

Division of

ALCOHOLIC
BEVERAGE
CONTROL

Bulletin

TRW Complex, Bldg. 20, 200 Woolverton Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2453

October 31, 1988

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1. **NOTICE TO LICENSEES - NEW "NOTICE OF INSPECTION" TO REPLACE NOTICE OF VIOLATION - FORMAL WARNING SYSTEM TO BE IMPLEMENTED IN LIEU OF DISCIPLINARY CHARGES AND PENALTIES IN CERTAIN CASES.**

In *Bulletin 2450, Item 2* (June 2, 1987), the Director announced the implementation of a "Notice of Violation" designed to expedite the disposition of routine, minor violations. This has been successfully carried out through utilization of a summons-like citation form issued by an Alcoholic Beverage Control Inspector at the time of investigation to a licensee for certain minor infractions of alcoholic beverage control laws or regulations. The licensee thereafter could resolve the matter in a summary manner by remitting the penalty without further proceedings.

In keeping with extensive changes begun in early 1988 by Attorney General Cary Edwards and Director John F. Vassallo, Jr., in which the efforts of the Division of Alcoholic Beverage Control are being reoriented toward education and self-compliance on the part of licensees, in mid-November the use of the "Notice of Violation" will be discontinued and it will be replaced with a "Notice of Inspection" and the implementation of a formal warning system for minor violations and discrepancies.

The "Notice of Inspection" form will be utilized in the following manner: When an Inspector visits a premises, if no violations or discrepancies are noted in the area(s) inspected, the Inspector will check Block "A" on the Notice and give it to the licensee. Block "A" reads, "This inspection has disclosed no violations or discrepancies in the area inspected. See other side." On the reverse will be found a notice to the licensee that, if Block "A" is checked on the other side, this indicates that no discrepancies or violations were noted in the areas covered by the inspection. It will also indicate that the Attorney General and Director commend and thank the licensee for his compliance efforts.

If, however, minor violations or discrepancies are noted, provided they are not more than three in number, the Inspector will check Block "B", which reads, "The following discrepancies were noted in this inspection:", and will list the discrepancy or discrepancies along with the applicable statute or regulation citation(s). The form will refer the licensee to the reverse side, where the following language is printed: "If Block 'B' is checked on the other side, this

indicates that discrepancies or violations of a minor nature were noted by the Inspector. You must take immediate measures to correct the listed discrepancies. Moreover, if you have previously received a warning for the same discrepancy, you can expect to hear from the Compliance Bureau of the Division of Alcoholic Beverage Control with regard to sanctions. Should you wish to contest any item listed in Block 'B', please contact the Compliance Bureau of the Division of Alcoholic Beverage Control, CN-087, Trenton, NJ 08625-0087, in writing. Please reference the number on the other side of this notice when you do."

When a "Notice of Inspection" form is given to a licensee, with Block "B" checked, it will be forwarded to the Division where the licensee's record will be checked for a prior similar warning. If there has been no previous warning for the same discrepancy, it will merely be recorded and the Notice will constitute a formal warning to the licensee, and it will be expected that the licensee will take immediate steps to correct the deficiency. If a previous "Notice of Inspection" was given to the licensee within a prior two-year period, the Compliance Bureau will advise the licensee that a monetary penalty in lieu of disciplinary proceedings (in accordance with a schedule of presumptive penalties - see *this Bulletin, Item 2*) is due for a second occurrence, or that a suspension is being imposed if it is a third or subsequent violation. In most cases a monetary penalty will not be accepted for a third or subsequent violation. It should be noted that, where there is a second occurrence by a Club Licensee, no monetary penalty will be accepted, but a suspension will be imposed. This is in keeping with the Director's long-standing policy of not accepting any monetary offers in compromise from Club Licensees because of the nature of the license and its purpose in only being for the benefit of its members.

The violations for which Block "B" of the Notice of Inspection form will be utilized include: no E-141-A form (Employee List); incomplete E-141-A form; no copy of license application (long, short or current); license certificate not conspicuously displayed; no federal special tax stamp or indicia of payment; contaminated and/or low proof bottles (not tampered); most prohibited promotions (unless of a serious nature); employment of a minor; no application filed for bulk sales permit; retailer delivery without transit insignia; failure to timely notify of corporate structure change; storage off the licensed premises; no or improper beer or wine tap markings; no identification of brand being dispensed by automatic or electronic dispenser; giving alcoholic beverages as a prize; possession of open container of alcoholic beverages on a plenary retail distribution licensed premises; other mercantile business (unless of a serious nature); prohibited practices by solicitor (unless of a serious nature); accepting alcoholic beverages on terms not in Current Price List; violation of "broad package" privilege or deviation from approved floor plan; sale beyond or in area not licensed; storage of co-operative purchase beyond 72 hours; receiving delivery from non-licensed carrier; sale below cost; misleading advertising of a minor nature; SBD licensee selling less than 144 oz. or chilled packaged beer; sale by club licensee to social affair permittee; rebate

regulation violations; most record-keeping violations; and most non-compliances with Bulletin directives not otherwise covered.

Where a serious violation, not covered in the list of items for Block "B", is found, or where more than three minor violations were noted, Block "C" will be checked by the Inspector and the Notice of Inspection will indicate that the Inspector will prepare and forward an inspection or investigation report to the Compliance Bureau of the Division of Alcoholic Beverage Control, and that the Compliance Bureau will thereafter send the licensee a notice regarding disciplinary proceedings or other disposition of the matter.

Reduced-size facsimile of the form for "Notice of Inspection":

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
ALCOHOLIC BEVERAGE CONTROL

NOTICE OF INSPECTION N" II

Name of licensee: _____
 Address: _____
 City: _____
 State: _____
 Zip: _____
 Date of inspection: _____
 Inspector: _____
 Title: _____

A. This inspection has disclosed no violations or discrepancies in the area inspected. See other side.

B. The following discrepancies were noted in this inspection.
ALSO SEE OTHER SIDE.

1. Beverage NJS 33 _____
or Regulation NJAC 13 _____

2. Beverage NJS 33 _____
or Regulation NJAC 13 _____

3. Beverage NJS 33 _____
or Regulation NJAC 13 _____

C. An inspection report will be forwarded to the Director of the Division of A.B.C. See other side.

Signature: _____ Stamp: _____

NOTICE TO LICENSEE

If Block "A" is checked on the other side, this indicates that no discrepancies or violations were noted in the areas covered by the inspection. The Attorney General and the Director of the Division of Alcoholic Beverage Control commend you and thank you for your compliance efforts.

.....

If Block "B" is checked on the other side, this indicates that discrepancies or violations of a minor nature were noted by the Inspector. You must take immediate measures to correct the listed discrepancies.

Moreover, if you have previously received a warning for the same discrepancy you can expect to hear from the Compliance Bureau of the Division of Alcoholic Beverage Control with regard to sanctions.

Should you wish to contest any item listed in block "B", please contact the Compliance Bureau of the Division of Alcoholic Beverage Control, CN-067, Trenton, NJ 08625-0067, in writing. Please reference the number on the other side of this notice when you do.

.....

If Block "C" is checked on the other side, this indicates that violation(s) of a serious nature or more than three minor violations were noted. The Inspector will prepare and forward an investigation report to the Compliance Bureau of the Division of Alcoholic Beverage Control. The Compliance Bureau will thereafter send you a notice regarding disciplinary proceedings or other disposition of the matter.

2. SCHEDULE OF PENALTIES.

Although the Division has long based penalties for violations of alcoholic beverage control laws and regulations on a schedule of presumptive penalties, that schedule has only been utilized internally within the Division. As a result, there has been no uniformity of penalties imposed by local issuing authorities throughout the State. Licensees have also not been able to know the starting point for penalties prior to their imposition. Additionally, the Alcoholic Beverage Control Study Commission has suggested that the penalties be published.

In order to eliminate the problems noted above, and in keeping with the Division's re-orientation toward education and self-compliance, the Director has determined to publish the following schedule of penalties, i.e., the starting point for penalties before consideration of aggravating or mitigating factors, and to disseminate it to the local issuing authorities and to the alcohol beverage industry in the State:

ALCOHOLIC BEVERAGE CONTROL PENALTY SCHEDULE

The following listing covers the most common violations and areas of non-compliance with regulations, together with the presumptive penalties for each. The list is intended solely as a guide for the assignment of penalties in routine cases.

Where there is a "non-vult" or guilty plea, it is currently the Director's policy to grant a 5-day or 20% remission (whichever is greater) in the number of suspension days in those cases where the suspension penalty exceeds 10 days.

(Whenever a suspension is imposed, whether by the Director or by the local issuing authority, the licensee can apply to the Director for acceptance of a monetary offer in compromise in lieu of suspension of the license. If the Director accepts the application for the offer in compromise, the amount will normally be calculated at one-half the per diem gross profit derived from the operation of the alcoholic beverage license times the number of suspension days imposed as the penalty. The licensee must furnish to the Director a tax return or other acceptable proof of income when applying for acceptance of an offer in compromise. No offer in compromise may be accepted by any issuing authority other than the Director. It is the Director's policy, without exception, to not accept any offer in compromise from the holder of a Club License.)

-Sale to or Consumption by Underaged¹: 15 days
 N.J.A.C. 13:2-23.1(a)

¹The current policy on the penalty for sale to or consumption by an underaged person is contained in *Bulletin 2443, Item 6* (Sept. 13, 1985). For a second similar violation within two years of the date of the first violation, a 30-day suspension will be imposed. For the third similar violation within two years of the date of the first violation, a 45-day suspension will be imposed. A monetary offer in compromise in lieu of the suspension for a third violation will be entertained only where there are mitigating circumstances for exceptional considerations. For the fourth similar violation within two years of the date of the first violation, the license will be revoked, unless there are clear mitigating circumstances or there is compelling reason not to do so.

Where there is a subsequent similar violation but it occurs more than two years but less than three years after the date of the first violation, five additional days will be added to the basic period of suspension.

A lesser penalty may be considered in cases where the licensee has demonstrated recognition of the underage drinking problem through an established age identification system, and has taken steps to use that system.

-Licensee or Employee Intoxicated: N.J.A.C. 13:2-23.20	15 days
-Sale to ² Actually or Apparently Intoxicated Person ² : N.J.A.C. 13:2-23.1(b)	15 days
-Tampered Bottles: N.J.A.C. 13:2-23.23	5 days
-Hindrance in the Investigation: N.J.A.C. 13:2-23.30	15 days
-Hindrance - Failure to Produce Documents: N.J.A.C. 13:2-23.30	30 days (or until produced)
-Failure to Keep True Books or Records: N.J.A.C. 13:2-23.32	30 days
-Solicitor - Interest in Retail License: N.J.A.C. 13:2-16.7	25 days
-Solicitor - Employed by Retailer: N.J.A.C. 13:2-16.7	25 days
-Retailer Employing Solicitor: N.J.A.C. 13:2-23.25	20 days
-Sale not in accord with Current Price List: N.J.A.C. 13:2-37.3	25 days
-Solicitor Giving Rebates; Prohibited Discounts: N.J.A.C. 13:2-37.3	25 days
-Sale Beyond Scope by Club Licensee: N.J.A.C. 13:2-8.9	15 days
-Sale Beyond Scope by Non-Club Licensee: N.J.S.A. 33:1-12	15 days
-Sale to Non-Members of Club: N.J.A.C. 13:2-8.8	15 days
-Permitting Brawl on Licensed Premises: N.J.A.C. 13:2-23.6(a)2	25 days
-Sale of Package Goods by Club Licensee: N.J.A.C. 13:2-8.13	15 days

²Penalties and factors in mitigation are also discussed in *Bulletin 2443, Item 6* (Sept. 13, 1985), and are similar to those applying to sale to or consumption by an underage person.

-Lewdness - Audience Participation ³ : N.J.A.C. 13:2-23.6	45 days
-Lewdness - No Audience Participation ³ : N.J.A.C. 13:2-23.6	30 days
-Narcotics - Direct Involvement by Licensee: N.J.A.C. 13:2-23.5(b)	Revocation
-Narcotics - Direct Involvement by Employee ⁴ : N.J.A.C. 13:2-23.5(b)	90 days
-Narcotics Activity on Licensed Premises with the Knowledge of Licensee/Employee ^{4,5} : N.J.A.C. 13:2-23.5(c)	60 days
-Illegal Activity on Licensed Premises: N.J.A.C. 13:2-23.5(c)	25 days
-Lewd Material on Licensed Premises ⁶ : N.J.A.C. 13:2-23.14	15 days
-Gambling - General: N.J.A.C. 13:2-23.7	30 days
-Gambling - Unlicensed Raffle, Sports Pool, Use of Video Device: N.J.A.C. 13:2-23.7	15 days
-Possession of Gambling Paraphernalia or Equipment (including Video Devices): N.J.A.C. 13:2-23.7	15 days
-Gambling - Bookmaking by Licensee: N.J.A.C. 13:2-23.7	60 days
-Gambling - Bookmaking by Employee: N.J.A.C. 13:2-23.7	30 days

³ Isolated cases of "flashing" may be treated with a lesser penalty. A fourth violation for lewd activity within a two-year period may result in revocation of the license.

⁴ A third C.D.S. related violation occurring within a two-year period will result in revocation of the license.

⁵ An offer in compromise will only be considered when there is adequate assurance of affirmative measures taken by the Licensee to prevent any recurrence of the narcotic-related activity.

⁶ Material or matter deemed to be lewd or indecent, but not intended to be used in furtherance of the licensed business, and not openly displayed and for the sole private use of the licensee, may be handled in the first instance by a warning.

-Knowingly Employing Disqualified Person: N.J.S.A. 33:1-25, 33:1-26	30 days
-Sale Before or After Legal Hour: N.J.A.C. 13:2-2-38	15 days
-Substantial Undisclosed Interest by Disqualified Person ⁷ : N.J.S.A. 33:1-25	Revocation
-Substantial Undisclosed Interest by Person Not Disqualified ⁷ : N.J.S.A. 33:1-25	30 days (with correc- tive action)
-Aiding & Abetting in a Prohibited Activity: N.J.S.A. 33:1-52	10 days
-Allowing Others to Use License Privilege ("Farm-Out" of License): N.J.S.A. 33:1-25	30 days (with correc- tive action)
-Misleading Advertising: N.J.A.C. 13:2-24.10	15 days
-Substituted Beverage: N.J.A.C. 13:2-23.19	15 days

⁷Where the undisclosed interest (at times known as a "front") is held by a person who is disqualified by reason of a criminal conviction, is in violation of the "tied-house statute" (N.J.S.A. 33:1-43), or is disqualified by reason of a prohibited interest in two or more licenses, the penalty is discussed in *Bulletin 2443, Item 6* (Sept. 13, 1985), which provides that where such interest is a substantial or controlling one, the penalty will be revocation of the license, absent mitigating circumstances.

When there is an undisclosed interest violation, but the person having the undisclosed interest is not disqualified from having an interest in an alcoholic beverage license, the penalty will be suspension for an appropriate period of time, depending on the facts and circumstances of the particular case. Similarly, the acceptance of a monetary offer in compromise in lieu of the suspension will be considered by the Director on a case-by-case basis. Where the interest resulted from an unfamiliarity with or misunderstanding of the appropriate statute or was technical as opposed to substantive or intentional, and where the situation can readily be corrected with full compliance thereafter, the matter may be handled with an offer in compromise in the amount of up to \$500 in lieu of disciplinary proceedings or as an offer in compromise in lieu of a minimal suspension imposed by an issuing authority other than the Director.

-Obtaining Large Quantities of Alcoholic
Beverages from Unauthorized Source
(Retailer to Retailer):
N.J.A.C. 13:2-23.12

10 days

The following items of non-compliance are those of an administrative nature and which in most instances are detected during a routine or "on-site" inspection of the licensed premises. In keeping with the policy of awareness and compliance, a "Notice of Inspection" (see *this Bulletin, Item 1*) will be issued to indicate the area(s) of non-compliance when the inspection is conducted by the Division or by State Police Alcoholic Beverage Control Inspectors. A first notice will be treated as a warning with expectation of prompt corrective action. The penalties for a second or third occurrence, barring mitigating circumstances, are set forth in the following schedule. (Where the second violation is found by a local issuing authority, it is recommended that a 1-2 day suspension be imposed, and the Director will then generally entertain an application for payment of a monetary offer in compromise in lieu of the suspension in the amount indicated in the schedule.) The Director may accept a monetary penalty in lieu of suspension for a third occurrence depending on the circumstances surrounding the violation. Monetary penalties will never be accepted from Club Licensees and all second occurrences by them will be dealt with by a 1-2 day suspension and a third or subsequent occurrence by the suspension listed in the schedule.


	Second Occurrence	Third Occurrence (Charges Preferred)
-No E-141-A Form (Employee List): N.J.A.C. 13:2-23.13(a)3	\$200	1 day
-Incomplete E-141-A Form: N.J.A.C. 13:2-23.13(a)3	\$150	1 day
-No Copy of License Application (Long, Short, or Current): N.J.A.C. 13:2-23.13(a)2	\$150	1 day
-License Certificate Not Conspicuously Displayed: N.J.A.C. 13:2-23.13(a)1	\$150	1 day
-No Federal Special Tax Registration/Payment: N.J.S.A. 33:1-31(e)	\$500	2 days
-Prohibited Promotion: N.J.A.C. 13:2-23.16	\$500	10 days

-Contaminated and/or Low Proof Bottles (Not Tampered): N.J.A.C. 13:2-23.23	\$100 (per bottle)	3 days (1-5 bottles) 5 days (6+ bottles)
-Employment of Minor: N.J.A.C. 13:2-14.3	\$500	5 days
-No Application Filed for Bulk Sales Permit (\$150 Penalty & \$50 Permit Fee): N.J.A.C. 13:2-23.12	\$200	5 days
-Delivery Without Transit Insignia (Retailer): N.J.A.C. 13:2-20.1	\$500	5 days
-Failure to Timely Notify of Corporate Structure Change: N.J.A.C. 13:2-2.16	\$500	5 days
-Storage Off Licensed Premises: N.J.A.C. 13:2-23.21	\$200	5 days
-No or Improper Beer or Wine Tap Markings: N.J.A.C. 13:2-23.22(a)	\$500	10 days
-No Identification of Brand Being Dispensed by Automatic or Electronic Dispenser: N.J.A.C. 13:2-23.22(b)	\$500	5 days
-Alcoholic Beverages As a Prize: Bulletin 2381, Item 5	\$500	5 days
-Possession of Open Container on Plenary Distribution Licensed Premises or "Broad C" Licensed Premises Without a Bar: N.J.S.A. 33:1-12(3)a; 33:1-12.23	\$500	5 days
-Other Mercantile Business: N.J.S.A. 33:1-12(1)	\$250	5 days
-Prohibited Practices by Solicitor: N.J.A.C. 13:2-16.12	\$500	15 days
-Accepting Alcoholic Beverages on Terms Not in C.P.L.: N.J.A.C. 13:2-24.6(6)	\$500	15 days

- "Broad Package" Violation or Deviation from Floor Plan: N.J.A.C. 13:2-35.1	\$500	15 days
- Sale Below Cost: N.J.A.C. 13:2-24.8	\$500	15 days
- Sale Beyond or in Area Not Licensed: N.J.S.A. 33:1-12; 1-12.23	\$500	10 days
- Storage by Co-op Beyond 72 Hours: N.J.A.C. 13:2-23.21	\$500	5 days
- Receiving Delivery from Non-Licensed Carrier: N.J.A.C. 13:2-21.1	\$300	5 days
- Misleading Advertising (of Minor Nature): N.J.A.C. 13:2-24.10	\$500	10 days
- S.B.D. Licensee - Sale of Less than 144 oz.: N.J.S.A. 33:1-11(2)c	\$500	10 days
- S.B.D. Licensee - Sale of Chilled Beer (Non-Keg): N.J.S.A. 33:1-11(2)c	\$500	10 days
- Sale by Club Licensee to Social Affair Permittee: N.J.A.C. 13:2-8.8	2 days	15 days
- Prohibited rebate offer: N.J.A.C. 13:2-24.11	\$250	5 days
- Non-Compliance with Bulletin directive (not serious in nature)	\$200	3 days

PUBLICATION OF BULLETIN 2453 IS HEREBY DIRECTED THIS

31ST DAY OF OCTOBER, 1988.



 JOHN F. VASSALLO, JR.
 DIRECTOR