

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

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

Revised section "to authorize the sale of alcoholic beverages by a receiver, trustee, executor" or other parties, in accordance with law or court order. Added (b) through (d).

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

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

In (b), substituted "prescribed" for "promulgated" and increased permit fees.

Recodified from N.J.A.C. 13:2-5.3 by R.2003 d.17, effective January 6, 2003.

See: 34 N.J.R. 3196(a), 35 N.J.R. 253(a).

Former N.J.A.C. 13:2-5.4, Temporary miscellaneous contingency permits; fees, recodified to N.J.A.C. 13:2-5.5.

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (b), substituted "\$10.00" for "\$5.00" and "\$2,000" for "\$1,000"; added (e).

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

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

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

In (e), added a \$5.00 per day fee for Ad Interim permit, changed fee for Close Out permit from \$25.00 to \$1.00 per case with a minimum price of \$20.00, increased fee for Donation permit from \$50.00 to \$150.00, added "per day" to Extension of Premises permit fee, changed fee for Food and Pharmaceutical permit from \$25.00 to \$20.00 to \$40.00, substituted "Gratuitous Samples" for "Gratuitous Services", categorized Merchandising Show permit into "In-state licensee" with a \$75.00 fee and "Out of state licensees" with a \$100.00 fee, decreased Merchandising Show—Out-of-State Importers permit fee from \$200.00 to \$100.00, decreased Temporary Authorization to Operate permit fee from \$200.00 to \$150.00, changed Temporary Storage permit fee from \$75.00 to \$25.00 plus \$2.00 per day, and deleted Temporary Warehousing permit and fee.

13:2-5.5 Temporary miscellaneous contingency permits; fees

(a) The Director, for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act.

(b) Application for such permits shall be on forms prescribed by the Director and shall be accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than \$10.00 nor more than \$2,000.

(c) The Director may impose special conditions or requirements on any such permit.

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

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

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

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

In (b), substituted "prescribed" for "promulgated" and increased permit fees.

Recodified from N.J.A.C. by R.2003 d.17, effective January 6, 2003.

See: 34 N.J.R. 3196(a), 35 N.J.R. 253(a).

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (b), substituted "\$10.00" for "\$5.00" and "\$2,000" for "\$1,000".

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

SUBCHAPTER 6. EXTENSION OF LICENSE

13:2-6.1 Petition for extension of license

(a) In case of death, bankruptcy, receivership or incompetency of a licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the licensed business may not be operated unless the license is extended by the issuing authority which issued the license.

(b) An application for extension of a license for a limited time not exceeding its term must be made in the form of a petition executed by the executor, administrator, trustee, receiver or other person upon whom operation of the business covered by the license shall have devolved by operation of law.

(c) Said petition shall be addressed to and acted upon by the authority which issued the license sought to be extended. An amendment of the license application to reflect the extension of the license shall be filed at the same time. No fee is required to be paid for an extension of the license and the petitioner is not required to publish a notice of application.

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

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

Section was "Special permit to operate licensed business". Incorporated 13:2-6.2, "Petition for extension of license", as (b) and (c).

13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control, may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

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

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

Incorporated prior text, "Petition for extension of license", into 13:2-6.1.

13:2-6.3 Proof of appointment; assignments

(a) Petitioners for extension of a license must present satisfactory proof to the issuing authority of their appointment to act in their representative capacity.

(b) A license may not be extended to an assignee for the benefit of creditors, unless said assignee presents to the issuing authority a court order authorizing him to continue

assignor's business during a period set forth in said order, as provided for in N.J.S.A. 2A:19-16.

13:2-6.4 Endorsement of licenses

If the petition for extension is granted, the license shall be endorsed as follows:

"This license is hereby extended, subject to all of its terms and conditions to _____, (Executor, or as the case may be) until _____, 20____".

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

Deleted references to "local issuing authority" and "proper municipal official"; deleted (b), regarding endorsement in license book.
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.1 Transferability of license

Any license issued under the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., may be transferred either from person-to-person or place-to-place, or both, in accordance with the provision of said law and these regulations.

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

Case Notes

Nude dancing was not allowed within separate room adjacent to or within licensed premises. Division of Alcoholic Beverage Control v. J & M Restaurant, 95 N.J.A.R.2d (ABC) 11.

Revocation of license was not required; undisclosed interest of disqualified person; indefinite suspension pending transfer to a bona fide purchaser. Division of Alcoholic Beverage Control v. 99 Washington Street, Inc., t/a Good & Plenti, 92 N.J.A.R.2d (ABC) 76.

Topless bar; application for place-to-place transfer. M.O.O. Inc. v. Board of Commissioners of Union City, 92 N.J.A.R.2d (ABC) 47.

Place-to-place transfer of plenary retail distribution license. Gene's Liquors v. Municipal Board of Alcoholic Beverage Control of the City of Paterson, 92 N.J.A.R.2d (ABC) 39.

Division of Alcoholic Beverage Control without statutory authority to prevent person-to-person transfer of liquor license which may be only asset of corporation which may owe unliquidated debt to transfer objector; liquor license is not property subject to lien, levy or execution; creditor cannot prevent sale of license or obtain satisfaction from proceeds. Mannies Cigarette Service, Inc. v. Aidan Corp., 4 N.J.A.R. 197 (1980).

13:2-7.2 Application for place-to-place license transfer

(a) Application for transfer of license to other premises, signed and sworn to by the licensee, must be filed with the Director or other issuing authority, as the case may be, at or

before the first insertion of the advertisement of the notice of application on forms prescribed by the Director.

(b) If the application is for transfer of the license to a building not yet constructed, plans of 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 over-all and room dimensions.

(c) Expansion of the licensed premises shall require a place-to-place transfer (expansion of premises) application.

(d) Voluntary reduction or voluntary delicensure of a portion of the premises shall require a place-to-place transfer (reduction of premises) application. A voluntary abandonment of all of the licensed premises shall be a change of facts that must be reported to the issuing authority pursuant to N.J.A.C. 13:2-2.7 and 2.14, but does not require a place-to-place transfer. A licensee that has voluntarily abandoned its licensed premises must apply for and be approved for a place-to-place transfer before commencing operation again.

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).

Added provisions for expansion and reduction of licensed premises at (c) and (d).

Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).
Rewrote (d).

Case Notes

Good cause required before extending license's reactivation deadline. In the Matter of Ghedine Unlimited, Inc., 97 N.J.A.R.2d (ABC) 79.

Municipal denial of place to place license transfer constitutes abuse of discretion if it relies on factors not substantiated by record. Martell's Sea Breeze, Inc. v. Mayor and Council of the Borough of Point Pleasant Beach, 97 N.J.A.R.2d (ABC) 39.

Neighboring license holder's objections to transfer of liquor license to location across street from his establishment were dismissed where transfer was properly effected and no community sentiment against transfer was shown. McCurdy v. Municipal Board of Alcoholic Beverage Control of Atlantic City, 96 N.J.A.R.2d (ABC) 156.

Evidence that did not exist until after request for place-to-place transfer of liquor license was granted could not be considered in determining reasonableness of that transfer. Borough of Pitman v. Township of Mantua and J.G. Cook's Bar and Grill, 96 N.J.A.R.2d (ABC) 118.

Approval of place-to-place transfer of liquor license was affirmed, despite new location's proximity to school and to existing licensee. Butch Kowel's Tavern, Inc. v. Rahway Board of Alcoholic Beverage Control, 96 N.J.A.R.2d (ABC) 109.

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.

Transferee of inactive license required place-to-place transfer to re-site in original location. Innkeeper v. Remington, 95 N.J.A.R.2d (ABC) 113.

Temporary loss of possession of foreclosed licensed premises; place-to-place transfer. Innkeeper, Inc., v. Mahwah Township Council, 94 N.J.A.R.2d (ABC) 13.

Filing of an appeal takes place upon the receipt of the Notice and Petition of Appeal by the Director, rather than upon their mailing; appeal dismissed as filed out of time. Van Holt v. Mayor and Council, Boro. of Sea Bright, 3 N.J.A.R. 183 (1981).

13:2-7.3 Application for person-to-person license transfer

Application for transfer of license to another person, or other person and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the current licensee, must be filed with the Director, or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms prescribed by the Director.

Amended by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Clarified transfer by "current licensee"; added text regarding forms promulgated by Director. Amended by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a). Substituted "prescribed" for "promulgated".

Case Notes

Court could order transfer of liquor license without holders' consent as temporary relief measure in breach of contract action arising out of

failed liquor license transfer agreement. Parkway Liquor & Deli, Inc. v. P.P.P. USA, Inc. et al., 96 N.J.A.R.2d (ABC) 151.

Mutual interest of city and liquor license transferee's landlord in cross access property agreement and sewer regulator agreement was not conflict of interest, and thus city's approval of liquor license transfer was not prohibited. Cromwell Liquors, Inc. v. Western Beverage Corporation, et al., 96 N.J.A.R.2d (ABC) 143.

Person-to-person transfer of liquor license was denied based upon finding that applicant was unqualified to run restaurant business and that applicant's father owned undisclosed interest in business. Varalli and Sons, Inc. v. Municipal Board of Alcoholic Beverage Control of Atlantic City, 96 N.J.A.R.2d (ABC) 122.

Filing of an appeal takes place upon the receipt of the Notice and Petition of Appeal by the Director, rather than upon their mailing; appeal dismissed as filed out of time. Van Holt v. Mayor and Council, Boro. of Sea Bright, 3 N.J.A.R. 183 (1981).

Town Council's action denying license transfer not reversible unless based upon mistakes or abuse of discretion; burden of proof upon transfer applicant; denial of transfer reasonable as founded on residents' objections and problems caused by large number of liquor establishments in transferral area. Stonehenge Gardens, Inc. v. Mayor and Town Council, Town of Phillipsburg, 2 N.J.A.R. 417 (1980) affirmed.

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of a license shall be published in the following form:

-NOTICE- ALCOHOLIC BEVERAGE PERMIT

Take notice that application has been made to _____

_____ of _____ (Name of Issuing Authority) (Address)

to transfer to _____ (Name of transferee)

trading as _____ for premises located (Trade Name, if any)

at _____ (Address of premises to which transfer is sought)

the _____ heretofore issued to (Type of License and Number)

_____, trading as _____ (Name of Licensee in full) (Trade Names, if any)

for premises located at _____ (No.) (Street) (Municipality)

The person(s) who will hold an interest in this permit is/are: _____

(Name(s))

See *

(See ** to insert other information applicable)

Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk or (Address)
ABC Board Secretary (address)

or Director, Division of Alcoholic Beverage Control)

(Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, partnership or other legal entity, insert the names and residence of all officers, directors, stockholders holding one percent or more of any of the stock of the applicant corporation, general partners, members, and limited partners holding an interest of one percent or more. If, in listing those, another corporation, partnership, or other legal entity is noted, the application and notice must contain the required information concerning officers, directors, stockholders, partners, or members, of that corporation, partnership, or other legal entity.

If the applicant is a club, insert the names and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

If the applicant is a limited liability company, insert the name of the limited liability company and the name and addresses of all officers and members.

**If the application is for transfer of a municipal license to a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control."

If the application is for a place-to-place transfer which involves an expansion or reduction of the premises, insert "Plans of the current license premises and proposed licensed premises may be examined at the office of the municipal clerk (or Division of Alcoholic Beverage Control, if appropriate)."

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of

_____ at _____
(Alcoholic beverage type) (No.) (Street)

_____ under the terms and conditions allowed by law."

(b) "Name of issuing authority" in the form in N.J.A.C. 13:2-7.4(a), usually means the governing board or body of the municipality, whatever the name may be, for instance, the mayor and common council, the township council, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If the application is made by a member of any issuing authority, or by a corporation, organization or association in which any member of an issuing authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the Director, the

Director is the "issuing authority" and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control, PO Box-087, Trenton, New Jersey 08625-0087. This subsection shall not apply to club licenses.

(c) The notice of application shall be published once a week, for two weeks successively, at least seven days apart, in a newspaper printed in the English language published and circulated in the municipality in which the licensed premises are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in

the English language, published and circulated in the county in which the licensed premises are located.

(d) Proof of publication of notice of application for transfer of a license shall be furnished after second publication with a copy of the dated advertisements attached.

Amended by R.1974 d.4, effective January 4, 1974.

See: 6 N.J.R. 82(a).

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).

Substantially revised application for transfer form. Incorporated 13:2-7.5, "Issuing authority defined in form", as (b); and 13:2-7.7, "Publication of notice of application", as (c). Added (d).

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

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

In (a) inserted provisions for expansion or reduction of the licensed premises.

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), rewrote the notice.

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), added "ABC Board Secretary (address)" and "If the applicant is a limited liability company, insert the name of the limited liability company, and the name and addresses of all officers and members." to Notice form.

Case Notes

Approval of expansion of licensed premises to include deck area was not abuse of discretion with imposition of special conditions. Property Owners Association v. Seaside Heights, 95 N.J.A.R.2d (ABC) 76.

13:2-7.5 Objections; hearing

Each issuing authority, immediately upon receipt of a written objection duly signed by an objector, shall set the matter down for a hearing and notify all parties of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

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 3:2-7.8. "Each issuing authority" was "Each municipal clerk"; clarified hearing and notification requirements. Prior text at 3:2-7.5, "Issuing authority defined in form", incorporated into 13:2-7.4 as (b).

Case Notes

Distance-between-premises ordinance did not preclude transfer of license to within 1000 feet of original premises. Innkeeper v. Mahwah Township Council, 95 N.J.A.R.2d (ABC) 115.

Approval of expansion of licensed premises to include deck area was not abuse of discretion with imposition of special conditions. Property Owners Association v. Seaside Heights, 95 N.J.A.R.2d (ABC) 76.

Transfer of retail distribution license for mixed use as convenience store with package liquor sales was approved. Zafar v. City of Summit, 95 N.J.A.R.2d (ABC) 63.

Entrance of premises to which liquor license transferred was not less than 200 feet from church. St. Paul's v. Paulsboro, 95 N.J.A.R.2d (ABC) 46.

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.

Denial of place-to-place transfer of liquor license; abuse of discretion. Midlantic Development, Inc. v. Mayer and Borough Council of Point Pleasant Borough, 95 N.J.A.R.2d (ABC) 7.

City failed to establish that transfer of license would result in overconcentration. City of Garfield v. Bonanno and Bonanno, 94 N.J.A.R.2d (ABC) 79.

Denial of transfer of liquor license was unreasonable. Grand Victorian Hotel v. Spring Lake Borough Council, 94 N.J.A.R.2d (ABC) 43.

Applicant failed to establish by that transfer of license was necessary or was in the public's best interest. In the Matter of Sam's Beer Outlet, Inc., 94 N.J.A.R.2d (ABC) 9.

Person-to-person and place-to-place transfer of plenary retail consumption liquor license was warranted. N.J.S.A. 33:1-76. G & P Restaurant Co., Inc. v. Municipal Bd. of Alcoholic Beverage Control, Passaic County, 92 N.J.A.R.2d (ABC) 5.

13:2-7.6 Date of hearing

The date fixed for hearing shall not be sooner than five days after the second notice was published (excluding Saturdays, Sundays and legal holidays) and should not be later than 14 days thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may fix a date for hearing later than said 14 days and may adjourn the hearing, upon notification to all parties.

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 13:2-7.9. Clarified fixing of hearing date and exception to time limitation. Prior text at 13:2-7.6, "Type of license defined in form", repealed.

13:2-7.7 Hearing not required; reasons

(a) If there is no written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative. This investigation should include fingerprinting and a criminal background check and financial disclosure documentation.

(b) No application shall be approved unless the issuing authority affirmatively finds and certifies that:

1. The submitted application form is complete in all respects;
2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, the regulations promulgated thereunder as well as the pertinent local ordinances and conditions imposed consistent with Title 33;
3. The applicant has disclosed and the issuing authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional

financing obtained in connection with the licensed business and;

4. The transferee has executed a valid consent to transfer the license.

(c) No application shall be disapproved without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

(d) In the event no action is taken on an application for transfer of a municipally issued license within 60 days of the date of filing of the application, the applicant may file an appeal with the Director from such failure to act on the transfer application.

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.1981 d.432, effective November 2, 1981.

See: 13 N.J.R. 604(b), 13 N.J.R. 777(e).

(a)3: "and" added after "licensed business"; (a)4 added.

Amended by R.1983 d.545, effective November 21, 1983.

See: 15 N.J.R. 1557(a), 15 N.J.R. 1945(b).

Deleted old (b)4.

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 13:2-7.10. In (b), "certifies" was "reduces to resolution"; in (d), "municipally issued" license specified, and appeal from application denial changed to appeal from failure to act on transfer. Prior text at 13:2-7.7, "Publication of notice of application", incorporated into 13:2-7.4 as (c).

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

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

In (a), inserted provision for fingerprinting and criminal background checks as part of investigation and added (b)4.

Case Notes

License was granted to drive-in beverage distributor over competitors' objections. In the Matter of Objections to State Beverage Distributors License Application by Roadside Beverage Inc., 94 N.J.A.R.2d (ABC) 69.

Denial of license transfer without hearing upheld; borough could not grant transfer due to passage of licensee minimum distance ordinance after filing of transfer application. *Lo-Ran, Inc. v. Boro. of Bound Brook*, 3 N.J.A.R. 357 (1981).

13:2-7.8 Application for place-to-place license transfer

Application for transfers of licenses to other premises shall be on forms prescribed by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

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 13:2-7.12. Specified "forms promulgated by the Director". Prior text at 13:2-7.8, "Hearing granted upon written objection", recodified to 13:2-7.5.

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

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

Substituted "prescribed" for "promulgated".

13:2-7.9 Application for person-to-person transfer

Applications for transfers of licenses to other persons shall be on forms prescribed by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

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 13:2-7.13. Specified "forms promulgated by the Director". Prior text at 13:2-7.9, "Date of hearing", recodified to 13:2-7.6.

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

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

Substituted "prescribed" for "promulgated".

13:2-7.10 Combined transfer

Transfers of license both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the person-to-person application shall not be approved unless the place-to-place transfer is also granted.

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 13:2-7.14. Clarified dual approval requirement. Prior text at 13:2-7.10, "Hearing not required; reasons", recodified to 13:2-7.7.

Case Notes

Denial of license transfer without hearing upheld; borough could not grant transfer due to passage of licensee minimum distance ordinance after filing of transfer application. *Lo-Ran, Inc. v. Boro. of Bound Brook*, 3 N.J.A.R. 357 (1981).

13:2-7.11 Fee for license transfer to other premises or to another person

Applications for transfers of license to other premises only, or applications for transfer of license to another person only, shall be filed in triplicate and accompanied by a fee of 10 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether or not the transfer is granted, and is to be accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of \$200.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

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

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

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 13:2-7.15. Added text regarding transfer "to another person only (not combined)"; specified forwarding of original of application for transfer of retail license. Prior text at 13:2-7.11, "Proof of publication of notice of application; form", repealed.

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

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

Increased filing fee.

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).
 Substituted "\$200.00" for "\$100.00".
 Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.
 See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).
 Provisions of R.2003 d.311 adopted without change.

13:2-7.12 Fee for combined license transfer

Applications for transfer of license to other premises and other persons shall be filed in triplicate and accompanied by a fee of 20 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of \$200.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

Amended by R.1973 d.234, effective August 30, 1973.
 See: 5 N.J.R. 356(a).
 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 13:2-7.17. Specified forwarding of application original for transfer of retail license. Prior text at 13:2-7.12, "Information for premises license transfer", recodified to 13:2-7.8.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Deleted enumeration of (a) and increased the filing fee.
 Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).
 See: 35 N.J.R. 3707(a).
 Substituted "\$200.00" for "\$100.00" following "filing fee of".
 Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.
 See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).
 Provisions of R.2003 d.311 adopted without change.

13:2-7.13 Special condition for early grant

If a resolution or certification granting application for transfer is adopted sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution or certification shall set forth a special condition that the transfer shall not be effective until five business days have elapsed. If within such period a written objection to the transfer is filed, the transfer shall not be effective pending the further determination of the issuing authority.

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 13:2-7.18. Clarified "five business days" requirement; "certification" was "motion". Prior text at 13:2-7.13, "Information of persons seeking transfer", recodified to 13:2-7.9.

13:2-7.14 License certificate

(a) Upon the grant of a transfer, the Director or other issuing authority as the case may be shall cause the following written endorsement to be made upon the face of the license certificate:

The license, subject to all of its terms and conditions, is hereby transferred, effective _____, 20 _____.
 (Date)
 from _____
 (Name) and/or (Address)
 to _____
 (Name) and/or (Address)

 (Name of Issuing Authority)
 By: _____
 (Duly authorized official)
 Dated: _____, 20 _____.

 (Name of Issuing Authority)

(b) Unless another specific date is identified in the resolution approving the transfer of license, the effective date for municipally issued licenses shall be the date of adoption of the resolution by the issuing authority, and for State issued licenses, the date the Director certifies on the license certificate.

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 13:2-7.19. Added (b). Prior text at 13:2-7.14, "Combined transfer", recodified to 13:2-7.10.
 Amended by R.2000 d.342, effective August 21, 2000.
 See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

13:2-7.15 Certification of license transfers

Each municipal issuing authority shall make or cause to be made certification to the Director of all license applications filed transferred denied or withdrawn during the preceding business week, which certification shall include the original of the filed application, any fees to be remitted to the Director and any resolution adopted.

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 13:2-7.23. Municipal certification requirements delineated on weekly basis. Prior text at 13:2-7.15, "Fee for license transfer to other premises", recodified to 13:2-7.11.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Deleted enumeration of (a).

SUBCHAPTER 8. CLUB LICENSES

13:2-8.1 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

"Club" means an organization, corporation or association controlled by and consisting of 60 or more persons, of legal drinking age, operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

“Club member” means any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the bylaws of a club, and who maintains such membership in a bona fide manner and whose name and address are entered on the list of members. No individual shall be eligible for such club membership unless he has filed written application with the appropriate body, as set forth in the club bylaws, and such application is approved by said body at least three days subsequent to the filing thereof. Persons holding limited or auxiliary club membership shall not be deemed to be club members.

“Guest of club member” means an individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guest no more than nine individuals on any one occasion unless such individuals are attending a private affair, such as a wedding, anniversary, confirmation, bar mitzvah or birthday party, honoring a spouse, child, parent, brother or sister of a club member.

Administrative Correction:

See: 15 N.J.R. 1876(b).

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.

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

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

Amended definition of “Club”.

Case Notes

Country club was not a bona fide club and, hence, could not hold club liquor license. *Alcoholic Beverage Control v. Medford Village Resort*, 95 N.J.A.R.2d (ABC) 96.

Club license; valid ordinance limiting the number of licenses. *Boricua Social Club, Inc. v. Perth Amboy City Council*, 94 N.J.A.R.2d (ABC) 36.

13:2-8.2 Bona fide clubs

Club licenses shall be issued only to bona fide clubs.

13:2-8.3 Previous period of continuous, active operation

Except as provided in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of its application for a license.

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

(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.

(d) Prior to the expiration of the 30-day period in which to enter a plea, upon application by the licensee, the Director may, for good cause shown, grant an additional 30-day period for the licensee to enter a plea.

(e) Failure of the licensee to enter a plea within the 30-day period, plus extension, if any, shall be deemed a plea of non vult. Upon submission of a certification by the Division that service was made upon the licensee and that no plea was received within the 30-day period, plus extension, if any, the Director may, in the Director's sole discretion, impose upon the licensee the penalty or penalties stated in the Notice of Charges, or take any other appropriate action, without further notice.

(f) In the event a matter is returned to the Division from the Office of Administrative Law due to the licensee's failure to appear at a scheduled proceeding, pursuant to N.J.A.C. 1:1-14.4, the licensee shall be deemed to have withdrawn any plea previously entered and a plea of non vult shall be entered. No earlier than 14 days of the date of the notice from the Clerk of the Office of Administrative Law returning the case to the agency for this reason, the prosecuting Deputy Attorney General may submit a certification to the Director that the attorney has received no explanation for the licensee's nonappearance and the Director may, in the Director's sole discretion, impose upon the licensee the penalty or penalties stated in the Notice of Charges, or take any other appropriate action, without further notice.

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

Former N.J.A.C. 13:2-19.3, Pending proceedings; effect upon license or permit, recodified to N.J.A.C. 13:2-19.7.

13:2-19.4 Emergent hearing

(a) If an alleged action of a licensee presents a danger which is an immediate threat to the public health, safety or welfare and contrary to the interest of the community, the Director may, upon request of the Division, issue an Order for Emergent Hearing. The Order shall either provide a plenary hearing on the charges pursuant to (b) below or provide a hearing concerning the imposition of conditions pending a plenary hearing pursuant to (c) below.

1. The hearing date shall be not less than five days from the date of service upon the licensee of the Order for Emergent Hearing. Service shall be made in the same manner set forth in N.J.A.C. 13:2-19.1(b).

2. In the Order for Emergent Hearing, the Director may impose such conditions to be in effect until the hearing date, as the Director, in the Director's sole discretion, deems necessary to protect the public health, safety and welfare.

(b) The Order for Emergent Hearing shall contain all of the information required for a Notice of Charges, as set forth in N.J.A.C. 13:2-19.2 and notify the licensee of the

time and place of the hearing. The licensee must appear before the Director at the designated time and place for a plenary hearing to answer the charges.

1. An Order for Emergent Hearing regarding charges shall notify the licensee that a failure to appear shall be deemed a plea of non vult to the charges. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the penalty or penalties stated in the Order for Emergent Hearing, without further notice.

(c) If the sole purpose of the emergent hearing is to address the imposition of pendente lite conditions, those conditions and the basis upon which the Division seeks to impose the conditions shall be set forth in the Order for Emergent Hearing, instead of the information required in N.J.A.C. 13:2-19.2. The licensee must appear before the Director at the designated time and place to address the issue of imposition of the conditions pending the plenary hearing.

1. An Order for Emergent Hearing regarding pendente lite relief only shall notify the licensee that a failure to appear shall be deemed to indicate no objection to the conditions only. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the condition or conditions stated in the Order for Emergent Hearing, without further notice.

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

Former N.J.A.C. 13:2-19.4, Expiration or surrender of license; pending proceedings, recodified to N.J.A.C. 13:2-19.8.

13:2-19.5 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.
Recodified from N.J.A.C. 13:2-19.1 by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).
Former N.J.A.C. 13:2-19.5, Suspended license; transfers or extensions, recodified to N.J.A.C. 13:2-19.9.

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.

13:2-19.6 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.

Recodified from N.J.A.C. 13:2-19.2 by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Former N.J.A.C. 13:2-19.6, Jurisdiction and hearing procedure, repealed.

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.

13:2-19.7 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.

Recodified from N.J.A.C. 13:2-19.3 by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Former N.J.A.C. 13:2-19.7, Revoked license: licensee inability to work; transfer prior to revocation, recodified to N.J.A.C. 13:2-19.10.

13:2-19.8 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.

Recodified from N.J.A.C. 13:2-19.4 by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

13:2-19.9 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.

Recodified from N.J.A.C. 13:2-19.5 by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

13:2-19.10 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 or a change in corporate structure has occurred, prior to the time that a license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether the holders or owners (either direct or indirect) of the license at the time the violation(s) occurred, at the time the license was revoked, or any interim times, either allowed, permitted or suffered the unlawful conduct or should have known the effects of a license revocation or should otherwise be subject to statutory disqualification. Thereafter, 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 (a) above.

New Rule, R.1995 d.450, effective August 21, 1995.

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

Recodified from N.J.A.C. 13:2-19.7 and amended by R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Rewrote (b).

13:2-19.11 Penalty schedule, definition of violation, successive violations

(a) This section sets forth penalties for violations of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., or the rules or orders of the Director promulgated thereunder.

(b) The Director may suspend or revoke a license, even for a first violation.

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).

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).

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).

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).

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) No State licensee privileged to sell alcoholic beverages at retail shall deliver or transport any alcoholic beverages in any vehicle, unless:

1. 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 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; or

2. The driver of the vehicle has in his or her possession a route card which shall contain the name, address and standing order of the customer, and the entry at the time of delivery of the date of delivery, the brand, size of container, quantity delivered and the price charged. In addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container; and

3. The original or true copy of such delivery slip, invoice, manifest, waybill, route card 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 beverage from any vehicle to any consumer.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

(a)3 added; Old (b) deleted and new (b) and (c) added.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Revised throughout with minor stylistic changes and substituted "New Jersey Alcoholic Beverage Control Act" for "Alcoholic Beverage Law."

**SUBCHAPTER 23. CONDUCT OF LICENSEES
AND PERMITTEES AND USE OF LICENSED
PREMISES**

**13:2-23.1 Prohibition against serving persons under the
legal age and intoxicated persons**

(a) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic

beverage by any such person in or upon the licensed premises.

(b) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person actually or apparently intoxicated, or permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

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

Law Review and Journal Commentaries

Dram Shop Act—Administrative Regulations—Alcohol—Comparative Negligence—Instructions. Steven P. Bann, 137 N.J.L.J. No. 3, 49 (1994).

Torts—Dram Ship Liability—Under New Jersey Law a Casino Patron Would Not Be Permitted to Recover Gambling Losses From a Casino That Served the Patron Free Alcohol and Allowed Him to Continue Gambling After He Became Visibly Intoxicated—Hakimoglu v. Trump. Anthony Fernandez, 26 Seton Hall L.Rev. 941 (1996).

Case Notes

Casino patron could not recover damages from casinos under dram shop liability doctrine for gambling losses allegedly caused by casinos' conduct in serving free alcoholic beverages to patron and allowing him to continue to gamble. Hakimoglu v. Trump Taj Mahal Associates, C.A.3 (N.J.)1995, 70 F.3d 291.

Casino Control Commission did not have exclusive primary jurisdiction over claims for gambling losses. Greate Bay Hotel & Casino v. Tose, C.A.3 (N.J.)1994, 34 F.3d 1227, rehearing and rehearing in banc denied.

Losses incurred by patron allowed to gamble while drunk were proximately caused by casino's negligence. Tose v. Greate Bay Hotel and Casino Inc., D.N.J.1993, 819 F.Supp. 1312.

Contributory negligence based on intoxication of patron is not available to casino. Tose v. Greate Bay Hotel and Casino Inc., D.N.J.1993, 819 F.Supp. 1312.

Tavern violated regulations requiring that premises be maintained in safe and orderly condition by continuing to serve unruly intoxicated patrons, even after its security guard had to break up altercation between patrons and another customer. Cassanello v. Luddy, 302 N.J.Super. 267, 695 A.2d 325 (N.J.Super.A.D. 1997).

Negligence under statute is not definable by reference to administrative regulations. Fisch v. Bellshot, 135 N.J. 374, 640 A.2d 801 (1994).

Prerequisites to establish tavern owner's negligence in serving alcoholic beverages to a patron noted. Geherty v. Moore, 238 N.J.Super. 463, 570 A.2d 29 (A.D.1990), certification granted 122 N.J. 148, 584 A.2d 219, appeal dismissed as improvidently granted 127 N.J. 287, 604 A.2d 110.

Finding that automobile accident was not proximately caused by motorist's intoxication, so that tavern owner was not liable supported by evidence. Geherty v. Moore, 238 N.J.Super. 463, 570 A.2d 29 (A.D. 1990), certification granted 122 N.J. 148, 584 A.2d 219, appeal dismissed as improvidently granted 127 N.J. 287, 604 A.2d 110.

Parents had duty to public to exercise reasonable care to arrange for competent supervision of their teenagers. Morella v. Machu, 235 N.J.Super. 604, 563 A.2d 881 (A.D.1989).

Insurer did not have duty to defend and indemnify bar in action by barmaid for wrongful termination in violation of public policy. John's Cocktail Lounge, Inc. v. North River Ins. Co., 235 N.J.Super. 536, 563 A.2d 473 (A.D.1989).

Licensee who sells package-alcoholic beverages to visibly intoxicated patron who thereafter negligently operates motor vehicle, is liable for injuries inflicted upon third party as a result thereof. Tilton v. Brombacher, 232 N.J.Super. 374, 556 A.2d 1337 (L.1989).

Tavern could be held 75% responsible for deaths and injuries caused by fire, in dram shop action wherein it was alleged that underage drinker negligently set house on fire. Finney v. Ren-Bar, Inc., 229 N.J.Super. 295, 551 A.2d 535 (A.D.1988).

Statute prohibiting underage person from entering casino imposed strict liability. State, Dept. of Law and Public Safety, Div. of Gaming Enforcement v. Boardwalk Regency Corp., 227 N.J.Super. 549, 548 A.2d 206 (A.D.1988).

Record supported the determination that the licensee delivered, either directly or indirectly, or "permitted or suffered" the delivery of beer to a person under legal age, even if a person of legal age had paid for the beer. N.J. Div. of Alcoholic Beverage Control v. H & H Wine and Spirit Shop, 216 N.J.Super. 532, 524 A.2d 466 (App.Div.1987).

Issue of whether owner of liquor store should reasonably have foreseen that underage purchaser would share liquor with minor injured in one car collision was question for jury. Thompson v. Victor's Liquor Store, Inc., 216 N.J.Super. 202, 523 A.2d 269 (App.Div. 1987).

Licensee's action dismissed against minor for lost profits due to license suspension caused by licensee's sale of liquor to minor who orally misrepresented age; licensee's failure to obtain written representation of minor's age was proximate cause of suspension. Faces, Inc. v. Kennedy, 185 N.J.Super. 113, 447 A.2d 592 (Law Div.1981), affirmed per curiam 185 N.J.Super. 77, 447 A.2d 572 (App.Div.1982).

Licensee selling minors alcohol on four occasions justifies twenty-day suspension period. Scherer & Company v. Municipal License Issuing Authority of the Township of Mahwah, 97 N.J.A.R.2d (ABC) 3.

Charges of serving liquor to intoxicated minors were dismissed where credible testimony established that minors had not been in bar on night in question. Division of Alcoholic Beverage Control v. Dom Sup Bar, Inc., 96 N.J.A.R.2d (ABC) 159.

Bar's liquor license was suspended for 30 days based upon minor's credible testimony that bartender sold him beer. Division of Alcoholic Beverage Control v. Hilcar, Inc., t/a Hilda's Place, 96 N.J.A.R.2d (ABC) 115.

Monetary penalty in lieu of license suspension was appropriate for large hotel facility charged with sales of alcoholic beverages to minors. Governor Morris Association v. Township Committee of the Township of Morris, 96 N.J.A.R.2d (ABC) 103.

Licensee that admitted selling alcohol to underage patron was not entitled to monetary penalty in lieu of license suspension. Alibi Inn v. Woodbridge Township, 96 N.J.A.R.2d (ABC) 90.

Suspension of liquor license warranted where licensee allowed underage persons to frequent its tavern in violation of city ordinance. J-Kal v. City of Trenton, 96 N.J.A.R.2d (ABC) 31.

Failure to require underage person to present identification warranted thirty-day suspension of liquor license. Montville Enterprises v. Township Council, 95 N.J.A.R.2d (ABC) 55.

Two concurrent suspensions imposed upon bar that served alcohol to minor and intoxicated person. Martin and Pearl Springman, Inc. v. Midland Park Borough, 94 N.J.A.R.2d (ABC) 90.

Failure to prove that liquor store owner sold alcohol to minors who were subsequently involved in a fatal car accident. Division of Alcoholic Beverage Control v. Chatfield and Connolly, Inc., 94 N.J.A.R.2d (ABC) 51.

Service to underage persons; allowing them to carry beer out of store after another person had paid for it. Division of Alcoholic Beverage Control v. Mr. G's, Inc., 92 N.J.A.R.2d (ABC) 52.

Suspension of license; sale of alcoholic beverages to a person under the legal age. De Cesare, Inc. v. City of Vineland, 92 N.J.A.R.2d (ABC) 37.

Fine in lieu of suspension of plenary retail consumption license. N.J.S.A. 33:1-31, 33:1-77. W.A.M. Night Clubs, Inc. v. Township Committee of the Township of Teaneck, 92 N.J.A.R.2d (ABC) 17.

Respondent guilty of selling alcoholic beverages to an underage individual (Decision of Div. of A.B.C.). Div. of Alcoholic Beverage Control v. H & H, 11 N.J.A.R. 478 (1986) affirmed 216 N.J.Super. 532, 524 A.2d 466.

Finding of not guilty of serving intoxicated person; conduct observed by licensee's employees did not give rise to conclusion by reasonable person that customer was intoxicated. Div. of Alcoholic Beverage Control v. Harry M. Stevens, Inc., 5 N.J.A.R. 141 (1981).

13:2-23.2 Prohibiting sales or consumption of alcoholic beverages during elections; municipal option

No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises while the polls are open for voting in any municipality in which an election is being held and the sale of alcoholic beverages is prohibited during such election by municipal ordinance.

Amended by R.1970 d.101, effective August 24, 1970.

See: 2 N.J.R. 76(a).

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.

13:2-23.3 Closing premises during public emergency or crime investigation

No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, at retail, or allow, permit or suffer the consumption of any alcoholic beverage on the licensed premises, or allow, permit or suffer the retail licensed premises to be open, during any period for which any duly constituted State, county or municipal law enforcement authority, because of a public emergency or investigation of crime, has ordered the licensed premises to be closed, unless excepted by such authority to permit continuing conduct of business other than the sale of alcoholic beverages.

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).

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).

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).

License suspended for allowing lewd and immoral conduct on premises (topless dancers); while constitutionality of ordinance and regulation must be reviewed by court of plenary jurisdiction, regulation examined and found constitutional; violative activity not protected free speech. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

13:2-23.7 Prohibition against lottery and gambling; exceptions

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

1. The conduct of any lottery;
2. Any ticket or participation right in any lottery to be sold or offered for sale;
3. Any pool-selling, bookmaking or any unlawful game or gambling of any kind;
4. Any slot machine or device in the nature of a slot machine or any other gambling device which may be used for the purpose of playing for money or other valuable thing;
5. Any gambling paraphernalia including, but not limited to, any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any lottery, pool-selling, bookmaking or unlawful game or gambling of any kind;
6. Any video device, which resembles a game of cards, dice, roulette, or any other game of chance or crane device, which device has not been approved by the Director. In approving a device, the Director must be satisfied that the specific device is an entertainment device and not a gambling device. In reaching this determination, the Director shall consider all factors relating to the operation of the device, including, but not limited to, whether the device can easily be used for or adapted to gambling. A licensee wishing to place such a device on a licensed premises shall request written confirmation from the Director, prior to placement, that the specific device has been previously approved or, if the specific device has not been previously approved, shall request that the Director make such a determination. The approval letter shall be kept on the licensed premises at all times or the device may be deemed to be unapproved; or

7. Any raffle, drawing, lottery or contest, etc., the prize for which is an alcoholic beverage, without the appropriate permit.

(b) This rule shall not apply to bingo, raffles or New Jersey State Lottery, or tickets or participation rights therein, being conducted pursuant to appropriate license under the Bingo Licensing Law (N.J.S.A. 5:8-24), Raffles Licensing Law (N.J.S.A. 5:8-50), State Lottery Law (N.J.S.A. 5:9-11) or other activity authorized by State law. However, in any instance of bingo at licensed premises, no licensee, during the period between the commencement of the first and the conclusion of the last game, shall sell, serve, or deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage in or upon any part of the licensed premises where the bingo or any part thereof is being conducted.

(c) All licensees which have approved video games on their licensed premises shall notify the Division within 48 hours of the placement thereof.

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.1995 d.450, effective August 21, 1995.

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

Prohibited gambling paraphernalia on licensed premises.

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

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

Rewrote (a); added (c).

Case Notes

Video poker, blackjack, dice, roulette and other electronic forms of traditional gambling games or devices are slot machines within the meaning of this regulation and, therefore, are prohibited on licensed premises. *Rosenkranz v. Vassallo*, 193 N.J.Super. 319, 473 A.2d 991 (App.Div.1984) on remand 9 N.J.A.R. 297 (1984).

Warrant needed to search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed activity. *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).

Warrantless searches of persons and tavern for lottery slips upheld (citing former N.J.A.C. 13:2-21.7). *State v. Carangelo*, 151 N.J.Super. 138, 376 A.2d 596 (Law Div.1977).

Liquor license was suspended for various violations, including possession of illegal gambling device on premises. *Division of Alcoholic Beverage Control v. Deleon Inc.*, 96 N.J.A.R.2d (ABC) 95.

Video machine easily adapted to actual gaming cannot be placed upon liquor-licensed premises unless exception to the proscription have been issued for the machine. *Rosenkranz v. Div. of Alcoholic Beverage Control*, 9 N.J.A.R. 297 (1984).

13:2-23.8 Eastern Standard Time change

(a) On the first Sunday of April of each year, at 2:00 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time. The official time will then become 3:00 A.M., and in any municipality having a closing time later than 2:00 A.M., the remaining hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 A.M., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time. The official time will be 1:00 A.M., and in any municipality having a closing hour later than 2:00 A.M., remaining hours of sale will be calculated accordingly.

(c) In either case, (a) or (b) above, licensed premises having closing hours of 2:00 A.M. or earlier, will be unaffected.

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.1990 d.412, effective August 20, 1990.

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

In (a), "first Sunday" was "last Sunday".

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

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

Added provisions for the "Official Time".

13:2-23.9 Prohibition against adulterated alcoholic beverages

(a) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverages adulterated with any foreign or harmful substance or containing any visible fruit flies or other insect matter. Notwithstanding, to the extent permitted by Federal law, tequila containing the agave worm shall not be deemed in violation of this provision.

(b) If, at the time that a violation of (a) above is discovered by an enforcing agency, the violative container is either sealed or equipped with a pouring spout containing a screen designed to prevent the ability of fruit flies and/or other insects from entering the container, then the enforcing agency shall direct the licensee to empty the violative container. Licensees shall immediately comply with this directive. Compliance with the directive shall result in no administrative charges for this violation.

(c) Nothing in this section shall prohibit licensees from storing and temporarily retaining such beverages for purposes of returning same to a manufacturer or wholesaler provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

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

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

Added (b).

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

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

Rewrote the section.

13:2-23.10 Restriction upon receiving prohibited deliveries of alcoholic beverages

No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of N.J.A.C. 13:2-20 and 13:2-21.

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

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

Added reference to 13:2-20.

13:2-23.11 Consumption of alcoholic beverages and possession of open containers prohibited upon retail distribution licensee's premises; exception

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises.

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective from being possessed by such licensee pending return to the manufacturer or wholesaler; provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Revised and designated existing text as (a) and (b).

13:2-23.12 Receiving alcoholic beverages from prohibited source

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director.

(b) The purchase of alcoholic beverages by one retailer from another and sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Designated existing text as (a) and (b).
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

Licensee's failure to comply with purchase and hiring regulations and statutes supports suspension. *Division of Alcoholic Beverage Control v. Chestnut, Inc.*, 97 N.J.A.R.2d (ABC) 31.

13:2-23.13 Maintaining copies of current license certificate; application; list of employees on the licensed premises

(a) No licensee holding a Class C license shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the retail licensed premises in such plain view as to be easily read by all persons visiting such premises, with Permit for Off-Premises Storage of Business Records sticker affixed, if applicable;

2. A photostatic or other true copy of the application for the current license as well as the last filed long-form application (if current application is the short form), is kept on the licensed premises; and

3. A list, on a form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises. A licensee shall be deemed to have complied with this requirement if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced.

(b) Such application copy and such list shall be available for inspection by the Director, the Director's deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

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)3, specified form "promulgated" by the Director.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (a), substituted "prescribed" for "promulgated" and added (c).
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

Violation finding upheld; failure to keep list of employees cannot be excused by attempting to classify "exotic dancers" as independent contractors, as they were working in furtherance of the licensed premises. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

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.

13:2-23.14 Prohibition against indecent matter upon licensed premises

No licensee shall allow, permit or suffer in or upon the licensed premises or have in his possession or distribute or cause to be distributed any obscene, indecent, filthy, lewd, lascivious or disgusting recording, printing, writing, picture or other matter.

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.

13:2-23.15 Possession of container mislabeled as to fill prohibited; exception

No licensee shall knowingly display, sell or deliver any alcoholic beverage in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and 39.1.

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).
Corrected reference.

13:2-23.16 Prohibited promotions

(a) Except for consumer alcoholic beverage tasting events conducted in accordance with N.J.A.C. 13:2-37, and promotions permitted in this section, no licensee, permittee or brand registrant shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers unlimited availability of any alcoholic beverage for consumption on a licensed premises, for a set price, except for:

i. Private parties, not sponsored by the licensee, such as wedding and birthday parties, and events held by social affair permittees; or

ii. New Year's Eve parties sponsored by a licensee where a set price for attendance includes an open bar;

2. Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except for:

i. Branded or unique glassware or souvenirs in connection with a single purchase;

ii. Consumer mail-in rebates offered in accordance with N.J.A.C. 13:2-24.11;

iii. Manufacturer's sweepstakes and contests, not prohibited by law, where entry or opportunity to win is open to the public without a requirement that a purchase be made;

iv. Discounts offered by retailers to consumers on the purchase of alcoholic beverages for off premises consumption;

v. Offers of not more than one free drink per patron, as a gesture of good will, in a 24 hour period, by an on-premise consumption licensee;

vi. Offers of not more than one free drink coupon, ticket, or token redeemable by a patron, once in a 24 hour period;

vii. Offers of a set price for a meal that includes a single alcoholic beverage drink; or

viii. Offers of a single bottle of wine or champagne to guests staying at a licensed hotel or motel, as part of a specialty package, provided that the primary guests are of legal drinking age;

3. Requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon;

4. Offers any prize, gift or award which consists of alcoholic beverages or coupons or gift certificates which may be redeemed for alcoholic beverages, such as two for one, and the like, except for a prize consisting of

alcoholic beverages in sealed containers offered in a raffle licensed pursuant to N.J.S.A. 5:8-50. A coupon or gift certificate, other than a certificate purchased by a consumer for an amount equal to the dollar value of the certificate, shall expressly state that the certificate shall not be applied toward the purchase or consumption of alcoholic beverages; or

5. Contains an instant win coupon, ticket, cap, game card or the like.

(b) No prize or promotion shall be given to, nor shall any contest for consumers be open to, any person under the legal age to purchase or consume alcoholic beverage, any supplier, wholesaler, distributor or retailer; or affiliates, employees or members of the immediate family or household of any such persons or entities.

New Rule, R.1980 d.304, effective July 3, 1980.

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

Amended by R.1983 d.527, effective November 21, 1983.

See: 15 N.J.R. 1558(a), 15 N.J.R. 1946(a).

In (a)2, added "or consumer mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11".

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

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

Excepted "consumer alcoholic beverage tastings" and "tasting dinners" from operation of section; divided (a)2 into (a)2.i and (a)2.ii; and added (a)2.iii, (b) and (c).

Amended by R.1996 d.271, effective June 17, 1996.

See: 27 N.J.R. 2051(a), 28 N.J.R. 3177(a).

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

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

Rewrote the section.

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

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

In introductory paragraph (a), substituted "tasting events" for "tastings or tasting dinners"; added (a)5.

Case Notes

Under New Jersey law, liability determination was limited to the inquiry surrounding negligent service of alcohol. *Zygmuntowicz v. Hospitality Investments, Inc.*, E.D.Pa.1993, 828 F.Supp. 346.

Leave granted to amend complaint to add claim for punitive damages. *Zygmuntowicz v. Hospitality Investments, Inc.*, E.D.Pa.1993, 151 F.R.D. 53.

Negligence under statute is not definable by reference to administrative regulations. *Fisch v. Bellshot*, 135 N.J. 374, 640 A.2d 801 (1994).

Hotel's "manager's reception" violated State alcoholic beverage laws. In the Matter of the Petition of Embassy Suites Hotel, 94 N.J.A.R.2d (ABC) 4.

13:2-23.17 Restriction upon limited retail distribution licensee possessing chilled malt alcoholic beverages

No limited retail distribution licensee shall possess or allow, permit or suffer any chilled malt alcoholic beverages other than chilled draught malt alcoholic beverages in kegs, barrels or similar containers of at least 7.75 fluid gallons in capacity, in or upon the licensed premises.

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

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

Added "chilled draught" exception and changed "one gallon" to "7.75 fluid gallons".

13:2-23.18 Solicitation prohibited

No plenary or seasonal retail consumption licensee shall allow, permit or suffer any person employed on the licensed premises to solicit any beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.

13:2-23.19 Prohibition against offering substitute beverages; exception

No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered, unless agreed to by the customer.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added "unless agreed to by the customer".

13:2-23.20 Intoxicated workers prohibited

No licensee shall work in any capacity in or upon the licensed premises while actually or apparently intoxicated, or allow, permit or suffer any actually or apparently intoxicated person to work in any capacity in or upon the licensed premises.

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.

Law Review and Journal Commentaries

Dram Shop Act—Administrative Regulations—Alcohol—Comparative Negligence—Instructions. Steven P. Bann, 137 N.J.L.J. No. 3, 49 (1994).

13:2-23.21 Restrictions upon storage of alcoholic beverages

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director. Nothing herein shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days after the effective date of the transfer of the license to other premises or for a period not to exceed 72 hours following delivery at the licensed premises of alcoholic beverages purchased, as part of a cooperative order by a fellow member of a cooperative purchasing agreement made pursuant to N.J.A.C. 13:2-26.

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

Provided for storage of alcoholic beverages purchased under a cooperative order.

13:2-23.22 Requirement for labeled tap markers; provision for electronic systems

(a) No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall allow, permit or suffer any tap on the licensed premises to be connected with any barrel or other container of a malt alcoholic beverage unless such tap bears a marker which truly indicates the name or brand of the manufacturer of such malt alcoholic beverage, and unless such name or brand is in full view of the purchaser when the tap is located at a bar at which consumers are served.

(b) On premises where either an electronic or automatic system is being used, which provides for the dispensing of distilled alcoholic beverages in a barroom, and the label on the container from which the beverage is drawn is not visible to a consumer at the bar, then some alternate device must be used to indicate to the consumer the brand being dispensed.

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.

13:2-23.23 Requirements concerning labels; tax payment indicia

(a) No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:

1. Does not bear any label describing its contents; or
2. Bears a label which does not truly describe its contents; or
3. Does not bear any indicia of tax payment as required by the laws of the United States.

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.

Case Notes

Liquor licensee was fined and license was suspended for conducting business without Special Federal Tax Stamp. Division of Alcoholic Beverage Control v. William Diggs Family, Inc., 96 N.J.A.R.2d (ABC) 81.

13:2-23.24 Restrictions upon placing of orders

No licensee shall place any order within this State for the purchase of any alcoholic beverage or allow, permit or suffer any of his employees to place any order for the purchase of any alcoholic beverage, with any individual soliciting in violation of N.J.A.C. 13:2-16.

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.

13:2-23.25 Restrictions upon retail/manufacturer or wholesaler relationships

No retail licensee shall employ or have connected with him in any business capacity whatsoever any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State, nor shall any retail licensee be employed by or connected in any business capacity whatsoever with any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State.

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.

13:2-23.26 Fingerprinting requirements

No licensee shall employ or have connected with him in any business capacity whatsoever any person who refuses to submit himself for fingerprinting when required to do so by the Director or the municipal license issuing authority concerned.

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.1995 d.450, effective August 21, 1995.

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

Stylistic changes.

13:2-23.27 Prohibited activities during license suspension

(a) No licensee, during the suspension of license, shall:

1. Allow, permit, or suffer the sale, service, delivery or consumption of any alcoholic beverage, or any other alcoholic beverage activity in or upon the licensed premises, except the storage of alcoholic beverages on hand or (with the permission of the Director) the return of alcoholic beverages to wholesalers or manufacturers; or
2. Deliver any alcoholic beverage to any consumer; or
3. Receive delivery of any alcoholic beverage at the licensed premises; or
4. Advertise that the licensed premises is closed or the licensed business stopped because of repairs or alterations or for any reason other than the suspension.

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; stylistic revisions.

13:2-23.28 Standard of liability

(a) Unless otherwise specified by statute or rule, a licensee is guilty of a violation of the Alcoholic Beverage Control Act if it allows, permits or suffers the violative act on or about its licensed premises.

(b) When knowledge is required to establish a violation of the Alcoholic Beverage Control Act, knowledge is established if:

1. The licensee itself committed the violative act;
2. The licensee had actual knowledge or was on notice that the violative activity was taking place, or about to take place, on or about the licensed premises; or
3. The licensee could have discovered violative activity was taking place, or about to take place, on or about the licensed premises through reasonable inquiry and had notice of circumstances which gave rise to a duty to inquire regarding same.

(c) In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant, employee or patron or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given by him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

(d) No licensee shall commit any act which gives rise to a violation which is chargeable against any other licensee. The licensee committing such violation may be administratively charged for same even if the other licensee is not charged.

(e) The provisions of this section apply to all classes of alcoholic beverage licenses.

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

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 drug 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).

13:2-23.29 Detention of evidence; search of licensed premises

By the acceptance of the license, the licensee consents to the detention, as and for evidence, of any physical matter, including alcoholic beverages, found on the licensed premises or during the course of any investigation, inspection or search of the licensed premises being conducted by the Director, the Director's deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

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; stylistic revision.

(d) All licensees shall produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p), unless a different time period is prescribed in N.J.A.C. 13:2-29.4, at a location designated by the requester. The failure to comply with this subsection shall be considered a violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

(e) All licensees shall have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p) at a location designated by the requester.

(f) All records required to be maintained by a licensee shall be in the English language.

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

Clarified five-year record requirement of all moneys received and expended.

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

Provided recordkeeping periods.
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

Disciplinary proceedings against liquor company resulted in a suspension of plenary retail distribution license for failure to disclose a hidden interest in the license (N.J.S.A. 33:1.25); failure to keep true books of account (N.J.A.C. 13:2-23.32) and hindering an investigation into the matter in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30. In Re: M.A.T. Co., 9 N.J.A.R. 262 (1983).

13:2-23.33 Dishonored checks; unpaid fees

If a check submitted by a licensee, permittee or applicant is returned unpaid to the Division or other issuing authority or if all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

New Rule, R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

**SUBCHAPTER 24. TRADE MEMBER
DISCRIMINATION, MARKETING AND
ADVERTISING**

13:2-24.1 Discrimination in terms of sale

(a) The purpose of this subchapter is to promote competition while preserving an orderly marketplace, including, but not limited to, the prevention of destructive price wars, and to promote practices that foster moderation and responsibility in the use and consumption of alcoholic beverages.

(b) For purposes of this subchapter:

1. A discount is an inducement or allowance to purchase a product which is reflected on the wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is completed. A discount is reflected in the cost of the product on which it is given, as it relates to the retailer's sale price for purposes of N.J.A.C. 13:2-24.8. Discounts may include quantity discounts;

2. A rebate is an inducement or allowance to purchase a product which is not reflected on the wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is completed, but which is payable no less than 30 days and no more than 90 days after the payment for the product on which it is given. A rebate is not reflected in the cost of the product on which it is given, as it relates to the retailer's sale price for purposes of N.J.A.C. 13:2-24.8; and

3. A retail incentive program (RIP) is a form of rebate in which a wholesaler provides a financial incentive to a retailer to purchase a specific quantity of alcoholic beverages in one purchase transaction and places no other obligation on the retailer. A purchase transaction is a single order and a single delivery of a specific quantity of a specific alcoholic beverage or combination of beverages, as reflected on a single wholesaler's invoice. More specific requirements for this type of rebate are set forth in (e) below.

(c) Except as may otherwise be authorized by this subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler, or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, be a party to, or assist in, any transaction or sale, or contract to sell:

1. Which discriminates against purchasers, in that:

i. There is a different price or are different credit terms for different purchasers of alcoholic beverages of the same brand or trade name of like age, quality and quantity (including, but not limited, to proof and size); or

ii. It is a discount, rebate, allowance or advertising service granted to a purchaser over and above any discount, rebate, allowance, or advertising service available at the time of such transaction to competitors with

respect to a sale of alcoholic beverages of the same brand or trade name of like age, quality and quantity. However, a wholesaler may exclude retail cooperatives from a RIP program without the prior approval of the Director so long as the RIP program complies with (e) below. A wholesaler wishing to exclude retail cooperatives from a RIP program that does not comply with (e) below shall first petition the Director and seek approval of its program. This petition may include one or more such proposed programs and shall be submitted to the Director at least 75 days in advance of the date on which the program(s) is proposed to appear on the Current Price List. Such program(s) shall not appear on the Current Price List without the Director's prior approval. The petition shall include the following information upon which the Director shall make his or her decision:

(1) A detailed description of the proposed program(s);

(2) A detailed description of how individual retail licensees will be able to participate in the program(s);

(3) A detailed explanation of why the program(s) will not destabilize the marketplace, including, but not limited to, the creation of destructive price wars, or unduly increase the consumption of alcoholic beverages; and

(4) Any other information the Director deems necessary from a specific petitioner.

2. Alcoholic beverages in any part of the State at prices lower than those charged by that person or entity elsewhere in the State for the purpose of destroying competition, or eliminating a competitor in the State.

3. Alcoholic beverages at unreasonably low prices for the purposes of destroying competition, or eliminating a competitor.

(d) The provisions of the foregoing shall not prevent:

1. Differentials which make only due allowance for actual differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which alcoholic beverage products are sold or delivered to, or paid for by, purchasers including discounts for prompt payment.

(e) Except as approved by the Director under (c)1ii above, a retail incentive program (RIP) rebate shall conform to the following requirements:

1. All wholesalers participating in such programs shall provide the rebate in the form of a monetary payment, payable only by business checks issued by the participating wholesalers;

2. No RIP rebate shall be offered on a quantity in excess of 50 cases for distilled spirits and wine, or 250 cases for beer. For every RIP rebate, there shall be a corresponding small quantity RIP rebate on the same product(s), for a quantity that is five cases or less. The minimum quantity of any RIP rebate shall be one bottle for distilled spirits or wine, or one case for beer;

i. RIP rebates may be based on a combination of various sizes and products. However, no single RIP rebate shall exceed \$1,000;

ii. Nothing in this section shall be deemed to limit the number of single RIP rebates which can be earned for qualifying purchases;

iii. If a wholesaler wishes to offer a RIP rebate using any formula or dollar amount other than that specified in this subsection, it shall obtain the written approval of the Director prior to offering such RIP rebate and prior to publication thereof in the wholesaler's Marketing Manual and Current Price List applicable to the period during which the RIP rebate will be offered;

3. All wholesalers and all retailers participating in such programs shall keep a separate, complete and accurate accounting of all such rebates disbursed or received and all documents that reflect same; and

4. All wholesalers participating in such programs shall publish the details in its Marketing Manual and its Current Price List.

(f) The Director may, on his own initiative or at the request of any affected industry member, investigate and, if appropriate, disapprove and prohibit the continued or renewed use of any RIP, including, but not limited to, a RIP that complies with the formula and dollar amounts specified in (e) above, if the effect of that RIP is inconsistent with the purposes of this subchapter. Whether to disapprove and prohibit a RIP will be considered pursuant to N.J.S.A. 33:1-39 and/or N.J.A.C. 13:2-19.

(g) If the Division investigates and/or prosecutes any discount, rebate, allowance or advertising service offered by any manufacturer, supplier, importer, brand registrant, wholesaler, or distributor, the party offering it must make a prima facie showing that the program is consistent with the applicable statutes and rules.

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.1981 d.432, effective November 2, 1981.

See: 13 N.J.R. 604(b), 13 N.J.R. 777(e).

(b)2 deleted.

Amended by R.2004 d.55, effective February 2, 2004.

See: 35 N.J.R. 1045(a), 36 N.J.R. 657(a).

Rewrote the section.

1. The amount of malt alcoholic beverage intended for brewing per year;
2. The site of restricted brewery license activities (must be immediately adjacent to retail license restaurant premises);
3. The name and license number of restaurant and seating capacity;
4. The license number of any other restricted brewery license which is issued to the plenary retail consumption licensee;
5. The manner in which the malt alcoholic beverage product will be sold by the open container, for immediate consumption on the restaurant premises, or as package goods for off premises consumption; and
6. A sketch of the proposed area of the licensed premises specifically setting forth the area in which the malt alcoholic beverage product will be sold.

(b) All applicants for a restricted brewery license shall provide this Division with the following documents:

1. Proof of posting of a tax bond with the New Jersey Division of Taxation;
2. Proof of registration as a brewer with the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) (must be registered prior to issuance of license);
3. Compliance with all State, county and/or local requirements associated with manufacturing and waste water discharge;
4. Proof of notice to local issuing authority regarding intention to operate restricted brewery; and
5. Certification from local issuing authority that applicant has present ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

Amended by R.2006 d.67, effective February 21, 2006.
See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).
Rewrote (b)2.

13:2-34.2 License fees

There is a base license fee of \$1,250 which must be paid at the time of the initial application. This fee shall entitle the licensee to brew up to one thousand 31 fluid gallon barrels per year. There is an additional \$625.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit. All fees shall be payable to the Division of Alcoholic Beverage Control.

Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).
Substituted "\$1,250.00" for "\$1,000.00" and "\$625.00" for "\$500.00".

13:2-34.3 Restaurant premises

(a) For the purposes of this license, a restaurant is defined as a premises which is regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dining room facilities. The applicant shall submit a sketch of the restaurant premises which must be immediately adjacent to the restricted brewery. The sketch shall reflect the seating capacity of the restaurant, the menu provided to customers and the layout of the restaurant showing where the malt alcoholic beverage will be sold for off premises consumption, if any.

(b) The Director shall issue a restricted brewery license only to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant as defined herein. A site visit by the Division will be conducted to ensure compliance with these regulations.

(c) For purposes of this subchapter, the term "adjacent" shall include but not be limited to those premises which are entirely surrounded and enclosed within the restaurant licensed premises.

13:2-34.4 Tasting and sale for off-premises consumption

(a) A restricted brewery licensee may offer, without charge, no more than five ounces of the brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the brewed product. This sampling shall not be offered to the same customer more than once, for each malt beverage brewed on the premises, during the hours of sale on any day.

(b) In addition to the sale of brewed malt alcoholic beverage for on premises consumption, sales for off premises consumption may be conducted on the retail licensed premises.

(c) The containers in which the malt alcoholic beverage are sold for off-premises consumption shall be sealed refillable containers having labeling approved by the Division. The containers may be returned to the restricted brewery and at the time of refill shall be sealed by the licensee.

(d) Display and sale of the malt alcoholic beverages for off-premises consumption on the restaurant licensed premises shall comply with all pertinent provisions of N.J.A.C. 13:2-35.

13:2-34.5 Hearings

The Director shall hold a hearing if the governing body of the municipality in which the license will be located files a written objection with the Director. The Director shall thereafter issue the license only if such issuance will not be contrary to the public interest.

13:2-34.6 Disciplinary proceedings

Any disciplinary proceedings against a restricted brewery license shall be in accordance with N.J.A.C. 13:2-19. The institution of disciplinary proceedings against a restricted brewery license shall be considered separate and distinct from and shall not adversely affect the status of the plenary retail consumption license owned by the person or entity holding the restricted brewery license. However, the Director may institute disciplinary proceedings against the plenary retail consumption license when the factual basis of the violation charged involves the operation of both the plenary retail consumption license and the restricted brewery license.

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**SUBCHAPTER 35. SALE AND DISPLAY OF
ALCOHOLIC BEVERAGES IN ORIGINAL
CONTAINERS BY CONSUMPTION LICENSEES
NOT HOLDING THE BROAD PACKAGE
PRIVILEGES**

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment, which must occupy not less than 15 percent of the total square footage of said room and which is designed for and used to sell and dispense alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises.

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises. A substantial portion of the bar must be visible from all public entrances to the barroom.

3. The principal public barroom shall be the room in which the main public bar is located. In determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

4. A "perimeter wall" of a barroom is defined as an external, generally weight bearing wall of the barroom.

5. The "outside edge" of the cashier (package goods) sales counter is defined as the edge away from the licensee's employee who is conducting sales (that is, the edge of the counter immediately facing the customer). The counter, the walking space behind the counter, and any

shelving attached to the perimeter wall (behind the counter) must fall within the five foot limitation as set out in N.J.A.C. 13:2-35.4(a)2.

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).

Added (a)4 and (a)5.

Case Notes

Transfer of retail consumption license with package sales to site adjacent to licensed premises with restaurant was granted. *Pungoti v. Sayreville*, 95 N.J.A.R.2d (ABC) 72.

**13:2-35.2 Prohibition on sales of package goods from
other than the principal barroom except by
holders of the broad package privilege**

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the "Broad Package Privilege") unless:

1. On or before June 30, 1948, the Director of the Division of Alcoholic Beverage Control received from such a licensee's municipal license issuing authority certification that such licensee, on May 27, 1948, sold alcoholic beverages in original containers for consumption off the licensed premises, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom; or

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a licensee alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

- i. Building alteration or construction in progress;
- ii. Prior destruction or loss of possession of the licensed premises; or

iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom or had actually undertaken alteration or construction of the licensed premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

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.

13:2-35.3 Notation of privilege on license certificate; daily certification

The Division of Alcoholic Beverage Control shall note the following on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.2:

"This license bears the "Broad package privilege" pursuant to P.L. 1948, ch. 98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-35.2)".

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

In former (a), changed "issuing authority" to "Division of Alcoholic Beverage Control"; deleted (b), regarding daily certifications.

13:2-35.4 Off-premises consumption sales; requirements and prohibitions

(a) No licensee without the "Broad package privilege" shall, with respect to the public barroom in which he may sell or display for sale alcoholic beverages in original containers for off-premises consumption:

1. Display package goods in the principal public barroom other than in an area located behind the bar or on shelving along the perimeter walls of the barroom, which shelving must not exceed two feet in depth, must be attached to the perimeter walls and run parallel to same, may be located below and around the exterior windows but not in any way obstructing the windows, and may include refrigerated cases, which are located flush and fastened to the wall;

2. Maintain a cashier service counter which exceeds more than three percent of the net sales area (with an area 30 inches behind a straight counter being included as part of the counter), nor shall any licensee maintain such counter, the outside edge of which is located more than five feet from a perimeter wall;

3. Maintain folding doors, gates, curtains, or other type of separation to be utilized for the purpose of closing off the package goods display area from the remainder of the barroom, except that such area may be roped off to the public during the hours when the sale of alcoholic beverages for off-premises consumption is prohibited;

4. Permit the public bar to be obstructed by low walls, screens, filigree, plants, flower boxes, racks, gondolas, movable shelves, fences, stacks of alcoholic beverages (including malt alcoholic beverages), or other mercantile items or merchandise.

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 13:2-35.5. In (a), added "Broad package privilege" qualification. Prior text at 13:2-35.4, "Lack of notation of privilege on license certificate", repealed.

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, deleted "and" following "same,"; added "; and may include refrigerated cases, which are located flush and fastened to the wall" at end of paragraph.

Case Notes

Transfer of retail consumption license with package sales to site adjacent to licensed premises with restaurant was granted. *Pungoti v. Sayreville*, 95 N.J.A.R.2d (ABC) 72.

13:2-35.5 Multiple barrooms; package goods sales restricted to the bona fide principal barroom

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on the licensed premises.

(b) Every holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall designate the principal public barroom on its sketch of the licensed premises. For current licensees, this requirement shall become effective upon the filing of the first renewal application after July 5, 2005. This designation shall be binding on the licensee, but not on the Division or other issuing authority.

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 13:2-35.6. Revised heading. Recodified prior text at 13:2-35.5, "Off-premises consumption sales; requirements", to 13:2-35.4.

Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Codified existing text as (a); added (b).

13:2-35.6 (Reserved)

Recodified to 13:2-35.5 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Multiple barrooms".

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS**13:2-36.1 Advisory opinions**

(a) Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written request for an interpretation, application, or other inquiry concerning the Division of Alcoholic Beverage Control's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability.

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087, and any request and corresponding advisory opinion may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature may not receive Division response. All requests shall contain a certification that the requesting party is not aware that the subject matter of the inquiry is presently an issue pending in any Federal or State court or any administrative adjudicatory forum. If the requesting party is aware that the subject matter of the inquiry is an issue pending in any court or forum, the nature of the proceedings and identification of the court or forum shall be fully described in the request for the advisory opinion.

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), "a written request" was "a written non-hypothetical request"; added new (b), with Division address for submitting requests; redesignated existing (b) as (c).

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

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

Added certification of the legal status of the inquiry subject matter in (b) and deleted (c).

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

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

In (b), substituted "may" for "will" following "nature".

SUBCHAPTER 37. CONSUMER ALCOHOLIC BEVERAGE TASTING EVENTS AND SAMPLINGS

13:2-37.1 Consumer Alcohol Beverage Tasting Events and Samplings

(a) Definitions for the purpose of this section are as follows:

1. "Tasting event" means a scheduled event hosted by a licensee or permittee, which is not open to the public and for which invitations are provided to guests at least 24 hours in advance.

2. "Sampling" means an act by a licensee or permittee where a small amount of an alcoholic beverage is offered to a consumer for the purpose of inducing or promoting a sale.

(b) Consumer alcoholic beverage tasting events or samplings may be held by a licensee or permittee allowed to sell alcoholic beverages in open containers under the following conditions:

1. The host for an event shall hold an actively operated license or a valid permit authorizing sales of alcohol for immediate on-premises consumption;

2. All alcoholic beverages consumed at a tasting event shall be obtained from the inventory of the host licensee or Annual State permittee, or, if a social affair permittee,

purchased in accordance with the Division laws and regulations;

3. The tasting event is not open to the general public, but is limited to invitation given 24 hours in advance only;

4. Servings of alcoholic beverages per person are limited to:

i. No more than five ounces of a particular malt alcoholic beverage, or naturally fermented or sparkling wine at a consumer tasting event; or

ii. No more than one-and one-half ounces of a particular fortified wine or distilled spirit at consumer tasting events;

5. Suppliers, manufacturers or wholesalers of alcoholic beverages may apply for an annual special permit to participate in consumer tasting events, solely to provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer or wholesaler shall be \$200.00 and an additional \$200.00 permit for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division a consumer tasting request on a form prescribed by the Director;

6. Tasting events and samplings are not offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated persons;

7. Tasting events and samplings are not offered when the sale of alcoholic beverages is otherwise prohibited; and

8. All samplings must be from the inventory of the licensee.

(c) Consumer wine tasting events and samplings may be held at plenary retail distribution licensed premises under the following conditions:

1. Tasting events and samplings are confined to the licensed premises and all wine used in the tasting events and samplings shall be from the inventory of the licensee conducting the tasting event or sampling;

2. Suppliers, manufacturers or wholesalers of alcoholic beverages holding an annual special permit as provided in (b)5 above may participate in consumer tasting events hosted by distribution licensees, provided each solicitor or duly authorized representative participating in consumer tasting events holds an additional permit as required in (b)5 above;

3. No eating of any kind nor any bars are permitted for the purpose of samplings or tasting events on a distribution licensed premises;

4. Only cheese, crackers, chips, dip and similar snack foods are permitted to be served at a tasting event and only cheese and crackers are permitted to be served during a sampling;

5. Distribution licensees holding a tasting event must notify the Division of Alcoholic Beverage Control, in writing, at least 10 days in advance of conducting a tasting event, describing the place, time and products to be featured at the event;

i. Only 12 bottles of wine may be open and offered at each tasting event; for purposes of this paragraph, an alcoholic beverage product means each specific individual brand registered alcoholic beverage product being offered;

ii. Only one tasting event may be conducted in a 24-hour period;

iii. At a tasting event, each patron/customer is limited to four one and one-half ounce samples;

6. Samplings may only be permitted on a retail distribution licensed premises between the hours of 9:00 A.M. and 10:00 P.M.;

7. Patrons are limited to four one-and one-half ounce samplings in any 24-hour period;

8. Samplings are not offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or actually or apparently intoxicated persons;

9. Samplings are not offered when the sale of alcoholic beverages is otherwise prohibited;

10. Only six bottles of wine may be open at any one time on a plenary retail distribution licensed premise for the purpose of sampling;

i. When a bottle is opened for the purpose of a sampling, a form supplied by the Division identifying the brand, size and the date the bottle was opened must be completed by the licensee. This form must be maintained on the licensed premises and available for inspection;

ii. When a bottle is opened for the purpose of a sampling, the bottle must be marked SAMPLE and with the date the bottle was opened, which coincides with the completed form; and

iii. Once a bottle is opened for the purpose of sampling, it cannot be returned to the supplier; and

11. No samplings of distilled spirits, beers or malt alcoholic beverages may be provided by a Plenary Retail Distribution Licensee.

(d) For any violation of State statutes, Division regulations, or terms of any permit issued, the following will be imposed in connection with this subsection:

1. The liquor license will be subject to the imposition of suspensions starting five days for a first offense, 10 days for a second offense, and 15 days for a third offense; and

2. A fine not to exceed \$500.00 for each offense.

(e) No licensee or permittee shall allow or permit the advertising, in any fashion, of the availability of any alcoholic beverages for purchase or sampling on a licensed premises by a non-licensed premises which permits consumption of alcoholic beverages pursuant to N.J.S.A. 2C:33-27.

(f) The Director may, on his or her own initiative or at the request of any affected industry member, investigate and, if appropriate, disapprove and prohibit the continued or renewed conduct of any tasting event or sampling or the participation of any licensee or permittee in tasting events or sampling, if the effect of that licensee's or permittee's participation or the tasting event or sampling is inconsistent with the purposes of this subchapter. Whether to disapprove and prohibit a tasting event or sampling, or the participation by a licensee or permittee therein, will be considered pursuant to N.J.S.A. 33:1-39 and/or N.J.A.C. 13:2-19.

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

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

Rewrote (a)5.

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (a)7, substituted "\$200.00" for "\$100.00" throughout.

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

Amended by R.2005 d.302, effective September 6, 2005.

See: 36 N.J.R. 3988(a), 37 N.J.R. 3422(a).

Added new (a), recodified former (a) as (b); rewrote the section and added (d)-(f).

SUBCHAPTER 38. LIMITATION OF HOURS FOR SALE AND DELIVERY AT RETAIL OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION

13:2-38.1 Retail package sales hours

(a) Subject to local options as expressed in the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. and except as further specified in (b) below, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or the removal of any alcoholic beverage in its original container from retail licensed premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week.

(b) However, if the sale of alcoholic beverages for consumption on the premises is authorized in a municipality, the sale, service or delivery of wine and malt alcoholic beverages in original containers for consumption off the premises shall be authorized on the same days and during the same hours.

(c) Cities of the first class may establish by ordinance separate hours of sale for each type of retail license, and separate hours for each type of retail license for sales by such licenses of alcoholic beverages for on-premises and off-premises consumption.

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

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

Amended by R.1981 d.71, effective May 1, 1981.

See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

Added "Subject to ... N.J.A.C. 13:2-38.2" and "pursuant to N.J.S.A. 33:1-40.3".

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

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

Revised to include service and wine; other textual revisions.

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 (b) and added (c).

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

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

Rewrote (c).

13:2-38.2 Sunday sales hours for retail distribution licensees and state beverage distributors; effect of municipal ordinances and State statute on sale for off-premises consumption

(a) If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises on Sunday, then except as provided in (b) below, a municipality may by ordinance authorize the sale of wine and malt alcoholic beverages in original containers for consumption off-premises by retail distribution licensees and State beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.