

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

## SUBCHAPTER 17. APPEALS

### Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. This subchapter expired in accordance with Executive Order No. 66(1978) on October 1, 1984. Reoption was filed December 17, 1984 as R.1984 d.608. See: 16 N.J.R. 2954(a), 17 N.J.R. 91(a). See also Chapter Historical Note and section annotations.

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

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds therefor and a fee of \$100.00 payable to the Director, Division of Alcoholic Beverage Control.

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

Added "from the actions taken by a municipal issuing authority concerning . . . a retail license."

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

Increased fee.

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

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

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

### 13:2-17.3 Time for appeal

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

written notice by the municipal issuing authority of the action taken against the licensee or the applicant.

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

Specified service or mailing of a "written" notice by issuing authority.

### 13:2-17.4 Answer

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

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

Stylistic revision.

### 13:2-17.5 Jurisdiction

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

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

Stylistic revisions.

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

Stylistic changes.

### Case Notes

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

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

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

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

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

### Case Notes

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

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

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

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at

the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

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

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

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

### 13:2-17.7 Subpoenas

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

Recodified from 13:2-17.9 by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

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

### 13:2-17.8 Stays

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

Stylistic changes.

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

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

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

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

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

### 13:2-17.11 Hearing procedure

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

### 13:2-17.12 (Reserved)

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

**13:2-22.4 Dates and location of training**

The educational training programs required under this subchapter shall be available and reasonably accessible to all plenary and limited retail distribution licensees in the State. The training programs shall be offered at least once every three months, subject to need, in the geographical area covered by each of the current three telephone area codes in New Jersey; as well as at least once annually on a Statewide basis.

**13:2-22.5 Designation of entity to conduct the training programs**

In order to satisfy the training requirements on the most cost efficient basis, and in furtherance of the authority set forth in N.J.S.A. 33:1-12.45, the Director, Division of Alcoholic Beverage Control may contract with a non-profit educational organization in this State to administer and conduct all or part of the educational training programs required by this subchapter.

**13:2-22.6 Training program curriculum**

(a) The Director, Division of Alcoholic Beverage Control, shall establish and revise annually the course content and shall approve the individual instructors or lecturers who will conduct the training programs, in consultation with any non-profit educational organization he or she may have contracted with in accordance with N.J.A.C. 13:2-22.5.

(b) The curriculum for the initial training programs shall include, but is not limited to, an explanation and development of the following:

1. The provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., as it relates to the distribution, transportation, sale, and marketing of alcoholic beverages by retail distribution licensees; with detailed emphasis placed on the provisions of law governing the sale and delivery of alcoholic beverages to persons under the legal age;

2. The rules and regulations promulgated by the Director, Division of Alcoholic Beverage Control, N.J.A.C. 13:2, governing the sale, advertising, transportation, required records, promotion and marketing of alcoholic beverages, the disciplinary and adjudicatory procedures and consequences attendant to violative activity, and the permitted and prohibited conduct and use of the license and the licensed premises;

3. The application of municipal ordinances and regulations concerning the licensure, hours of sale, location, restrictions and permitted use of retail licenses and licensed premises established by municipal governing bodies or municipal boards of alcoholic beverage control;

4. Relevant administrative policies and determinations of the Director, Division of Alcoholic Beverage Control, the requirements and procedures for the collection and remittance of New Jersey taxes, and other State and

Federal laws and regulations that impact upon the retail alcoholic beverage industry of the State of New Jersey; and

5. The relationship and application of the 10 point legislative declaration of policy and purpose set forth in N.J.S.A. 33:1-3 to the conduct and use of retail liquor licenses.

(c) The curriculum for the supplemental training program shall include, but not be limited to, any changes in the Alcoholic Beverage Control Act or other related laws affecting retail licensed businesses, new or amended regulations of the Division of Alcoholic Beverage Control, administrative and judicial policy changes, prevailing market or societal conditions and reinforcement or further expansion of matters addressed in the initial training program or revisions thereto.

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

**13:2-22.7 Registration fees**

(a) Each attendee shall be required to pay a registration fee in an amount to be established by the Director, Division of Alcoholic Beverage Control, giving due consideration to the actual expenses required to properly operate and maintain the educational training programs. The cost of registration shall be reviewed annually by the Director against the actual operational expenses and adjusted accordingly. In no event shall the registration fee for each attendee be less than \$50.00 nor more than \$150.00.

(b) A schedule of registration fees and any subsequent amendments thereto shall be set forth and published in the Alcoholic Beverage Control Bulletin, and otherwise disseminated to all affected licensees.

(c) For purposes of administration, if the Director contracts with a non-profit educational organization pursuant to N.J.A.C. 13:2-22.5, the full registration fee shall be remitted to the contracting educational organization. That organization shall forward 20 percent of the fee to the Director, within seven business days after receipt for deposit in the State Treasury. The balance of the fee shall be retained by the educational organization to reimburse it for the costs associated with the conduct and maintenance of the educational training programs, including the scheduling, notice and promotional expenses, site expenses, instructional expenses (other than personnel of the Division of Alcoholic Beverage Control or other State employees), course materials, and other related expenses.

(d) The non-profit educational organization shall maintain true and accurate books of account concerning all aspects of the operation and maintenance of the educational training program, which records shall be made available for inspection by the Director upon demand. The organization shall provide the Director with a full and complete fiscal

and operational report detailing the program's activities on an annual basis; and it shall post an adequate performance bond if required by the Director.

### 13:2-22.8 Certification of educational training or order of deferment

(a) Upon the satisfactory completion of an initial or any supplemental educational training program required under this subchapter, the holder of a plenary or limited retail distribution license shall receive from the Director, Division of Alcoholic Beverage Control, a Certificate of Educational Training. The certificate shall include the date and location of the completed training program, the name of the attendee or attendees on behalf of the licensee, and the licensee's name, address and license number. The Certificate of Educational Training may be displayed on the licensed premises and must be made available to the licensing issuing authority at the time of any application for renewal of the license.

(b) Any holder of a plenary or limited retail distribution license who is unable to attend an initial or supplemental training program within the required time period, may apply to the Director, no later than 30 days before the expiration of the requisite training time period, for a deferment of the requirement for attendance in the educational program. The request for deferment shall be made to the Director on a form to be prescribed by the Director and accompanied by a non-refundable processing fee of \$25.00. If the Director is satisfied that there is good cause for the deferment, the Director shall issue an Order of Deferment of the training requirement, subject to conditions thereon as may be appropriate.

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

### 13:2-22.9 Sanctions for noncompliance

(a) Any holder of a plenary or limited retail distribution license who fails to attend and successfully complete the required initial or supplemental educational training program within the time period set forth in this subchapter, and who has not received a currently valid Order of Deferment, shall be subject to the following administrative sanctions to be imposed by the Director, Division of Alcoholic Beverage Control.

1. The first failure to attend or successfully complete the training program within the time periods set forth in this subchapter shall constitute a first offense and shall subject the licensee to a monetary penalty of \$250.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

2. Failure to attend or successfully complete the training program within the three month extension after a first offense shall constitute a second offense and subject the licensee to a monetary penalty of \$500.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

3. Failure to attend or successfully complete the training program within the additional three month extension granted a second offender shall constitute a third offense and subject the licensee to a monetary penalty of \$1,000 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

4. Any failure to comply with the final three months extension afforded a third offender shall subject the licensee to formal administrative charges that can lead to an indefinite suspension of license, with leave granted to lift the suspension upon payment of a monetary penalty of \$2,000 and proof of satisfactory completion of the educational training program.

(b) False or misleading representations by a licensee in its petition for a deferment are grounds for suspension or revocation of its license.

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

### 13:2-22.10 (Reserved)

Repealed by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).  
Section was "Subchapter operative date".  
Section was "subchapter operative date."

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

### Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 23 was re-adopted as R.1984 d.51, effective February 14, 1984. See: 16 N.J.R. 29(a), 16 N.J.R. 428(a). See also Chapter Historical Note and section annotations.

### 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 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 in or upon the licensed premises:

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

3. Nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance.

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**

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).

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 in or upon 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 which may be used for the purpose of playing for money or other valuable thing;

5. Nor shall any licensee possess, have custody of, or allow, permit or suffer in or upon the licensed premises 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.

(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.

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.

**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).

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.

(b) 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).

### 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.

### 13:2-23.13 Maintaining copies of current license certificate; application, list of employees; availability for inspection

(a) No licensee shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises;

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.

(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).