

## The Sober Truth of New Jersey's BYOB Law and the Acquisition of a Liquor License

06/21/19

New Jersey became home to America's first commercial distillery when, in 1780, an immigrant from Scotland established an Applejack production facility in what is now Colts Neck. Since that time, New Jersey has become the birthplace to some of the most complex liquor license laws in the Country. For those familiar with the application process and cost of a license, there can be no dispute that acquiring and maintaining a liquor license through the [New Jersey Division of Alcoholic Beverage Control](#) (the ABC) and its many coordinate local licensing authorities is both an expensive and intensive pursuit subjecting owners and operators to routine inspection of books, records and on premises activities. There is, however, an undeniable economic incentive to obtaining the privilege to sell and serve the panoply of popular intoxicating beverages that diners and revelers alike willingly peel out the plastic to purchase in mass quantities.

The relative scarcity and expense of consumption licenses has led many restaurants to instead turn to New Jersey's BYOB (Bring Your Own Bottle) law, which permits patrons to bring their own alcoholic beverages to consume on unlicensed premises—those restaurants that do not have a liquor license. Importantly, however, our BYOB law, codified at *N.J.S.A. 2C:33-27*, is far more limiting than many restaurants and patrons may realize.

Primarily, New Jersey's BYOB law permits only wine and malt alcoholic beverages (the most common malt beverage being beer) to be consumed, thus, patrons may *not* bring and establishments should *not* allow their patrons to consume *distilled* beverages. Thus, vodka, gin, rum, whiskey, and the many other beverages that are produced through distillation are simply not permitted in any form regardless of the particular proof of the spirit.

### **BYOB Is Not Universally Allowed In New Jersey**

Few are familiar with the fact that BYOB is not universally allowed. Restaurants may not permit BYOB in their establishments if the local government of the municipality in which the restaurant is located has forbidden the practice. See *Club 35, L.L.C. v. Borough of Sayreville*, 420 N.J. Super. 231 (App. Div. 2011). Even where the practice is permitted under local law, it is ultimately up to each restaurant to determine whether it will or will not permit BYOB on its premises.

### **Advertising BYOB is Now Allowed in New Jersey**

Before November 18, 2018, a restaurant was prohibited from advertising that it was a BYOB. However, the United States District Court for the District of New Jersey recently held that banning BYOB advertising is unconstitutional because the state may regulate alcohol but not the speech relating to alcohol. See *GJJM Enterprises, LLC v. City of Atlantic*, 352 F. Supp. 3d 402, 409 (D.N.J. 2018). Advertising a BYOB restaurant is considered commercial speech and is *not* conduct that allows the state to prevent it. *Id.* Therefore, New Jersey restaurants may advertise that they are BYOB, provided the municipality in which the restaurant is located permits BYOB. In addition, restaurants are prohibited from charging any fee, cover, service or corkage charge for customers who bring their own wine or malt beverage. Consumption is limited to specific hours and, like licensed restaurants, BYOB restaurants should not allow their patrons to overindulge on their premises, even though the restaurant is not actually providing nor serving alcoholic beverages.

## **BYOB Regulation is Enforced Locally, not by the ABC**

The New Jersey ABC does not have legal jurisdiction over unlicensed establishments. New Jersey's BYOB law places the burden on the establishment to comply with law and leaves enforcement to local law enforcement. Thus, patrons who seek to unlawfully consume distilled beverages, or those who continue consuming after becoming visibly intoxicated, are placing the operator of the restaurant in legal jeopardy. While patrons who violate the law could be subject to penalties that range up to six months in jail, a municipality through its local police powers could charge the establishment with per incident violations, which could become progressively more punitive. Ultimately, for those establishments that routinely permit the abuse of the BYOB law, it is foreseeable that they could suffer the loss of the advantage offered by the BYOB law. Further, a history of violating the BYOB law would likely be considered and employed as a reason to reject a future bid for licensure by the ABC.

If you have any questions about BYOB law in New Jersey, contact John E. Hogan at 732.855.6470.

### **Attorney**

- John E. Hogan

### **Practice**

- Criminal Defense