

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Carriers, Subchapter 34, Alcohol Permits, and Subchapter 37, Contracts of Employment and Conduct of Solicitors, were repealed by R.1990 d.412, effective August 20, 1990.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Retail Privileges, Subchapter 28, Decanting of Wine, Subchapter 32, Sales of Forfeited Property, and the Appendix were repealed and Subchapter 34, Restricted Brewery, Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners, and Subchapter 41, Issuance or Transfer of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24, 2000, and Subchapter 13, Execution of Questionnaire by State Licensees, and their Principals and Employees, was repealed by R.2000 d.342, effective August 21, 2000.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.

(c) Upon return of the order to show cause, the Director may grant interlocutory relief if it appears that a substantial question of law or fact has been raised and that the petitioner will probably suffer substantial and irreparable injury without such relief before final determination of the proceeding.

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 13:2-18.7. Revised (a) and deleted (b). Prior text at 13:2-18.4, "Hearing schedules; notice", repealed.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Divided existing text into (a) and (c) and added (b).

13:2-18.5 Enforcement of Director's orders

All persons whether licensees or non-licensees, shall comply with the terms of any final, interlocutory or other order entered in these proceedings. In the event a respondent fails to comply with the terms of such order, the Director may, in addition to any penalty provided by law, enter an order prohibiting any licensed wholesaler from purchasing, directly or indirectly, any alcoholic beverage other than malt alcoholic beverages of such respondent until the Director finds that there has been compliance therewith.

Recodified from 13:2-18.8 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 13:2-18.5, "Discovery", repealed.

13:2-18.6 Jurisdiction

Upon the filing of the Verified Petition and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall either 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.

Repeal and New Rule, 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".

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.

13:2-18.7 Public hearing

All proceedings shall be heard at a location designated by the Division of Alcoholic Beverage Control or by the Office of Administrative Law, whichever agency is hearing the case.

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

Recodified prior text at 13:2-18.7, "Interlocutory relief", to 13:2-18.4.

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Changed hearing location.

13:2-18.8 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 its conduct.

New Rule, R.1990 d.412, effective August 20, 1990.

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

Recodified prior text at 13:2-18.8, "Enforcement of director's orders", to 13:2-18.5.

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.

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

13:2-19.1 License or permit subject to disciplinary proceedings

Disciplinary proceedings against a license or permit shall not be barred or abated because of the expiration, transfer, surrender, renewal or extension of the license or permit.

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

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

Clarified text.

Case Notes

Attempt to revoke liquor license by converting renewal proceedings into disciplinary proceedings was improper. *What's Your Beef v. Plainfield*, 95 N.J.A.R.2d (ABC) 24.

13:2-19.2 Suspension, cancellation or revocation

Any license or permit may be suspended, cancelled or revoked for proper cause, notwithstanding that such cause arose prior to a subsequent transfer or extension of the license, or arose during a prior license term of a license held by the licensee or his predecessor in interest or arose during the term of a prior permit held by the permittee.

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

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

Specified "subsequent" transfer or extension of license, and added clarifying language.

Case Notes

Sales and delivery of alcoholic beverages before legal hours of sale warranted 18-day license suspension. *Hardys Liquor Deli v. Alcoholic Beverage Control*, 95 N.J.A.R.2d (ABC) 94.

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 suspended; unlawful activity premises. *Alcoholic Beverage Control Division v. M & O O, Inc. t/a Party Place*, 94 N.J.A.R.2d (ABC) 63.

Time for commencement and termination of licensee's five-day suspension. *Matter of Div. of Alcoholic Beverage Control v. Mr. G's, Inc.*, 93 N.J.A.R.2d (ABC) 59.

13:2-19.3 Pending proceedings; effect upon license or permit

When disciplinary proceedings are instituted and the license is transferred, extended or renewed, or a permit is extended or renewed during the pendency thereof, such

proceedings shall be carried through to completion. Any order of suspension, cancellation or revocation therein shall apply without further proceedings to the transferred, extended or renewed license or permit.

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.

13:2-19.4 Expiration or surrender of license; pending proceedings

Where a license expires or is surrendered and another license is issued or transferred to another person for the licensed premises subject to pending disciplinary proceedings, the premises shall continue to be subject to any order made in the disciplinary proceedings declaring the premises ineligible to become the subject of a license under N.J.S.A. 33:1-31.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added N.J.S.A. 33:1-31 limitation.

13:2-19.5 Suspended license; transfers or extensions

When any license has been suspended, such suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

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

13:2-19.6 Jurisdiction and hearing procedure

(a) A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. 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.

(b) In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 10 days after entry of the plea. No oral argument may be had before the Director unless the Director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor.

Amended by R.1979 d.393, effective October 1, 1979.
See: 11 N.J.R. 580(f).
Amended by R.1984 d.606, effective January 7, 1985.
See: 16 N.J.R. 2957(a), 17 N.J.R. 92(a).
Old section hearings substantially amended.
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).

Deleted requirement of a motion by the Director for oral arguments to be heard.

13:2-19.7 Revoked license: licensee inability to work; transfer prior to revocation

(a) A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class, or work, in any capacity, in any licensed premises, for a period of two years from the effective date of such revocation. A second revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any such license, or work, in any capacity, in any licensed premises, at any time thereafter.

(b) In the event that a license is transferred to another person or entity prior to a change in corporate structure has occurred, prior to the time at which the license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether or not the holders and owners (either direct or indirect) of the license at the time the violation(s) occurred; at the time the license was ordered revoked; or any interim times, either allowed, permitted or suffered the unlawful conduct or knew or should have known of the effects of a license revocation or should be sanctioned for any other sound reasons. In the exercise of sound discretion, the Director may order that any or all of such holders and owners be statutorily disqualified pursuant to the terms of N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.7(a).

New Rule, R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such vehicle, while so used, shall first have issued therefor a transit insignia, special transit insignia, transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

Amended by R.1985 d.333, effective July 1, 1985.
See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).
Substantially amended.