

SUBCHAPTER 4. ISSUANCE, RENEWAL OR  
TRANSFER OF MUNICIPAL RETAIL LICENSES  
(OTHER THAN CLUB LICENSES) BY THE  
DIRECTOR

**13:2-4.1 Interest in issuance, renewal or transfer of  
license; application made to the division**

(a) No municipal issuing authority may issue, renew or transfer a license to or from any of its members, or issue, renew or transfer a license to or from any corporation, organization, or association in which any of its members is interested directly or indirectly.

(b) No municipal issuing authority may transfer to other premises a license of any of its members, or transfer to other premises a license of any corporation, organization or association in which any of its members is interested, directly or indirectly.

(c) Whenever the municipal issuing authority is prohibited from acting by this section, or is unable to reach a quorum due to individual conflicts of interest, application must be made to the Director of the Division of Alcoholic Beverage Control and shall be governed by this subchapter.

(d) The provisions of (a) and (b) above shall not apply to club licenses.

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

In (c), clarified when application to Division must be made.  
Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Provided for license renewal and made (a) and (b) inapplicable to club licenses.

**Case Notes**

Good cause for license non-use justifies renewal. In the Matter of David Blassinder, Agnes Ricci and Thomas Ricci, 97 N.J.A.R.2d (ABC) 71.

Denial of plenary retail license renewal because of ordinance conflict unreasonable if ordinance not triggered by renewal. Posadas v. Board of Directors of the City of Union City, 97 N.J.A.R.2d (ABC) 69.

Place-to-place transfer approved if new next door licensed location prevents alcohol consumption at old location. Cunningham v. Borough Council of the Borough of Sea Girt and the Bottle Shop of Sea Girt, Inc., 97 N.J.A.R.2d (ABC) 63.

Plenary retail license may be renewed subject to special conditions for underage drinking if recurring problem. Paradise Enterprises, Inc. v. City Council of the City of Long Branch, 97 N.J.A.R.2d (ABC) 57.

Municipality abuses discretion by approving person to person license transfer without obtaining written consent. Royal Oak Ventures, Inc. v. Township of Warren and King Caterers, Inc., 97 N.J.A.R.2d (ABC) 21.

City's denial of liquor license renewal deemed reasonable. Hilcar, Inc. v. Mayor and Council of the City of New Brunswick, 97 N.J.A.R.2d (ABC) 15.

Application for license renewal unreviewable if filed beyond statutory deadline without evidence nonrenewal due to circumstances beyond control. In the Matter of Granada Restaurant Corporation, 97 N.J.A.R.2d (ABC) 13.

Inactive liquor license was renewed where evidence indicated that license would soon be activated. In re Application of Alcestis Land Corporation, 96 N.J.A.R.2d (ABC) 112.

Holder of inactive liquor license would be allowed to renew that license where good cause existed inactive status. Medina v. Board of Commissioners of the City of Union City, 96 N.J.A.R.2d (ABC) 85.

License holder's failure to apply for renewal of alcoholic beverage license for 1994-1995 and 1995-1996 license years precluded renewal for 1993-1994. In the Application of Georgia's Liquors and Deli, 96 N.J.A.R.2d (ABC) 69.

Local authority must deny the person-to-person application for transfer of liquor license where disqualifying person is involved in sale of business receiving transfer. Doc Cross v. Township of Hamilton, 96 N.J.A.R.2d (ABC) 60.

Good cause was not shown for renewal of inactive liquor license where license was inactive for ten years and there were no prospects for activation. In the Matter of 126 Center Corporation, 96 N.J.A.R.2d (ABC) 57.

Strong public interest supported denial of place-to-place liquor license transfer to site where prior license generated numerous violations and public complaints. Jaya v. City of Union City, 96 N.J.A.R.2d (ABC) 53.

Division of Alcoholic Beverage Control lacks jurisdiction to grant renewal where licensee allowed license to lapse. R. & G. 795 Sanford Avenue Corp. v. Newark, 96 N.J.A.R.2d (ABC) 51.

Poor business judgement by absentee owner was insufficient excuse for untimely filing of alcohol license renewal request. Barba v. Division of Alcoholic Beverage Control, 96 N.J.A.R.2d (ABC) 39.

Failure to demonstrate good grounds for liquor licensee's failure to file timely renewal application precludes special ruling to file for new license. In the Matter of the Application of City Garden Associates, Inc., 96 N.J.A.R.2d (ABC) 34.

Restricting plenary retail consumption license to retail distribution license was contrary to law. P.I.J.'s v. Montville Township Township Committee, 96 N.J.A.R.2d (ABC) 19.

City may not deny place-to-place liquor license transfer based on unsupported claim that new location is trouble spot or on licensee's prior history of minor violations or on belief that city had issued too many liquor licenses. El Porto Alegre v. Union City Board of Commissioners, 96 N.J.A.R.2d (ABC) 8.

Plenary retail consumption license should not have been denied renewal as inactive. Appeal from Denial of Renewal of Plenary Retail License, 95 N.J.A.R.2d (ABC) 133.

Inactive license was not subject to renewal when prognosis for activation was speculative and not definitive. Matter of Jamesburg Inn, 95 N.J.A.R.2d (ABC) 121.

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.

Issue with respect to first license term was moot after expiration of second license term. Stork Club v. Alcoholic Beverage Control, 95 N.J.A.R.2d (ABC) 100.

Factors beyond licensee's control demonstrated good cause for ninth year renewal of inactive Class C liquor license. Sarkissian v. Alcoholic Beverage Control, 95 N.J.A.R.2d (ABC) 52.

Reasonable conditions were placed upon licensee in alcohol-abuse counseling to obtain renewal of liquor license. Hilcar v. New Brunswick, 95 N.J.A.R.2d (ABC) 49.

Revised floor plan for conversion of plenary retail consumption license required resubmission for noncompliance with regulations. *SSAR v. City of Long Branch*, 95 N.J.A.R.2d (ABC) 35.

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.

### 13:2-4.2 Application to the Director

(a) Application to the Director shall be made upon the same application forms used in all applications for municipal licenses (copies are obtainable from the clerk of the municipality wherein the premises sought to be licensed are situated).

(b) The application shall be fully executed and submitted in triplicate.

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Duplicate changed to triplicate.

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.

### 13:2-4.3 New or renewal license fees; certification by issuing authority

(a) Applications for a new license or for a renewal of an existing license shall be accompanied by a fee of \$200.00 payable to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted from the municipal clerk, board secretary, or other responsible municipal official stating that the appropriate municipal fee has been paid and the amount of such fee.

Amended by R.1973 d.234, effective August 30, 1973.

See: 5 N.J.R. 356(a).

Amended by R.1980 d.304, effective July 3, 1980.

See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Duplicate changed to triplicate.

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

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

In (a), deleted submission of supplemental forms requirement; redesignated (a)2. as (b) and added "board secretary".

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 that checks be certified.

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (a), increased fee from \$50.00 to \$200.00.

### 13:2-4.4 Fee for license transfer to other persons or other premises; certification

(a) Applications for transfer of license to other persons only, or applications for transfer of license to other premises only (not combined) shall be accompanied by:

1. A fee of \$200.00 payable to the order of the Division of Alcoholic Beverage Control and retained by the Director whether or not the transfer is granted, and accounted for as are other license fees.

2. A certification shall be submitted from the municipal clerk, board secretary, or other responsible municipal official that 10 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality ... shall be paid."

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

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

In (a), added text on license transfer to "other premises only"; 10 percent fee requirement revised and designated (a)2.

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 that checks be certified.

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a)1, substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (a)1, increased fee from \$50.00 to \$200.00.

### 13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of \$200.00 payable to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted by the municipal clerk, board secretary or other responsible municipal official stating that 20 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

(c) Where there is a combined transfer application, the Director shall not approve a person-to-person transfer of the license if the place-to-place transfer is denied.

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality ... shall be paid."

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 13:2-4.6. Twenty percent fee requirement revised and designated (b); Director's duties clarified. Prior text at 13:2-4.5, "Fee for license transfer to other premises", repealed. The following annotations pertain to that section:

Amended by R.1973 d.234, effective August 30, 1973.

See: 5 N.J.R. 356(a).

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality ... shall be paid."

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 that checks be certified.

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (a), increased fee from \$50.00 to \$200.00.

**Case Notes**

Appeal of liquor license renewal dismissed as untimely. *Cottrell v. Zagami, LLC*, OAL DKT. NO. ABCAM 08017-06, 2007 N.J. AGEN LEXIS 549, Final Decision (May 22, 2007).

**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**

Where a plenary retail consumption license holder did not abandon or vacate the licensed premises, but in fact the landlord testified that he intentionally kept the lease intact in hopes that the lease holder would resolve his tax problems or that a third party would buy the license, acquire the lease, and resume operations, the ALJ's decision denying transfer of the license was reversed. *United Funding, LLC v. Municipal Bd. of Alcohol Beverage Control, City of Paterson*, OAL Dkt. No. ABC 10954-04, 2005 N.J. AGEN LEXIS 1484, Final Decision (June 21, 2006).

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 Alcohol 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 Alcohol 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**

(a) 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.

(b) In cases in which a suspension or revocation has been stayed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(c) In cases in which a suspension has not been stayed or in which a revocation has been stayed and an indefinite suspension imposed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(d) In cases in which a revocation has not been stayed pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

(e) In all other cases, except those addressed in N.J.A.C. 13:2-17.9, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

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.

Amended by R.2003 d.436, effective November 3, 2003.  
See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

Designated existing text as (a); added (b) through (e).

#### 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

(a) 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 appears that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would result if the license is not extended, the Director may extend the license pending the outcome of the appeal, subject to such special conditions as the Director may deem appropriate.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).  
Amended by R.2004 d.55, effective February 2, 2004.  
See: 35 N.J.R. 1045(a), 36 N.J.R. 657(a).

In (i), amended N.J.A.C. reference in Code, BOOKS1 and BOOKS2.  
Amended by R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

In (f), substituted "date of disposition of any prior violation(s)" for "date of the first violation"; in (g), deleted "in writing" following "has been notified"; rewrote (i).

#### Case Notes

Numerous lewd and immoral acts committed by female dancers on the licensed premises with different patrons on three separate days constituted separate and successive violations of N.J.A.C. 13:2-23.6. N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

License revocation was the appropriate penalty for numerous lewd and immoral acts committed by female dancers on the licensed premises on three separate dates; the violations were egregious and committed with the licensee's knowledge, and the sheer number of violations demonstrated an intentional disregard of the standard of conduct imposed on licensees. N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

#### 13:2-19.12 Offers in compromise of suspension

(a) The Director may, in the Director's sole discretion, accept offers in compromise for all or part of a suspension. These offers may be monetary, pursuant to N.J.S.A. 33:1-31, or may involve deferring some of the days of suspension. The Director is under no obligation to accept an offer in compromise and shall make this decision based on what the Director determines to be reasonable and proper under the circumstances of the case.

(b) In cases being prosecuted by the Division, a licensee proposing that the Director accept an offer in compromise shall submit any such proposal to the Director, in writing, setting forth the reasons why the offer should be accepted. The Director will not consider an offer in compromise in any case being prosecuted by the Division after an Initial Decision is issued by the Office of Administrative Law, except under extraordinary circumstances. However, if the license is transferred and the current licensee had no interest in the license at the time that the violations in question were charged, the current licensee may apply to the Director for relaxation of this regulation pursuant to N.J.A.C. 13:2-9.1.

(c) In municipal cases involving an application to the Director for a monetary offer in compromise, the licensee shall file a Notice of Appeal, with notice to the municipality, setting forth the reasons why the offer should be accepted. Rules governing the Notice of Appeal are set forth in N.J.A.C. 13:2-17.

(d) If a licensee proposes that the Director accept a monetary offer in compromise, the licensee shall submit any documentation the Director requests, including, but not limited to, income tax returns or other financial reports.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).  
Amended by R.2005 d.212, effective July 7, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).  
Rewrote (b).

#### Case Notes

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

#### 13:2-19.13 Increase or decrease of penalties

(a) The penalties set forth in the penalty schedule, at N.J.A.C. 13:2-19.11(i), may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances.

(b) Some of the factors that the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings or violations about compliance problems, efforts to conceal violations, age of customers and that the incident that gave rise to the violation resulted in death or substantial injury. These factors are provided as examples only and are not to be considered all inclusive.

(c) In addition, if death or serious injury occurred as a result of the incident that gave rise to the violation, the Director may revoke the license, even if it is a first violation. The licensee has the burden of demonstrating mitigating circumstances.

(d) In determining to increase or decrease the penalty or penalties set forth in the penalty schedule, the Director shall state in writing specific reasons for determining the penalty or penalties actually imposed.

(e) In instances where a licensee fails to comply with a request for documents and/or testimony, the Director may indefinitely suspend the license until such time as the licensee complies, in addition to any other penalty for hindering an investigation.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).  
Amended by R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).  
Added (e).

**Case Notes**

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

**13:2-19.14 Warning letters and fine letters**

The Director may, in the Director's sole discretion, issue a warning letter advising a licensee of a violation(s) or issue a fine letter, indicating that the Director will accept a monetary payment in lieu of prosecution.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

**13:2-19.15 Review by Director of penalties imposed by local issuing authorities**

In reviewing the reasonableness of penalties imposed by local issuing authorities, reasonableness will be judged in accordance with the penalty schedule and other factors set forth in the record before the Director.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

**13:2-19.16 Application of subchapter**

(a) This subchapter, as amended effective December 3, 2001, shall apply to violations occurring on or after December 3, 2001.

(b) To the extent that any of the penalties set forth in this subchapter are inconsistent with the penalties set forth in any earlier document(s), including, but not limited to, ABC Bulletins, the penalties set forth in this subchapter shall apply.

New Rule, R.2001 d.447, effective December 3, 2001.  
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

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, or 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.

Amended by R.1989 d.372, effective July 17, 1989.  
See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Deleted language about transportation permit sticker and added description of new transportation license insignia.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Deleted "special transit insignia."

**13:2-20.2 Transportation by retail licensee; delivery slip; emergency delivery**

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverages from any vehicle.

(c) It shall be an affirmative defense, to a charge of violating N.J.A.C. 13:2-20.1, where the licensee satisfactorily demonstrates that:

1. The licensee owned or leased a properly permitted vehicle;
2. An emergency situation arose which prevented the delivery from being made in the properly permitted vehicle; and
3. The delivery was, in all other respects, made in accordance with the provisions of N.J.A.C. 13:2-20.2(a).

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.

Amended by R.1989 d.372, effective July 17, 1989.  
See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a), 21 N.J.R. 2385(c).

In a: changed "Alcoholic Beverage Law" to "New Jersey Alcoholic Beverage Control Act" and revised with minor stylistic changes.

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).

closure regulation. By its express terms, N.J.A.C. 13:2-23.3 applies to situations where the licensing authority closes a tavern because of a public emergency or investigation of crime. Requiring an actual conviction as a prerequisite to closing the licensed premises would eviscerate the purpose of the regulation to suspend operations pending completion of the criminal investigation, and indeed N.J.A.C. 13:2-23.3 would then be superfluous since N.J.A.C. 13:2-9.2(a)(2) already authorizes revocation of a licensee who has been convicted of a crime of moral turpitude. *Luisa Enterprises, Inc. v. Town of Guttenberg*, OAL Dkt. No. ABC 01078-06, 2008 N.J. AGEN LEXIS 47, Initial Decision (January 30, 2008).

### 13:2-23.4 House-to-house solicitation forbidden

No licensee shall solicit from house-to-house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

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.

### 13:2-23.5 Prohibited patrons; narcotics or other unlawful drugs; illegal activity or enterprise

(a) No licensee shall allow, permit or suffer in or upon the licensed premises the habitual presence of any known prostitute, gangster, racketeer, notorious criminal, or other person of ill repute.

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. Narcotic drugs;
2. Controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.);
3. Controlled dangerous analogs as defined by the Comprehensive Drug Reform Act of 1987 (N.J.S.A. 2C:35-1 et seq.);
4. Any prescription legend drug, in any form, which is not a narcotic drug or a controlled dangerous substance or analog, as so defined; or
5. Drug paraphernalia as defined by N.J.S.A. 2C:36-1.

(c) No licensee shall allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of or accessible to any illegal activity or enterprise.

Amended by R.1972 d.67, effective April 6, 1972.

See: 4 N.J.R. 50(a), 4 N.J.R. 105(c).

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

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

In (b), added numbered paragraphs, "Controlled dangerous analogs ..." and "Drug paraphernalia ...".

### Case Notes

Revocation of liquor license was improper. *County Hearth, Inc., v. Old Bridge Twp. Council*, 221 N.J.Super. 293, 534 A.2d 424 (App.Div.1987).

Law enforcement officers could not search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed activity, without a search warrant. *State v. Williams*, 168 N.J.Super. 359, 403 A.2d 31 (App.Div.1979), affirmed 84 N.J. 217, 417 A.2d 1046 (1980).

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. *Division of Alcoholic Beverage Control v. Maynard's Inc.*, OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Stockholder's crime of distribution of a controlled dangerous substance was one of moral turpitude; retail consumption license properly revoked. *Division of Alcoholic Beverage Control v. Doug-Kar Corp.*, 92 N.J.A.R.2d (ABC) 21.

Employees selling drugs and guns and delivering liquor for off-premises consumption after legal hours of sale; suspension of license. *N.J.S.A. 33:1-3.1. Director of the Div. of Alcoholic Beverage Control v. Vanmar Liquors, Inc.*, 92 N.J.A.R.2d (ABC) 9.

Sale of cocaine on premises warranted revocation of liquor license. *Fischer v. Mayor and Council of the City of Garfield*, 92 N.J.A.R.2d (ABC) 1.

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).

Violation found for employee's possession of narcotics paraphernalia on premises. *Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

License suspended due to employee's sale of marijuana on premises; licensee must bear responsibility for employee's action; penalty mitigated by licensee's serious efforts to stop during trafficking on premises; 30 day suspension ordered (Division's Final Decision). *Div. of Alcoholic Beverage Control v. Red Klotz Enterprises, Inc.*, 6 N.J.A.R. 13 (1982).

License revoked for cocaine trafficking on premises by majority stockholder; minority stockholders' lack of knowledge of activity not excusable in mitigation of penalty. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

License suspended for allowing, permitting and suffering possession of controlled dangerous substance on premises; good faith effort to stop activity not found. *Div. of Alcoholic Beverage Control v. Ty-Dan Corp.*, 5 N.J.A.R. 273 (1980), affirmed.

**13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises**

(a) No licensee shall engage in or allow, permit or suffer on or about the licensed premises:

1. Any lewdness or immoral activity or
2. Any brawl, act of violence, disturbance, or unnecessary noise.

(b) Every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

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

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

Revised heading.

Amended by R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

**Case Notes**

Tavern owner duty-bound to summon police if reasonably foreseeable that patron may otherwise be harmed by criminal acts of another. *Dubak v. Burdette Tomlin Memorial Hosp.*, 233 N.J.Super. 441, 559 A.2d 424 (A.D.1989), certification denied 117 N.J. 48, 563 A.2d 817.

Violation finding upheld against challenge that regulation invalid due to lack of standard for lewdness; contested case decisions provide conduct illustrations or precedents for lewdness available to any licensee. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Violation of regulation by tavern owner does not give rise to action by policeman for injuries sustained in answering call for assistance. *Entwistle v. Draves*, 200 N.J.Super. 1, 490 A.2d 313 (App.Div.1985), affirmed 102 N.J. 559, 510 A.2d (1986).

License revocation was the appropriate penalty for numerous lewd and immoral acts committed by female dancers on the licensed premises on three separate dates; the violations were egregious and committed with the licensee's knowledge, and the sheer number of violations demonstrated an intentional disregard of the standard of conduct imposed on licensees. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

For purposes of alcoholic beverage regulation, female dancers providing entertainment on the licensed premises were employees of the licensee, whether they were hired by the licensee directly or contracted through an outside service. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

Nuisance charge under N.J.A.C. 13:2-23.6 upheld in connection with a stabbing outside the licensed premises, involving persons who had an association with the business; dispute between a dancer and a promoter began inside the premises, related to operations of the bar, and resulted in a loud crowd in the parking lot and the injury of the promoter. *Township of Irvington Bd. of Alcoholic Beverage Control v. Maka, Inc.*, OAL Dkt. No. ABC 09001-04N, 2008 N.J. AGEN LEXIS 279, Initial Decision (March 31, 2008).

Nuisance charge under N.J.A.C. 13:2-23.6 was arbitrary and unreasonable, where a dancer, upset over pay, had thrown chairs and broken a mirror inside the premises, and the licensee called the police; not every event that involves the police entering a licensee's premises rises to a level supporting characterization of the premises as a public

nuisance. *Township of Irvington Bd. of Alcoholic Beverage Control v. Maka, Inc.*, OAL Dkt. No. ABC 09001-04N, 2008 N.J. AGEN LEXIS 279, Initial Decision (March 31, 2008).

Petitioner charged with eight counts of allowing lewdness by way of topless dancing on the licensed premises, two counts of allowing lewdness in the form of sexual activity on the licensed premises, and one count of failure by the petitioner to maintain a complete and accurate employee list, failed to submit a requested post-hearing explanation of mitigating factors; thus, the ALJ was forced to conclude that no mitigating factors existed and upheld a 150-day liquor license suspension. *S.B. Lazarus, Inc. v. Borough of Bound Brook*, OAL DKT. NO. ABC 6468-06, 2007 N.J. AGEN LEXIS 579, Initial Decision (August 15, 2007).

Police officer's testimony of a dancer facing a patron with an exposed, erect penis and physical contact between the dancers' breasts and the patron's face was sufficient to establish that the activities carried out were "lewd," as even though the officer did not charge that prostitution had occurred, lewd and immoral conduct can occur without it amounting to prostitution; the acts described by the officer, even without actual contact of the pelvic areas being noted, sufficiently simulated sexual activity, particularly as the patron was exposed and clearly prepared for a climax. Because the Trenton City Council was well within its rights to determine that the officer's testimony was credible and that lewd and immoral conduct was established by a preponderance of the credible evidence, there was nothing arbitrary or capricious about the Council's decision. Accordingly, because the determination of the Council that lewd and immoral conduct occurred within the licensed premises was fully supported by the record made before it, the finding against the licensee must be upheld and revocation of the licensee's plenary retail consumption license was likewise affirmed. *J-Kal, Inc. v. City of Trenton*, OAL DKT. NO. ABC 06834-05S, 2006 N.J. AGEN LEXIS 424, Initial Decision (July 19, 2006).

Licensee loses liquor license for operating business as a nuisance. *Antoine Services, Inc. v. City of Linden*, 97 N.J.A.R.2d (ABC) 9.

Prior suspension of club's plenary retail consumption license for acts of lewdness by club's dancers supported new license suspension for repeat violation. *Jensa, t/a Club Phoenix v. The City of Asbury Park*, 96 N.J.A.R.2d (ABC) 76.

Suspension of club's liquor license was warranted by multiple and flagrant violations of state law, including alleged incidents of lewd conduct by club's dancers and patrons. *Alcoholic Beverage Control v. Jayson, Inc.*, 96 N.J.A.R.2d (ABC) 71.

Incidents of lewdness on business premises warranted suspension of liquor license. *D & Z Realty v. City of Asbury Park*, 96 N.J.A.R.2d (ABC) 41.

Liquor license renewal denied where bar owners failed to comply with special condition and operated bar as a public nuisance. In the Matter of *Nathan's Realty, Inc.*, 96 N.J.A.R.2d (ABC) 25.

Lewd conduct by dancers within sight of licensee warranted revocation of liquor license. *Alcoholic Beverage Control v. Quesada*, 95 N.J.A.R.2d (ABC) 88.

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Lewdness of female go-go dancer warranted 45-day suspension of liquor license. *Jonilo v. Municipal Board*, 95 N.J.A.R.2d (ABC) 1.

Go-go bar's license revoked upon showing of lewd or immoral activity. *Division of Alcoholic Beverage Control v. Wemar, Inc.*, 94 N.J.A.R.2d (ABC) 82.

License suspended for allowing lewd and immoral conduct on premises ("Go-Go" dancers); good faith effort to stop activity not found. *State of N.J. v. G. & J.K. Enterprises, Inc.*, 8 N.J.A.R. 588 (1985).