

**CHAPTER 2**

**DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

**Authority**

N.J.S.A. 33:1-1 et seq.

**Source and Effective Date**

R.2000 d.342, effective July 24, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 2, Division of Alcoholic Beverage Control, expires on July 24, 2005.

**Chapter Historical Note**

Chapter 2, Division of Alcoholic Beverage Control, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.1990 d.412, effective July 24, 1990, and Subchapter 22, Transportation of Alcoholic Beverages by Railroad Carriers, Subchapter 34, Alcohol Permits, and Subchapter 37, Contracts of Employment and Conduct of Solicitors, were repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Subchapter 22, Licensee Training and Certification, was adopted as new rules by R.1992 d.445, effective November 2, 1992. See: 24 N.J.R. 1958(b), 24 N.J.R. 4055(b).

Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.1995 d.450, effective July 24, 1995, and Subchapter 9, Warehouse Receipts Licenses, Subchapter 11, Farm Winery Licenses and Retail Privileges, Subchapter 28, Decanting of Wine, Subchapter 32, Sales of Forfeited Property, and the Appendix were repealed and Subchapter 34, Restricted Brewery, Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners, and Subchapter 41, Issuance or Transfer of Plenary Retail Consumption Licenses to Non-Profit Musical or Theatrical Corporations; Qualifications of Restaurant Operators, were adopted as new rules by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2000 d.342, effective July 24, 2000, and Subchapter 13, Execution of Questionnaire by State Licensees, and their Principals and Employees, was repealed by R.2000 d.342, effective August 21, 2000. See: Source and Effective Date. See, also, section annotations.

**Law Review and Journal Commentaries**

Practitioner's Guide to ABC Disciplinary Review. Kevin Marc Schatz, 137 N.J.L.J. No. 16, 10 (1994).

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**SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE**

**13:2-1.1 Filing of application; advertising**

Application for license must be filed on forms prescribed by the Director, Division of Alcoholic Beverage Control, in duplicate with the Division at or before the first insertion of advertisement and accompanied by the full annual license fee. If the application is to include as the licensed premises a building not yet constructed, plans for the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material, and the overall room dimensions.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Stylistic revisions.

**13:2-16.14 Responsibilities of employer**

No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

New Rule, R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

**13:2-16.15 Solicitor's contracts**

All contracts of employment between Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licenses and their solicitors shall be in writing and shall set forth the salary, commission or other compensation of any kind agreed to be paid to such solicitor. Contracts shall be maintained by the employer for a period of three years from the date of execution and shall be available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

New Rule, R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

**13:2-16.16 Filing of statement of compensation with Director**

On or before May 31 of each year, each holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license employing any solicitor during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses, prizes, awards, bonuses, or otherwise, paid to each such solicitor by such manufacturer or wholesaler during that calendar year.

New Rule, R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

SUBCHAPTER 17. APPEALS

**13:2-17.1 Notice and petition of appeal; contents; fee**

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds

therefor and a fee of \$100.00 payable to the Director, Division of Alcoholic Beverage Control.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Added "from the actions taken by a municipal issuing authority concerning . . . a retail license."  
Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).  
Increased fee.

**13:2-17.2 Service of notice and petition of appeal**

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority and, where the action appealed from is the grant, transfer or extension of a license, or the refusal to revoke or suspend a license, a copy shall be so served upon the licensee, who shall also be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed with the Director within the time set forth in N.J.A.C. 13:2-17.3.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Stylistic revisions.

**13:2-17.3 Time for appeal**

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a license must be taken within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be taken within 30 days after the personal service or mailing by registered mail of a written notice by the municipal issuing authority of the action taken against the licensee or the applicant.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Specified service or mailing of a "written" notice by issuing authority.

**13:2-17.4 Answer**

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the Director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Stylistic revision.

**13:2-17.5 Jurisdiction**

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-8 or retain it under the provisions of N.J.S.A. 52:14F-8.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

#### Case Notes

Appeal from issuance of plenary retail license to replace seasonal consumption license was moot. *Belleaire v. Spring Lake*, 95 N.J.A.R.2d (ABC) 114.

### 13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Deleted N.J.A.C. 13:2-17.8 exception.

#### Case Notes

Appeal was properly dismissed where reasonable support existed for municipal board's granting of application for place-to-place transfer of plenary retail consumption license. *Caracitas v. Municipal Board of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 98.

Denial of request for place-to-place transfer of liquor license to site in vicinity of two churches was not unreasonable. Application of *Maxine's Tavern*, 95 N.J.A.R.2d (ABC) 124.

Liquor license for bar/restaurant, given relatively minor incidents, should have been renewed instead of denied. *Starbo Corp. v. City of Asbury*, 95 N.J.A.R.2d (ABC) 107.

Denial of liquor license transfer application without evidence of detrimental affect was clear abuse of discretion. *Midlantic v. Mayor and Borough Council*, 95 N.J.A.R.2d (ABC) 7.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Denial of person-to-person transfer of a plenary retail consumption license based upon licensee's conviction on three disorderly persons offenses upheld. *Sturchio v. Town of Harrison*, 9 N.J.A.R. 78 (1986).

Burden of showing erroneous action of licensing authority so as to reverse license suspension not met by licensee. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

An appeal from a local license issuing authority is heard de novo; the de novo hearing is designed to cure any procedural defects which occur in connection with the issuing authority's action. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

### 13:2-17.7 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the Director or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

Recodified from 13:2-17.9 by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Prior text at 13:2-17.7, "Public hearing", repealed.

### 13:2-17.8 Stays

The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.11. Filing of appeal by municipal authority is an "automatic" stay. Prior text at 13:2-17.8, "Stipulations, offer of transcript", repealed.

#### Case Notes

Offer of transcription of proceedings before local issuing authority in lieu of producing witnesses on appeal de novo noted. *Marlboro Manor, Inc. v. Alcoholic Beverage Control Bd., Tp. of Montclair*, 7 N.J.A.R. 29 (1981), reversed 187 N.J.Super. 359, 454 A.2d 905 (App. Div.1982).

### 13:2-17.9 Extension of license term

Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in the exercise of sound discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it shall appear that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the extension of license, subject to such conditions as may be imposed, shall be continued pending a final determination of the appeal, or the expiration of the license term, whichever comes sooner.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.12. Added language regarding N.J.A.C. 13:2-2.10(b) time requirement and continuation of extension of license; deleted references to ALJ order. Recodified prior text at 13:2-17.9, "Subpoenas", to 13:2-17.7.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

### 13:2-17.10 Transfer, extension or renewal subject to appeal

When appeal is taken in any matter, any subsequent transfer, extension or renewal of the license involved in the appeal shall be subject to the ultimate outcome of such appeal, unless otherwise ordered in the final administrative determination of the case.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.13. Added text regarding "subsequent" change of status of "the license" involved in appeal. Prior text at 13:2-17.10, "Failure to appear; failure to comply with orders or hearing requirements; obstructing the orderly conduct of proceedings", repealed.

### 13:2-17.11 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

Amended by R.1979 d.393, effective October 1, 1979.

See: 11 N.J.R. 580(f).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.14. Deleted exception "pursuant to N.J.A.C. 13:2-17.8". Recodified prior text at 13:2-17.11, "Stays", to 13:2-17.8.

#### Case Notes

Denial of liquor license for lewd conduct was moot absent objection prior to license expiration. *Daniels v. Township of Neptune*, 95 N.J.A.R.2d (ABC) 68.

Liquor license suspension reversed; Alcoholic Beverage Control board failed to appear at appeal hearing. *Tucceri Tavern, Inc. v. Hoboken Municipal Board of the Division of Alcoholic Beverage Control*, 94 N.J.A.R.2d (ABC) 55.

Granting of stay within Director's sound discretion. *Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

Procedures and standards on appeal. *Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

Requirements for appeal based upon agency declaratory ruling; examination and application of statute prohibiting issuance of liquor license to establishment within 200 feet of a church. *Raritan Rd. Baptist Church v. Tp. of Cranford*, 2 N.J.A.R. 218 (1980).

Admissibility of evidence; record includes exhibits marked at original disciplinary proceedings but not timely provided to administrative law judge (citing former rule) (Division's Final Decision). *A.H.S., Inc. v. Tp. Committee, Tp. of Wall*, 1 N.J.A.R. 284 (1979).

### 13:2-17.12 (Reserved)

Recodified to 13:2-17.9 by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Extension of license term".

### 13:2-17.13 (Reserved)

Recodified to 13:2-17.10 by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Transfer, extension or renewal subject to appeal".

### 13:2-17.14 (Reserved)

Recodified to 13:2-17.9 by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Hearing procedure".

### 13:2-17.15 (Reserved)

Section was "Relaxation of appeals procedures".

## SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

### 13:2-18.1 Grounds for relief

(a) There shall be no discrimination in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, by importers, blenders, distillers, rectifiers and wineries, to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers and wineries to sell such nationally advertised brand in New Jersey. All actions by duly licensed New Jersey wholesalers seeking relief from such discrimination shall be in the form of a petition to the Director setting forth the facts of alleged discrimination, the relief sought and the grounds therefor.

(b) For purposes of (a) above refusal to sell based upon any of the following shall be deemed not to be discrimination:

1. The appointment of a trustee, receiver or other similar custodian for all or any substantial part of the wholesaler's property based upon the provisions of N.J.S. 14A:14-2(2) or any other State or Federal provision similar to N.J.S. 14A:14-2(2);

2. The filing of the petition by the wholesaler, or an answer, not denying jurisdiction, in bankruptcy, under Chapter XI of the Federal Bankruptcy Act, or any similar law, State or Federal, whether now or hereafter existing, or if any such petition is filed against the wholesaler and not vacated or stayed within 15 days of such filing;

3. The making, by the wholesaler, of an assignment for the benefit of creditors;

4. An attachment of the wholesaler's property, or any substantial part thereof, or the filing of any like process against it which is not discharged within 30 days of such filing, unless satisfaction of the underlying obligation is the subject of continuing negotiation, installment payments, or appeal;

5. The rendition of a final judgment by any competent court or tribunal against the wholesaler which remains unsatisfied for 30 days after the entry thereof and which is substantial in relation to the assets of such wholesaler; unless satisfaction of the underlying obligation is the subject of continuing negotiations, installment payments, or appeal;

6. The actual suspension or loss, by the wholesaler, of any Federal or State license required for the operation of its business, whether lost through revocation, failure to renew or suspension, for a period of 60 continuous days or more;

7. The insolvency of the wholesaler;

8. The disparagement, by the wholesaler, of any product of the refusing seller made by a representative spe-

cifically authorized by a wholesaler's key management personnel: "Disparagement" shall mean the specific suggestion that the product of the refusing seller not be purchased, or demonstration of a course of conduct that would lead a reasonable person to believe that the product of the refusing seller should not be purchased, and when called to the attention of key management personnel of the wholesaler, no reasonable corrective action is taken;

9. The unfair preferment in sales effort, by the wholesaler, of a competitor's brand over that of the refusing seller;

10. The material breach, by such wholesaler, of any material term or condition of sale or credit agreed upon or established by course of dealing between the wholesaler and the refusing seller, in writing; provided that where either by virtue of customary practice in the industry or past dealings between parties, such breach would not be deemed a reasonable basis for fear of material economic loss from the transaction or transactions involved.

(c) For purposes of (b)7 above, a wholesaler shall be deemed insolvent when:

1. The aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts; or

2. The wholesaler is unable, by its available assets or the reasonable use of credit to pay its debts as they become due; provided, however, that where such inability does not put the refusing seller in reasonable fear of material economic loss from the transaction or transactions involved, refusal to sell shall not be authorized.

Amended by R.1979 d.138, effective May 1, 1979.  
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).  
Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Stylistic revisions.

#### Case Notes

Incorporation of two authorized liquor wholesalers under Limited Liability Company Act did not deprive them of protection under wholesaler anti-discrimination regulations, which prohibit discrimination in sale of nationally advertised brand of alcoholic beverage to duly licensed wholesalers, even though limited liability company included transportation company to deliver products for wholesalers; formation of company did not dissipate supplier's control of its distribution system. *R & R Marketing, L.L.C. v. Brown-Forman Corp.*, 704 A.2d 1327, 307 N.J.Super. 474 (A.D. 1998).

Successor owner of distillery ordered to continue sales to wholesale distributor as under contracts with former owner; N.J.S.A. 33:1-93.6 et seq. constitutional. *Royal Liquor Distributors and Importers v. Brown-Forman Distillers Corp.*, 4 N.J.A.R. 248 (1982).

#### 13:2-18.2 Filing and serving petitions

(a) The petitioner shall file with the Director, Division of Alcoholic Beverage Control, an original and copy of a Verified Petition setting forth the identity of the parties, the subject matter of the petition, the identity and the brand registration number for each of the product(s) involved, the relief sought, the grounds therefor and such other matters required under N.J.S.A. 33:1-93.6 et seq.

(b) The petitioner shall serve, personally or by ordinary mail, a copy of the petition upon the respondent importer, blender, distiller, rectifier or winery no later than within five days from the filing of the petition. The original petition, together with acknowledgement or affidavit of service, shall be filed with the Director.

(c) The petition shall be accompanied by a filing fee of \$100.00 payable to the Director, Division of Alcoholic Beverage Control.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Added (a) and redesignated existing text, with revisions, as (b).  
Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added (c).

#### 13:2-18.3 Answer to petition

Within 10 days after service of the copy of the petition, each respondent shall file an answer with the Director, together with proof of service of a copy thereof on the petitioner. The answer shall include a statement as to whether the respondent has refused to sell to the petitioner and, if so, the reasons for such refusal.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Deleted exception regarding sale of malt beverages.

#### 13:2-18.4 Interlocutory relief

(a) The petitioner may apply to the Director by verified petition and request interlocutory relief. The verified petition must allege that the petitioner will probably suffer substantial and irreparable injury before final determination of the proceeding unless interlocutory relief is granted.

(b) If it appears that the petitioner will probably suffer immediate, substantial and irreparable injury before a hearing can be held on the return date of the order to show cause, the Director may enter an ex parte order granting ad interim relief, provided the respondent is granted the right to move, on two days notice, to dissolve or modify said order. Ad interim relief can include an Order which requires, among other things, that the respondent sell designated product(s) to the petitioner upon terms as specified by the Director.

(b) A license issued pursuant to N.J.S.A. 33:1-19.7 may be transferred place-to-place, but only if the location to which it is to be transferred is fully qualified to receive this special license under the provision of this statute and the licensee has complied with all applicable provisions of law required for a place-to-place transfer.

(c) Expansion and reduction of premises must be accomplished by application for a place-to-place transfer of license.

(d) Applications for transfers of special plenary retail consumption licenses may only be filed by the qualified non-profit corporations authorized to hold such licenses.

**13:2-41.6 Reporting changes in facts and in corporate structures**

Changes in any facts contained in any existing filed application, including changes in corporate structure both in the non-profit corporation holding the license as well as any corporate restaurant operator, shall be reported in accordance with the provisions of N.J.A.C. 13:2-2.14 and 2.16.

**13:2-41.7 Renewal of special plenary retail consumption licenses**

A license issued under the provisions of N.J.S.A. 33:1-19.7 may only be renewed by the qualified non-profit corporation authorized to hold such license and shall be renewed as any other plenary retail consumption license, under appropriate provisions of law.