

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX, CN-087
TRENTON, NJ 08625

BULLETIN 2445

February 5, 1986

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1. RECENT LEGISLATION - AMENDMENT TO FEE FOR IDENTIFICATION CARD -
TEXT OF AMENDED STATUTE.

On January 13, 1986, Governor Kean signed S-2949, sponsored by Senator Lynch, as Chapter 422 of the Laws of 1985. Section 6 of that act increases the fee for the identification card issued by the County Clerk from \$4.00 to \$6.00, and thereby amends N.J.S.A. 33:1-81.5.

The full text of N.J.S.A. 33:1-81.5, as amended, now reads as follows:

33:1-81.5. A fee of \$6.00 shall be paid to each county clerk for the issuance of an identification card hereunder. (As amended L. 1985, c.422, effective January 13, 1986.)

This statutory increase in the fee supersedes N.J.A.C. 13:2-40.7, which indicates a fee of \$4.00. That section of the regulations will be amended as soon as is feasible.

2. RECENT LEGISLATION - FURTHER AMENDMENT TO STATUTE PROHIBITING
SALE TO PERSON UNDER LEGAL AGE AND MODIFICATION OF DEFENSES
THEREUNDER (N.J.S.A. 33:1-77) - TEXT OF AMENDED STATUTE.

On January 21, 1986, Governor Kean signed A-1983, which had been sponsored at the request of the Division by Assemblyman Joseph Paterno and then Assemblyman John Markert, and joined in the Senate version by Senator Joseph Bubba, as Chapter 503 of the Laws of 1985. This newest amendment (see Bulletin 2435, Item 1 for a discussion of prior amendments) restores to N.J.S.A. 33:1-77 the use of a written representation signed by a buyer as an element of a seller's establishing a defense to a charge of selling alcoholic beverages to an underaged person. This defense had been deleted from the statute by P.L. 1983, c. 565 in January, 1984.

With the defense of a written representation now being restored, in the words of the "Statement" to A-1983, "a buyer may state in writing that he is of the legal age to purchase alcoholic beverages if that buyer cannot produce a photographic identification card but can produce other forms of valid identification as to age."

Retail licensees are cautioned that the use of the written representation, or the photo driver's license, or the photo identification card issued by the County Clerk is not alone sufficient as a defense. In addition, the buyer must appear to be 21 years of age or older. (See Bulletin 2437, Item 7, which is also hereby modified to the extent that the written representation of age may now again be used as a defense).

The full text of N.J.S.A. 33:1-77, as most recently amended, now reads as follows:

33:1-77. Anyone who sells any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages is a disorderly person; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the purchaser falsely represented in writing, or by producing a driver's license bearing a photograph of the licensee, or by producing a photographic identification card issued pursuant to section 1 of P.L. 1968, c.313 (C. 33:1-81.2) or a similar card issued pursuant to the laws of another state or the federal government that he or she was of legal age to make the purchase, (b) that the appearance of the purchaser was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase, and (c) that the sale was made in good faith relying upon such written representation, or production of a driver's license bearing a photograph of the licensee, or production of a photographic identification card issued pursuant to section 1 of P.L. 1968, c. 313 (C. 33:1-81.2) or a similar card issued pursuant to the laws of another state or the federal government and appearance and in the reasonable belief that the purchaser was actually of legal age to make the purchase. (As amended, L. 1985, c.503, effective January 21, 1986.)

In addition to the amendment to N.J.S.A. 33:1-77 accomplished by section 1 of P.L. 1985, c. 503, section 2 of the act repealed section 8 of P.L. 1968, c. 313 (N.J.S.A. 33:1-81.9) which was implicitly superseded by the January, 1985 amendment to N.J.S.A. 33:1-77 that added use of the photographic identification card issued by the county clerk. (See Bulletin 2435, Item 1). The notice on the identification card to the effect that it was not valid for identification purposes was also eliminated by a recent amendment to N.J.A.C. 13:2-40 (See Bulletin 2443, Item 10).

3. SUGGESTED "WRITTEN REPRESENTATION" FORM FOR USE BY RETAIL LICENSEES

As a result of the amendment to N.J.S.A. 33:1-77's returning the "written representation" defense to a charge of selling alcoholic beverages to an underage person, the Division has redone the suggested "Representation and Statement" that previously appeared in the appendix to the A.B.C. Regulations. The suggested form is presented

here. (It can also be copied and included with the forms at the end of the A.B.C. Handbook For Retail Licensees):

REPRESENTATION AND STATEMENT OF AGE FOR PURCHASE
OF ALCOHOLIC BEVERAGES

I understand that misrepresentation of age to induce the sale, service or delivery of alcoholic beverages to me is cause for my arrest, prosecution and punishment which can result in:

1. payment of a fine of not less than \$100 - nor more than \$1,000;
2. possible imprisonment up to 6 months;
3. mandatory loss or deferment of driver's license privileges for 6 months;
4. a requirement to participate in an alcohol education or treatment program for a period not to exceed 6 months.

Knowing the possible penalties for misstatement, I hereby represent and state for the purpose of inducing _____

(Name of licensee)

to sell, serve or deliver

(Address of licensed premises)

alcoholic beverages to me, that I was born _____

Month

_____, 19____, and am _____ years of age.

(Day)

Signed _____

Date _____

Address _____

Other Identification Presented:

non photo driver's license -
number & State

Signature of Person who witnessed
completion of this statement by
patron.

photo driver's license -
number & State

signature

County photo ID - Number & County

Credit Card-Company & Number

Draft Registration - Number & Date

Other (specify)

4. WARNING TO SUPPLIERS REGARDING N.J.A.C. 13:2-24.5(a)2 AND NECESSITY FOR STRICT COMPLIANCE THEREWITH.

In Bulletin 2436, Item 3, the Division gave notice to "All Manufacturers, Brewers, Importers and Blenders and Rectifiers selling or intending to sell alcoholic beverages to wholesalers or distributors within New Jersey" that N.J.A.C. 13:2-24.5(a)2 requires them to make available to all their distributors or wholesalers their prices, inclusive of all discounts, allowances or differentials by the first of the month preceding the month for which they are to become effective.

Wholesalers and distributors advise the Division that, despite the notice in Bulletin 2436 (issued August 16, 1984), there is still widespread non-compliance with the regulation and prices continue to be furnished up to a day or two before the 15th of the month, when the wholesalers must file their Current Price Lists.

Suppliers covered by N.J.A.C. 13:2-24.5(a)2 are hereby warned that this regulation will hereafter be strictly enforced and violations will result in disciplinary proceedings, which can include suspension of the Brand Registration for the product(s) involved. Before any prices, discounts, allowances or differentials may be furnished to wholesalers after the first of the month prior to the effective month, approval must be obtained from the Director. Such approval will only be given upon a demonstrated inability to have furnished the required prices, discounts, allowances or differentials by the first of the month.

5. AMENDMENTS TO A.B.C. HANDBOOK FOR RETAIL LICENSEES TOPICS

As the result of changes in laws or regulations, or following decisions or opinions, answers to certain questions contained in the A.B.C. Handbook for Retail Licensees will require revision. The Division will attempt to include such changes in the Bulletins soon after they occur. The changes will also later be included in the periodic updating of the A.B.C. Handbook for Retail Licensees available by subscription (see Bulletin 2444, Item 1).

(a) As a result of the recent amendment to N.J.S.A. 33:1-77 (Item 2, this Bulletin), "AGE TO PURCHASE" on pages 3-4 of the Handbook is revised as follows:

AGE TO PURCHASE

WHAT ARE THE CRITERIA FOR AVOIDING AN UNDERAGE SALE VIOLATION?

A licensee with retail license privileges cannot sell to a person under the legal age (21 years). A bartender or sales clerk who violates this law will be subject to a disorderly persons charge under N.J.S.A. 33:1-77 and the license itself will be subject to administrative charges under that statute or N.J.A.C. 13:2-23.1. The law does recognize a valid defense to a charge that a person or licensee sold to someone under the legal age. For this defense, all the following must be established:

- (1) that the purchaser falsely represented his or her age by producing
 - a. a photo driver's license of any state; or
 - b. an A.B.C. photo identification card issued by a County Clerk pursuant to N.J.S.A. 33:1-81.2, et seq. and N.J.A.C. 13:2-40; or
 - c. a card similar to the A.B.C. photo identification card issued by another state or the Federal government; or
- that the purchaser falsely represented in writing that he or she was of legal age to make the purchase; and
- (2) that the purchaser appeared to be 21 years of age or older; and
- (3) that the seller relied on the written representation or on the false photo identification presented and on the purchaser's appearance, thereby believing that the individual was 21 years of age or older.

The three elements together are necessary to establish a valid defense to a charge of sale to a person under the legal age. Any forms of identification other than those listed in (1) a, b or c, above, which may be presented will not be recognized as a defense. Licensees are encouraged to also request alternate types of identification, in addition to the photographic identification, to verify the true age and identity of the purchaser. This should also be done if the written representation is used and such alternate types of identification, together with numbers, etc., should be noted on the written representation paper.

If there is any doubt that the purchaser is under 21 years of age, the sale should not be made. Licensees have the right to refuse a sale in a case such as this. (See also "False Identification").

6. STATE LICENSE TRANSACTIONS - DECEMBER 11, 1985 TO DATE.

License Type:	License Number:	Status:
Plenary Retail Transit Ocean Beach Enterprises 906 Ocean Avenue Belmar, NJ 07719 From: Nine-O-Six Inc.	3400-13-992-001	Person to Person iss. eff: 12/11/85
Transportation License Plymouth Rock Transportation Corp. 400 Duncan Avenue Jersey City, NJ 07302	3401-20-365-001	New License iss. eff: 12/11/85
Transportation License Stech Transportation Co. 961 Sylvan Street Camden, N.J. 08104	3401-20-366-001	New license iss. eff: 12/17/85
Plenary Wholesale License Bastamov Imports, Ltd. 120 Littleton Rd Parsippany, NJ 07054	3401-23-106-002	New License Effective: 12/16/85
Plenary Wholesale License James Catto And Co., Inc. Parker Plaza Fort Lee, NJ 07024 From: 30 Rockefeller Plaza New York, NY 10112	3400-23-056-003	Place to Place Transfer iss. eff: 12/18/85
Plenary Wholesale License The Paddington Corp. Parker Plaza Fort Lee, NJ 07024 From: 30 Rockefeller Plaza New York NY 10112	3401-23-030-003	Place to Place Transfer iss. eff: 12/18/85
New Transportation License Fleetwood Forwarding Ltd. 175 Undernhill Blvd Syosset, NY 11791	3401-20-367-001	New license iss. eff: 12/23/85
Wine Wholesale License Deinlard and Partners, Inc. 274 County Rd Tenafly, NJ 07670	3401-26-282-002	Corp. Structure Change iss. eff: 12/23/85
Limited Wholesale License Hub Beer Distributors, Inc. 1102 Ferry Ave Camden NJ 08104	3400-25-100-003	Corp. Structure Change iss. eff: 12/19/85
Limited Wholesale License Hub City Distributors, Inc. 643-649 Whitehead Rd Trenton, NJ 08638	3400-25-101-002	Corp. Structure Changes iss. eff: 12/19/85
Plenary Wholesale License Winebow Inc. 1 Hollywood Ave Bldg 24 Ho-Ho-Kus NJ 07423	3401-23-155-003	Corp. Structure Change iss. eff: 12/19/85
Annual State Permit Specialty Restaurants Corp. 195 Passaic Avenue Fairfield, NJ 07006	3401-14-368-001	New License iss. eff: 12/27/85

Type of License:	License #:	Status:
Plenary Wholesale Regal Brands, Inc. 1290 Ave of the Americas New York, NY 10104	3401-23-369-001	New License iss. eff: 1/2/86
Beaver Wine Co. Marlboro Industrial Park Marlboro, New Jersey 07746	3401-23-357-002	Place to Place Transfer (Expansion of Premises) iss. eff: 1/14/86
Public Warehouse J.S.L. Warehousing Corp. 9 Peekay Drive Clifton, NJ 07014	3401-28-372-001	New license iss. eff: 1/22/86
Plenary Retail Transit Challenger Fishing Inc. Casino Challenger #620966 228 Bay Avenue Ocean City, NJ 08260	3401-13-371-001	New license iss. eff: 1/22/86
New Transportation License North Continental Trucking Inc 27 Haynes Avenue Newark, NJ 07014	3401-20-373-001	New license iss. eff: 1/31/86

PUBLICATION OF BULLETIN 2445 IS HEREBY DIRECTED THIS

5TH DAY OF FEBRUARY, 1986.



JOHN F. VASSALLO, JR.
DIRECTOR