

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX, CN-087
TRENTON, NJ 08625

BULLETIN 2434

March 13, 1984

ITEM

1. RECENT LEGISLATION - AMENDMENT TO "TIED-HOUSE" STATUTE TO ELIMINATE PREVIOUSLY INVALIDATED LANGUAGE PERTAINING TO RESTRICTIONS BETWEEN SUPPLIERS AND WHOLESALERS AND EXCEPTING FROM PROHIBITION THE RETAIL PRIVILEGES CONFERRED BY CLASS A OR B LICENSES, RULES OR REGULATIONS, OR SPECIAL PERMIT, AND ALSO EXCEPTING HOTELS OR MOTELS HAVING 100 OR MORE ROOMS (N.J.S.A. 33:1-43) - TEXT OF AMENDED STATUTE.
2. RECENT LEGISLATION - AMENDMENT TO STATUTE PROHIBITING PURCHASE OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS AND PROVIDING AS MANDATORY PENALTY A ONE-YEAR SUSPENSION OF DRIVING PRIVILEGES (N.J.S.A. 33:1-81) - TEXT OF AMENDED STATUTE.
3. AMENDED REGULATION - AMENDMENT TO MANUFACTURERS' REBATES AND COUPONS (N.J.A.C. 13:2-24.11) - TEXT OF AMENDED REGULATION
4. NEW REGULATION - NEWLY ADOPTED REGULATION PROHIBITS SALE BY ANY LICENSEE FOR ULTIMATE RESALE TO CONSUMERS ANY ALCOHOLIC BEVERAGE IN A CONTAINER MARKED FOR ANOTHER STATE'S DEPOSIT (N.J.A.C. 13:2-27.2) - TEXT OF NEW REGULATION.
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6. AMENDMENT TO NOTICE TO WHOLESALERS, DISTILLERS, BREWERS, VINTNERS, IMPORTERS AND SUPPLIERS: REVISED PROCEDURE FOR 1984 PRODUCT INFORMATION - BRAND REGISTRATION FILING (N.J.A.C. 13:2-33.1 & .2) AS PUBLISHED IN BULLETIN 2433, ITEM 4, DECEMBER 14, 1983.
7. NOTICE TO ALL WHOLESALERS OF ALCOHOLIC BEVERAGES IN NEW JERSEY PERTAINING TO SERVICE OF A "NOTICE OF OBLIGATION" AS REQUIRED BY N.J.A.C. 13:2-24.4.
8. TRANSIT INSIGNIA AND SPECIAL TRANSPORTATION PERMITS - INFORMATION REGARDING QUALIFICATIONS AND REQUIREMENTS FOR SUCH PERMITS.
9. VIDEO POKER AND OTHER SIMILAR TYPE MACHINES ON LIQUOR LICENSED PREMISES - AFFIRMANCE OF BAN - EXCEPTIONS
10. FINDINGS AND CONCLUSIONS OF DIRECTOR UPON EXAMINATION OF VIDEO CARD GAME DEVICES - SIDNEY ROSENKRANZ AND RICHARD FERNANDEZ v. JOHN F. VASSALLO, JR., DIRECTOR OF THE STATE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, February 21, 1984.

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Chapter 572 of the Laws of 1983 (approved January 17, 1984) amended N.J.S.A. 33:1-43 to permit an interest by a supplier or wholesaler in a retail license held in conjunction with a hotel or motel having at least 100 guest rooms, provided that the retail licensee may not sell or dispense any of the product of such supplier or wholesaler. The amendment also permits the converse. In addition, the language of the statute was updated to eliminate provisions which had expired and to eliminate the provisions prohibiting interests between suppliers and wholesalers, since such provisions had been invalidated either by court decisions or attorney general opinion.

The statute, as amended, now reads as follows:

33:1-43. Interest in both brewery, distillery or wholesaling, etc., and in retailing, prohibited

33:1-43. a. 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 chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler.

b. It shall be unlawful for any owner, part owner, stockholder 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 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, rectifying and blending plant, or wholesaling or importing interests of any kind whatsoever.

No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler.

c. Nothing in this section shall prohibit:

(1) the exercise of limited retail privileges by Class A or Class B licensees conferred pursuant to R.S. 33:1-10, R.S. 33:1-11, by rule or regulation or by special permit issued by the director;

(2) any owner, part owner, stockholder, officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery, rectifying and blending plant or any wholesaler of alcoholic beverages, from conducting, owning, either in whole or in part, or being directly or indirectly interested in the retailing of any alcoholic beverages, under any retail consumption license or State issued permit, in conjunction with and as a part of the operations of a hotel or motel; or

(3) any owner, part owner, stockholder or officer or director of any corporation, or any other person or corporation interested in any way whatsoever in the retailing of alcoholic beverages, under a retail consumption license or State issued permit, in conjunction with and as a part of the operations of a hotel or motel from conducting, owning, either in whole or in part, or being a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interest of any kind whatsoever.

No more than 20% of the total gross annual revenues of a hotel or motel described in paragraphs (2) and (3) shall be derived from the sale of alcoholic beverages by the hotel or motel. A retail licensee described in paragraph (2) and (3) shall not purchase or sell any alcoholic beverage product produced or sold by the brewery, winery, distillery, rectifying and blending plant or wholesaler that has any interest in the retail license of the hotel or motel, and shall, within 30 days following the effective date of this act, file with the Division of Alcoholic Beverage Control a list of all alcoholic beverage products which shall not be purchased or sold by the hotel or motel. Thereafter, the retail licensee shall file a new or amended list with the division within 30 days of any changed circumstances which affect the information on the list. This list shall be made available to the public upon request.

For purposes of this subsection "hotel" or "motel" means an establishment containing at least 100 guest room accommodations where the relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest.

2. RECENT LEGISLATION - AMENDMENT TO STATUTE PROHIBITING PURCHASE OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS AND PROVIDING AS MANDATORY PENALTY A ONE-YEAR SUSPENSION OF DRIVING PRIVILEGES (N.J.S.A. 33:1-81) - TEXT OF AMENDED STATUTE.

Chapter 574 of the Laws of 1983 (approved January 17, 1984) amended N.J.S.A. 33:1-81 to provide that, in addition to the monetary penalty or jail sentence imposed for violation of the statute prohibiting purchase of alcoholic beverages by or for underage persons, a mandatory suspension of driving privileges for a period of one year shall also be imposed.

The statute, as amended, now reads as follows:

33:1-81. Unlawful acts by persons under legal age for purchase of alcoholic beverages; disorderly persons

It shall be unlawful for (a) a person under the legal age for purchasing alcoholic beverages to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage; or

(b) A person under the legal age for purchasing alcoholic beverages to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him any alcoholic beverage; or

(c) Any person to misrepresent or mistake his age, or the age of any other person for the purpose of inducing any licensee or any employee of any licensee, to sell, serve or deliver any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages; or

(d) Any person to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or to purchase alcoholic beverages, for another person who does not because of his age have the right to purchase and consume alcoholic beverages.

Any person who shall violate any of the provisions of this section shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00. In addition, the court shall suspend the person's license to operate a motor vehicle for one year or prohibit the person from obtaining a license to operate a motor vehicle in this State for one year beginning on the date he becomes eligible to obtain a license or on the date of conviction, whichever is later. In addition to the general penalty prescribed for an offense, the court may require any person under the legal age to purchase alcoholic beverages who violates this act to participate in an alcoholic education or treatment program authorized by the Department of Health for a period not to exceed the maximum period of confinement prescribed by law for the offense for which the individual has been convicted.

3. AMENDED REGULATION - AMENDMENT TO MANUFACTURERS' REBATES AND COUPONS (N.J.A.C. 13:2-24.11) - TEXT OF AMENDED REGULATION.

N.J.A.C. 13:2-24.11, Manufacturers' Rebates and Coupons, has been amended to specifically include in the regulatory language the interpretation and conditions of the use of rebates and refunds as appeared in Bulletin 2432, Item 2 (August 31, 1983). The basic changes in the regulation limit a refund to one refund or rebate per household or family for any single rebate or refund program, and require the supplier offering the refund or rebates to maintain adequate records to assure this. The amendment also specifically limits the purchase requirement to one alcoholic beverage product (i.e., one bottle, one six-pack, one case, etc.) and prescribes that no other purchase may also be required to qualify for the rebate or refund.

The full text of N.J.A.C. 13:2-24.11, as amended, is as follows:

N.J.A.C. 13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of an alcoholic beverage directly to consumers for the purpose of introducing or reintroducing consumers to its product(s) or for advertising, promotion or market-testing purposes.

1. No such rebate may be for more than the full amount of the retail purchase price of the alcoholic beverage. In addition, the reimbursement of first-class postage to the consumer for the cost of mailing in the rebate offer for redemption is permitted.

2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A proof-of-purchase may also be required to be submitted with the form. Such forms shall be

distributed to consumers via advertisements in newspapers, magazines, or circulars of general distribution; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers on bottles; provided that such pads or neck-hangers shall be non-discriminatorily distributed to licensees within a targeted advertising area. Nothing shall prohibit the directing of a rebate offer to a specific geographic area, but rebates shall be made to any New Jersey resident complying with the terms of the offer, whether or not they shall reside in the targeted advertising area.

3. Any rebate offered in accordance with this section shall be mailed to the consumer completing the form at the address shown thereon in the form of cash or check only.

4. At least ten days prior to the commencement of any rebate promotion offered in accordance with this section, the manufacturer, distiller, blender and rectifier, brewer, vintner, or importer making such rebate offer shall file in duplicate with the Director of the Division of Alcoholic Beverage Control a statement setting forth all terms and conditions of the rebate offer, including, but not limited to, the amount of rebate, any proof-of-purchase requirement, the effective dates of the offer, the marketing area in which the offer will be promoted, how the offer will be advertised to the public and the name and address of any clearinghouse retained to process rebates. A facsimile or copy of the rebate offer form shall also be filed in duplicate. The Division shall promptly be notified of any change in the terms of a rebate offer prior to such change's taking place.

5. No such rebate offered in accordance with this section shall require the purchase of more than one alcoholic beverage product or the purchase of any other item or product as a condition for either obtaining a rebate or enhancing the value of a rebate.

6. Any rebate offered in accordance with this section shall be limited to one refund or rebate per household or family for any one rebate or refund program and the rebate offer form shall specifically indicate such restriction. Any manufacturer, distiller, blender and rectifier, brewer, vintner or importer offering a rebate or refund program shall maintain adequate records, or shall cause the clearinghouse processing such rebates to maintain adequate records, in order to assure compliance with the limitation of one rebate or refund per household or family as set forth herein.

(b) No manufacturer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute by any means whatsoever any coupon or certificate redeemable for a discount on or "cents-off" the purchase price of any alcoholic beverage by a consumer at any retail licensed premises, nor shall any retail licensee redeem any such coupon or certificate.

(c) No retail licensee shall advertise a lower price or a reduction in the price of an alcoholic beverage product or package it is offering for sale by reason of a manufacturer's rebate or refund. A retail licensee, however, may indicate in advertising that a manufacturer's rebate is being offered on a particular alcoholic beverage product or package but any such advertising must also indicate that the rebate is limited to one per household or family.

As amended, R.1983 d.644, eff. January 17, 1984.
See 15 N.J.R. 1830(a), 16 N.J.R. 146(a).

4. NEW REGULATION - NEWLY ADOPTED REGULATION PROHIBITS SALE BY ANY LICENSEE FOR ULTIMATE RESALE TO CONSUMERS ANY ALCOHOLIC BEVERAGE IN A CONTAINER MARKED FOR ANOTHER STATE'S DEPOSIT (N.J.A.C. 13:2-27.2) - TEXT OF NEW REGULATION

The Division has adopted N.J.A.C. 13:2-27.2, which became effective upon its promulgation in the New Jersey Register on March 5, 1984, and which prohibits the sale by any New Jersey licensee, for ultimate resale to a consumer in New Jersey, of any alcoholic beverage in a container marked for a deposit in another state.

The full text of N.J.A.C. 13:2-27.2 is as follows:

13:2-27.2 Deposit marked containers

No manufacturer, supplier, importer, brand registrant, wholesale or retail licensee or permittee shall sell, distribute or market for resale to a consumer in New Jersey or purchase for resale to a consumer in New Jersey any alcoholic beverage product packaged in a bottle or can marked for deposit of another state.

As Adopted, R.1984 d. 51, eff. March 5, 1984.
See 15, N.J.R. 31(a), 16 N.J.R. 428(b).

5. NOTICE TO RETAIL CONSUMPTION LICENSEES REGARDING COLLECTION OF RETAIL SALES TAX ON NON-ALCOHOLIC BEVERAGES

It has come to the attention of both this Division and the Division of Taxation that a prevalent practice by a number of retail consumption licensees with restaurants is to include food on a restaurant bill and beverages on a separate "bar tab" even though the beverages may include non-alcoholic beverages (or even food items containing an alcoholic beverage, such as an ice cream sundae with a liqueur topping).

The Director of the Division of Taxation reminds licensees that N.J.S.A. 54:32B-8.34 of the New Jersey Sales and Use Tax Act provides an exemption from sales tax in this State for retail sales of alcoholic beverages as defined in the Alcoholic Beverage Tax Law. Soda and other non-alcoholic beverages only fall within this exemption from sales tax when mixed with an alcoholic beverage.

The sale of soda or other non-alcoholic beverages by a licensee, whether or not by the drink, is subject to sales tax and the tax must be stated and collected at the current rate of 6% on the charge for the beverage and remitted to the Division of Taxation. The legal incidence of sales tax on the sale of soda and other non-alcoholic and carbonated beverages is not affected by the common licensee practice of accounting for such a sale on the "bar tab".

Licensees are also reminded by this Division that N.J.S.A. 33:1-31 provides, inter alia, that any license may be suspended

or revoked for "(n)onpayment of any excise tax or other payment required by law to be paid to the State Tax Commissioner or for "(f)ailure to have at all times proper stamps or other proper evidence of payment of any tax required to be paid by any law of this State." It will be considered evidence of non-payment of the retail sales tax if sales tax is not added to the purchase of soda or other carbonated or non-alcoholic beverages, and appropriate disciplinary action will be taken against the license by this Division. The licensee is also subject to other penalties under Title 54 of the Revised Statutes and regulations promulgated by the Division of Taxation.

It is extremely important to the revenues and budget of New Jersey that all applicable sales taxes be charged, collected and remitted and therefore the cooperation of licensees is requested to assure strict compliance and to eliminate the practice as discussed above.

6. AMENDMENT TO NOTICE TO WHOLESALERS, DISTILLERS, BREWERS, VINTNERS, IMPORTERS AND SUPPLIERS: REVISED PROCEDURE FOR 1984 PRODUCT INFORMATION - BRAND REGISTRATION FILING (N.J.A.C. 13:2-33.1 & .2) AS PUBLISHED IN BULLETIN 2433, ITEM 4, DECEMBER 14, 1983.

The notice to wholesalers, distillers, brewers, vintners, importers and suppliers regarding the revised procedure for 1984 product information-brand registration filing pursuant to N.J.A.C. 13:2-33.1 and .2, as set forth in Bulletin 2433, Item 4, December 14, 1983, is modified as to the fee in the following respect:

For any brand which the registrant does not reasonably expect will sell over 25 standard cases of the brand being registered for the brand registration year, the \$10.00 fee is waived. The purpose of this modification in the fee requirement is to avoid an adverse effect on the availability of boutique wines imported in very small quantity or on private label brands that are little used. For all other products, the fee remains at \$10.00 per brand being registered, with no ceiling.

The Division has developed a form for the format which may be utilized as the affidavit that will establish that the brand being registered is entitled to the waiver of the fee. The use of the form is not mandatory, but the content must be included in an affidavit. A facsimile of the Division's form is as follows:

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
CN-087, TRENTON, NEW JERSEY 08625

AFFIDAVIT TO SUPPORT WAIVER
OF BRAND REGISTRATION FEES

(The following form may be used to have the \$10.00 fee waived for each brand registration of any product that the registrant does not reasonably expect will sell over 25 standard cases of the brand being registered for that brand registration year, pursuant to N.J.A.C. 13:2-33.1. If, subsequent to the filing of the affidavit to waive the \$10.00 fee, it turns out that more than 25 cases are sold, the \$10.00 fee should be submitted to the Division of Alcoholic Beverage Control at that time.)

STATE OF _____)
COUNTY OF _____) SS.

_____, being duly sworn according to law, upon his/her oath deposes and says:

1. I am the _____, (Name of Registrant) _____, and I am authorized to make this affidavit on its behalf.

2. The said Registrant is herewith filing Brand Registrations for 19__ for the following brands/the brands on the attached list:

3. It is reasonably anticipated that the registrant and the wholesalers/distributors designated by it will not sell more than 25 cases of each of the brands listed in item 2 above during this year.

4. I am making this affidavit to support the waiver of the \$10.00 brand registration fee for each of the brands listed in item 2 above.

Sworn to and subscribed
before me this _____ day
of _____, 19__ .

7. NOTICE TO ALL WHOLESALERS OF ALCOHOLIC BEVERAGES IN NEW JERSEY PERTAINING TO SERVICE OF A "NOTICE OF OBLIGATION" AS REQUIRED BY N.J.A.C. 13:2-24.4.

The following notice has been furnished to all wholesalers reminding them of the requirement to furnish a "Notice of Obligation" to any retail licensee who has not paid an invoice within 30 days of its date and the delivery of the products:

NOTICE TO ALL WHOLESALERS OF ALCOHOLIC BEVERAGES IN NEW JERSEY

N.J.A.C. 13:2-24.4 provides, in pertinent part, that:

"1. The maximum period for which credit may be extended in sales made to retailers is 30 days from the date of delivery in the case of all sales of any type of alcoholic beverage".

"(b) In the event that a wholesaler has not received payment in accordance with the terms of sale as set forth upon an individual delivery invoice pursuant to N.J.A.C. 13:2-39.4, such wholesaler shall, personally or by first class mail, serve a 'Notice of Obligation' upon any such defaulting retailer or its employee within three business days after the obligation is due. Service shall be deemed complete on the second business day following the date of mailing or when personal service is made".

"(c) A wholesaler which has complied with the provisions of sub-paragraph (b) above shall, on the third business day thereafter, cause a written or electronic 'Notice of Delinquency' to be transmitted to all wholesalers of alcoholic beverages who sell to retailers in this State and to the retailer which is the subject of the Notice. The 'Notice of Delinquency' shall contain the State license number of the delinquent licensee, the amount due, and the date past due".

We have recently amended the quoted regulation to permit the service of the "Notice of Obligation" by first class mail, where, heretofore, "physical" service of such notice was required.

In spite of that additional convenience, it has come to our attention that some of the wholesalers in this State have not been complying with the terms of this regulation, and are neglecting to serve the "Notice of Obligation", and/or simply placing the defaulting retailer on the COD list.

This notice, therefore, is to serve as a reminder that each and every wholesaler is obliged to serve a "Notice of Obligation" whenever and wherever the circumstances requiring it are present.

Failure to utilize the "Notice of Obligation", as required will result in disciplinary proceedings to be taken against the offending wholesaler.

Very truly yours,


JOHN F. VASSALLO, JR.
DIRECTOR

Dated: January 19, 1984

8. TRANSIT INSIGNIA AND SPECIAL TRANSPORTATION PERMITS - INFORMATION REGARDING QUALIFICATIONS AND REQUIREMENTS FOR SUCH PERMITS.

Any motor-driven vehicle engaged in intrastate activity in New Jersey must be commercially registered with the New Jersey Division of Motor Vehicles. This requirement extends to passenger vehicles, trucks and tractor units engaged in transportation of alcoholic beverages into, out of and within the State of New Jersey.

Vehicles owned or operated by non-resident individuals or businesses must obtain New Jersey commercial registration and license plates prior to the conduct of intrastate business activity in the State. Trailer and semi-trailer units registered outside of New Jersey are extended the privilege of intrastate operation when drawn by a New Jersey registered power unit. Non-resident alcoholic beverage licensees should be aware that agreements of reciprocal or apportioned motor vehicle registration in other states are not recognized as valid within the State of New Jersey. Licensees currently relying on such agreements as proof of registration should take steps to fully and completely register their vehicles in New Jersey. (N.J.S.A. 39:3-15)

When a business or individual is engaged in the transport of alcoholic beverages not intended for delivery, sale or consumption in New Jersey, they are exempt from the foregoing registration requirements. Exempt activity might include transportation of alcoholic beverages between points outside the State and piers of import or export within the State, or transport from licensed premises within the State directly to points outside the State. Such transporters are required to hold a New Jersey Limited Transportation Permit to transport alcoholic beverages, but do not have to provide proof of motor vehicle registration in New Jersey. (N.J.A.C. 13:2-21.7)

Any state or municipal alcoholic beverage licensee applying for Transit Insignia - a decal issued to commercial-type vehicles, or Special Transportation Permits - a glove-compartment certificate issued to passenger-type vehicles, must include proof of commercial registration in New Jersey. This may be indicated by an "X" prefixed license plate number, or by a photo-copy of the current registration card issued to each vehicle listed on the application. Registration cards issued to passenger-type vehicles (sedan, station wagon, etc.) should reflect a code "15", denoting a passenger vehicle which pays a commercial fee of at least \$52.50. Applications which list commercial vehicles (van, truck, tractor unit) should be accompanied by a copy of a registration card indicating that the vehicle is registered in New Jersey. (N.J.A.C. 13:2-20.8)

Licensees should note that a vehicle listed on an application for either Transit Insignia or Special Transportation Permit must be exclusively owned, controlled and operated by the licensee, i.e. the name on the alcoholic beverage license. When in doubt, the licensee should be sure that the name on the alcoholic beverage license is the same as that found on the motor vehicle registration. Should these differ, the application must be accompanied by a copy of a lease agreement which turns over exclusive control of the vehicle to the licensee. (N.J.A.C. 13:2-20.9)

The licensing year for Transit Insignia and Special Transportation Permits is September 1 of any given year to August 31 of the following year. The annual fee for either Transit Insignia or Special Transportation Permit is \$25.00 per vehicle. The appropriate fee must accompany the application in the form of a Money Order or Certified Check made payable to the order of the Division of Alcoholic Beverage Control. (N.J.A.C. 13:2-20.6.)

9. VIDEO POKER AND OTHER SIMILAR TYPE MACHINES ON LIQUOR LICENSED PREMISES - AFFIRMANCE OF BAN - EXCEPTIONS

In Bulletin 2430, Item 3, March 31, 1983, the Director gave notice that video machines which resemble games of cards, dice, roulette, etc., are not permitted in liquor licensed premises in New Jersey as they are violative of N.J.A.C. 13:2-23.7. A suit was subsequently filed and the ban was temporarily not enforced due to a stay ordered by the Appellate Division. On January 25, 1984, however, the Appellate Division of the Superior Court of New Jersey issued its opinion affirming the ban on such video machines as previously enunciated by the Director. Sidney Rosenkranz and Richard Fernandez v. John F. Vassallo, Jr., Director of the State Division of Alcoholic Beverage Control, (App. Div. Docket No. A-3925-82 T1, January 25, 1984.)

Although the ban remains in effect, the Division recognizes that the state of the art in video games has developed to the point that there are now video games designed around the card or similar type format, and such games are truly entertainment devices as opposed to gambling devices covered in the ban. The Division has and will continue to review such games or machines on an individual basis to determine if they will be considered exceptions to the ban. In reviewing such games or machines, the Director will consider such factors as the absence of a "knock-down" switch or other device or means that will eliminate or erase credits, the presence or absence of dip switches, the type of scoring, the ability to multiply plays, the results of the game, and the frequency of wins, as well as other factors that reflect on whether the game or device can easily be utilized for or adapted to gambling.

To date four coin-operated video card game devices have been approved as exceptions to the ban. A written exception, containing a brief description of the machine, as well as a photograph of it, has been issued for each of the machines. A copy of the written exception must be furnished to each licensee to whom such device is sold or on whose premises such machine is placed. The licensee must maintain such written exception on the licensed premises and it must be exhibited on request to the Director or his representative.

In addition, within 48 hours of the placement of an excepted machine on a licensed premises, the Division of Alcoholic Beverage Control must be notified of the identify of the machine and its serial number, together with the information as to the name and address of the licensed premises on whose premises the machine is placed.

All licensees are advised that, even though an exception is issued for a particular machine, if that game is in any way utilized as the basis for any gambling activity whatsoever, the licensee will

be held responsible and is subject to disciplinary proceedings against the alcoholic beverage license and also possibly to prosecution for violation of gambling laws of this State.

The four exceptions issued to date are:

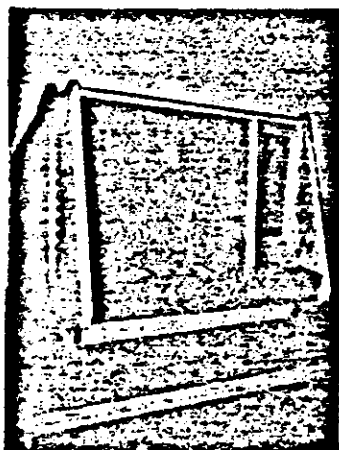
Video card game exception #001 (February 15, 1984):



Re: "GRAND PRIX"
Version 020184-A
copyright 1983
by:
SMS Manufacturing
Corporation
3 Broadway
Point Pleasant Beach,
NJ 08742

Three versions:
"Little Brother" cabaret
Upright (pictured at left)
Countertop
(with swivel base)

Video card game exception #002 (February 15, 1984; revised
February 27, 1984):



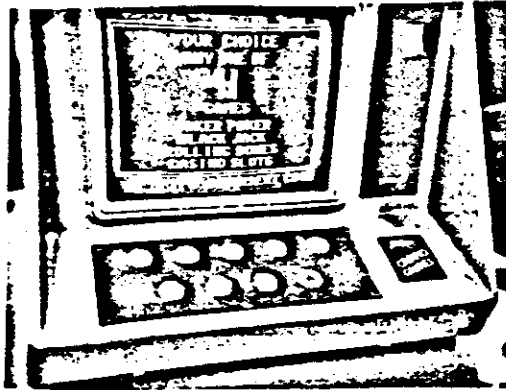
Re: "PIT BOSS" & "PIT BOSS, JR."
Copyright 1983
by:
Merit Industries, Inc.
630 Woodland Avenue
P.O. Box 213
Cheltenham, PA 19012

Two versions:
Countertop (with swivel base)
Smaller (16") countertop

Games included:
Joker Poker
Slots
Blackjack
The Dice Game
or

Joker Poker
Photo Finish (Horseshoe)
Blackjack
The Dice Game

Video card game exception #003 (February 27, 1984):

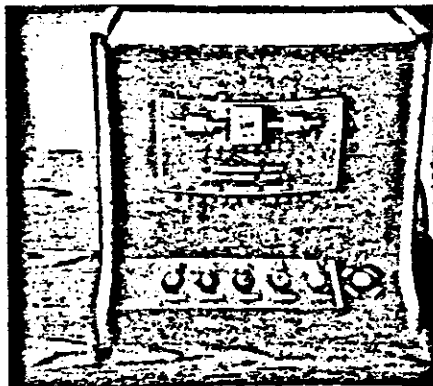


Re: "Casino Games" Model 104AM
Copyright 1982
by:
Greyhound Electronics, Inc.
Route 37 & Germania Station Rd.
Toms River, NJ 08753

Games included:
Joker Poker
Casino Slots
Blackjack
Rolling Bones

Buttons:
Cancel
Stand
Deal
Play Chips

Video card game exception #004 (March 8, 1984):



Re: "Two-Bits Casino Classics
AKA "Fun Casino II"
Model No. TBCC
Copyright 1983 by:
Tron-Teck International
42624 Christy Street
Fremont, California 94538

Countertop Version (with
swivel base)

Represented by:
International Game Technology
520 So. Rock Blvd.
Reno, NV 89502

Games included:
1. Five-Card Draw Poker
2. Blackjack
3. Hi-Lo
4. Craps
5. Derby (Horse Race Game)

10. FINDINGS AND CONCLUSIONS OF DIRECTOR UPON EXAMINATION OF VIDEO CARD GAME DEVICES - SIDNEY ROSENKRANZ AND RICHARD FERNANDEZ v. JOHN F. VASSALLO, JR., DIRECTOR OF THE STATE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, February 21, 1984.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

SIDNEY ROSENKRANZ and
RICHARD FERNANDEZ,

Appellants

v.

JOHN F. VASSALLO, JR.,
DIRECTOR OF THE STATE DIVISION
OF ALCOHOLIC BEVERAGE CONTROL

Defendant

FINDINGS AND CONCLUSIONS
UPON EXAMINATION OF
APPELLANTS' VIDEO CARD
GAME DEVICES

Richard L. Gruber, Esq., Appeared for Appellants
(Mayer and Mayer, attorneys)

BY THE DIRECTOR:

On February 15, 1984 a "hearing" was held by the Director of the Division of Alcoholic Beverage Control pursuant to an Order of the Appellate Division of the Superior Court of New Jersey embodied in its opinion of January 25, 1984 in the above captioned matter bearing Appellate Division Docket No. A-3925-82 T1. In that opinion the Appellate Division affirmed my ban of video poker, dice, blackjack, hi-lo and similar gaming type video machines on licensed premises as being violative of N.J.A.C. 13:2-23.7(a)4. The court, however, because of claim made by the plaintiffs that their machines were different in design and manufacture from the type of machines on which the said ban was based, and since they claim they were not afforded the opportunity to present evidence to that effect to me, the court deemed that the interest of justice and administrative due process would best be served by affording the appellants an opportunity to present proofs to me in an effort to show that their machines do not fall within the said proscription which I had promulgated in ABC Bulletin 2430, Item 3, on March 31, 1983. The Appellate Division remanded the matter to me to determine the appropriate type of hearing to be conducted and, pending those further proceedings, the Appellate Division continued the stay of the implementation and enforcement of the order contained in Bulletin 2430, Item 3, as previously imposed by the court.

Promptly upon receipt of the opinion of the Appellate Division, I was in contact with Richard L. Gruber, attorney for the appellants, and I had advised that the type of "hearing" appropriate to this matter would be for the appellants to exhibit their video card game machines and any pertinent literature and specifications to the undersigned. Since the appellants' devices were allegedly placed in liquor licensed premises in various locations, and recognizing that it might be impractical for them to bring their machines to the offices of the Division of Alcoholic Beverage Control, I offered to review the machines in the locations where they were placed. Mr. Gruber, however, advised that his clients did not want me to do this, but would bring the machines to the offices of the Division. I pointed out to him that it would be necessary for each kind of machine to be reviewed, and he assured me that that would take place. Because of commitments that Mr. Gruber had, the "hearing" was not able to be scheduled until February 15, 1984, which was a date selected to fit in with the schedule of Mr. Gruber.

Shortly before February 15, 1984, Mr. Gruber advised that his clients wished to postpone the "hearing", but because of the stay still being in effect prior to the review of the machines, I determined that in the interest of justice, and without compelling reason having been presented, that the "hearing" could not be postponed.

Accordingly, the "hearing" was held at the offices of the Division of Alcoholic Beverage Control in Trenton on February 15, 1984. At that time neither of the appellants, Sidney Rosenkranz nor Richard Fernandez, appeared; but only Richard L. Gruber, Esq., appeared with Henry J. Fernandez, the brother of Richard Fernandez, who represented that he has nothing to do with the machines and only appeared because he has a station wagon which his brother asked him to utilize to transport the machines to the offices of the Division.

Mr. Gruber and Mr. Henry J. Fernandez brought two upright cabinet video card game devices to the offices of the Division. Both of the machines were in almost identical cabinets and the face plates on each read "Hi-Lo Double-Up Joker Poker". The electronic boards in the two machines, which are the "brains" of the machines, however, were different.

It should be noted that neither of the machines came with any literature, specifications, nor contained any identification whatsoever as to the manufacturer of the circuitry or program which was in the cabinets. There was also nothing whatsoever to give any clue as to the original manufacturer of the games, and appellants could not provide any such information.

The first of the two video game devices brought for examination by the appellants is undoubtedly a gambling device within the proscription of the ban as contained in Bulletin 2430, Item 3, as aforesaid. An unlimited number of quarters can be inserted into

the machine, with each quarter registering one credit that can be played either singly or in any multiple. If a "bet" of four or more credits is made, there are then two wild card jokers in the pack. It is also noteworthy that the only pair of cards that provides a "win" is a pair of aces. Other pairs do not provide a "win", unless there are two pairs.

Since there was no literature, it was not possible to ascertain with any certainty that there was any certain win frequency, and we were not able to ascertain the program adjustments that may or may not be available in the program. It was noted, however, that the wins were not too frequent, but they were frequent enough so that a moderate amount of credits would be built up. Of course, there was a double or nothing feature on the games so that even when credits were built up by a winning hand, they could be quickly lost with the double or nothing feature. The noteworthy problem with the game, however, in addition to the acceptance of an unlimited number of coins, is that the machine contained a "knock-down" button on the rear of the machine. Depressing this button would erase the number of credits shown on the machine and bring it back to zero. Although the number of credits erased was not metered, it would still be possible for a record to be manually maintained as to the number of credits erased. There was also a meter in the machine that monitored the intake of coins.

Based on the examination of the machine, I could not conclude that it was any different from the video card games which are so intrinsically designed that they cannot realistically be expected to be utilized for any other purpose than gambling. I therefore find that the first of the two games brought to the Division's offices by the appellants falls within the ban as contained in Bulletin 2430, Item 3, and cannot be excepted from that ban. Such machine and any similar to it are therefore banned from liquor licensed premises, and maintaining of such on premises will be a violation of N.J.A.C. 13:2-23.7(a)4.

The second of the machines had a board which we recognized as being similar to the board in the "Grand Prix" video card game machine manufactured by SMS Manufacturing Corporation of Point Pleasant Beach, New Jersey, which game has been examined by the Director and excepted from the ban contained in Bulletin 2430, Item 3. The device brought in by the appellants, however, did not have the manufacturer information contained in the program, nor did it display any identifying or copyright information. It was only through familiarity with the board from having recently examined the "Grand Prix" that the similarity was noted.

The initial display which appeared on the program read "Be a high roller with JOKER POKER with Hi-Lo double up." A very similar wording appears on SMS Manufacturing Corporation's "Grand Prix" program, except that the copyright information and name of the manufacturer also appears on the SMS game.

The device of the appellants, although bearing two coin slots, apparently only accepts one 25¢ coin for a game. Insertion of that coin activates the machine with 10,000 points which then can be

played in multiples of 100 points over 5 hands of Poker. At the conclusion of the fifth hand, the number of points remaining, plus any number of points won in each hand, is displayed on the screen. If the total score is 25,000 or more, the player is given the opportunity to insert 3 initials in the "high roller's" list which will then show approximately the ten highest scores, together with the initials.

We were unable to activate the control program on the machine in the "operator's mode" because there was apparently something defective either in the program or the switches. Also, no literature whatsoever was furnished with the machine.

Up to the insertion of initials into the "high roller's club" the program in this device remains strikingly similar to the program of the "Grand Prix" by SMS Manufacturing Corporation, which has a list of "card sharks" as opposed to "high rollers". At that point, the similarity ends, and there is not the reaction game that follows with the SMS device, and which was one of the features noted in issuing the exception to the ban for that machine.

Based on the examination of appellants' device with the program similar to that of the "Grand Prix", it would appear that such machine might be excepted from the ban. The problem, however, is that there is no way of identifying the program of this device and, without such means of identification, there remains a danger of either modification or change to the program. This was explained to Mr. Gruber and he readily recognized that an approval of this machine could not be given without some positive manufacturer identification of the game and/or program. Mr. Gruber was advised that if that could be furnished, the issuance of an exception to the proscription of video game devices as contained in Bulletin 2430, Item 3, would be considered for this machine. Until that time, however, it must of necessity be included in the ban because of the inability to identify the game.

It is also noteworthy that the appellants have failed to provide the Division of Alcoholic Beverage Control with a list of the licensed premises in which their video game devices have been placed. Such list has been repeatedly requested so that there is no confusion and so that the Division would not unwittingly violate the terms of the stay imposed by the Appellate Division of the Superior Court of New Jersey on April 28, 1983, and as continued pending the further proceedings which I have now held.

Because the terms of the order of the Appellate Division have now been complied with and a "hearing" has been afforded to the appellants, and since they have not satisfactorily demonstrated that their video card game devices are different from those at which the ban in ABC Bulletin 2430, Item 3 was directed, and since the Appellate Division did not retain jurisdiction, and since the appellants have failed to advise the Division as to the location of their video card game devices, the Division can do nothing other than consider any devices found on liquor licensed premises, wherever located in New Jersey, to be violations of Bulletin 2430, Item 3, and N.J.A.C. 13:2-23.7(a)4, unless exceptions to the proscription have been


issued for the machine. To date, only two such exceptions have been issued, one for the SMS Manufacturing Corporation's "Grand Prix" machine, previously discussed in this opinion, and the other for the "Pit Boss" and "Pit Boss, Jr." manufactured by Merit Industries of Cheltenham, Pennsylvania, and specifically meeting the specifications as noted in the written exceptions. It should also be noted that all such exceptions will be issued to the manufacturer or distributor of the machine with the condition that if placed on liquor licensed premises, a copy of the exception will be available on the premises and the Division of Alcoholic Beverage Control will be advised of the name of the licensed premises on which the machine is placed, as well as an identification of the game within 48 hours of its placement.

Mr. Gruber has been advised that if the appellants wish to submit anything further, appropriate consideration will be given. At this point, however, the hearing has been completed and neither of the two games, which it must be assumed are representative of all of the games of the appellants, since nothing to the contrary was presented nor represented, can be approved.

s/John F. Vassallo, Jr.
JOHN F. VASSALLO, JR.
DIRECTOR

DATED: February 21, 1984

PUBLICATION OF BULLETIN 2434 IS HEREBY DIRECTED THIS
13TH DAY OF MARCH, 1984.


JOHN F. VASSALLO, JR.
DIRECTOR