shopping mall.

f. Except as otherwise provided by this section, each special permit shall be governed by the provisions of R.S.33:1-12 and R.S.33:1-19 in the same manner as plenary retail consumption licenses. The special permit shall be issued by the governing body of the municipality and shall be renewed annually at the request of the special permit holder. The initial issuance fee for the special permit shall be \$25,000 and the annual renewal fee shall be \$5,000 paid to the municipality. An additional

annual renewal fee of \$1,000 shall be paid to the division.

g. A special permit issued pursuant to this section shall not be issued to any person who would not qualify as a plenary retail consumption license holder pursuant to Title 33 of the Revised Statutes and the rules and regulations of the director.

h. A municipality that prohibits the sale of alcoholic beverages within its borders shall not be entitled to issue a special permit pursuant to this section unless the municipality by resolution or referendum, as appropriate, allows the sale of alcoholic beverages by plenary retail consumption license holders following the effective date of this act.

i. A special permit issued pursuant to this section shall be used in a manner consistent with the provisions of Title 33 of the Revised Statutes, regulations, and any applicable municipal ordinances.

6. (New section) a. The Director of the Alcoholic Beverage Control, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 3, 4, and 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Notwithstanding the provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Alcoholic Beverage Control may adopt, immediately upon filing with the Office of Administrative Law, and no later than the 180th day after the effective date of this act, such regulations as the director deems necessary to implement any of the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). Regulations adopted pursuant to this subsection shall be effective until the adoption of rules and regulations pursuant to subsection a. of this section, and may be amended, adopted, or readopted by the director in

accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

7. Sections 1, 2, and 6 of this act shall take effect immediately and sections 3, 4, and 5 of this act shall take effect 180 days following the date of enactment, but the Director of the Division of Alcoholic Beverage Control may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Respectfully,

/s/ Philip D. Murphy

Governor

[seal]

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor