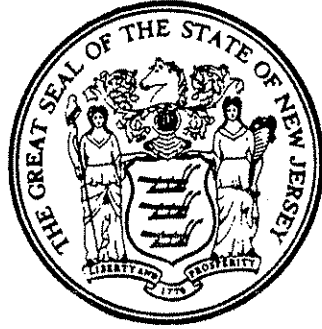


STATE OF NEW JERSEY



ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

1989 ANNUAL REPORT

Senator Catherine A. Costa, Chairman

Leo Bromley, Vice-Chairman

**Anne M. Stefane
Associate Counsel and
Staff to the Commission
Office of Legislative Services
Room 315
State House Annex
Trenton, New Jersey 08625
(609) 984-0231**

SENATOR CATHERINE A. COSTA
Chairman

LEO BROMLEY
Vice-Chairman

ASSEMBLYMAN JIMMY ZANGARI
MILTON BARNETT
J. ROSS BEVIS

JOSEPH A. DeMARCO
ANTHONY N. FRATTINI
JOHN J. GARRITY
ROBERT GUITTAG
GARY W. HOLSTEN
WILLIAM E. JERLAT

JAMES LEWANDOWSKI
JOHN W. McCAFFREY
ANTHONY J. NAPODANO
CHARLES D. SAPIENZA
COLONEL CLINTON L. PAGANO, SR.
EX OFFICIO
JOHN F. VASSALLO, JR.
EX OFFICIO



New Jersey State Legislature

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0231

January, 1990

Governor James J. Florio
President of the Senate John A. Lynch
Speaker of the General Assembly Joseph V. Doria, Jr.
Members of the Legislature

Dear Governor, Mr. President, Mr. Speaker, and Members of the Legislature:

The Alcoholic Beverage Control Study Commission, created by Joint Resolution No. 4 of 1982 and reconstituted by Joint Resolution No. 7 of 1984 and Joint Resolution No. 11 of 1987, hereby respectfully submits its report for the year of 1989 in compliance with the provisions of the above resolutions.


Senator Catherine A. Costa
Chairman

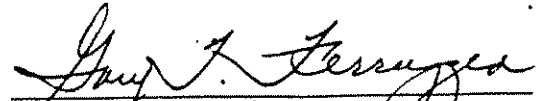
Leo Bromley
Vice-Chairman

Assemblyman Jimmy Zangari

Milton Barnett

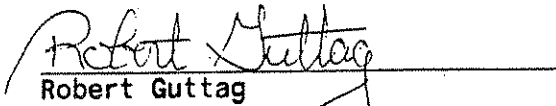
J. Ross Bevis


Joseph A. DeMarco

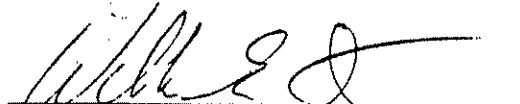

Gary T. Ferruggia


Anthony N. Frattini



John J. Garrity


Robert Gutttag

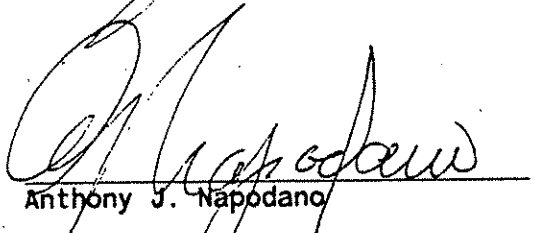

Lt. Gary W. Holsten

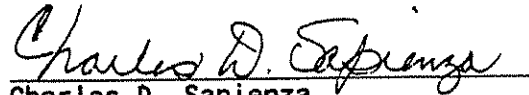

William E. Jerlat


Resigned
Nancy Beth Kelly

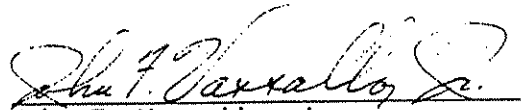

James Lewandowski


John W. McCaffrey


Anthony J. Napodano


Charles D. Sapienza


Capt. Olindo Teza
(for Col. Clinton Pagano, Sr.)


John F. Vassallo, Jr.

SENATOR CATHERINE A. COSTA
Chairman
LEO BROMLEY
Vice-Chairman



ASSEMBLYMAN JIMMY ZANGARI
MILTON BARNETT
J. ROSS BEVIS

New Jersey State Legislature

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

STATE HOUSE ANNEX, CN-06B
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0231

JOSEPH A. DeMARCO
ANTHONY N. FRATTINI
JOHN J. GARRITY
ROBERT GUTTAG
GARY W. HOLSTEN
WILLIAM E. JERLAT

JAMES LEWANDOWSKI
JOHN W. McCAFFREY
ANTHONY J. NAPODANO
CHARLES D. SAPIENZA
COLONEL CLINTON L. PAGANO, SR.
EX OFFICIO
JOHN F. VASSALLO, JR.
EX OFFICIO

January, 1990

Governor James J. Florio
President of the Senate John A. Lynch
Speaker of the Assembly Joseph V. Doria, Jr.
Members of the Legislature

Dear Governor, Mr. President, Mr. Speaker, and Members of the Legislature:

I am pleased to transmit with this letter the 1989 annual report of the Alcoholic Beverage Control Study Commission.

The commission, which began its mandated study in June 1983, was created for the purpose of modernizing the statutes and administrative regulations which control the alcoholic beverage industry. The commission members undertook this task with complete professionalism and a determination to achieve results which would benefit the State and local governments, the citizens of this State, and the alcoholic beverage industry.

This report summarizes the achievements of this commission since its inception in 1983. The commission's most important accomplishments include recommendations on the enforcement of alcoholic beverage laws and regulations, initial legislative proposals for dealing with insurance liability dilemmas faced by both alcoholic beverage licensees and social hosts, a statement of legislative policy and purpose for Title 33, legislation preserving tied house protections, a comprehensive study of fetal alcohol syndrome warning labels and signs, and improved dissemination of information to alcoholic beverage licensees. This report also describes the background of the commission, scope of its study, and the numerous issues, statutes and regulations discussed at the meetings of the commission, its task forces and subcommittees.

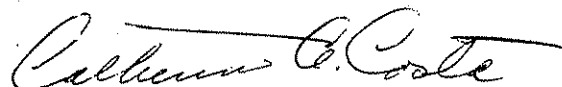
I would like to take this opportunity to thank the talented members of the commission who contributed their time and expertise. Leo Bromley deserves special recognition for his capable and experienced leadership as the vice-chairman of the commission. I would also like to thank John Vassallo who is returning to law practice after eight years as both Director of the Division of Alcoholic Beverage Control and a member of the commission. His dedicated

service and contributions to the work of the commission are deeply appreciated. Special thanks are in order for Robert Pinard, Harold Damon, and John Markert, Deputy Directors of the Division of Alcoholic Beverage Control, for their assistance at subcommittee meetings.

Recognition should also be given to the members of the alcoholic beverage industry who expressed their interest by attending commission meetings and providing comment and testimony on the issues faced by the commission. Their assistance and knowledge helped the commission to examine the problems of those who are associated with the business of alcoholic beverages and to propose recommendations for their solution.

It has been a rewarding experience to serve as chairman of this commission for the past six years. The contributions and achievements of this group are a testimony to the commission form of legislative inquiry. I thank them all for their efforts, and I hope that we may work together in future endeavors which will benefit the State, its citizens, and the alcoholic beverage industry.

Sincerely,



Senator Catherine A. Costa
Chairman
Alcoholic Beverage Control
Study Commission

MEMBERS OF THE ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

1. Senator Catherine A. Costa, Chairman appointed by the President of the Senate
11 W. Broad Street
Burlington, N.J. 08016
(609) 387-9378
(609) 667-1230
2. Assemblyman Jimmy Zangari appointed by the Speaker of the General Assembly
1134 Clinton Avenue
Irvington, N.J. 07111
(201) 399-1000
3. Milton Barnett appointed by the President of the Senate (representing alcoholic beverage wholesalers)
Fedway
P.O. Box 519
Kearny, N.J. 07032
(201) 624-6444
4. J. Ross Bevis appointed by the Speaker of the General Assembly (representing the general public)
15 Suffolk Lane
Princeton Junction, N.J. 08550
(609) 799-2853 (home)
(609) 984-4284
5. Leo Bromley appointed by the President of the Senate and Speaker of the General Assembly (Executive Director of the New Jersey Liquor Stores Association)
310 Orange Road
Montclair, N.J. 07042
(201) 746-5088
6. Gary T. Ferruggia appointed by the Speaker of the General Assembly (representing the New Jersey Restaurant Association)
65 Orchard Road
Watchung, N.J. 07060
(201) 997-8800
7. Anthony N. Frattini appointed by the President of the Senate and Speaker of the General Assembly (formerly with the Division of Alcoholic Beverage Control)
165 Perry Street
Dover, N.J. 07801
(201) 366-8127
8. John J. Garrity appointed by the President of the Senate and Speaker of the General Assembly (Executive Director of the Beer Wholesalers' Association of New Jersey)
941 Whitehorse-Mercerville Road
Trenton, N.J. 08610
(609) 585-5900
9. Robert Guttag appointed by the President of the Senate (representing the Distilled Spirits Council of the United States)
Black Prince Distillery, Inc.
P.O. Box 1999
691 Clifton Avenue
Clifton, N.J. 07015
(201) 365-2050

10. Lt. Gary W. Holsten
13 Debonis Drive
Milltown, N.J. 08850
(201) 390-6925
appointed by the Governor (local law enforcement official)
11. William E. Jerlat
N.J. Licensed Beverage Assoc.
2825 Woodbridge Avenue
Edison, N.J. 08817
(201) 549-6670
appointed by the President of the Senate and Speaker of the General Assembly (representing the New Jersey Licensed Beverage Assoc.)
12. James Lewandowski
30 North Avenue
Elizabeth, N.J. 07032
(201) 272-2600
appointed by the Governor (representing the general public)
13. John W. McCaffrey
708 Bendermere Avenue
Interlaken, N.J. 07712
(201) 531-7392
(609) 530-0100
appointed by the President of the Senate and Speaker of the General Assembly (representing the New Jersey Conference of Mayors and Anheuser Busch)
14. Anthony J. Napodano
3840 Park Avenue - Suite 203
Edison, N.J. 08820
(201) 906-8550
appointed by the President of the Senate and Speaker of the General Assembly (representing Shop Rite Liquor Stores)
15. Charles D. Sapienza
N.J. Wine & Spirits Wholesalers' Association
124 West State Street
Trenton, N.J. 08608
(609) 393-3300
appointed by the President of the Senate and Speaker of the General Assembly (Executive Director of the New Jersey Wine & Spirits Wholesalers' Association)
16. Capt. Olindo Teza
Division of State Police
P.O. Box 7068
W. Trenton, N.J. 08625
(609) 882-2000 ext. 2790
designee of Colonel Clinton L. Pagano, Sr.
(State law enforcement official)
17. John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
CN-087
Trenton, N.J. 08625
(609) 984-2830
designated by enabling legislation

There are currently three vacancies on the commission.

COMMISSION STAFF

Anne M. Stefane, Associate Counsel
Office of Legislative Services
Room 315
State House Annex
CN 068
Trenton, N.J. 08625-0068
(609) 984-0231

MEMBERS OF THE SUBCOMMITTEES CONTRIBUTING
TO THIS YEAR'S DISCUSSIONS AND RECOMMENDATIONS

LICENSING AND ADMINISTRATION

Chairman	Assemblyman John T. Hendrickson, Jr.
Vice Chairman	John W. McCaffrey Anthony N. Frattini John F. Vassallo

REGULATORY AFFAIRS

Chairman	Vacancy
Vice Chairman	Charles D. Sapienza Nancy Kelly James Lewandowski Frank J. Tripucka Robert Guttag

COMPLIANCE - INSPECTION

Chairman	Assemblyman Jimmy Zangari
Vice Chairman	William E. Jerlat James Butler Lt. Gary W. Holsten Milton Barnett

TRADE RELATIONS

Chairman	Senator Catherine A. Costa
Vice Chairman	Anthony J. Napodano John J. Garrity Capt. Olindo Teza J. Ross Bevis

AD HOC COMMITTEE

Chairman	Leo Bromley Members as assigned by Chair to work on specific problems.
----------	--

TABLE OF CONTENTS

	<u>PAGE</u>
Letter of Transmittal	i
Letter from the Chairman	iii
Members of the Commission	v
Members of the Subcommittees	viii
Table of Contents	ix
I. Background	1
II. Summary of Achievements and Work of the Commission 1983-1988	4
A. Achievements of the Commission	4
B. Work of the Commission	6
III. Recommendations for Future Study	16
IV. Work of the Commission in 1989	17
A. Introduction	17
B. Trade Relations Subcommittee	17
C. Ad Hoc Subcommittee	20
D. Compliance and Inspection Subcommittee	22
 <u>Appendices</u>	
I. Joint Resolution No. 4 of 1982	25
II. Joint Resolution No. 16 of 1983	27
III. Joint Resolution No. 5 of 1984	28
IV. Joint Resolution No. 7 of 1984	29
V. Joint Resolution No. 11 of 1987 (which reconstituted the commission until December 31, 1989)	30
VI. Senate Bill No. 3896 of 1989	33

I. BACKGROUND

On July 28, 1982, Acting Governor Carmen A. Orechio signed Joint Resolution No. 4 of 1982, creating a 15 member Alcoholic Beverage Control Study Commission to thoroughly examine existing statutes and administrative regulations concerning the alcoholic beverage industry.

The resolution instructed the commission to study and evaluate the statutes and administrative regulations affecting the manufacture, distribution, sale and consumption of alcoholic beverages; to ascertain if the existing legal controls are appropriate and effective, and continue to serve their intended purpose; and to determine if revisions of the statutes and administrative regulations are necessary, practical and feasible. In short, the purpose of the commission as stated by J.R. 4 of 1982 was to modernize the statutes, as set forth generally in Title 33 of the New Jersey Statutes (N.J.S.A. 33:1-1 et seq.), and administrative regulations relating to alcoholic beverage control, as set forth in Title 13 of the New Jersey Administrative Code (N.J.A.C. 13:2-1.1 et seq.). In addition, the commission's duties include the review of all other statutes or regulations which deal directly or indirectly with the control of alcoholic beverages in this State.

The focus of the commission's study is Title 33 of the New Jersey Statutes which provides a comprehensive statutory framework for the regulation of the alcoholic beverage industry. However, Title 33 also delegates broad regulatory authority to the Division of Alcoholic Beverage Control in the Department of Law and Public Safety (hereinafter referred to as the ABC). Pursuant to that authority, the ABC has promulgated an array of administrative regulations affecting virtually every aspect of the alcoholic beverage industry. In light of the social attitudes and economic conditions of the 1980's, a comprehensive review of the statutory and regulatory controls over the alcoholic beverage industry was deemed essential.

The Alcoholic Beverage Control Study Commission was created so that a valuable public purpose would be served by the review of the underlying principles for the State's control of the manufacture, distribution, sale and consumption of alcoholic beverages. The underlying principles were first established by the Legislature in 1933 with the passage of the Alcoholic Beverage Law, P.L. 1933, c. 436 (N.J.S.A. 33:1-1 et seq.), on December 6, 1933, one day after the repeal of national prohibition. These principles were revised and updated with the passage of P.L. 1985, c. 268 (N.J.S.A. 33:1-3.1).

The commission was created by J.R. 4 of 1982 for a term of one year. Unfortunately, due to a delay in the appointment of members, the commission did not organize and hold its first meeting until June 28, 1983, just one month before the commission as an entity was due to expire. In addition, it was soon realized that the scope and complexity of the subject to be studied required a greater length of time than was originally allotted. Therefore, the Governor signed J.R. 5 and J.R. 7 of 1984 on March 19, 1984. J.R. 5 increased the membership of the commission to a total of 18 members. J.R. 7 reconstituted the commission and extended its term to December 31, 1987.

Chapter J.R. 11, approved January 14, 1988, extended the work of the commission for two years until December 31, 1989. This resolution also increased the membership of the commission from 18 to 21, including two more alcoholic beverage industry members and one more public member. Two of the new members were appointed by the Assembly Speaker and one by the Senate President. The replacement for the late Commissioner Norman Feldman also was made by the Senate President.

The basic research and analysis of the commission is conducted by four subcommittees parallel in subject matter to the bureaus in the ABC and designated as Licensing and Administration, Regulatory Affairs, Compliance-Inspection and Trade Relations. These subcommittees have been charged with examining Title 33 of the New Jersey Statutes and Title 13 of the New Jersey Administrative Code in light of the statement of legislative intent in N.J.S.A. 33:1-3.1. Ad hoc subcommittees are formed if needed to study a specific issue or proposed legislation. The commission previously had been organized into subcommittees during the first two years of its existence and had been reorganized again in 1988.

After a thorough review of subcommittee recommendations, the commission may recommend that a provision of the law or a regulation be retained because it serves a worthwhile purpose and is workable or that it be amended or repealed. Amendment of a provision may be necessary in order to eliminate any ambiguity, modernize and clarify the language, or update the provision in order to reflect current practices and procedures. Amendments may also be necessary to eliminate conflicts between the statutes and administrative regulations.

For several years the basic research and analysis of the commission was conducted by task forces composed of three to seven members. These task forces had been given assignments by the full commission to consider or review specific or broad issues or problems that face the alcoholic beverage industry or the consuming public. By the end of 1988, the 10 task forces had completed their respective charges.

The following pages summarize the commission's work from 1983 to 1988 and report its work in 1989 as reflected in the activities of its subcommittees.

This report is the seventh annual report submitted by this commission.

II. SUMMARY OF ACHIEVEMENTS AND WORK OF THE COMMISSION -

1983 - 1988

A. Achievements of the Commission

The following is a summary of the most important achievements of the commission in keeping with its mandate to study the statutes and regulations concerning the alcoholic beverage industry.

1. Recommendations on the Enforcement of Alcoholic Beverage Laws and Regulations. The commission's Task Force VII studied the need for municipalities to exercise greater responsibility for the conduct of their licensees and for municipalities to be provided with the ability to levy sanctions less severe than at present, such as reprimands and fines. The commission presented recommendations which were incorporated in the creation of new policies toward the enforcement of alcoholic beverage regulations, including a schedule of presumptive penalties, which has been disseminated to the alcoholic beverage industry and local issuing authorities. While the ABC had based penalties for violations of the laws and regulations on a schedule of presumptive penalties in the past, this schedule had been utilized only within the ABC. As a result there was a lack of uniformity in penalties imposed by local authorities. The published schedule serves as a starting point for penalties before the consideration of aggravating or mitigating factors.

The ABC also introduced a new system of issuing single page inspection notices which created a new streamlined system and was similar in many respects to what the task force proposed. In addition, the ABC discontinued the Notice of Violation which was replaced with a Notice of Inspection and the implementation of a formal warning system for minor violations and discrepancies. These new procedures basically implemented the other features of the Task Force's proposal.

2. Legislative Proposal--Alcoholic Beverage Licensee Liability Crisis.

The commission drafted an initial legislative proposal for dealing with the liability dilemma and insurance crisis faced by alcoholic beverage licensees. The proposal was eventually introduced in the Legislature and signed into law in 1987 as the "New Jersey Licensed Alcoholic Beverage Server Fair Liability Act," P.L.1987, c.152 (C.2A:22A-1 et seq.). As a result of this legislation, more insurance companies are writing policies at affordable rates for alcoholic beverage licensees.

3. Statement of Legislative Policy and Purpose. The commission articulated in a statement the legislative policy and purpose underlying Title 33 of the New Jersey Statutes which was signed into law by Governor Kean (P.L.1985, c.258; C.33:1-3.1). The statement defines the objectives for alcoholic beverage control pursuant to which the statutes and administrative regulations are updated, amended and drafted.

4. Legislative Proposal--Social Host Liability Crisis. The commission's original draft legislation dealing with the liability dilemma faced by alcoholic beverage licensees also included social hosts who face liability for the actions of intoxicated guests. However, social hosts were eventually removed from the draft because another commission, the Alcoholic Beverage Liability Commission, was already studying the civil liability of social hosts for the actions of intoxicated guests. In 1986, a social host liability statute was signed into law by Governor Kean (P.L.1987, c.404; C.2A:15-5.5).

5. Tied House Protections. The commission conducted public hearings which resulted in legislation which preserves the tied house protection in N.J.S.A. 33:1-43 without unduly and unnecessarily inconveniencing the consuming public of the State.

6. Fetal Alcohol Syndrome. The commission conducted a comprehensive study of warning labels and warning signs and their effect on the problem of birth defects due to women's consumption of alcohol during pregnancy and determined that such labels and signs would be ineffective in curtailing use of the product by those at risk. However, the federal government has mandated that warning labels concerning fetal alcohol syndrome and other dangers of drinking be on all containers of alcoholic beverages bottled after November 1989.

7. Dissemination of Information to Licensees by the Division of Alcoholic Beverage Control. The commission's Task Force VII found that licensees and others who are controlled by the Division of Alcoholic Beverage Control often find compliance difficult without a clear understanding of the law. In response, the division began publishing the Alcoholic Beverage Control Handbook for Retail Licensees and its newsletter, What's on Tap at the ABC.

B. Work of the Commission

1. Statutes Reviewed.

The commission recommended that the following statutes should not be amended because they maintain the goals enunciated in the statement of legislative policy and purpose in P.L. 1985, c. 258 (C. 33:1-3.1).

N.J.S.A. 9:17B-1	Drinking age at 21
N.J.S.A. 33:1-1	Definitions
N.J.S.A. 33:1-11	Class B licenses (wholesalers)
N.J.S.A. 33:1-11.1	Sales by Class A or Class B licensees to organizations of army, navy, or air force personnel
N.J.S.A. 33:1-11.2	Definitions
N.J.S.A. 33:1-11.3	Foreign persons holding Class B licenses; sales to resident retail licensees
N.J.S.A. 33:1-11.4	Inapplicability to foreigners who hold Class A licenses
N.J.S.A. 33:1-11.5	Revocation or suspension of license
N.J.S.A. 33:1-11.6	State beverage distributor's license
N.J.S.A. 33:1-12.14	Limitation on number of new retail licenses in municipalities
N.J.S.A. 33:1-12.25	Hotel guests, sale and delivery to
N.J.S.A. 33:1-12.31	Acquisition of beneficial interest in more than two retail licenses prohibited
N.J.S.A. 33:1-12.36	Corporate licenses
N.J.S.A. 33:1-14	Class E Licenses; subdivisions; fees
N.J.S.A. 33:1-25	Licensees; qualifications; applications, contents; corporations; partnerships; clubs; notice; publication
N.J.S.A. 33:1-25.1	Peace officers; right to leadership or titular position in non-profit organization with club license
N.J.S.A. 33:1-25.2	Nonprofit organization; use of name other than peace officer as licensee
N.J.S.A. 33:1-26	Term of license; prorated fee; separate licenses; license restrictions; extension of license; procedure on transfer of license; employment regulations
N.J.S.A. 33:1-26.1	Peace officers; employment in business licensed to sell alcoholic beverages

N.J.S.A. 33:1-28	Transportation of beverages by licensees in their own vehicles; transit insignia
N.J.S.A. 33:1-43	Interest in both brewery, distillery or wholesaling, etc., and in retailing; prohibition
N.J.S.A. 33:1-43	Limited right of wholesaler to acquire interest in corporation
N.J.S.A. 33:1-72	Sale of warehouse receipts; license required; fee
N.J.S.A. 33:1-76.1	Renewal or reissuance of club or Class B wholesale license granted on waiver
N.J.S.A. 33:1-81.8	Alcoholic beverage licensees not relieved from liabilities by presentation
N.J.S.A. 33:1-89	Discrimination in price to retailers prohibited
N.J.S.A. 9:17B-1	Minors, eighteen and older; powers, obligations and legal capacity
N.J.S.A. 34:2-21.17	Prohibited employment for minors under 16 and under 18; exceptions
N.J.S.A. 40:48-2.40	Alcoholic beverage retail consumption licenses; reduction of number

The commission reviewed the statutes listed below and made the following recommendations.

N.J.S.A. 33:1-25	Reduce the minimum age for obtaining an alcoholic beverage license from the State from 21 to 18. This would provide parity with other State-issued licenses.
N.J.S.A. 33:1-28	Permit employee of a licensee to transport alcoholic beverages in his personal vehicle or vehicle leased to the licensee/employer when such vehicle bears a transit insignia--providing these beverages are intended for his personal use.

2. Regulations Reviewed

The commission reviewed the following regulations and made the recommendations indicated:

- | | |
|--|---|
| N.J.A.C. 13:2-1.1 et seq.
13:2-14.2, 14.3,
14.4, 14.10 | (Employment of persons under 18 on licensed premises) No change recommended. |
| N.J.A.C. 13:2-20.5 (c) | Language in Lease Agreement and Special Transit Permit applications should conform to language contained in this regulatory section, e.g.

<u>Motor Vehicle Lease Agreement:</u>
"The lessee-licensee will have the right to exclusive possession, control and operation of the above vehicle <u>when utilized in connection with licensed business.</u> "
<u>Special Transit Permit Application:</u>
(to transport alcoholic beverage in a non-commercial vehicle):
"Vehicles must be owned or exclusively controlled by the licensee <u>when utilized in connection with the licensed business.</u> " |
| N.J.A.C. 13:2-20.9(a) | Employee of a licensee should be permitted to transport alcoholic beverages in his personal vehicle or in a vehicle leased to the licensee/employer when the alcoholic beverages are intended for personal use. (Reflects proposal re N.J.S.A. 33:1-28 above) |
| N.J.A.C. 13:2-23.8 | Amend to reflect change in federal law concerning beginning of Eastern daylight savings time. |
| N.J.A.C. 13:2-23.22 | Extend tap marker requirements -- that apply now only to malt beverages -- to wine as well. |
| N.J.A.C. 13:2-24.1 | (Discrimination in terms of sale).
No change recommended. |
| N.J.A.C. 13:2-24.2 | (Discrimination in services, facilities or equipment). No change recommended. |
| N.J.A.C. 13:2-24.4 | (Regulation of wholesaler credit).
No change recommended. |

- N.J.A.C. 13:2-24.5(3) (Supplier pricing and marketing information). Repeal this regulation which was rendered unconstitutional by U.S. Supreme Court decision in Brown-Forman Distillers Corp. v. New York State Liquor Authority.
- N.J.A.C. 13:2-24.6 Task Force V recommended that wholesalers be permitted to amend their monthly price filings within five business days after the filing deadline in order to meet lower prices filed by another wholesaler. That proposal was rejected by the Commission.
- N.J.A.C. 13:2-24.7 (Marketing initiatives). No change recommended.
- N.J.A.C. 13:2-24.9 (Combination and tied sales). No change recommended.
- N.J.A.C. 13:2-24.10 (Advertising and consumer protection). No change recommended.
- N.J.A.C. 13:2-25.1 (Plenary and wine wholesalers delivery from warehouse inventory). Extend scope of regulation to cover limited wholesale licensees.
- N.J.A.C. 13:2-25.2(a) (Required distribution). Change to conform to 1984 amendment of N.J.S.A. 33:1-2b which prohibits Class B wholesalers from selling a product unless it is acquired from the brand owner, the brand owner's authorized agent or a wholesale licensee in the State who is designated as a registered distributor by a brand owner.
- N.J.A.C. 13:2-25.3(b) Modify language concerning the filing of a schedule of products without reference to waiver provisions of N.J.A.C. 13:2-33.1(b)(3).

3. Corresponding Statutes and Regulations

The commission also examined the following issues and found no inconsistencies.

- a. Brand Registration. N.J.A.C. 13:2-33.1(b)(3) and N.J.S.A. 33:1-2(b).

- b. Social Affair Permit. N.J.A.C. 13:2-5.11(e) and N.J.S.A. 33:1-74.
- c. Special Concessionaire Permit. N.J.A.C. 13:2-5.2 and N.J.S.A. 33:1-42.
- d. Substitute Beverages. N.J.A.C. 13:2-23.19 and N.J.S.A. 33:1-3.1(b)(2).

4. Other Recommendations

a. Hours of Sale. N.J.S.A. 33:1-40.3 was amended in 1981 to permit the sale of wine, in addition to malt alcoholic beverages, in original bottle or can containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted and authorized in a municipality. N.J.A.C. 13:2-38.1 has not been changed since 1973 and, therefore, is inconsistent with the statute in that it does not authorize the sale of wine in addition to malt beverages. The commission's Task Force IX recommended that the regulation be amended to permit the sale of wine in addition to malt beverages in order to eliminate the inconsistency with the law.

On May 15, 1987, this recommendation was approved unanimously by the commission and the division agreed to amend the section accordingly. However, the division has not yet amended this section.

b. County Identification Cards. N.J.S.A. 33:1-81-2 et seq. had provided, in part, that the ABC Director, by regulation, determine the size, style and additional content of the county identification card. Presentation of this card by any person in connection with the purchase or attempted purchase of any alcoholic beverage can constitute a defense to a charge under N.J.S.A. 33:1-77 (sale to person under legal age) if the licensee makes the sale in good faith reliance on the card and the appearance of

the purchaser was such that an ordinary prudent person would believe the card holder to be of legal age.

N.J.A.C. 13:2-40.5 also sets forth the form of this card. But its language is inconsistent with the appearance of the new tamper-resistant statewide card introduced in 1987 by the division for use by the counties. Task Force IX recommended and the commission agreed that the regulation be revised to conform with the new card now in use.

On September 9, 1987, the ABC adopted amendments to N.J.A.C. 13:2-40.1, 40.5, 40.6 and 40.7 which reflected the appearance of the new identification cards.

c. Transportation of Alcoholic Beverages by Consumers. Pursuant to N.J.S.A. 33:1-2, the State limits the quantity of alcoholic beverages which may be transported within any consecutive 24-hour period to be used solely for personal consumption as follows:

(a) one-half barrel of beer or no more than 64 twelve ounce cans or bottles of beer;

(b) no more than five gallons of wine; and

(c) no more than 12 quarts of other alcoholic beverages.

Larger quantities may be transported upon first obtaining a special permit from the director and payment of a fee.

The Trade Relations subcommittee recommended either repealing the intrastate limitations or at least increasing the quantity limitations for intrastate transportation by consumers as follows:

(a) one-half barrel of beer or no more than 168 twelve ounce cans or bottles of beer or cooler (seven cases), or equivalent in any combination;

(b) 36 liters (three cases) or equivalent of wine; and

(c) 24 liters (two cases) or equivalent of other alcoholic beverages.

The subcommittee did not recommend a change in the quantity limitations with respect to the interstate transportation of alcoholic beverages in view of the State's legislative purpose to protect tax revenue as set forth in N.J.S.A. 33:1-3.1. But to further that legislative purpose, the subcommittee recommended applying the existing interstate quantity limitations to alcoholic beverages transported from a New Jersey military base to another point in the State.

The subcommittee also recommended that the language "personal consumption" be changed to "personal use." This change reflects the fact that an individual may be purchasing alcoholic beverages for consumption by his household rather than his own consumption.

The subcommittee's recommendations were approved by the commission and introduced by Senator Costa as Senate Bill No. 3486 of 1989. During the 1988-1989 legislative session the bill was approved by the Senate but was not acted upon by the General Assembly. The bill was prefiled for introduction in the 1990-1991 legislative session as Senate Bill No. 689.

d. License for Non-Resident Suppliers. The Regulatory Affairs subcommittee recommended that a new license be created for non-resident suppliers of alcoholic beverages. Presently, non-resident suppliers, in order to sell or solicit the sale of their products in New Jersey, must obtain wholesaler licenses. This requirement is inconsistent with N.J.S.A. 33:1-3.1 which identifies the maintenance of a three-tier system as a public policy and legislative purpose that should be pursued by the statutes. The members noted that other states have adopted such a license or a certificate of compliance for non-resident suppliers. The subcommittee's recommendations were approved by the commission and introduced by Senator Costa as Senate Bill No. 3622 of 1989.

e. Distillers', Brewers' and Vintners' Pre-Packaged Merchandise.

The commission also concentrated its attention on statutes and regulations which circumscribe the sale of distilled spirit and wine products in combination with non-alcoholic items such as glassware, clothing and other items.

N.J.S.A. 33:1-12 governs the issuance of Class C licenses. Under this statute, package stores and on-premise consumption licensees may sell distillers' and vintners' packaged holiday merchandise prepacked as a unit with suitable glassware. The ABC has interpreted this statute as prohibiting the sale of prepackaged products by on-premise licensees where one of the elements in the package is anything other than glassware or bar-related items such as beer openers or coasters.

Therefore, if a supplier distributed a holiday gift package consisting of a bottle of distilled spirits and a tape recording of a famous rock and roll band, New Jersey law would prohibit an on-premise retailer from selling that package to a customer. Likewise, such a retailer would be prohibited from creating a package of distilled spirits or wine and some other item, such as a tee-shirt or photograph, and selling it to consumers.

The Regulatory Affairs subcommittee found that this section is in conflict with federal regulations promulgated under the Federal Alcohol Administration Act which permit a supplier or wholesaler to package and distribute spirits, wine or malt beverages in combination with any other items providing that (1) those items have no value or benefit to the retailer other than that of having the potential of attracting purchasers and thereby promoting sales, (2) the package itself is designed to be delivered intact to the consumer, and (3) any additional cost incurred in creating the combination package is passed on to the retailer.

The commission approved the subcommittee's recommendation that N.J.S.A. 33:1-12 be amended to permit the retail sale of distillers' brewers' and vintners' merchandise when that merchandise is prepacked as a unit with other items. The subcommittee determined that the director has the discretion under current law to promulgate rules and regulations to limit specific types of merchandise that would pose a danger to the public policy underlying the State alcoholic beverage laws. Legislation was drafted and introduced by Senator Costa as Senate Bill No. 3485 of 1989. During the 1988-1989 legislative session the bill was approved by the Senate but was not acted upon by the General Assembly. The bill was prefiled for introduction in the 1990-1991 session as Senate Bill No. 688.

III. RECOMMENDATIONS FOR FUTURE STUDY

1. Taxation of Alcoholic Beverages. The State and Local Expenditure of Revenues Commission (SLERP) in its final report made recommendations concerning increasing the taxes imposed on alcoholic beverages. This issue should be studied more closely.

2. Relationship between the State Police and the Division of Alcoholic Beverage Control. Senate Bill No. 1322 of 1990 would complete the integration of the ABC inspectors into the Division of State Police. The effect of this legislation should be closely examined.

3. Continued Review of Statutes and Regulations. The changing economics of the alcoholic beverage industry, social viewpoints concerning proper use of the product, and other factors require a continued review of existing statutes and regulations. This is especially true in light of the sunset provision in the regulations which specifies August 5, 1990 as the date of expiration.

The commission has made significant contributions to the equitable administration of the alcoholic beverage industry and the preservation of the public health, safety and welfare. There are other important issues, however, which were not examined by the commission but should be studied in the future.

IV. WORK OF THE COMMISSION IN 1989

A. Introduction

In 1989, the public business meetings of the Alcoholic Beverage Control Study Commission were conducted at the State House Annex in Trenton on January 27, April 21, July 16 and August 18. The subcommittees met on February 17, June 22, July 21 and other dates at the call of the subcommittee chairmen. On October 18, a public meeting of the commission was held in Atlantic City. Members of the commission led discussions on the following subjects: legislation proposed by the compliance-inspection subcommittee to require that the sale of alcoholic beverages to an underage person be a knowing sale for the criminal prosecution of an alcoholic beverage licensee, the impact of consolidation on the retail and wholesale level, and the impact of wine selling clubs.

B. Trade Relations Subcommittee

The Trade Relations Subcommittee reviewed subchapter 23 of the regulations of the Division of Alcoholic Beverage Control. The commission took action on the following recommendations:

1. N.J.A.C. 13:2-23.1--Serving minors and intoxicated persons.

The subcommittee recommended that greater effort be made by the authorities, including the division, to educate minors through a program in the schools of the penalties they risk if convicted of purchasing alcoholic beverages. The commission passed by a voice vote a motion that the ad hoc subcommittee work with the ABC, the State Police and OLS to draft legislation that would create mandatory education programs in the schools. Senator Costa later appointed several commissioners to the ad hoc subcommittee to study this issue. A summary of the subcommittee's work appears on page 20.

2. N.J.A.C. 13:2-23.5--Narcotics and illegal activities, prohibited patrons. The subcommittee recommended a licensee should be held culpable only if he knew or should have known that the narcotics or illegal activity was occurring on or adjacent to the licensed premises. This is the test that is used in connection with other illegal activities. The commission passed by a voice vote a motion recommending that the same standard be applied.

3. N.J.A.C. 13:2-23.9--Adulterated alcoholic beverages. The subcommittee recommended that in the case of unopened original containers the responsibility for adulterated alcoholic beverages should rest with the manufacturer-supplier and not the wholesale or retail licensee, unless the wholesale or retail licensee knowingly sells the adulterated product. Commissioners stated that this recommendation was consistent with changes in New Jersey products liability law and proposed federal changes. ABC Director Vassallo opposed this recommendation because the current regulation is a useful tool for the division in the case of a recalled product, and because there have been cases where consumption licensees have altered a product. The commission passed by a voice vote a motion to adopt this recommendation.

4. N.J.A.C. 13:2-23.10--Receiving prohibited deliveries of alcoholic beverages. The subcommittee recommended that this section be amended to require knowledge on the part of the licensee by inserting the word "knowingly." Arguments against the proposed amendment were (1) it would open the door to transshipping by weakening the wholesaler's protections, (2) inserting the word "knowingly" relieves persons of the responsibility to ensure that they are participating in a legal transaction, (3) it would hinder efforts to police the alcoholic beverage industry and (4) it would eviscerate the regulation because a retailer could be prosecuted only under unusual circumstances. A motion to adopt the subcommittee's recommendation failed by a voice vote.

5. N.J.A.C. 13:2-23.11--Possession of open containers; consumption. The subcommittee recommended that sampling or tasting of alcoholic beverages be permitted on retail distribution licensed premises subject to first obtaining authorization by special permit from the ABC Director. A motion was made to adopt this recommendation and passed by a voice vote.

6. N.J.A.C. 13:2-23.13--Copies of current certificates; application; list of employees. The subcommittee recommended the section be modified to permit the licensee a period of seven days from the date of employment or termination to update the list as opposed to a contemporaneous recording. The commission passed by a voice vote a motion to adopt this recommendation.

7. N.J.A.C. 13:2-23.14--Indecent matter. The subcommittee was of the opinion that this section would appear to prohibit the cable television broadcasting of "R" rated movies on licensed premises and requested that the commission give this issue discussion and consideration. ABC Director Vassallo stated that the regulation should not be amended because it has been upheld by the courts. A motion not to amend the section was passed by a voice vote.

8. N.J.A.C. 13:2-23.24--Placing of orders. The subcommittee proposed that this section be amended so that a licensee would not be in violation of the section unless he had knowledge that the individual soliciter did not possess a permit in violation of N.J.A.C. 13:2-16. The subcommittee was of the opinion that this amendment is necessary because a retailer who communicates via the telephone, computer or fax machine with a person who does not have the permit required under N.J.A.C. 13:2-16 would be in violation of N.J.A.C. 13:2-23.24. A motion was passed by a

voice vote that the director (1) amend N.J.A.C. 13:2-23.24 in accordance with the subcommittee's recommendation and (2) modify N.J.A.C. 13:2-16.1 and 13:2-16.2 to recognize that methods of placing orders today include the telephone, fax machine and computer.

9. N.J.A.C. 13:2-23.28--Responsibility of licensee in disciplinary proceedings. The subcommittee recommended that in those instances where an employee acted contrary to instructions given to him by the licensee, any sanction imposed upon the licensee should be substantially mitigated subject to the discretion of the Director and/or issuing authority. Director Vassallo stated that this is currently the division's policy. A motion recommending that this policy continue was approved unanimously.

10. The commission passed by a voice vote a motion that the subcommittee's recommendations regarding other sections of subchapter 23 to remain unchanged be adopted.

C. Ad Hoc Subcommittee

An ad hoc subcommittee was formed to study the recommendation of the Trade Relations Subcommittee that underage persons be educated through school programs on the penalties they face for purchasing and consuming alcoholic beverages. Senator Costa appointed Commissioners Napodano, Kelly and Jerlat to the subcommittee which is chaired by Commissioner Bromley.

Current statutes provide as follows: (1) Under N.J.S.A. 33:1-81, it is unlawful for a person under the legal drinking age to purchase or consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to have another purchase for him any alcoholic beverage. It is also unlawful for such a person to misrepresent or misstate his age, or the age of any other person for the purpose of inducing any licensee or his employee to sell, serve or deliver any alcoholic beverage to a person under

the legal drinking age. Any person who violates this section is deemed a disorderly person and punished by a fine of not less than \$100. In addition, the court must suspend or postpone the issuance of the person's driver's license for six months. The court also may require participation in an alcohol education or treatment program authorized by the Department of Health. (2) Under N.J.S.A. 2C:33-15, any person under the legal drinking age who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage in any school, public conveyance, public place, place of public assembly, or motor vehicle, is guilty of a disorderly persons offense and fined not less than \$100. Whenever the offense is committed in a motor vehicle, the court also may suspend or postpone the issuance of the person's driver's license for up to 30 days. In addition, the court may require the person to participate in an alcohol education or treatment program authorized by the Department of Health.

The subcommittee approved draft legislation which requires schools with mandated substance abuse programs to provide instruction for public school students in grades kindergarten through 12 regarding these penalties for purchase and consumption of alcoholic beverages by persons under the legal drinking age. The draft legislation also requires that this information be included in training workshops for program teachers. On August 18, 1989, the commission passed by a voice vote a motion to adopt the subcommittee's recommendation.

However, on the basis of information subsequently provided to the commission, it was decided that the proposed legislation may not be required at the present time.

In 1989 the ABC started an educational campaign aimed at underage drinkers that centers around the loss of driving privileges. A poster was

produced which graphically depicts the consequences of drinking by underage persons and may be used in the classroom setting as a teaching aid. The ABC plans to locate these posters in the State's high schools. The ABC gives the following rationale for this campaign. "It is not expected that this campaign will suddenly alter the habits of the state's youth. It may, however, make a few of the borderline cases think twice before risking their license, or the other costs. Many still think of buying a drink as a game with no real penalties. This campaign is aimed at letting people know exactly what the penalties are."

In addition, representatives of the Department of Education stated that the department's drug and alcohol education guidelines, which will be updated for the 1990-1991 school year, could be readily amended to reflect the objectives of the Commission's proposed legislation.

D. Compliance and Inspection Subcommittee

The subcommittee examined the penalties imposed on persons who sell alcoholic beverages to persons under the legal age to purchase alcoholic beverages.

Under N.J.S.A. 33:1-77, a person who sells alcoholic beverages to an underage person is subject to a disorderly person's charge. The penalty is applicable to both the licensee and his employees. The statute provides a valid defense to a charge that a person or licensee sold alcoholic beverages to a person under the legal age, but all of the following factors must be established: (1) the buyer produced a driver's license bearing a photograph of the licensee or a photographic identification card issued by a county clerk pursuant to New Jersey law or a similar card issued by another state or the federal government; (2) the appearance of the buyer would lead one to believe the buyer was of legal age; and (3) the sale was made in good faith relying upon the appearance of the buyer and the photographic driver's

license or the photographic identification card produced by that buyer.

A person who sells alcoholic beverages to an underage person is also subject to administrative charges under N.J.A.C. 13:2-23.1. The ABC director may suspend or revoke the seller's license or accept a monetary penalty in lieu of suspension pursuant to N.J.S.A. 33:1-31. Under current division policy, for the first offense the license is suspended for 15 days. For the second similar offense within two years of the first offense, the license is suspended for 30 days. For the third similar violation within two years of the date of the first violation, a 45-day suspension will be imposed. The director will not accept a monetary offer in lieu of suspension for the third offense unless there are mitigating circumstances.

The subcommittee proposed legislation amending N.J.S.A. 33:1-77. The proposed amendment provides that an alcoholic beverage licensee must knowingly sell alcoholic beverages to a minor for criminal prosecution of the licensee. Because the defenses would not be applicable when alcoholic beverages are knowingly sold to such persons, the legislation removes them in this situation.

The subcommittee determined that an amendment to the section is necessary because it has become increasingly difficult for licensees to detect minors. Persons under the legal drinking age easily can obtain a forged driver's license, even though the new driver's licenses with photographs issued by the Division of Motor Vehicles were designed to be tamper-proof. More importantly, many employees of licensees work full time in other occupations such as teaching, and a conviction under this section means they will have a criminal record.

On June 16, 1989, the commission passed by a voice vote a motion that N.J.S.A. 33:1-77 be amended to incorporate the subcommittee's

recommendations. On August 18, 1989, the commission passed by a voice vote a motion to adopt the subcommittee's recommendation in the form of draft legislation.

Under the provisions of the legislation as approved by the commission and introduced by Senator Costa, the licensee would not be subject to prosecution unless he knowingly sold the alcoholic beverages to the underage person. The bill also provides that any licensee who personally, or through his agents or employees, sells or serves any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages may be subject to administrative charges by the director or other issuing authority. The bill makes the current statutory defenses available to the licensee on an administrative charge, incorporating the current practice into the statute. A copy of this legislation (Senate Bill 3896 of 1989) is included as Appendix VI.

JOINT RESOLUTION No. 4

Approved July 28, 1982

A JOINT RESOLUTION creating a commission to study the statutes and regulations concerning the alcoholic beverage industry.

WHEREAS, The Legislature finds that the underlying principles for the State's control of the manufacture, distribution, sale and consumption of alcoholic beverages were established by legislation adopted in 1933; that under this basic mandate, the Division of Alcoholic Beverage Control has promulgated a vast array of rules affecting virtually every aspect of the alcoholic beverage industry; and

WHEREAS, In light of changing social and economic attitudes and conditions, a comprehensive review of the statutory and regulatory controls over alcoholic beverages would serve a valuable public purpose; now, therefore,

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

1. There is established an Alcoholic Beverage Control Study Commission, to consist of 15 members to be appointed as follows:

a. Two from among the members of the Senate, by the President of the Senate, and shall not be of the same political party;

b. Two from among the members of the General Assembly, by the Speaker of the General Assembly, and shall not be of the same political party;

c. Six citizens of the State, to be appointed jointly by the President of the Senate and the Speaker of the General Assembly, who shall be representatives of the alcoholic beverage industry, and no more than three of whom shall be of the same political party;

d. Three citizens of the State, to be appointed by the Governor, including a representative of a local law enforcement agency, the casino industry and the general public, and no more than two of whom shall be of the same political party; and

e. The Director of the Division of Alcoholic Beverage Control, ex officio, or his designee and the Superintendent of the New Jersey Division of State Police, ex officio, or his designee. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. It shall be the duty of the commission to study and evaluate the statutes and regulations affecting the manufacture, distribution, sale and consumption of alcoholic beverages, to ascertain whether the existing legal controls are appropriate, effective and continue to serve their intended purposes or whether revisions of the laws or regulations are necessary, practical and feasible.

3. The commission shall organize as soon as possible after the appointment of its members and shall elect a chairman from among its members. The chairman shall appoint a vice-chairman from among its members. The commission may appoint a secretary, who need not be a member of the commission.

4. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ counsel, stenographic and clerical assistants and incur traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for its purposes.

5. The commission may meet and hold hearings at any place or places as it shall designate during the sessions or recesses of the Legislature and shall report within 6 months of the effective date of this Joint Resolution its findings and recommendations to the Legislature and issue its final report after 12 months of the effective date of this Joint Resolution, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

6. The commission shall have all of the powers provided by the provisions of chapter 13 of Title 52 of the Revised Statutes.

7. This Joint Resolution shall take effect immediately and shall expire 1 year following enactment.

JOINT RESOLUTION No. 16

Approved October 26, 1983

A JOINT RESOLUTION concerning the commission to study the statutes and regulations relating to the alcoholic beverage industry and amending Joint Resolution No. 4 of 1982.

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

1. Section 1 of Joint Resolution No. 4 of 1982 is amended to read as follows:

1. There is established an Alcoholic Beverage Control Study Commission to consist of 16 members to be appointed as follows:

a. Two from among the members of the Senate, by the President of the Senate, and shall not be of the same political party;

b. Two from among the members of the General Assembly, by the Speaker of the General Assembly, and shall not be of the same political party;

c. Seven citizens of the State, to be appointed jointly by the President of the Senate and the Speaker of the General Assembly, who shall be representatives of the alcoholic beverage industry, and no more than four of whom shall be of the same political party;

d. Three citizens of the State, to be appointed by the Governor, including a representative of a local law enforcement agency, the casino industry and the general public, and no more than two of whom shall be of the same political party; and

e. The Director of the Division of Alcoholic Beverage Control, *ex officio*, or his designee and the Superintendent of the New Jersey Division of State Police, *ex officio*, or his designee. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. Section 5 of Joint Resolution No. 4 of 1982 is amended to read as follows:

5. The commission may meet and hold hearings at any place or places as it shall designate during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature and issue its final report by January 1, 1984, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

3. Section 7 of Joint Resolution No. 4 is amended to read as follows:

7. This joint resolution shall take effect immediately and shall expire January 1, 1984.

4. This joint resolution shall take effect immediately.

JOINT RESOLUTION No. 5

Approved March 19, 1984.

A JOINT RESOLUTION concerning the commission to study the statutes and regulations relating to the alcoholic beverage industry and amending Joint Resolution No. 4 of 1982.

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

1. Section 1 of Joint Resolution No. 4 of 1982 is amended to read as follows:

1. There is established an Alcoholic Beverage Control Study Commission to consist of 18 members to be appointed as follows:

a. Two from among the members of the Senate, by the President of the Senate, and shall not be of the same political party;

b. Two from among the members of the General Assembly, by the Speaker of the General Assembly, and shall not be of the same political party;

c. Nine citizens of the State, to be appointed jointly by the President of the Senate and the Speaker of the General Assembly, seven of whom shall be representatives of the alcoholic beverage industry, two of whom shall be representatives of the general public and no more than five of whom shall be of the same political party;

d. Three citizens of the State, to be appointed by the Governor, including a representative of a local law enforcement agency, the casino industry and the general public, and no more than two of whom shall be of the same political party; and

e. The Director of the Division of Alcoholic Beverage Control, ex officio, or his designee and the Superintendent of the New Jersey Division of State Police, ex officio, or his designee. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. This joint resolution shall take effect immediately but shall remain inoperative until either one of the joint resolutions now pending before the Legislature as Assembly Joint Resolution No. 23 of 1984 and Senate Joint Resolution No. 13 of 1984 is enacted into law.

JOINT RESOLUTION No. 7

Approved March 19, 1984.

A JOINT RESOLUTION to reconstitute the commission created to study the statutes and regulations concerning the alcoholic beverage industry.

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

1. The commission to study the statutes and regulations concerning the alcoholic beverage industry, created by Joint Resolution No. 4 of 1982, is reconstituted with the same membership, powers and duties as heretofore provided.

2. The commission shall make recommendations which it deems proper and shall prepare and submit to the Legislature and the Governor reports which it deems necessary, accompanying its recommendations and reports with any legislative bills which it may desire to recommend for adoption by the Legislature.

In addition to the recommendations and reports made by the commission during the course of its term until its expiration on December 31, 1987, the commission shall submit an annual report, no later than December 31 of each year, to the President of the Senate, the Speaker of the General Assembly, and the Governor, describing the activities and accomplishments of the commission.

If the commission determines in 1987 that the termination date of December 31, 1987 should be extended, a recommendation to that effect may be submitted to the President of the Senate, Speaker of the General Assembly and the Governor. The recommendation shall be submitted by September 1, 1987 and shall state the reasons for the commission's decision to make the recommendation.

3. This joint resolution shall take effect immediately and shall expire on December 31, 1987.

[OFFICIAL COPY REPRINT]
SENATE JOINT RESOLUTION No. 69
STATE OF NEW JERSEY

INTRODUCED JUNE 22, 1987

By Senator COSTA

Referred to Committee on Law, Public Safety and Defense

A JOINT RESOLUTION to reconstitute the commission to study the statutes and regulations relating to the alcoholic beverage industry *and amending Joint Resolution No. 4 of 1982*.

1 BE IT RESOLVED by the Senate and General Assembly of the State
2 of New Jersey:

1 *1. There is established an Alcoholic Beverage Control Study
2 Commission to consist of [18] 21 members to be appointed as
3 follows:

4 a. Two from among the members of the Senate, by the President
5 of the Senate, and shall not be of the same political party;

6 b. Two from among the members of the General Assembly, by
7 the Speaker of the General Assembly, and shall not be of the same
8 political party;

9 c. [Nine] Six citizens of the State, to be appointed [jointly] by
10 the President of the Senate and six citizens of the State to be
11 appointed by the Speaker of the General Assembly. Of these 12
12 citizens, nine [seven of whom] shall be representatives of the
13 alcoholic beverage industry, [two of whom] three shall be repre-
14 sentatives of the general public and no more than [five of whom]
15 three appointees each of the President and the Speaker shall be of
16 the same political party;

17 d. Three citizens of the State, to be appointed by the Governor,
18 including a representative of a local law enforcement agency, the
19 casino industry and the general public, and no more than two of
20 whom shall be of the same political party; and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.
Matter enclosed in asterisks or stars has been adopted as follows:
*—Assembly amendments adopted January 7, 1988.

21 e. The Director of the Division of Alcoholic Beverage Control,
22 ex officio, or his designee and the Superintendent of the New Jersey
23 Division of State Police, ex officio, or his designee. Vacancies in
24 the membership of the commission shall be filled in the same manner
25 as the original appointments were made; *provided, however, that:*

26 (1) *In the case of the additional members authorized under the*
27 *provisions of this joint resolution, two shall be appointed by the*
28 *Speaker of the General Assembly and one shall be appointed by*
29 *the President of the Senate.*

30 (2) *In the case of a vacancy among the members jointly appointed*
31 *by the President of the Senate and the Speaker of the General*
32 *Assembly which exists on or occurs after the effective date of this*
33 *joint resolution, the President of the Senate and the Speaker of*
34 *the General Assembly shall, in turn, beginning with the President*
35 *of the Senate, appoint the successor.*

36 (3) *Whenever any member appointed by either the President of*
37 *the Senate or the Speaker of the House shall vacate his position*
38 *on the commission, the successor shall be appointed by the presiding*
39 *officer, be it the President of the Senate or the Speaker of the*
40 *General Assembly, who appointed the citizen who vacated his*
41 *position on the commission.*

42 f. *After the effective date of this joint resolution, any citizen*
43 *member who shall miss three consecutive meetings of the commis-*
44 *sion without good cause shall be deemed to have forfeited and*
45 *vacated his membership on the commission. Any vacancy so*
46 *created in the membership shall be filled in the manner prescribed*
47 *in subsection e. of this section.**

1 ***[1.]** *2.* The commission to study the statutes and regulations
2 concerning the alcoholic beverage industry, created by Joint Reso-
3 lution No. 4 of 1982, and reconstituted by Joint Resolution No. 7
4 of 1984, is reconstituted with the same membership, **except as*
5 *provided in section 1 of this act and the same** powers and duties
6 as heretofore provided.

1 ***[2.]** *3.* The commission shall make recommendations which
2 it deems proper and shall prepare and submit to the Legislature
3 and the Governor reports which it deems necessary, accompanying
4 its recommendations and reports with any legislative bills which it
5 may desire to recommend for adoption by the Legislature.

6 In addition to the recommendations and reports which may be
7 made by the commission during the course of its term until its
8 expiration on December 31, 1989, the commission shall submit an
9 annual report, no later than December 31 of each year, to the

10 President of the Senate, the Speaker of the General Assembly, and
11 the Governor, describing the activities and accomplishments of
12 the commission.

1 *~~3.~~* *4.* This joint resolution shall take effect immediately and
2 shall expire on December 31, 1989.

ALCOHOLIC BEVERAGES

Reconstitutes Alcoholic Beverage Control Study Commission.

SENATE, No. 3896
STATE OF NEW JERSEY

INTRODUCED NOVEMBER 20, 1989

By Senator COSTA

AN ACT concerning the sale of alcoholic beverages to persons under the legal age to purchase alcoholic beverages and amending R.S.33:1-77.

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

1. R.S.33:1-77 is amended to read as follows:
 - a. Anyone who knowingly sells any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages is a disorderly person; provided, however, that:
 - b. Any licensee who personally or through his agents or employees sells or serves any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages may be subject to administrative charges by the director or other issuing authority; provided however that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any [prosecution] such administrative charges therefor:
 - [(a)] (1) that the purchaser falsely represented to the licensee or his agent or employee in writing, or by producing a driver's license bearing a photograph of the [licensee] purchaser, or by producing a photographic identification card issued pursuant to section 1 of P.L.1968, c.313 (C.33:1-81.2) or a similar card issued pursuant to the laws of another state or the federal government that he or she was of legal age to make the purchase[.];
 - [(b)] (2) that the appearance of the purchaser was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase[.];
 - [(c)] (3) that the sale was made in good faith relying upon such written representation, or production of a driver's license bearing a photograph of the [licensee] purchaser, or production of a photographic identification card issued pursuant to section 1 of P.L. 1968, c. 313 (C.33:1-81.2) or a similar card issued pursuant

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S3896

2

to the laws of another state or the federal government and appearance and in the reasonable belief that the purchaser was actually of legal age to make the purchase.

(cf: P.L.1985, c.503, s.1)

2. This act shall take effect immediately.

STATEMENT

Under R.S.33:1-77 any licensee who sells alcoholic beverages to a person under the legal age for purchasing alcoholic beverages is a disorderly person. The statute also lists defenses available to a licensee who sells alcoholic beverages to an underage person. Under the provisions of this bill, the licensee would not be subject to prosecution unless he knowingly sold the alcoholic beverages to the underage person. Because the defenses would not be applicable when alcoholic beverages are knowingly sold to such persons, the bill removes them in this situation.

The bill also provides that any licensee who personally or through his agents or employees sells or serves any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages may be subject to administrative charges by the director or other issuing authority. The bill makes the current statutory defenses available to the licensee during an administrative hearing. The Director of the Division of Alcoholic Beverage Control currently permits the licensee to use these defenses against administrative charges; the bill incorporates this practice into the statute.

PUBLIC SAFETY Alcoholic Beverages

Requires sale of alcoholic beverages to underage purchaser be knowing for prosecution of licensee.

