

ALCOHOLIC BEVERAGE CONTROL HANDBOOK

FOR RETAIL LICENSEES



State of New Jersey

DEPARTMENT OF LAW & PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

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ALCOHOLIC BEVERAGE CONTROL HANDBOOK
For Retail Licensees
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IF YOU HAVE A QUESTION . . . CALL US!
(609) 984-2830

If you are not sure which Bureau can be of assistance, call our main number shown above. If you need specific help from a member of a Bureau's staff, dial that person direct via the following telephone numbers.

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PUBLICATIONS

Certain publications, which are the authoritative sources of the laws and regulations governing the commerce of alcoholic beverages in New Jersey, are available. These publications are legal in nature, but they should also be considered an important source material for a licensee. Of particular importance are the A.B.C. Bulletins which are described in greater detail in the Handbook itself. These publications are frequently referenced in the Handbook.

NEW JERSEY ALCOHOLIC BEVERAGE CONTROL ACT

Title 33, "Intoxicating Liquors," New Jersey Statutes Annotated

Available From: West Publishing Company
610 Opperman
Eagan, Minnesota 55123
1-800-328-2209
www.west.thomson.com

ALCOHOLIC BEVERAGE CONTROL REGULATIONS

Title 13, Chapters 2, New Jersey Administrative Code (Alcoholic Beverages)

Available From: Lexis Nexis/Matthew Bender
136 Carlin Road
Conklin, New York 13748
1-800-833-9844

A.B.C. BULLETINS & INFORMATION

Described in detail in the text of the Handbook. See "Bulletins."

Available From: Lori Rosati
Licensing Bureau
Division of Alcoholic Beverage Control
140 East Front Street
P.O. Box 087
Trenton, New Jersey 08625-0087
(609) 292-0322

Cost: Previous Bulletins can be obtained for \$5.00 each.

A.B.C.

WHAT DOES “A.B.C.” STAND FOR?

The abbreviation “A.B.C.” stands for “Alcoholic Beverage Control” and is frequently used to indicate the Division of Alcoholic Beverage Control. (See “Division of Alcoholic Beverage Control.”)

A.B.C. BULLETINS – *See “Bulletins”*

A.B.C. INVESTIGATIONS BUREAU

WHAT IS THE “A.B.C. INVESTIGATIONS BUREAU,” AND WHAT ARE ITS FUNCTIONS?

The Division of Alcoholic Beverage Control Investigations Bureau is within the Division of Alcoholic Beverage Control and is responsible for investigating criminal and administrative violations of the Alcoholic Beverage Control Act (N.J.S.A. 33:1-1 et seq.) and the attendant regulations (N.J.A.C. 13:2-1.1 et seq.).

The investigators assigned to the A.B.C. Investigations Bureau have the full authority of the Director of the Division of A.B.C. to inspect and investigate licensees and the conduct of activities under the license and on the licensed premises. They may do so without a search warrant and all records must be available and produced to them upon demand. Failure to do so can result in a charge of hindering an investigation. The Investigations Bureau is also staffed with Detectives from the Division of Criminal Justice (which, just as the Division of Alcoholic Beverage Control, is in the Department of Law and Public Safety under the authority of the Attorney General). The Detectives have the authority to arrest persons for violations of any criminal laws of the State of New Jersey. The Investigations Bureau may be contacted by calling (866) 713-8392.

AD INTERIM PERMIT – *See “License Renewal”*

ADVERTISING

ARE THERE ANY RESTRICTIONS ON ADVERTISING BY A RETAIL LICENSEE?

Retail licensees may individually run advertisements in newspapers, circulars, coupon packages, radio, television or any other media that regularly promotes business to potential customers. The contents of the advertising can be anything that is not prohibited or which would cause a violation of law or regulation. (See A.B.C. Bulletin 2430, Item 4.)

Certain matters are specifically prohibited in advertising. No matter may be included that is in any way false, misleading, deceptive or in any way designed to suggest that a special value can be obtained when in reality it is not a special value (for example, “bait and switch”). Nor may any matter be included in advertising if it is lewd or obscene or suggests that the use of any alcoholic beverage will result in health or athletic benefits. Additionally, no improper use may be made of religious characters or symbols, nor may any portrayal of or reference to minors or children be made. (N.J.A.C. 13:2-24.10.)

Prices can be advertised provided they are not below cost. (N.J.A.C. 13:2-24.8.) (See “Cost.”) An advertisement may also indicate that a manufacturer’s rebate is available. (N.J.A.C. 13:2-24.11.) (See “Coupons.”)

Where sale prices are advertised, a retailer will generally not be able to compare the sale price to a “regular price.” (See A.B.C. Bulletin 2432, Item 5.)

A licensee may join with other licensees in advertising. This is commonly referred to as cooperative advertising or “co-op advertising.” When this is done, the advertised prices must be set by only one of the licensees taking part in the ad, and the ad must prominently indicate the identity of that licensee. There must also be language to the effect that those prices and the products pertain only to that one licensee and may not be available, or available at that price, from other licensees listed in the advertisement. (N.J.A.C. 13:2-24.10.)

The Alcoholic Beverage Control Law prohibits a manufacturer, supplier or importer from having an interest, directly or indirectly, in a retail license in New Jersey or in the retailing of alcoholic beverages. Therefore, advertising support or inclusions of a retailer’s name in a supplier’s ad could be considered a violation of this statute as well as a discriminatory offering of a service to certain retailers. Thus, the selection of one or several retailers for a particular advertising service by a supplier is not only discriminatory but would constitute a tied-house violation. (See A.B.C. Bulletin 2451, Item 3.) (See “Tied-House Statute.”)

AGE LIMITS

HOW OLD MUST SOMEONE BE TO PURCHASE OR DRINK ALCOHOLIC BEVERAGES ON A LICENSED PREMISES?

A person must be 21 years of age or older to legally purchase or consume any alcoholic beverage on a licensed premise. There is absolutely no exception to this. (N.J.S.A. 9:17B-1.)

HOW OLD MUST SOMEONE BE TO OWN A LICENSE?

The lawful age to own a license and to purchase alcoholic beverage products for resale under a license privilege is 18 years of age. (N.J.S.A. 9:17B-1.)

HOW OLD MUST SOMEONE BE TO BE EMPLOYED BY A LICENSEE?

For all on-premise consumption licenses, no person under 18 years of age may be employed to work on the licensed premises (this includes entertainers, etc.) except you may employ someone 16 years of age or older as:

- (1) a pin setter or lane attendant at a public bowling alley or
- (2) a busboy (or someone who does not prepare, sell or serve alcoholic beverages) in a restaurant,

bowling alley, hotel, motel or guest house.

Any on-premise consumption licensee may employ any person 14 years of age or older who will be exclusively used to perform duties as a golf caddy and/or pool attendant.

For all off-premise consumption licensees, no person under 18 years of age may be employed to work on the licensed premises except you may employ someone 15 years of age or older to act as a stock clerk or in a similar position that does not involve the sale of alcoholic beverages to customers.

Alcoholic Beverage Control Regulations require all retail licensees, except those operating in conjunction with a *bona fide* hotel or public restaurant, to obtain an Employment Permit from the Division of Alcoholic Beverage Control for any employee who is less than 18 years of age. Such permit must be obtained no later than 10 days from the commencement of employment. The Alcoholic Beverage Control will issue a Blanket Permit to licensees that will cover employment of more than one person under the age of 18. Inquiries should be made to the Division's Licensing Bureau. (See "Fee Schedule" at the end of this Handbook.)

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), which is often abbreviated as "PULA." 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** of the following criteria 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 an identification card issued by the New Jersey Motor Vehicle Commission or
 - (b) an official photo identification card issued by any state or the federal government; **AND**
- (2) that the purchaser falsely represented in writing that he or she was of legal age to make the purchase; **AND**
- (3) that the purchaser appeared to be 21 years of age or older **AND**
- (4) that the purchaser appeared to be the person described in the about proof of age.

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 or b above which may be presented, will not be recognized as a defense. Licensees are encouraged to also request alternative 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 alternative types of identification, together with numbers, etc., should be noted on the written representation paper. (See A.B.C. Bulletin 2457, Item 5.) (A suggested format for the written representation can be found on the ABC Website.) (See A.B.C. Bulletin 2445, Item 3.)

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 if they believe a purchaser is under the age of 21. (See also “False Identification” and “Patrons, Excluding.”)

A license which has four (4) such violations within two (2) years presumptively will be revoked.

ALCOHOL CONTENT – See “Content and Size of Drink”

ALCOHOLIC BEVERAGE CONTROL BOARDS

WHAT ARE “ALCOHOLIC BEVERAGE CONTROL BOARDS” OR “A.B.C. BOARDS?”

The Alcoholic Beverage Control Law provides for an issuing authority in each municipality to issue, renew and transfer retail licenses and provides for enforcing that law, A.B.C. rules and regulations and local ordinances pertaining to the control of alcoholic beverages. The issuing authority is the governing body of the municipality unless the municipality establishes a municipal board, which is commonly known as an “Alcoholic Beverage Control Board” or “A.B.C. Board.” An A.B.C. Board may be established in any municipality which has a population of at least 15,000. The A.B.C. Board consists of three members appointed on a bipartisan basis for 3-year terms. Currently, there are 20 municipalities with A.B.C. Boards. They are: Atlantic City, Camden, Clifton, East Orange, Elizabeth, Galloway, Garfield, Hillside, Hoboken, Jersey City, Linden, Newark, North Bergen, Orange, Passaic, Paterson, Rahway, Secaucus, West New York and West Orange.

Once a municipal A.B.C. board has been created, it has all of the powers, duties and obligations that the governing body of the municipality would ordinarily exercise relative to the issuance, transfer, enforcement and discipline of retail licenses within the municipality. (N.J.S.A. 33:1-5 and 33:1-24.)

ALCOHOLIC BEVERAGES

WHAT IS AN “ALCOHOLIC BEVERAGE?”

Any liquid (or solid that can be converted into a liquid) that is fit to drink and has an alcoholic content of more than ½ of 1 percent by volume is an alcoholic beverage and is subject to control by the Division of A.B.C. A license or permit is required to make, distribute or sell any such alcoholic beverage. If a beverage contains ½ of 1 percent or less alcohol, it is not controlled by the Alcoholic Beverage Control Act or A.B.C. rules and regulations and may be sold without an alcoholic beverage license. (See “Non-alcoholic

Beverages.”)

APPEALS FROM DIRECTOR'S DECISIONS

CAN A DECISION OR RULING OF THE DIRECTOR OF THE DIVISION OF A.B.C. BE CHALLENGED?

Any final action or ruling of the Director of the A.B.C. can be challenged by means of an appeal to the Appellate Division of the Superior Court of New Jersey. In filing such an appeal there are rules of practice and procedure that must be carefully and strictly followed. When such an appeal is filed, application can be made to “stay” (that is, delay the effective date of) the action appealed from until the appeal is completed.

APPEALS FROM LICENSING ACTION BY MUNICIPALITIES

WHEN A MUNICIPALITY ISSUES, RENEWS, TRANSFERS OR PLACES SPECIAL CONDITIONS ON A LICENSE, OR FAILS TO DO SO, AND SOMEONE DISAGREES WITH THAT ACTION, WHAT CAN BE DONE?

If a license is denied renewal or if special conditions are imposed on a license, the licensee can appeal the municipality's action to the Director of the A.B.C. This appeal must be received by the A.B.C., either by personal service or by registered mail, within 30 days after the licensee has received notice of the action. An appeal is started by filing a document called a “Notice and Petition of Appeal” (see “Notice and Petition of Appeal”) and the \$100 filing fee with the Division of A.B.C. The licensee must also serve the municipality with a copy of the “Notice and Petition of Appeal” and furnish proof of such service to the Division of A.B.C. When an appeal is filed, the A.B.C. Director can extend the license privilege while the appeal is pending or stay (postpone the effective date of) a suspension or special conditions imposed by the town if good reason is shown for the Director to do so. (See “Notice and Petition of Appeal.”)

If the municipality does not act on a renewal application within 90 days after the expiration of the previous license term, within 45 days on an application for a new license or within 60 days on an application for a transfer, the licensee may treat this failure to act as a denial; and may file an appeal with the Director of the A.B.C.

The same appeal procedure applies to a person whose application for a new license or transfer has been denied or to a taxpayer who objects to the issuance or renewal of a license or to its transfer. In such cases, however, no temporary relief will be granted while the appeal is being heard.

Detailed rules governing appeals are found in N.J.A.C. 13:2-7 and 13:2-17. (See “Fee Schedule” at the end of this Handbook.)

APPEALS FROM MUNICIPALLY-IMPOSED LICENSE SUSPENSIONS

IF A MUNICIPALITY SUSPENDS OR REVOKES A RETAIL LICENSE, CAN IT BE APPEALED AND WHAT MUST BE DONE?

Yes. Within 30 days after a municipality adopts a resolution suspending or revoking a license, the licensee

may file an appeal by filing a document called a “Notice and Petition of Appeal” with the Division of A.B.C. Proof that the appeal papers were also filed with the municipality must be provided to the Division of A.B.C. along with a \$100 filing fee. (See “Payment of Fees” and “Notice and Petition of Appeal;” see also “Fee Schedule” at the end of this Handbook.)

At the time the Division receives a properly filed appeal, the Director will issue an order staying (delaying the effective date of) the suspension or revocation pending the outcome of the appeal unless the Director finds good reason not to do so. This will permit the licensee to continue to operate while the appeal is pending. (See “Fines.”)

APPLICATION FORM – See “Retail License Application”

ATHLETIC TEAM SPONSORS

WHAT ARE THE RULES THAT GOVERN THE SPONSORSHIP OF ATHLETIC TEAMS BY LICENSEES?

Athletic teams can be sponsored by licensees of any class. When the sponsored team consists of players under the age of 18 years, such as a Little League or Babe Ruth League team, the use of words “liquor,” “cocktail,” “package goods,” “bar,” “tavern” or similar words or terms which are associated with the sale or consumption of alcoholic beverages, is prohibited. This is a result of the strong public policy against drinking by minors. When the players are at least 18 years of age, such words as described above can be utilized in the team identification or on uniforms. This is because 18-year old individuals can legally own or be employed by taverns, restaurants or liquor stores.

ATLANTIC CITY CASINOS

WHO REGULATES THE RETAIL SALE OF ALCOHOLIC BEVERAGES IN ATLANTIC CITY CASINO-HOTELS?

The Casino Control Commission, not the Atlantic City Board of Alcoholic Beverage Control or the New Jersey Division of Alcoholic Beverage Control, licenses and regulates the retail sales and service of alcoholic beverages in the Atlantic City casino-hotels. The Casino Control Act directs that the Casino Control regulations shall be as consistent as possible with the A.B.C. rules and regulations and shall deviate only as necessary because of the unique character of the casino-hotel premises and operations. (N.J.S.A. 5:12-103.)

ATLANTIC CITY LICENSES

ARE NON-CASINO ALCOHOLIC BEVERAGE LICENSEES IN ATLANTIC CITY REGULATED DIFFERENTLY THAN LICENSEES IN OTHER NEW JERSEY COMMUNITIES?

While the same rules and regulations generally apply, the issuance or transfer of any non-casino license in Atlantic City must first be investigated by the Atlantic City Joint Liquor Task Force. The Director of the Division of A.B.C. must then determine whether or not the grant of the application for the license or transfer is in the public interest. If the Director’s approval is granted, the A.B.C. Board of Atlantic City will then

consider the application. In all other respects, these retail licenses have the same privileges and are subject to the same restrictions as other retail licenses in the State. (N.J.A.C. 13:2-3.10.)

AUTOMATIC DISPENSERS

CAN AUTOMATIC OR ELECTRONIC DISPENSING EQUIPMENT BE USED?

Yes. Where such a system is used, the label on the container or on the tap must be visible to the patron, or some alternative device or sign must be used to indicate the type and brand of alcoholic beverage. When dispensing pre-mixed drinks, the sign must also identify all other ingredients by generic or brand name and give an approximate percentage by volume of alcohol of each drink at the time of service. (N.J.A.C. 13:2-23.22(b).) (See “Tap Markers,” “Pre-mixed Drinks” and “Mini-Bars;” see also A.B.C. Bulletin 2427, Item 1, and A.B.C. Bulletin 2454, Item 3.)

BACKING UP DRINKS

IF A PATRON HAS A DRINK, CAN ANOTHER DRINK BE SERVED TO THAT PATRON?

If a patron has a drink, it is permissible to serve another drink, either at the patron’s request, one purchased by someone else or to use a token or other indication of such purchase. However, care must be taken to prevent over consumption by such patron. If necessary, the licensee should refuse to serve any actually or apparently intoxicated patron a drink, and if drinks have been previously purchased, must refund the patron his or her money. **NOTE ALSO THAT THIS PRACTICE CANNOT BE USED TO AVOID A CLOSING HOUR RESTRICTION.** (See A.B.C. Bulletin 2381, Item 2; see also “Complimentary Drinks” and “Happy Hours.”)

BANKRUPTCY OF LICENSEE

IF A LICENSEE FILES FOR BANKRUPTCY, WHAT CHANGES MUST BE MADE ON THE LICENSE APPLICATION?

When a licensee files for relief under the United States Bankruptcy Code, several changes to the license application are required.

If the licensee files for bankruptcy relief pursuant to **CHAPTER 7** (Corporations) or **CHAPTER 13** (Individuals), the intent and purpose of such a filing is to completely liquidate the assets of the estate to pay the various debts. Under this provision a Trustee is appointed by the Bankruptcy Court to accomplish the actual liquidation of the business and the sale of its assets. In this situation, the regulations require that the license be “extended” to the Trustee by the local issuing authority. This means that the Trustee must file a full application with the local issuing authority so as to be listed as the holder of the license. This mechanism authorizes the Trustee to exercise the privileges of the license.

If the licensee files for bankruptcy relief pursuant to **CHAPTER 11**, the intent or purpose is to continue active operation while formulating a plan to pay off all of the debts. During this reorganization period most actions against the licensee are stayed until certain determinations are made by the Bankruptcy Court. At

the same time the licensee files for bankruptcy relief pursuant to Chapter 11, the licensee must also file an amendment to the license application demonstrating that the licensee has filed for protection with the United States Bankruptcy Court. This is done by amending the holder of the license to the debtor in possession (for example, “XYZ” Corporation as debtor in possession). The purpose of this amendment is to ensure that anyone having an interest in this license (especially the municipality) is aware that the license is in Chapter 11 and that any sale, transfer or change affecting the license must have prior approval of the Bankruptcy Court.

It is highly recommended that, should a licensee petition and file with the Bankruptcy Court, it should also seek legal advice to ensure that all legal requirements are fulfilled. (N.J.S.A. 33:1-26; N.J.A.C. 13:2-6.1) (See “Credit Practices,” “Extension of License,” “License Transfer” and “Retail License Application.”)

BARRING PATRONS – See “*Patrons, Excluding*”

BARROOM – See “*Licenses – Retail*” and “*Package Goods Sales by Consumption Licensees*”

BINGO

IS THE PLAYING OF BINGO PERMITTED IN A LICENSED ESTABLISHMENT?

Yes, provided the game has been licensed under the “Bingo Licensing Law” (N.J.S.A. 5:8-24, et seq.). No alcoholic beverages, however, may be sold or consumed in the part of the licensed premises during the period of time when the game is being played. (N.J.A.C. 13:2-23.7(b).)

BOATS – See “*License – Retail, Plenary Retail Transit License*”

BOOKS OF ACCOUNT

WHAT BUSINESS RECORDS ARE REQUIRED BY THE A.B.C. TO BE MAINTAINED BY A LICENSEE?

Holding an A.B.C. license allows you to conduct a business involving the sale and service of alcoholic beverage products to retail consumers in the State of New Jersey. As such, the A.B.C. requires that you maintain certain business records in the English language which accurately reflect the business conducted. The records must be provided for review at the demand of the A.B.C. These records are commonly referred to as “books of account.” The following is a synopsis of the records:

- (1) The licensee shall have and keep, for an unlimited period of time, permanent records 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.
- (2) The licensee shall maintain for a period of five years, a record of all money, or any other thing of value, received in the ordinary course of business or received outside the ordinary course of business, including, but not limited to, sales of alcoholic beverage products, food sales, rebates, Retail Incentive Program Payments, (RIPs), merchandise received as a “dealer loader” and

miscellaneous income.

- (3) The licensee shall maintain for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for:
- (a) the purchase of alcoholic beverages;
 - (b) the purchase of food items;
 - (c) the purchase of supplies and use of utilities;
 - (d) the purchase or lease of equipment;
 - (e) the payment of all employees' compensation, including all required withholding taxes;
 - (f) the payment of all local, state and federal taxes and license fees;
 - (g) the payment of rents, mortgages, loans and/or a reduction of an owner's equity and
 - (h) all other disbursements.

WHERE MUST THE BUSINESS RECORDS BE PHYSICALLY MAINTAINED?

All of the records are required to be maintained on the licensed premises and must be available for inspection by either the A.B.C. or by the local issuing authority. The A.B.C. will allow a licensee to maintain the business records off the licensed premises at another location if a Permit for Off-Premise Storage of Business Records is first obtained from the A.B.C. Licensing Bureau. The permit is valid from July 1 through June 30 of the following year. It must be renewed on an annual basis in conjunction with the alcoholic beverage license renewal. The permit must be displayed on the A.B.C. alcoholic beverage license.

BORROWING ALCOHOLIC BEVERAGES

IF A RETAILER RUNS OUT OF PRODUCT, CAN THAT RETAILER BORROW SOME FROM ANOTHER RETAILER AND LATER REPLACE IT?

No. Borrowing or trading alcoholic beverages between retailers is prohibited. Retailers can only obtain alcoholic beverages from a New Jersey licensed wholesaler. (See "Retailer to Retailer Sale.")

BOWLING TOURNAMENTS – See "Card Playing/Dart Games"

BRAND REGISTRATION

WHAT IS "BRAND REGISTRATION," AND HOW DOES IT AFFECT A RETAIL LICENSE?

Every alcoholic beverage product sold in New Jersey must be registered with the Division of A.B.C. before being sold. A separate annual registration is required for each type and brand of alcoholic beverage. The registrations are filed by the brand owners or agents designated by the brand owners. Retailers that have private labels are generally considered the brand owners and must register their brands, although they may,

and in most cases do, appoint the wholesaler through whom the product is supplied as the agent to register that product. (N.J.S.A. 33:1-2; N.J.A.C. 13:2-33.) Retail licensees may generally assume that a product is properly registered if it is offered for sale by an authorized and licensed New Jersey wholesaler. However, a retail licensee who had knowledge that a product was not brand registered would be subject to disciplinary action for selling such unregistered product.

BREW PUBS

WHAT ARE “BREW PUBS,” AND WHAT ARE THEIR PRIVILEGES?

A brew pub, referred to in the A.B.C. law as a Restricted Brewery License, is a manufacturing license that permits the license holder to brew malt alcoholic beverages in quantities not to exceed 3,000 barrels per license term. This license can only be issued to a person or entity that identically owns a Plenary Retail Consumption License which is operated in conjunction with a restaurant regularly and is principally used for the purpose of providing meals to its customers and having kitchen and dining facilities. The restricted brewery licensed premises must be immediately adjoining the retail consumption licensed premises. The holder of this license shall only be entitled to sell or deliver its product to that restaurant premises. The purpose of this type of license is to allow the holder of the license to manufacture product and to sell it at its retail licensed premises. No more than two Restricted Brewery Licenses shall be issued to a person or entity which holds identical interests in two plenary retail consumption licenses, used in conjunction with restaurants, as previously discussed.

Since this is a manufacturing license, it will also need certain approval from the federal Alcohol and Tobacco Tax and Trade Bureau and from the New Jersey Department of Environmental Protection and may also require additional approval from the municipality in which it is located.

BROAD PACKAGE PRIVILEGE – See “Licenses – Retail”

BULLETINS

WHAT ARE “A.B.C. BULLETINS?”

A.B.C. Bulletins contain information regarding changes in laws and regulations, notices from the Director, directives to licensees, opinions of the Director and other pertinent information that is important to the licensee and reflect the policy of the Division of A.B.C. Bulletins also contain appellate and disciplinary opinions of the Director which can be used as precedent in future cases. Failure to follow a directive published in a Bulletin can result in disciplinary action against a license.

Bulletins are promulgated and published by the Division of A.B.C. They have been published since the Department of Alcoholic Beverage Control was established in 1933.

The A.B.C. Bulletins are accumulated and bound by the A.B.C., and the Bulletins may be viewed at the offices of the Division of A.B.C. Bound Bulletins have been furnished to the New Jersey State Library in Trenton, the Division of Law Library within the Richard J. Hughes Justice Complex and the law school

libraries in the State of New Jersey. The Casino Control Commission also has the Bulletins.

Copies of current Bulletins may be obtained from the Division of A.B.C. Details regarding ordering and cost are contained in the information at the beginning of this Handbook.

BUS TRIPS

CAN A LICENSEE SPONSOR A BUS TRIP WHERE ALCOHOLIC BEVERAGES ARE SERVED OR ARE MADE AVAILABLE ON THE BUS?

No. If there is a charge for a bus trip where alcoholic beverages are served or made available on the bus, it would be considered a sale off the licensed premises and is, therefore, prohibited. (N.J.S.A. 33:1-12.) On any bus trip, however, under current Motor Vehicle law, passengers may bring their own alcoholic beverage package goods which were purchased at retail. Additionally, if a non-licensee were to charge for the bus trip which included alcoholic beverages, it would be considered an unlawful sale of alcoholic beverages constituting a criminal offense. (N.J.S.A. 33:1-50.) Moreover, retail consumption licensees who sponsor such trips would be subject to sanctions for unlawfully conducting an “other mercantile business” as well as a “sale beyond the scope of their license.”

BUYING A LICENSE

HOW CAN A PERSON OBTAIN AN ALCOHOLIC BEVERAGE LICENSE?

Since 1948, new retail consumption and distribution licenses can only be issued by a municipality if its population, by last federal census, exceeds certain limits. With certain limited exceptions, for every 3,000 persons a town can issue one consumption license, and it can issue one distribution license for every 7,500 persons. (N.J.S.A. 33:1-12.14.) Licenses issued in excess of that population cap under previous laws were allowed to continue in existence under a grandfather clause. (N.J.S.A. 33:1-12.16.) Every town is entitled to issue one consumption license and one distribution license even if the population is less than one thousand. (N.J.S.A. 33:1-12.15.)

Because of the population caps, new licenses generally are only issuable in growing municipalities. Those municipalities often auction off their new licenses to the highest bidder, although they can also set certain conditions (operate a restaurant, public accommodation or other facility) and accept applications meeting same conditions. (N.J.S.A. 33:1-19.1, et seq.) (See A.B.C. Bulletin 2457, Item 6.)

As a result of the relatively few new licenses being issued, most persons obtain a license by purchasing an existing license and having it transferred to the purchaser by filing a “person-to-person” transfer application with the local issuing authority. The purchase price of the license is a private agreement between the buyer and the seller. The buyer, however, is not entitled to utilize the license unless and until it is transferred to him by formal action of the local issuing authority. In making its determination of whether or not to approve the transfer, the issuing authority is under the legal obligation to ensure that the purchaser is not disqualified to hold a license, is reputable and will operate in a reputable manner, that the transfer does not violate any State laws, regulations, local ordinances or conditions and that the licensee has disclosed and the

issuing authority has determined that all funds used to purchase the licensed business came from legitimate sources. (N.J.A.C. 13:2-7.7(b); 13:2-9.2(a).) (See “License Transfer” and “Licenses – Retail.”)

B.Y.O.B. (BRING YOUR OWN BOTTLE)

CAN “B.Y.O.B.” BE ADVERTISED?

Under no circumstances may any “B.Y.O.B.” (Bring Your Own Bottle) be advertised in any fashion by an unlicensed restaurant or other public place where food or beverages are sold to the general public. A person who is found guilty of violating this prohibition is considered a disorderly person. By definition (N.J.S.A. 2C:33-27), B.Y.O.B. prohibits sales of alcohol and relates to unlicensed premises. Accordingly, questions relating to B.Y.O.B. are generally not within the purview of the ABC and should be directed to appropriate local law enforcement officials.

CAN A CUSTOMER BRING ALCOHOLIC BEVERAGES INTO A LICENSED PREMISES?

There is no regulation prohibiting this practice, however, the licensee has the right to permit or prohibit this practice as a matter of business policy. (See “Penalty – Effect on Use of Premises.”)

ARE NON-LICENSED RESTAURANTS PERMITTED TO ALLOW CUSTOMERS TO BRING THEIR OWN ALCOHOLIC BEVERAGES (“B.Y.O.B.”) FOR CONSUMPTION WITH THEIR MEALS?

Unless there is a local ordinance prohibiting it, customers of an unlicensed restaurant may be permitted by the ownership of the restaurant to bring and consume only wine and beer. The restaurant can supply glasses, ice, etc., but may not impose a cover, corkage or service charge. Also, under no circumstances may spirituous liquors be permitted. There may be no advertising whatsoever of the fact that wine or beer may be permitted. Additionally, the owner may not permit wine or beer to be consumed during hours in which the sale of these products is prohibited by licensees in that municipality, nor allow consumption of beer or wine by persons under 21 years or by persons who are actually or apparently drunk or intoxicated. (N.J.S.A. 2C:33-27.)

WHERE SHOULD VIOLATIONS OF THE “B.Y.O.B.” LAW BE REPORTED?

Since the statute (N.J.S.A. 2C:33-27) applies to non-licensed premises, violations should be reported to the police department of the municipality in which the offending restaurant is located.

CANDY, LIQUORED

CAN NON-LICENSEES SELL LIQUORED CANDY?

Yes. Due to a change in the law made in 1984, the manufacturing and sale of confectionery containing less than 5 percent alcohol by volume was allowed. That law also provided, however, that selling confectionery containing more than ½ of 1 percent by volume to persons under the legal age (to purchase alcoholic beverages) is a disorderly persons offense. Additionally, there must be either a label on the package or a

sign posted which states “Sale of this product to a person under the legal age for purchasing alcoholic beverages is unlawful.”

CARD PLAYING/DART GAMES

MAY A LICENSEE ALLOW CARD PLAYING OR DART GAMES TO BE PLAYED ON A LICENSED PREMISES?

Card playing is permitted provided that no gambling takes place or there is no play for money, prizes or other things of value. Dart playing is permitted on the same basis, except that the Division of A.B.C. will grant permission for a dart tournament which can include an entry fee and the awarding of prizes other than alcoholic beverages. Other skill tournaments (bowling, golf, billiards, etc.) will be treated similarly. No prizes or anything of value may be awarded to anyone other than actual participants in such tournaments. (See also “Gambling.”) While the Division allows decks of cards on a licensed premises, licensees are cautioned that any other paraphernalia used or usable in the playing phases of any gambling activity are prohibited. (See, e.g., N.J.S.A. 2C:37-1(e) and N.J.A.C. 13:2-23.5(a).)

CATERING

CAN ALCOHOLIC BEVERAGES BE SOLD AND SERVED BY A LICENSEE WHO IS CATERING AN EVENT AWAY FROM THE LICENSED PREMISES?

Yes, but only by a Plenary Retail Consumption Licensee, provided a Special Permit to Cater is first obtained from the Licensing Bureau of the Division of A.B.C. **No Catering Permit can be issued to a Retail Distribution Licensee.** The permit fee and application must be made on a form prescribed by the Division of A.B.C. This application must contain the written consent of the Municipal Clerk and the Police Chief of the municipality in which the event is taking place and the written consent of the owner of the premises on which the event is being held. **NO MORE THAN 25 PERMITS TO PERMIT THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES IN ANY ONE LOCATION MAY BE ISSUED IN A CALENDAR YEAR.** If the area on which the alcoholic beverages will be sold and served is contiguous to or adjoins the licensee’s premises, an Extension of Premises Permit, rather than a Catering Permit, must be obtained. The fact that catering business is occurring should be noted on page 4 of the license application. (See “Extension of Premises” and “Fee Schedule” at the end of this Handbook.)

WHAT TYPES OF EVENTS WOULD QUALIFY FOR A CATERING PERMIT?

Events which qualify for Catering Permits must be for a **SINGLE, SPECIAL, NON-RECURRING PURPOSE**, such as a wedding reception, anniversary dinner, Bar Mitzvah dinner or grand opening. The Division will not issue a Catering Permit to authorize the sale/service of alcoholic beverages at a location if such issuance will create the impression to the general public that the permitted premises may be licensed. No catering permits may be issued where other mercantile business is taking place.

CHECK CASHING

MAY A LICENSEE CASH PAYROLL OR OTHER PERSONAL CHECKS FOR PATRONS?

Yes, if the service is not advertised and if no service charge or fee is charged. Because of the prohibition of other mercantile business activity by a retail consumption licensee, a check cashing service where a fee is charged is prohibited by that class of license.

A retail distribution licensee (liquor store) can provide check cashing services for a fee if issued a "Check Casher License" by the New Jersey Department of Banking and Insurance as required by N.J.S.A. 17:15A-30, et seq., unless there is a municipal ordinance prohibiting mercantile activity of this type. A fee is defined to include any fee, charge, cost expense or other consideration. Unlicensed check cashing involving a fee is a crime. Additional information on a Check Casher License is available on the New Jersey Department of Banking and Insurance Internet website at: <http://www.state.nj.us/dobi/banklicensing/checkcasher.html>.

CLAW AND CRANE MACHINES

MAY A LICENSEE HAVE ON THEIR LICENSED PREMISES AMUSEMENT GAME MACHINES KNOWN AS "CRANE OR CLAW MACHINES" OR "ROTISSERIES," WHERE A PLAYER CAN OBTAIN A STUFFED ANIMAL OR SIMILAR PRIZE BY MANEUVERING THE CLAW OR ARM?

No. While such machines can be licensed under the Amusement Games Act, the applicable regulations prohibit their placement at a location that has an alcoholic beverage license. N.J.A.C. 13:3-1.7. These types of machines allow a player to maneuver the claw or crane on a rotisserie device over an intended prize. The player may then lower the claw, pick-up the prize and drop it into a chute that delivers the stuffed animal or plush toy to the successful player. Because the ultimate success of the player depends on the tension at which the claw or crane is set, the Division has determined that this is not a game of skill but rather a gambling device. Consequently, placement of this type of a device on a licensed premises without the prior approval of the Director of the Division of Alcoholic Beverage Control would constitute a violation of the Alcoholic Beverage Control Act and would place the license in jeopardy of suspension or possible revocation. To date, several claw or crane type machines that allow a player to win every time have been approved by the Director for placement on licensed premises. Those machines are:

- (1) The Snack Attacker;
- (2) The Challenger Crane, manufactured by Coast to Coast Entertainment;
- (3) The Talon Crane, manufactured by Talon Manufacturing, Inc.,
- (4) The Toy Soldier Crane, manufactured by Coastal Amusements, Inc., and
- (5) Prize Time Crane, manufactured by Smart Industries Corp.

CLOSE-OUT SALES

MAY A RETAIL LICENSEE CONDUCT A "CLOSE-OUT" SALE OF ALCOHOLIC BEVERAGES TO ANOTHER LICENSEE?

Generally speaking, the answer is no. In cases involving a license transfer, bankruptcy or court ordered sale however, a Special Permit to authorize such sale may be secured from the A.B.C. (N.J.A.C. 13:2-5.4.) If the retail licensee is transferring the license, a “Bulk Sale Permit” will be issued to authorize the sale of existing inventory to the purchaser of the license. If the licensee is going out of business and wishes to sell the inventory to another retail licensee, a “Retailer to Retailer Permit” may be issued by the A.B.C. for good cause. (N.J.A.C. 13:2-23.12.)

CLOSING AND OPENING TIME

HOW ARE “CLOSING HOURS” AND HOURS OF OPERATION ESTABLISHED, AND BY WHOM?

Generally, a municipality, by ordinance, establishes the lawful hours during which alcoholic beverages may be sold. In some municipalities, referenda have been held to establish or limit the hours or days of sale.

By A.B.C. regulation (N.J.A.C. 13:2-38), no retail licensee may sell spirituous liquors in original containers (package goods) before 9:00 a.m. and after 10:00 p.m. on any day of the week. Municipalities can further limit these hours by ordinance or referendum and frequently do so as far as Sunday mornings are concerned. However, by State statute (N.J.S.A. 33:1-40.3), retail licensees can sell wine and malt beverage products in original containers (package goods) at any time the municipality has permitted the sale of alcoholic beverages by the drink. Cities of the first class (namely, Jersey City and Newark), however, pursuant to N.J.S.A. 33:1-40.3, may establish laws by ordinance for each type of retail license and for sales for on or off premises consumption. To be certain as to restrictions on hours of sale, licensees must check with their respective municipalities.

WHAT IS A LICENSEE REQUIRED TO DO AT CLOSING TIME?

Hours ordinances have uniformly been interpreted by the Division of A.B.C. to mean that, if there is anyone on the license premises after the closing hour other than employees who are in the process of cleaning up, it is a violation of the local ordinance, unless specifically otherwise provided. (Even employees are not permitted to consume alcoholic beverages before or after the closing hour.) At closing time, all sales and consumption of alcoholic beverages must stop and all members of the general public must be off the premises. In order for a licensed premises to stay open to the public after closing hours to engage in some other type of business (generally hotel or diner), there must be a specific provision in the local ordinance allowing that activity.

CLUB LICENSE

WHAT IS A “CLUB LICENSE,” AND WHAT ARE ITS PRIVILEGES AND RESTRICTIONS?

A “Club License” is one that is issued by a municipality to a corporation, association or organization that is non-profit and operating for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes. To be eligible to receive the club license, the club must also comply with all conditions that the A.B.C. Director has established by rules and regulations. See N.J.A.C. 13:2-8; N.J.S.A. 33:1-12, Item #5. There is no limit to the number of club licenses that may be issued in a municipality except the

municipality may, by ordinance, either decide not to issue any club licenses or limit the number that will be issued.

The club license authorizes the club to sell and serve alcoholic beverages but only for immediate consumption on the licensed premises and only to *bona fide* club members and their guests. This means that all alcoholic beverages sold or served must be consumed on the licensed premises by actual club members and those who are truly their guests. No one else may be served. A club member is any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the by-laws of the club, who maintains such membership in a *bona fide* manner and whose name and address is listed on the list of members. There is a minimum three-day time limit for admission into the club so that no member may be admitted by a means of an instant membership. Persons holding limited or auxiliary club membership shall not be deemed to be club members. Persons who are members of an organization of which the club license is an affiliated chapter and where the organization's members have reciprocal privileges in any affiliated club, may be considered guests of the club licensee itself and may therefore purchase and consume alcoholic beverages on the club licensed premises.

The only other group that may be sold or served alcohol by the licensee are guests of *bona fide* members. Each club member is permitted nine guests on the premises at any one time. These guests must be invited to the club licensed premises by an individual *bona fide* member of the club and sponsored by and personally attended by the member at the premises. Also, no alcoholic beverages in original containers (package goods) may be sold and removed from the licensed premises.

When an organization which has a club license wishes to hold an event such as a fund raiser which is open to the public or to persons other than *bona fide* club members, the club may not sell alcoholic beverages at the event unless it first obtains a Social Affair Permit (N.J.A.C. 13:2-5.1). If such permit is not obtained, the club license is in violation if alcoholic beverages are sold at the event. A *bona fide* club member may have a private function at the club such as a wedding, anniversary, bar mitzvah or other social function. In these instances, the club member may rent or use the club's licensed premises in order to have the function where the club may sell the alcohol to be consumed at the social function to the member. The club cannot run affairs or rent its hall for or cater such events as weddings, birthday parties or the like for anyone other than a *bona fide* member of the club and serve alcoholic beverages at the affair. The only way for alcoholic beverages to be served at such affair where the host is anyone other than a *bona fide* member of the club is for the host to purchase them at a liquor store or from a retail licensee who is permitted to sell package goods and bring them into the club licensed premises for use at the affair. The club licensee cannot sell or in any way provide alcoholic beverages nor can it impose a charge related to those alcoholic beverages. The club may only sell food and non-alcoholic beverages to the host renting the facility. The host, if it is an organization conducting a fundraiser, is required to obtain a Social Affair Permit. (See "Social Affair Permit.")

All other rules and regulations which apply to plenary retail licenses, such as those dealing with the purchase of alcoholic beverages, keeping records, etc., apply to club licensees. (See N.J.S.A. 33:1-12; N.J.A.C. 13:2-8.1 through 8.14; and for a comprehensive discussion of club licenses and privileges, see

A.B.C. Bulletin 2431, Item 7, and A.B.C. Bulletin 2468, Item 1.)

C.O.D. – See “*Credit Practices*” and “*Credit Compliance Information*”

COMBINATION SALES – See “*Tied and Combination Sales*”

COMPLAINTS

HOW SHOULD SOMEONE REPORT A VIOLATION OR SUSPECTED VIOLATION OF AN ALCOHOLIC BEVERAGE CONTROL LAW, RULE OR REGULATION?

A suspected violation of an Alcoholic Beverage Control Law, statute, regulation or rule may be reported to the local police department or to the Division of A.B.C. Investigations Bureau.

Complaints made to the A.B.C. Investigations Bureau may be made telephonically by dialing 866-713-8392 during normal business hours. Anonymous complaints are accepted.

Complaints are also accepted by letter addressed to:

NJ Division of Alcoholic Beverage Control
Investigations Bureau
140 East Front Street
P.O. Box 087
Trenton, NJ 08625-0087.

In addition, complaints are also accepted through the A.B.C. Internet website at:

<http://www.nj.gov/oag/abc/feedback.html>.

COMPLIMENTARY DRINKS

CAN A CONSUMPTION LICENSEE OR EMPLOYEE BUY A CUSTOMER A DRINK OR GIVE THE CUSTOMER A DRINK “ON THE HOUSE?”

Yes, with certain qualifications. The general rule is that a licensee cannot sell any alcoholic beverage, whether in original package or by the drink, which would fall below the cost of that beverage. Generally, the offering of a free drink would cause it to be below cost and thus would be prohibited. There are, however, certain exceptions which permit a complimentary alcoholic beverage to be served to a patron. (See A.B.C. Bulletin 2440, Item 2.) The three exceptions are:

- (1) The Division of A.B.C. recognizes the long-standing practice of allowing a retail licensee to “buy a drink” for a patron as a gesture of good will. This activity is permitted so long as there is no advertising of the fact that the retail licensee will “buy” a patron a drink at any established interval or based on the purchase by the patron of a certain number of drinks or other products. Where a

licensee engages in this practice of “buying a drink” for a patron, the licensee must be careful that it does not result in over consumption by the patron.

It should be noted that where someone identified other than the licensee, such as the band or the DJ, offers a free drink for certain patrons or during certain times, these activities will only be permitted if the licensee can lawfully conduct such a promotion. The band or the DJ is considered for alcoholic beverage control purposes as the licensee’s employees since their services are in furtherance of the licensee’s business. Accordingly, the licensee is responsible for their actions. Thus, a promotion that limits the offer to one free drink on the DJ would be lawful because the licensee itself could conduct such a promotion. In contrast, a promotion advertising “free drinks to all ladies for two hours on the DJ” is not permitted because it involves giving away more than one free drink, and since that cannot be done by the licensee, it also cannot be done by the licensee’s employees.

- (2) The Division also permits retail licensees to utilize a “free drink coupon.” The Division has permitted retail licensees to offer a patron one open container drink per day per patron by utilization of a coupon or other similar advertising device.
- (3) The Division also permits a licensee to include one alcoholic beverage drink to be given complimentary with or to be included in the price of a meal. In such situations, the licensee may advertise that the beverage is included with the meal or is complimentary with the meal. The Division also requires that the patron have the opportunity to choose a non-alcoholic beverage in lieu of the included or complimentary drink. Promotions which offer to the general public unlimited alcoholic beverages such as “champagne brunches” are not allowed. Only one free or complimentary drink can be offered with the meal.

WHAT IS THE PERMISSIBLE SIZE OR APPROPRIATE CONTAINER FOR FREE OR COMPLIMENTARY DRINKS?

Free or complimentary alcoholic beverage drinks with a meal can only be offered in a glass from which patrons drink or in a “split” (187 ml) of wine. Except for the “split,” other intermediate containers such as carafes and pitchers from which the beverage is then poured into drinking glasses are not permitted.

For hotel and motel licensees only, it has been recognized that, under certain limited circumstances, a 750 ml bottle of champagne or similar sparkling or still wine may be offered. Such licensees are permitted to offer a complimentary bottle of champagne or wine not to exceed 750 ml in size in its original container to their hotel guests who are there as a result of a weekend, honeymoon or other specialty package which is provided by such retail licensees, provided that those guests are at least 21 years of age. (See A.B.C. Bulletin 2452, Item 4.)

CONCESSIONAIRE’S AGREEMENT

WHAT IS A “CONCESSIONAIRE’S AGREEMENT?”

A “concessionaire’s agreement” is a written agreement between a licensee and a non-licensed entity wherein the non-licensed entity sells food and non-alcoholic beverages on a licensed premises. This agreement is used when the licensee does not want to operate the food portion of the business. Licensees who are considering such type of operation on their premises should contact the Division and request a copy of the informational letter discussing “concessionaire’s agreements.” The fact that a restaurant is being conducted on the licensed premises should be noted on page 4 of the license application.

CONFLICT LICENSE

WHAT IS A “CONFLICT LICENSE?”

No retail license other than a Club License, may be issued, transferred or renewed by a local issuing authority if a member of that issuing authority (i.e., Mayor, Council Member, Committee Member) has an interest, either direct or indirect, in that license. In such instances, applications for transfer or renewal, must be made directly to the Director of the Division of Alcoholic Beverage Control for his/her approval. (N.J.S.A. 33:1-20; N.J.A.C. 13:2-4.1 through 13:2-4.10.)

CONSUMPTION OFF LICENSED PREMISES

IS IT A VIOLATION FOR A CUSTOMER TO PURCHASE AN ALCOHOLIC BEVERAGE, GO OUTSIDE AND CONSUME IT?

If a patron purchases a drink in an open container, he cannot remove it from the licensed premises. If a patron purchases package goods, the unopened containers can be taken outside. Once off the licensed portion of a premises, the patron can legally open and consume it (unless there is a municipal ordinance prohibiting it). If this is done in the area of the licensed premises, it can easily lead to problems and possible restrictions being placed on the license at renewal time. A wise licensee will take steps to ensure that this practice does not occur since it can only lead to a variety of problems. The licensee should also be aware that if it offers smoking outside the licensed premises or on an unlicensed deck, the patron cannot remove open containers from the licensed premises to these areas to consume while smoking.

CONTENT AND SIZE OF DRINK

HOW MUCH LIQUOR OR WINE MUST BE USED IN A DRINK?

There is no regulation regarding the amount of an alcoholic beverage that must be included in a drink unless it is advertised that the drink includes a certain amount of liquor or wine. In pouring or mixing drinks, however, one should always be conscious of over consumption by a patron. (See “Complimentary Drinks” and “Happy Hours.”)

CONTEST PRIZES

MAY ALCOHOLIC BEVERAGES BE GIVEN AS PRIZES IN ANY CONTEST OR SWEEPSTAKES ON A LICENSED PREMISES?

No. A licensee is not permitted to offer a free drink or alcoholic beverage as a prize or reward. A licensee is also prohibited from offering as a prize or reward a gift certificate which includes alcoholic beverages. If it were done, it would be considered a sale below cost. (N.J.A.C. 13:2-24.8.)

CONTESTS

MAYA LICENSEE CONDUCT DANCE, SINGING OR OTHER SIMILAR CONTESTS?

Yes. Generally speaking, a licensee may conduct contests (dance, singing, costume, etc.) so long as the activity does not involve something that would violate a law or regulation and no purchase of alcoholic beverages is required as a condition of entry. No alcoholic beverage can be offered or given as a prize. (See A.B.C. Bulletin 2381, Item 4; see also “Card Playing/Dart Games.”)

CONTRIBUTIONS – See “*Donations of Alcoholic Beverages*”

COOKING ALCOHOL

WHAT IS “COOKING ALCOHOL,” AND CAN IT BE USED BY A LICENSEE WHO IS UNDER SUSPENSION?

Cooking alcohol is an alcohol product which has been made unfit for beverage or drinking purposes, usually by the addition of salt. It is no longer an alcoholic beverage and is therefore not subject to Alcoholic Beverage Control Laws and regulations. Consequently, it can be utilized by a licensee whose license is under suspension even though no alcoholic beverage activity is permitted on the licensed premises.

A licensee under suspension, however, may not utilize any alcoholic beverage, even for cooking purposes.

CO-OP ADVERTISING

A licensee may join with other licensees in advertising. This is commonly referred to as cooperative advertising or “co-op advertising.” When this is done, the advertised prices must be set by only one of the licensees taking part in the ad, and the ad must prominently indicate the identity of that licensee. There must also be language to the effect that those prices and the products pertain only to that one licensee and may not be available, or available at that price, from other licensees listed in the advertisement. (N.J.A.C. 13:2-24.10.) (See “Advertising.”)

CO-OP PURCHASING

WHAT IS INVOLVED IN COOPERATIVE PURCHASING?

A retail licensee may join with other retail licensees to cooperatively purchase alcoholic beverages. Before actually making any such cooperative purchase, the licensees must enter into a written agreement among themselves and must file such agreement with the Division of A.B.C. In addition, all the licensees must apply for a Cooperative Purchasing Permit with the Division and obtain a cooperative registration number. Each cooperative must renew its registration by August 1 of each year and pay an annual fee for each retail licensee in the cooperative. Licensees may be added or deleted from the co-op during the term of authorization provided that the request for either action contains each licensee’s written acknowledgment and proof of participation in the written cooperative agreement.

The total number of retail licensees that may participate in a purchasing cooperative is limited to the largest number of plenary retail distribution licenses issued to any one person as of the previous July 1st. A retail licensee may belong to more than one cooperative.

Retail licensees who are members of a cooperative must be sure that the restrictions that are contained in the applicable regulations (e.g., participation, delivery and transportation restrictions, etc.) are carefully followed. (N.J.A.C. 13:2-26.1; N.J.A.C. 13:2-23.21.) (See A.B.C. Bulletin 2430, Item 5, and A.B.C. Bulletin 2435, Item 5.) (See “Storage of Alcoholic Beverages.”)

WHAT IS THE EFFECT WHEN ONE MEMBER OF THE CO-OP DOES NOT PAY ITS INVOICE?

When a retailer joins a co-op, it signs an agreement that it will be individually and jointly liable for payment of all alcoholic beverages purchased by any member of the co-op which are part of the co-op purchase. This means that if any member of the group does not pay pursuant to the terms of sale of a co-op purchase, the wholesaler can look to and seek payment from every other member of the co-op. Wholesalers efforts to collect such moneys are only enforceable in a competent court of law. Nevertheless, some co-ops post a bond with the wholesaler and require every member to contribute toward the premium.

Besides such provisions, the Division, by regulation, has established certain requirements regarding credit terms between wholesalers and retailers. Under these regulations, unless specifically stated in the agreement between the co-op and the individual wholesaler, only the defaulting retailer will be placed on C.O.D. status and not the entire co-op. In this case, if a defaulted member wishes to participate in a co-op purchase, arrangements must be made for cash payment at the delivery site. Therefore, the defaulting member must either prepay to the wholesaler or have its payment at the delivery site before its portion of the purchase can be delivered.

CORPORATE STRUCTURE CHANGE – See “*Stockholder Change*”

COST

HOW IS “COST” DETERMINED WITH REFERENCE TO THE REGULATION WHICH PROHIBITS A SALE BELOW COST?

“Cost” to the retail licensee is determined by the actual total price shown on the invoice from the wholesaler, including all applicable taxes. The cost of a bottle or drink is then determined by dividing the total price by the number of bottles or single drinks included in the total figure. If the “cost” figure works out to a fractional cent, the lowest amount at which the bottle or drink may be sold by the retailer is the next highest cent. (See A.B.C. Bulletin 2429, Item 3.) The actual invoice price shall be determined by the “last-in-first-out” method of applying generally accepted accounting principles.

The serving of a complimentary drink (see “Complimentary Drinks”) is an exception to the prohibition of sales below cost.

COUPONS

ARE COUPONS ALLOWED?

It is permissible for a retail licensee to establish his own coupon program which offers a percentage discount (not based on any minimum purchase), a fixed dollar amount discount or a special price on alcoholic beverages upon presentation. (See A.B.C. Bulletin 2381, Item 3.) Such coupons may be made available by distribution on the licensed premises or by printing in news media or through a general resident mailing service. A coupon for a future purchase may not be given with or conditioned on the purchase of an alcoholic beverage product. Also, when a coupon is utilized, the licensee must make certain that a sufficient quantity of the offered product is on hand or immediately available to meet the anticipated demand. Additionally, when using a coupon, a retailer must make certain that the price of the item will not fall below its cost. (See “Cost;” see also “Advertising” and “Complimentary Drinks.”)

Coupons of another type, which are commonly called “manufacturers’ coupons,” are not permitted for the purchase of alcoholic beverages. These are the “cents off” coupons which are generally distributed by manufacturers and would be redeemable in the retail store by a customer and later presented to the manufacturer by the retailer for reimbursement. Manufacturers of alcoholic beverages should know that these are not permitted in New Jersey and any such cents off coupons that they utilize should indicate thereon that they are not valid in New Jersey, and they should not be distributed in this State.

In contrast, mail-in manufacturer rebate offers are permitted in New Jersey, but such rebate coupons can only be handled through the mail between the consumer and the manufacturer. (N.J.A.C. 13:2-24.11.) (See “Rebates.”)

COVER CHARGES

ARE “COVER” OR ADMISSION CHARGES PERMITTED FOR ADMISSION TO LICENSED PREMISES?

Yes. The “cover” or admission charge may also include one, but not more than one, drink. Also, it may not in any manner allow a patron to participate in a drawing or anything similar since that would be considered gambling. (N.J.A.C. 13:2-23.7 and 23.16.) (See “Complimentary Drinks” and “Gambling.”)

HOW DO I REFLECT THE COLLECTION OF COVER CHARGES IN MY BOOKS AND RECORDS?

All cover charges are considered income of the licensed establishment and must be reflected in the books of account. (See “Books of Account.”) If cover charges are used to pay for a band, a promoter or other entertainment, the total amount of the collected cover charges should be deposited into the business accounts and recorded as income. The payment for the entertainment should be in the form of a business check and recorded as an expense.

CRANE MACHINES – See “Claw and Crane Machines”

CREDIT CARDS

MAY A LICENSEE ACCEPT CREDIT CARDS FOR PURCHASES, AND MAY THAT FACT BE ADVERTISED?

Yes. A licensee may accept credit cards in payment and may advertise that fact in newspapers or other media. (See A.B.C. Bulletin 2224, Item 7; see also "Home Deliveries.")

CREDIT PRACTICES

HOW MUCH CREDIT MUST A WHOLESALER EXTEND TO A RETAILER, AND WHAT HAPPENS IF THE BILL IS NOT PAID IN THAT TIME?

A wholesaler is not required to give credit but may extend credit to a retailer up to a maximum of 30 days of delivery. The wholesaler must set forth its credit terms both in its "Current Price List" ("C.P.L.") filed monthly with the Division of A.B.C. and on invoices. Credit terms must be the same for all retailers unless different terms are justified by the financial or credit history or risk of a particular retail account.

If the wholesaler has not been paid within the established credit period, the wholesaler is required to give or send a retailer a Notice of Obligation within three (3) business days. This Notice of Obligation is a reminder of the bill and must basically identify the terms of the debt and advise the retailer of the right to dispute the debt by notifying the Division of A.B.C. If still not paid within three (3) more business days, the wholesaler must give the overdue licensee and all other wholesalers who sell to retailers a Notice of Delinquency. This Notice advises the other wholesalers of the debt and of the fact that no credit may be extended until the debt is paid and the wholesaler issues a Notice of Satisfaction. Until that time, a licensee may only purchase alcoholic beverages on a prepaid or cash on delivery (C.O.D.) basis. The Notice of Satisfaction must be given to the other wholesalers within three (3) business days after the debt is paid. (N.J.A.C. 13:2-24.4.) In addition to the sanctions described above, the wholesaler must also charge any interest or penalties that were set forth in its C.P.L. and which appeared in the terms set forth on the invoice for the alcoholic beverages for which payment was not made on time.

HOW IS A LICENSEE'S C.O.D. STATUS REMOVED?

In most instances, licensees can have their C.O.D. status removed only by paying the amount of the unpaid invoice together with interest and penalties. However, a licensee may be taken off C.O.D. status by the Director if the licensee submits a written petition with notice to all creditor wholesalers in such instances where:

- (1) the licensee and wholesalers to whom money is owed have executed among themselves a written repayment plan; or
- (2) the license has been the subject of a formal debt liquidation plan pursuant to federal or State insolvency proceedings where notice of the proceedings was given to all the creditor wholesalers or

- (3) the licensee has received a transfer of the license from the issuing authority pursuant to a sale approved under (a) federal or State insolvency proceedings, (b) State receivership HIP action, (c) New Jersey Division of Taxation seizure of the license or (d) IRS seizure of the license where the petitioner is not connected to the old licensee who incurred the debts.

In all other instances, the C.O.D. status will follow the license through subsequent person-to-person transfers. See N.J.A.C. 13:2-24.4.

CREDIT COMPLIANCE INFORMATION

To check if a license is on C.O.D. status, please contact Credit Compliance at (609) 585-8000. Their address is 941 Whitehorse Avenue, Hamilton, New Jersey 08610.

CURRENT PRICE LIST

WHAT IS THE "CURRENT PRICE LIST?"

The "Current Price List," commonly referred to as the "C.P.L.," is the list of prices and terms of sale which each wholesaler who sells to retailers is required to maintain and to file monthly with the Division of A.B.C. The monthly filing must be made by the 15th day of each month with the prices that are in effect for the entire calendar month that follows. On the third business day following the filing of the C.P.L.s, they are made available for inspection by the members of the industry at the offices of the Division of A.B.C.

A retail licensee may not purchase alcoholic beverages on any terms or for any price that differs from those listed in the C.P.L. See N.J.A.C. 13:2-24.6(9)3-7.

DEATH OF LICENSEE – See *"Extension of License"*

DISPLAYS

WHAT DISPLAYS OR PROMOTIONAL MATERIALS CAN A RETAILER LEGALLY RECEIVE FROM WHOLESALERS, MANUFACTURERS AND OTHER SUPPLIERS?

The Division of A.B.C., with some exceptions, generally does not specify by type what displays or promotional materials are permitted or prohibited. Wholesaler, manufacturers and other suppliers may provide advertising material and product displays for use on retail licensed premises provided those offerings are not conditioned upon future purchases of alcoholic beverages and further provided that the supplier of the materials maintains certain records and does not discriminate between licensees.

These displays may include wine racks, bins, barrels, casks, shelving and the like from which alcoholic beverages can be displayed and sold. They may involve product advertisement by banners, consumer self-liquidating offers, case cards, advertising of consumer novelties, recipe books, napkins, etc. These items are supplied by manufacturers or wholesalers generally at their own expense. A retailer may not be paid or charged for placing or permitting a display on the licensed premises or for using advertising materials.

Retailers should be aware that the providing of advertising display material at retail licensed premises can be done by either a licensed New Jersey wholesaler utilizing its own employees or by a display service company registered under N.J.A.C. 13:2-24.12. When the display is placed by a registered display service company, the retail licensee must receive a copy of the placement invoice. The retailer can refuse to have a display placed in its establishment but it cannot refuse to permit one company to place the display and thereafter accept it from another company it favors. Nor can the retail licensee state that it will only accept displays booked with certain display companies. (See A.B.C. Bulletin 2441, Item 7.)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

WHAT IS THE "DIVISION OF ALCOHOLIC BEVERAGE CONTROL?"

The Division of Alcoholic Beverage Control ("Division of A.B.C." or "A.B.C.") is the unit of State Government that is charged with regulating the commerce of alcoholic beverages within the State of New Jersey. The 21st Amendment to the United States Constitution gave each state the right to determine whether to allow alcoholic beverages, and, if so, how to regulate them. As soon as the amendment was adopted in 1933, New Jersey enacted its Alcoholic Beverage Control Law, which is commonly known as Title 33 (since the Alcoholic Beverage Control Law is contained in the Revised Statutes as the 33rd title listed alphabetically by major subject matter and under the title of "Intoxicating Liquors"). In that law, a Department of Alcoholic Beverage Control was established under a Commissioner. In the late 1940's, after New Jersey's 1947 Constitution was adopted, some departments were consolidated and the Department of Alcoholic Beverage Control was absorbed into and became a division of the Department of Law and Public Safety under the New Jersey Attorney General.

The Division of A.B.C. is headed by a Director, whose function is to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of the Alcoholic Beverage Control Law. (N.J.S.A. 33:1-1.1 and 33:1-3.) (See A.B.C. Bulletin 2443, Item 1.)

A listing of personnel within each of the Division's Bureaus is found at the beginning of this Handbook.

DOCUMENTS AND RECORDS

WHAT DOCUMENTS AND RECORDS MUST A LICENSEE KEEP ON THE LICENSED PREMISES AND MAKE AVAILABLE FOR INSPECTION BY PERSONS AUTHORIZED TO ENFORCE THE ALCOHOLIC BEVERAGE CONTROL LAWS?

The following documents and records must be maintained on the licensed premises in such manner as to be readily available upon demand to persons authorized to enforce the Alcoholic Beverage Control Laws:

- (1) current license certificate (which must also be conspicuously displayed in plain view of customers) (N.J.A.C. 13:2-23.13(a)1);

- (2) a copy of the current license application with any amendments filed, if applicable, together with a copy of the last full retail license application filed by the licensee (N.J.A.C. 13:2-23.13(a)2) (see “Twelve-Page Application”);
- (3) a fully completed and up-to-date list of all persons currently working on the licensed premises (commonly known as the “E-141-A” form or “Employee List”) (N.J.A.C. 13:2-23.13(a)3);
- (4) copies of delivery slips, invoices or similar documents which must be retained for a period of one (1) year (see N.J.A.C. 13:2-20.4(b));
- (5) true books of account and other records including all business receipts, disbursements and funds which, when used in connection with the licensed business, must be retained for a period of five (5) years and, with respect to all moneys invested in the licensed business, all such records must be retained for an unlimited period of time (see N.J.A.C. 13:2-23.32) (for additional information, see “Books of Account”);
- (6) records of transactions with or placements by a registered display service (N.J.A.C. 13:2-24.12) and
- (7) N.J. Sales Tax Certificate of Authority number (see A.B.C. Bulletin 2457, Item 4, and see “Inspections.”)

NOTE: At the time of the latest revisions to this *Handbook*, the required annual Federal Special Tax Stamp was suspended by Congress. Should the Special Tax Stamp be re-instituted by the Federal government at some future date, the current stamp must be displayed in the same manner as the A.B.C. license. In addition, the licensee should be able to show proof of the Special Tax Stamp payment.

DONATIONS OF ALCOHOLIC BEVERAGES

CAN A RETAIL LICENSEE GIVE ALCOHOLIC BEVERAGES AS DONATIONS OR CONTRIBUTIONS?

No. It is prohibited for a retail licensee to donate any alcoholic beverage product in any form. Thus, if an organization requests a donation of an alcoholic beverage product or gift certificate for an alcoholic beverage product to be used as a door prize, etc., the licensee must refuse. Since a “gift” of alcoholic beverages by a licensee is by definition a “sale,” to give such a donation would be a sale below cost and is prohibited. (N.J.A.C. 13:2-24.8; see also “Cost.”)

DRESS CODE

MAY A LICENSEE ESTABLISH A DRESS CODE?

Nothing in the Alcoholic Beverage Control Laws or regulations prohibits a licensee from establishing a dress code. There may, however, be requirements imposed by other agencies that must be observed.

DRIVE-IN WINDOW SALES

ARE "DRIVE-IN WINDOW" OR "CURB SALES" PERMITTED?

The concept of a "drive-in window" or "curb service" is not permitted for a retail licensee. In most cases, to provide such service, the actual sale would occur off the licensed premises. In addition, the Division, for obvious public policy reasons, disapproves of this type of operation. The sensitivity of the relationship between alcoholic beverages and motor vehicle operations is such that this is not a prudent practice, nor does it provide to the licensee the best opportunities to visually observe the patron to ascertain whether that patron is of legal age or is actually or apparently intoxicated. (See A.B.C. Bulletin 1031, Item 3.)

E-141-A FORM

WHAT IS THE "E-141-A FORM?"

The "E-141-A form" is the employment list and form prescribed by the Director of the A.B.C. containing names, addresses and other required information of all persons employed on retail licensed premises. All persons defined as an employee by the A.B.C. must be listed on the employment list. (See "Employee" for additional details.) The form must be maintained in an up-to-date manner at all times. A blank form is available from the Division of A.B.C. or through the Internet at the A.B.C. Internet site www.nj.gov/lps/abc/downloads/e141a.pdf. It is permissible for photocopies of the form to be utilized. (N.J.A.C. 13:2-23.13(a)3.) (See "Documents and Records.")

The E-141-A form must be maintained by every retail licensee and kept on the licensed premises unless specific written permission to utilize an alternative format or place is given by the A.B.C. Director. This permission will only be given in exceptional circumstances such as when the licensee has several thousand employees. (See A.B.C. Bulletin 2431, Item 5.) Licensees who have a computer which is programmed to list all of the information required on the E-141-A form in substantially the same format, may utilize same as long as the information contained therein is current, accurate, up-to-date and capable of being immediately printed out upon request by authorized officials. (See A.B.C. Bulletin 2447, Item 2.) The employment list must be produced when requested by any law enforcement officer or employees of the A.B.C.

Employees under 18 years of age in most instances must have a "Minor's Permit" issued by this Division and that such permit number must be listed on the form. (See "Age Limits.")

Employees convicted of a crime must indicate same on the E-141-A form and are presumptively prohibited from working until written authorization is received from the Division. If issued, the employee's Rehabilitation Employment Permit Number or Eligibility Determination Number must be listed on the E-141-A form. (See "Rehabilitation Employment Permit/Disqualification Removal.")

ELIGIBILITY, DETERMINATION OF

WHAT IS A "DETERMINATION OF ELIGIBILITY," AND WHEN IS IT NECESSARY?

Under New Jersey Alcoholic Beverage Control Law, persons convicted of a crime involving moral turpitude are unable to have any interest in or **BE EMPLOYED BY AN A.B.C. LICENSEE**. (See Rehabilitation Employment Permit/Disqualification Removal.") In some instances, it may be unclear whether a conviction involves an element of moral turpitude. In those instances the convicted person can petition the Division to render a determination of eligibility as to whether or not the crime does involve an element of moral turpitude.

Generally, crimes involving moral turpitude are those deemed serious by society.

In order to obtain a determination of eligibility, it will be necessary for the petitioner to submit a copy of the following documents:

- (1) a copy of an indictment, if one was issued;
- (2) minutes of the Grand Jury presentation, if one was conducted;
- (3) any probation or pre-sentence report issued;
- (4) a certified true copy of the Judgement of Conviction;
- (5) an Affidavit executed by the petitioner containing:
 - (a) all the facts and circumstances surrounding the arrest, indictment (if applicable), conviction and sentencing;
 - (b) an affirmative statement if there was no indictment, Grand Jury minutes and/or probation/pre-sentence report that either same were never issued or else a justifiable reason is provided as to why such documents were not submitted for review and
 - (c) a statement of whether or not the petitioner has been convicted of any other criminal matters or if there are any pending criminal dispositions at the present time;
- (6) any other official reports that may have been prepared relative to this matter **AND**
- (7) any other documents or matters the petitioner believes would have relevance to the decision in this matter.

Upon receipt of the submitted documents, the matter will first be reviewed by the Director who may be able to determine whether the conviction was not for a crime involving moral turpitude; and, therefore, the

petitioner is eligible to have an interest in an alcoholic beverage license. The petitioner may be required to divest any interest in the license pending such final determination. (See “Rehabilitation Employment Permit/Disqualification Removal” and “Moral Turpitude;” see also “Fee Schedule” at the end of this Handbook.)

It should be noted that, by definition, convictions for disorderly persons offenses are not crimes, and therefore, such convictions do not render a person criminally disqualified for licensure. Such convictions can bear on whether or not a person is reputable, however, and in such instance an issuing authority could decline to issue or transfer an alcoholic beverage license to a person who has not established that she/he is a reputable person who will operate the business in a reputable manner.

EMPLOYEE

WHO IS CONSIDERED TO BE AN “EMPLOYEE” OF A LICENSEE?

Any person who performs services in connection with the licensed business is considered to be an “employee.” This covers people that are included on the payroll of the licensee, persons who perform services on the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee’s payroll and even people who are not paid for their work or services, including family members who may temporarily be “minding” the business while the owner is away from the premises. Some common examples of persons considered “employees” include those regularly employed such as managers, bartenders, waiters and waitresses, cooks, janitors, door-persons, bouncers, cashiers, dishwashers, bus-persons, clerks, stock clerks, delivery people and those hired under a contract, such as a promoter, a band member, singer, disc jockey, dancer, private security guard, private parking attendant, janitorial service person and others who regularly perform services required in the operation of the licensed business. Persons who are engaged to perform extraordinary repairs to the licensed premises, such as an electrician or plumber, provided they are independent business persons and are not under the direct supervision of the licensee, are not generally considered employees for A.B.C. purposes.

All persons who are considered employees must be listed on the “E-141-A” form. (See “Documents and Records” and “E-141-A Form.”)

Each employee must meet the following qualifications:

- (1) must be at least 18 years of age or have the necessary employment permit (see “Age Limits”);
- (2) has not been convicted of a crime (with certain limited exceptions) unless the disqualification has been removed or a Rehabilitation Employment Permit (or temporary work letter) has been issued by the A.B.C. Director (see “Rehabilitation Employment Permit/Disqualification Removal”);
- (3) is not a full-time law enforcement officer in the community in which the license is located (see “Police Officer Employment”);

- (4) does not have an interest in any manufacturer or wholesaler of alcoholic beverages (N.J.S.A. 33:1-43) and is not employed as a solicitor (N.J.A.C. 13:2-16.7) (see “Tied-House Statute”);
- (5) has no disqualification resulting from having had an interest in a revoked license (N.J.S.A. 33:1-31) and
- (6) does not have an interest in more than two retail licenses, unless grandfathered or covered by an exception (N.J.S.A. 33:1-12.31) (see “Two-License Limitation”).

EMPLOYEE LIST – See “E-141-A Form”

EMPLOYER RESPONSIBILITY

CAN THE OWNER OF A LICENSE BE CHARGED WITH A VIOLATION BASED SOLELY ON SOMETHING AN EMPLOYEE DOES OR DOES NOT DO?

Yes. The licensee is responsible for the acts of employees even if those acts are contrary to specific instructions and even if it occurs during the absence of the licensee. It is the licensee’s responsibility to monitor and control the activities and performance of employees. (N.J.A.C. 13:2-23.28.)

ENTERTAINERS

MUST A LICENSEE OBTAIN APPROVAL TO HIRE A BAND, SINGER, DANCER OR OTHER ENTERTAINER?

There is no State A.B.C. regulation or law that requires approval for a licensee to hire an entertainer, but some municipalities have ordinances requiring an entertainer to be licensed or registered. There are also certain age requirements, and in most instances, entertainers must be at least 18 years of age. (See “Age Limits.”) Entertainers are considered employees of the licensee for A.B.C. purposes. (See “E-141-A Form” and “Employee;” see also “Go-Go Dancers.”)

Licensees should note, however, that if a band member or other entertainer is a police officer, approval for such employment is required. N.J.A.C. 13:2-23.31. (See “Police Officer Employment.”)

EXCLUDING PATRONS – See “Patrons, Excluding”

EXTENSION OF LICENSE

WHAT MUST BE DONE IF A LICENSEE DIES OR A LICENSE IS INVOLVED IN INSOLVENCY COURT PROCEEDINGS?

If a license is held solely by an individual who dies, the licensed business cannot be operated until the license is extended to an executor or administrator by the local issuing authority. In order to keep the licensed business operating immediately following the licensee’s death, pending appointment of the executor or administrator, the prospective executor or administrator may petition the Division of A.B.C. for

a Special Permit to operate. (N.J.S.A. 33:1-26; N.J.A.C. 13:2-6.) When a partner or stockholder dies, the license can continue to operate. The license application, however, must be amended to indicate assignment of the deceased's interest to an executor or administrator. When a licensee goes into bankruptcy, receivership or similar court-supervised insolvency proceedings, the license must be extended to the trustee, receiver or other court-appointed person by the issuing authority. Until that is done, the licensed business can only continue to operate on a special permit issued by the Division of A.B.C.

In extending licenses, a complete 12-page license application is required. (See "Retail License Application.")

When the licensee's estate is settled or the insolvency proceedings are concluded, a person-to-person transfer from the executor, administrator, trustee, etc., to the person or persons legally entitled to the license at that point is required. (See "License Transfer.")

EXTENSION OF PREMISES

HOW CAN A RETAIL CONSUMPTION LICENSEE USE AN UNLICENSED AREA FOR A SPECIAL EVENT WHERE THE LICENSED PREMISES IS TOO SMALL?

A retail consumption licensee may apply for an "Extension of Premises" Permit to extend or expand the area on which alcoholic beverages for consumption on the premises may be sold and served. The extension area must be contiguous to or adjoin the permanently licensed premises. It is usually issued to allow the sale and service in a parking lot, outside lawn area, etc. The sale of any package goods on the extension area is prohibited.

Application is made to the Division of A.B.C., which must include a description and sketch of the extension area, security measures, reason for the extension and the date and hours the permit is to be in effect. This application must contain written consent of the municipal clerk and the police chief of the municipality in which the license is situated and of the owner of the extension area, if other than the licensee. **NO MORE THAN 25 PERMITS MAY COVER ANY ONE AREA OR LOCATION IN EACH CALENDAR YEAR.** (See "Fee Schedule" at the end of this Handbook.)

Any permanent enlargement of the area that constitutes the licensed premises as initially or previously approved requires a place-to-place transfer.

FALSE IDENTIFICATION

WHAT SHOULD A RETAIL LICENSEE DO WHEN AGE IDENTIFICATION IS PRESENTED?

See "Age to Purchase" where the permissible forms of age identification are discussed. Licensees are cautioned that many young people have obtained counterfeit photo driver's licenses or photo identification cards or they have made alterations to their own licenses or identification cards. Thorough inspection should be made of any identification presented, and the person presenting it should be carefully questioned and compared to the photograph and written information on the identification. Other pieces of

identification and comparison of signature may also be utilized in addition to the photo driver's license or photo identification card. This is especially true if the licensee is using an electronic swiping device to determine if the individual is underage.

FEES – See “Fee Schedule” at the end of this Handbook or Check the Division of ABC’s website at www.nj.gov/lps/abc/index.html for current applications and fee schedule.

FETAL ALCOHOL WARNING

AS A RETAIL LICENSEE, MUST I DISPLAY A FETAL ALCOHOL SYNDROME WARNING IN MY ESTABLISHMENT?

Any establishment with a Class C license, except a Plenary Retail Transit License or a Club License, shall ensure that a warning notice prepared by the New Jersey Department of Health is posted prominently in any service area as well as on a wall, towel dispenser or other appropriate location in any public restroom for women patrons. The notice warns patrons that alcohol consumption during pregnancy has been determined to be harmful to the fetus and can cause birth defects, low birth weight and Fetal Alcohol Syndrome, which is one of the leading causes of mental retardation. Warning notices are available from your local health department or the A.B.C. Internet site in the Investigations Bureau “Forms and Publications” section. (See N.J.S.A. 33:1-12a.)

FINGERPRINTING

MUST APPLICANTS FOR RETAIL LICENSES AND EMPLOYEES OF RETAIL LICENSEES BE FINGERPRINTED?

A person who has been convicted of a crime is usually prohibited from holding an interest in an alcoholic beverage license, and the municipality often requires fingerprinting of applicants to verify that such individuals are not criminally disqualified.

The same prohibition exists for employees (unless they have applied for and received written authorization from the Division of A.B.C.). (See “Rehabilitation Employment Permit/Disqualification Removal.”) Also, some municipalities have adopted ordinances requiring the municipal licensing of some employees. Fingerprinting is often required to verify that the potential employee is not criminally disqualified. (N.J.A.C. 13:2-23.26.)

An applicant or employee may be required to pay a fee for the fingerprint check.

FOOTBALL POOLS – See “Gambling”

FREE DRINKS – See “Complimentary Drinks”

FREE FOOD

IS IT PERMISSIBLE TO SERVE FREE FOOD IN A TAVERN OR RESTAURANT?

Yes, as long as the free food or snacks are available to everyone and the purchase of an alcoholic beverage is not required in order for a patron to be served the free food or snacks. (N.J.A.C. 13:2-23.16.) There is no limitation on the type or quantity of free food or snacks that can be provided. (See “Happy Hours.”)

GAMBLING

IS GAMBLING ALLOWED ON LICENSED PREMISES?

Generally, neither gambling nor gambling paraphernalia is allowed on licensed premises. Those games or activities, however, which are licensed under the New Jersey laws dealing with bingo, raffles or lotteries and charity sponsored “casino nights” may be conducted on a licensed premises. (If you have a N.J. Lottery machine, you must indicate same on page 4 of your license application.)

Any other unlicensed game or activity where chance and not skill is the primary element and a person pays money or anything else of value in the hope or expectation of winning money, a prize or some other valuable thing, is prohibited. This prohibition does not apply to the holding of a tournament, such as darts or bowling, where skill, and not chance, is the determining factor. (N.J.A.C. 13:2-23.7.)

A sweepstakes is permitted provided no fee or purchase is required to enter. The prize, however, may not include or be any alcoholic beverage. For example, if the prize is a free meal, that meal may not include alcoholic beverages.

The Division has found that “football pools,” “sports pools” and “Super Bowl pools” constitute gambling under the above definition, and are, therefore, prohibited on the licensed premises by both the licensee, its employees and its customers.

Licensees are accountable for any prohibited gambling activity by patrons on the licensed premises. (See “Bingo,” “Card Playing/Dart Games,” “Claw and Crane Machines,” “Contest Prizes” and “Raffle Tickets.”)

GIFT CERTIFICATES

ARE LICENSEES PERMITTED TO SELL GIFT CERTIFICATES TO BE USED FOR FOOD AND ALCOHOLIC BEVERAGES?

Yes. Gift certificates are permitted as long as they are redeemable only at face value. They are permitted for package goods as well as for food and alcoholic drinks to be consumed at a bar or restaurant, such as a “dinner certificate.”

When a gift certificate is made available by a member of an advertising co-op or group of affiliated but not identically owned stores and the certificate can be redeemed at any of the stores in that co-op or group, there must be provision for full payment to be paid to the store where the certificate is redeemed if it is not the

store where the gift certificate was purchased. In such case, no profit may be made on the sale by anyone other than the redeeming store, except that a flat service charge, which was pre-established, may be charged. The service charge may not be a percentage of the value of the gift certificate or in any way based on its value. (See A.B.C. Bulletin 2381, Item 6; see also “Contest Prizes.”)

GO-GO DANCERS

WHAT ARE THE RESTRICTIONS ON GO-GO DANCING?

Go-Go dancing, just as other live entertainment, cannot involve persons under the age of 18 years (see “Age Limits”) and cannot involve “lewd or immoral activity.” (N.J.A.C. 13:2-23.6.) Such lewd or immoral activity generally involves the lack of attire or covering on genitals or “private parts,” as well as female breasts. See-through garments and the use of “pasties” are not considered sufficient covering. Simulation of sexual activity, even if clothed, is also prohibited. Dancers are not permitted to touch or be touched by patrons, and this includes the placing of tips in the costume of the dancer. A dancer also cannot solicit drinks from patrons.

HAPPY HOURS

ARE “HAPPY HOUR” PROMOTIONS PERMITTED?

There is no prohibition on promotions, be they called “happy hours,” “attitude adjustment hours,” etc., provided they do not unduly promote the consumption of alcoholic beverages.

Certain practices, however, which do unduly promote the consumption of alcoholic beverages, are absolutely prohibited. These include the offering or serving of “2 for 1,” increasing the size of a drink over its usual size, any other multiple drink offer such as “all you can drink for a set price” or anything else that gives something of value based on the purchase of an alcoholic beverage drink. (N.J.A.C. 13:2-23.16.)

The price of a drink can be reduced for a promotional purpose, but it cannot be brought down to where the price is less than the cost of the drink. (N.J.A.C. 13:2-24.8; see also “Cost.”)

Free or reduced-price food or snacks can be given as long as the purchase of an alcoholic beverage is not required. The Division of A.B.C., in fact, encourages that “happy hour” promotions be along this line, if they are to take place at all. A detailed discussion concerning prohibited promotions is contained in A.B.C. Bulletin 2440, Item 2. (See “Complimentary Drinks.”)

HEARING FOR LICENSEES

WHEN DOES A LICENSEE HAVE THE RIGHT TO A HEARING CONCERNING A LICENSE?

Any time an application is made for the issuance of a license, a transfer of the license or the renewal of it, the applicant must be given the opportunity to present its case or position before the issuing authority. If there is no objection, it might not be necessary to do so. However, where there is an objection, the applicant must be notified of that fact and must be given the chance to appear and present its case.

When a licensee is charged with a violation, the licensee must be given no less than five (5) days notice of the charges and hearing date in order to have a reasonable opportunity to be heard, to present evidence and to cross-examine witnesses.

The above applies to both proceedings before the Division of A.B.C. and before the municipality.

HOME DELIVERIES

ARE HOME DELIVERIES PERMITTED?

A licensee with plenary retail privileges may deliver alcoholic beverages (with or without a fee) to the residence of a customer who has purchased the beverages at the New Jersey licensed premises. Such purchase may take the form of either the customer actually being in the licensed premises and paying for the beverage so that they actually become the customer's property at that point, or it may be by a telephone order, placed during the permitted hours of sale, where the cost is immediately charged to the customer's credit card or pre-established credit account so that the ordered beverage actually becomes the ordering customer's property at that point. It is not permitted to receive an order by telephone and then take the alcoholic beverage to the ordering customer's home with payment to be collected there. This would be a sale at the home of the customer, which is off the licensed premises, and therefore, beyond the scope of the license.

In making a permissible home delivery, a licensee must be sure that the alcoholic beverage is not delivered into the hands of a person under the age of 21 years. Also, such deliveries may only be made during the hours in which the licensee may legally sell alcoholic beverages. The licensee may legally transport alcoholic beverages only in A.B.C. licensed vehicles. (See "Credit Cards" and "Transit Insignia Permit.")

HOTEL/MOTEL – See "License – Retail"

You must indicate same on page 4 of your license application.

INACTIVE LICENSE

WHAT IS AN "INACTIVE LICENSE?"

An inactive license may be renewed by a municipality two times after the term in which the license became inactive. If the license has been inactive for more than two license terms, the licensee must file a Verified Petition in affidavit form and a filing fee with the Director (with a copy to the issuing authority), setting forth what efforts have been made to site the license at an operating place of business or what specific plans are in place for activating the license in the future. A licensee holding a license which has been inactive for two full license terms or more should contact the Office of Counsel to the Director in the Division of A.B.C. for the procedure to apply for relief pursuant to N.J.S.A. 33:1-12.39. Such licensees should also note that a timely filed renewal application must be filed with the issuing authority and all fees paid before the Director will act on a petition. (See "License Renewal" and "Lapsed License;" see also "Fee Schedule" at the end of

this Handbook.)

In all cases, municipal clerks should accept timely filed applications and fees and forward them to the Licensing Bureau of the Division of A.B.C. but defer passing a resolution renewing the license until the Special Ruling is issued by the Director and the issuing authority is in receipt of same. (N.J.S.A. 33:1-12.39.) (See “Pocket License.”)

INSPECTIONS – REVIEW OF BUSINESS RECORDS

IF THE LICENSEE OR A MANAGER IS NOT PRESENT WHEN EITHER A.B.C. INVESTIGATIONS BUREAU PERSONNEL OR LOCAL LAW ENFORCEMENT PERSONNEL VISIT THE LICENSED PREMISES, MUST DOCUMENTS AND RECORDS BE AVAILABLE?

Yes, records generally must be made immediately available upon demand. Employees should be instructed as to where such records are located, and at least one of the employees on duty at all times should have access to them.

If a licensee has a business reason to maintain the business records off the licensed premise, an application can be made to the ABC Licensing Bureau for an annual “Off-Premise Storage of Business Records” permit. The licensee must disclose to the A.B.C. the actual location where the business records are maintained and stored and agree to produce any requested business record within seven days of the request. Once approved by the A.B.C., a permit sticker will be issued. The licensee must display the sticker on the A.B.C. license certificate. This will indicate to both the A.B.C. and local law enforcement that the business records are maintained off the licensed premise. (“See Records – Permit for Off-Premise Storage of Business Records.”)

A licensee can be cited for a violation if the records are not available or if a permit is issued, for not producing the records within the time allowed. (See “Documents and Records” and “A.B.C. Investigations Bureau.”)

INTOXICATED PATRONS

WHAT ARE A LICENSEE’S RESPONSIBILITIES TOWARD AN INTOXICATED PATRON?

The regulations prohibit a licensee from selling, serving or delivering any alcoholic beverage to a person who is actually or even appears to be drunk or intoxicated. The licensee may not allow such a person to consume any alcoholic beverage on the licensed premises. (N.J.A.C. 13:2-23.1(b).)

If the patron who is intoxicated or who appears to be intoxicated becomes unruly or insists that he be served an alcoholic beverage, the local police should be called for assistance. In any event, such person should never be served or allowed to continue to drink an alcoholic beverage while in such condition. It is permissible, however, for such person to be served food, coffee or a non-alcoholic beverage. The licensee should also do everything reasonably possible to prevent such person from driving. (See “Substituting Beverages.”)

INVESTIGATIONS OF THE APPLICANT

WHAT INVESTIGATION IS CONDUCTED OF AN APPLICANT FOR A RETAIL LICENSE?

The Alcoholic Beverage Control Law requires the local issuing authority to investigate applicants and premises for licensure and to review licensees (and premises) at the time of renewal. This is generally done by the local police department at the direction of the governing body or by investigators specifically employed by a local A.B.C. Board. Regulations of the Division of A.B.C. require that at the time of the issuance, transfer or renewal of a retail license, the municipal issuing authority affirmatively find and state in a resolution the following:

- (1) that the application is fully completed;
- (2) that the applicant is qualified to be licensed according to all standards established under the Alcoholic Beverage Control Law, A.B.C. regulations, local ordinances and conditions established for the license, provided those conditions are consistent with State law **AND**
- (3) that the applicant has disclosed and that the local issuing authority has reviewed the source of all funds used to purchase the license and the licensed business and any additional financing obtained in connection with the licensed business. (N.J.S.A. 33:1-24; N.J.A.C. 13:2-2.9 and 13:2-7.10.)

In the course of the investigation the applicant may also be required to produce documents such as personal or business tax returns, contracts, leases, etc., and to furnish sworn statements regarding matters relevant to the application.

I.R.S. SEIZURE – See “*Liens on Licenses*”

ISSUING AUTHORITY

WHO IS THE ISSUING AUTHORITY FOR A RETAIL LICENSEE?

For retail licenses, other than Plenary Retail Transit Licenses, the issuing authority is the governing body of the municipality or the local A.B.C. Board. These entities are referred to as the “issuing authority” or the “governing body.” However, if a member of the issuing authority has an interest in the license, the license must then be issued by the Director of the Division of A.B.C. and is then called a “Conflict License.” (N.J.S.A. 33:1-19 and 1-20; N.J.A.C. 13:2-4.) (See “Conflict License.”)

LAPSED LICENSE

WHAT CAN I DO IF I HAVE NOT RENEWED MY LICENSE BY THE TIME REQUIRED WITH THE LOCAL ISSUING AUTHORITY?

Most retail licenses must be renewed with the local issuing authority by June 30th of the year ending the current license term. If your license has not been renewed by June 30th, absent receipt of an Ad Interim Permit from the Division of A.B.C., you must shut down your business. The law states that you must file

your renewal application and filing fees with the local issuing authority by June 30th or within 30 days thereafter. As a result, if you do not file within that time, the issuing authority can no longer act upon your application because your license has lapsed. You then have until July 30th of the year ending the new license term to file a renewal application and filing fees with the issuing authority and file a Verified Petition and filing fee with the Director of the Division of A.B.C. to request the issuance of a new license. You must file a Verified Petition with the Division which establishes that the reason you did not file the renewal application and fees within the time required was due to circumstances beyond your control. If you do not file your renewal application and fees with the issuing authority and file your Verified Petition and filing fee with the Division by July 30th of the year ending the new license term, the Division no longer has jurisdiction to consider your petition and your license lapses and ceases to exist. (N.J.S.A. 33:1-12.18.) (See “License Renewal;” see also “Fee Schedule” at the end of this Handbook.)

LAST CALL

MUST A LICENSEE OR EMPLOYEE OF A BAR OR TAVERN ANNOUNCE “LAST CALL?”

There is no requirement that “last call” be announced unless there is a local ordinance that requires it. In any event, there must be strict compliance with the rules governing closing hours especially when consumption must end and all patrons must be off the premises. (See “Closing Time.”)

LEASING OF LICENSE

CAN A LICENSEE ALLOW SOMEONE ELSE TO USE THE LICENSE TO OPERATE A BUSINESS?

No. The person who operates the business must be an actual disclosed licensee (who has at least a one percent interest) to whom the license was issued. It is a serious violation for a licensee to lease or “farm out” the license to anyone else. (N.J.S.A. 33:1-26.)

LEFTOVER ALCOHOLIC BEVERAGES

MAY A LICENSEE WHO OPERATES UNDER A SEASONAL RETAIL CONSUMPTION LICENSE RETURN LEFTOVER ALCOHOLIC BEVERAGES AFTER CLOSING FOR THE SEASON?

If the goods are likely to spoil during the closed season, the licensee should contact the wholesalers or distributors from whom the goods were purchased. It is permissible for them to take back those products. The final decision, however, is a business decision that rests with the wholesaler or distributor, and there is no requirement that they must, in fact, take them back. (N.J.A.C. 13:2-39.1.)

LEWD OR IMMORAL ACTIVITY

WHAT IS THE NATURE OF LEWD OR IMMORAL ACTIVITY THAT IS PROHIBITED ON LICENSED PREMISES?

Live entertainment, as described under the heading “Go-Go Dancers,” is generally prohibited. (See “Go-Go Dancers.”)

LICENSE CERTIFICATE

WHAT IS THE “LICENSE CERTIFICATE” AND HOW MUST IT BE DISPLAYED ON THE LICENSED PREMISES?

The License Certificate is the single-page document that evidences the issuance of an alcoholic beverage license. The certificate contains information as to the License Number, Expiration Date, Name of County and Municipality, Type of License, Name of Licensee, Address of Licensed Premises, Effective Date, Amount of Fee Paid to the Municipality and Signature of the Municipal Clerk or Secretary of the Municipal A.B.C. Board, if one exists (unless the licensee is a member of the governing body, in which case the license is issued by and the certificate signed by the A.B.C. Director). The municipal seal should also be affixed (or the seal of the Division of A.B.C. if issued by the Director).

The certificate also contains the legend, “This license confers all rights and privileges pertaining thereto as set forth in Title 33 of the New Jersey Statutes, and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth therein in any rules and regulations promulgated heretofore and hereafter by the Director of the Division of Alcoholic Beverage Control pursuant to Title 33 of the New Jersey Statutes. This license is further subject to the provisions of all municipal ordinances and/or resolutions pertaining thereto which have been or shall have been duly enacted under law.”

The License Certificate must be prominently displayed where it can readily be seen by customers. The licensee may be cited for a violation if it is not so displayed. (See “Documents and Records.”) If your license is destroyed or your license is seized by the I.R.S., you can go to the local issuing authority and request a copy of it with the proper notations (as to what happened to your original certificate) typed thereon.

LICENSE FEES – See *“Licenses – Retail”* and *“Municipal Fees”*

LICENSE NUMBER

WHAT IS THE “LICENSE NUMBER” AND WHAT INFORMATION DOES IT GIVE?

Every alcoholic beverage license issued in New Jersey has a 12-digit license number assigned to it. It is always in the format: 0000-00-000-000.

The first set of 4 digits shows the county and municipality in which the municipal license is issued. Digits 1 and 2 are the number of the county, assigned alphabetically, and digits 3 and 4 are the number assigned alphabetically to the municipality within the county. (In the case of State-issued wholesale, manufacturing and retail transit licenses – except those issued to limousines – the first digits are 3400, 3401, 3402, etc.)

The second set of digits tells the type of license. In the case of municipally-issued retail licenses, the numbers will be “31” for a Club License, “32” for a Plenary Retail Consumption License with the “Broad Package Privilege,” “33” for a Plenary Retail Consumption License without the broad package privilege,

“34” for a Summer Seasonal Retail Consumption License, “36” for a Plenary Retail Consumption License issued as a Hotel/Motel Exception, “37” for a Plenary Retail Consumption License issued as a 1,000 Seat Theater Exception, “38” for a Plenary Retail Consumption License w/Brew Pub, “43” for a Limited Retail Distribution License and “44” for a Plenary Retail Distribution License. (See “Licenses – Retail.”)

The third set of digits indicates the number of the license within the municipality. All retail licenses issued by that municipality, regardless of type, are assigned consecutive numbers beginning with 001.

The fourth and final set of digits indicates the generation number of the license. When the 12-digit number was established in the late 1970’s, all licenses then in existence were assigned generation number 001. Any new license is also assigned generation number 001. Thereafter, whenever a transfer or change in corporate structure for which an application must be filed takes place, the generation number is increased.

LICENSE RENEWAL

WHAT STEPS ARE REQUIRED FOR THE ANNUAL RENEWAL OF A RETAIL LICENSE?

All retail licenses must be renewed annually effective July 1st, except Summer Seasonal Retail Consumption Licenses, which must be renewed May 1st. The governing body or local A.B.C. Board issuing the retail licenses establish their time schedules for filing the renewal applications prior to July 1st so that the renewals can be acted upon and approved by that date.

Renewal application forms for each license are provided by the Division of A.B.C. to the municipal clerks or A.B.C. Boards.

Licensees must complete the application, attaching pages to correct the full application on file as necessary and file it with the municipal clerk or secretary of the A.B.C. Board together with the applicable municipal fee and a separate check or money order made payable to the Division of Alcoholic Beverage Control. The licensee need not publish a notice of renewal as this is taken care of by the Division of A.B.C. on behalf of all licensees. After the renewal application is filed with the municipality, if no objection to the renewal is raised and the municipality has received the required Alcoholic Beverage Retail License Clearance Certificate for renewal from the Division of Taxation, the governing body or A.B.C. Board may approve the renewal. If there is an objection, a hearing is held, and then the governing body or A.B.C. Board can act on the license renewal. If approved, it must be done by resolution. After approving the renewal, the municipal clerk or secretary of the A.B.C. Board forwards the resolution to the Division of A.B.C.

Licensees should note that it is their obligation to be sure that they receive the renewal application and file it together with the required fees in sufficient time to have the license renewal process completed by July 1st. If the licensee does not receive the application by May 15th, the licensee should contact the municipal clerk or, where applicable, the secretary of the local A.B.C. Board. (See “Lapsed License” regarding renewal applications that are filed late.) Licensees should further note that it is their responsibility to be in tax compliance in order for the municipality to receive a tax clearance certificate for renewal. (See “Sales Tax.”)

If, for some reason the local renewal process is delayed so that a license renewal is not approved by municipal resolution by July 1st, all alcoholic beverage activity on the licensed premises must cease unless the licensee has filed the renewal application, paid the applicable fees and applies to and has issued by the Division of A.B.C. an “Ad Interim” Permit. The application for the permit is on a form supplied by the Division of A.B.C. and requires the signature from the issuing authority that there is no objection to the issuance of the permit. The fee should be made payable to the Division of A.B.C. (N.J.A.C. 13:2-2.10.) (See “Fee Schedule” at the end of this Handbook.)

When a municipal issuing authority does not finally act on the renewal of a license within 45 days of the date of a timely filed renewal application, that failure to act is deemed a denial, and the licensee may file an appeal. (See “Appeals from Licensing Action by Municipalities.”) The holder of an inactive license or pocket license must file a renewal application in the same manner and at the same time as active licenses. (See “Inactive License” and “Pocket License.”)

A municipal resolution renewing a license that requires, but has not obtained, relief pursuant to N.J.S.A. 33:1-12.18 (see “Lapsed License”) is null and void.

LICENSE TRANSFER

WHEN IS IT NECESSARY TO “TRANSFER” A LICENSE?

A “transfer” must be approved by the issuing authority whenever a licensee sells or conveys their license to another person, adds or deletes a general partner, changes the location of the license or increases the size of the premises under the license. There are two types of transfers: “person-to-person” and “place-to-place.” Note that if a corporation which holds a license merely changes stockholders, no matter how much of the stock changes hands, it constitutes a “change in corporate structure” and is not considered a “transfer.” (See “Stockholder Change;” see also “Extension of License.”)

HOW IS A TRANSFER ACCOMPLISHED?

The transfer of a license must be approved by the local issuing authority. The licensee, or the person to whom the license will be transferred, must file a full retail license application and publish two legal notices of intent to transfer the license. The licensee must also provide a written consent to transfer to the issuing authority before they consider approval of the transfer. An Alcoholic Beverage Retail Licensee Clearance Certificate for Transfer must be received by the issuing authority to consider approval of the transfer. The transferee (buyer) must contact the New Jersey Division of Taxation’s Licensing Unit to apply for a Certificate of Sales Tax Authority and an Alcoholic Beverage Retail License Clearance Certificate. A fee equal to 10% of the annual license fee must be paid to the municipality (or 20% if both a person-to-person and a place-to-place transfer is to take place), along with a filing fee made payable to the Division of A.B.C. If there is any written objection to the license transfer, the local issuing authority must hold a hearing. The governing body or A.B.C. Board must grant their approval or disapproval of the license transfer in the form of a resolution.

If a transfer is granted, the current license certificate is then endorsed by the issuing authority to reflect the transfer, if that is necessary. (See N.J.A.C. 13:2-7, and, for those licenses where a member of the governing body or A.B.C. Board has an interest, N.J.A.C. 13:2-4.)

If the transfer includes the transfer of alcoholic beverages inventory, a Bulk Sale Permit must be issued to the transferee by the Division of A.B.C. (See “Close-out Sales.”)

LICENSED PREMISES

WHAT IS THE “LICENSED PREMISES?”

The “Licensed Premises” is that portion of the licensee’s property on which or from which alcoholic beverages may be sold, served or stored. The licensed premises is defined by the licensee at the time an initial license application is filed and finally determined by the approval of the issuing authority. On page 3 of the retail license application, there are questions which require a description of the area to be licensed. In addition, every licensee is required to submit and keep current a sketch of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license. Any sale, service or storage of alcoholic beverages outside of the licensed premises is “beyond the scope of the license” and is a violation. Additionally, licensees are cautioned that in some instances they may be responsible for activities which occur off, but near, their premises.

Once the licensed premises is established, any expansion or reduction requires a place-to-place transfer with a complete retail application, publication of notice, payment of fee and approval by the issuing authority. For a temporary extension for a particular function see “Extension of Premises.”

LICENSES – MANUFACTURING

WHAT ARE MANUFACTURING LICENSES?

Alcoholic beverage licenses issued to manufacturers – commonly known in the alcoholic beverage industry as “suppliers” – are “Class A” licenses and are set forth in N.J.S.A. 33:1-10. They include Plenary Brewery (identified in the second set of digits in the license number as a “10”), Limited Brewery (“11”), Plenary Winery (“21”), Farm Winery (“22”), Plenary Distillery (“16”), Limited Distillery (“17”), Supplementary Limited Distillery (“18”), Rectifier and Blender (“15”) and Bonded Warehouse Bottling (“29”) licenses. Any supplier engaging in the actual manufacture or bottling of alcoholic beverage in New Jersey must have one of these licenses. They are issued by the Director of the Division of A.B.C. (See “Brew Pubs.”)

LICENSES – RETAIL

WHAT ARE THE DIFFERENT TYPES OF RETAIL LICENSES AND WHAT ARE THEIR PRIVILEGES AND RESTRICTIONS?

All retail licenses are “Class C” licenses and are identified in N.J.S.A. 33:1-12 or N.J.S.A. 33:1-19, which establish the privileges and restrictions of the different types of licenses. In the order they are established by

statute, the types of retail licenses are:

PLENARY RETAIL CONSUMPTION LICENSE (“33”). This license authorizes the sale of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle and also allows the sale of alcoholic beverages in original containers for consumption off the licensed premises. Such sales of package goods, however, may only take place from the public barroom, and the package goods may only be displayed for sale on its perimeter walls unless a floor plan was approved by the A.B.C. Director prior to the late 1970’s. Where this license is granted, no other mercantile or commercial activity may take place on the licensed premises except for certain activities such as a restaurant or the sale of snack or certain other items enumerated in the statute. The fee for this license is set by the municipality between **\$250** and **\$2,500** per year. Since 1947 only one retail consumption license, with certain exceptions, can be issued in a municipality for each 3,000 of its population, although licenses in excess of this limit before 1947 were grandfathered.

PLENARY RETAIL CONSUMPTION LICENSE WITH “BROAD PACKAGE PRIVILEGE” (“32”). This license is another Plenary Retail Consumption License except the sale of package goods is not restricted to the public barroom. This “broad package privilege” was added to certain Plenary Retail Consumption Licenses in 1948, and those licenses continue to retain that privilege. These licenses are counted as Plenary Retail Consumption Licenses for the purpose of the population limitation. The fees are the same for Plenary Retail Consumption Licenses. (See N.J.S.A. 33:1-12.33; N.J.A.C. 13:2-35.) (See also “Merchandise – Sale by Retail Licensees.”)

SEASONAL RETAIL CONSUMPTION LICENSE (“34”). This license allows all the privileges of a Plenary Retail Consumption License but is issued for the summer season extending from May 1 through November 14. The same restrictions that apply to a Plenary Retail Consumption License also apply to this seasonal license and these licenses also are counted in the total number permitted by population. The fee for this license is 75% of the fee established for the Plenary Retail Consumption License. (Although the statute also authorizes a winter season license from November 15 to April 30, no such license has been issued in the State.)

HOTEL/MOTEL LICENSE (“36”). This license is a Plenary Retail Consumption License issued to a hotel or motel with 100 or more guest sleeping rooms. It is an exception to the population restrictions. The license may only be used in connection with a facility which meets the 100 room condition. Other Hotel/Motel licenses issued prior to 1969 are conditioned that they may be used only in connection with a facility with 50 or more guest sleeping rooms.

THEATER LICENSE (“37”). This license is a Plenary Retail Consumption License which may be issued to a non-profit corporation which conducts musical or theatrical performances in a theater with a seating capacity of 1,000 or more persons. It is an exception to the population restrictions. The license authorizes the sale of alcoholic beverages for on-premises consumption during performances and for two hours immediately preceding and following performances.

PLENARY RETAIL CONSUMPTION LICENSE W/BREW PUB LICENSE (“38”). (See “Brew Pubs.”)

PLENARY RETAIL DISTRIBUTION LICENSE (“44”). This license permits only the sale of alcoholic beverages in original containers for consumption off the licensed premises (package goods). Other mercantile or commercial activity is permitted on the license premises unless it is prohibited by municipal ordinance. The fee for this license is set by the municipality between **\$125** and **\$2,500** per year. Only one Plenary Retail Distribution License may be issued for each 7,500 of population in a municipality, although Plenary Retail Distribution Licenses in excess of this number at the time the limitation came into effect are grandfathered.

LIMITED RETAIL DISTRIBUTION LICENSE (“43”). This license permits only the sale of warm beer and other malt alcoholic beverages in quantities of not less than 72 fluid ounces (equal to a “six-pack”) in original containers for consumption off the licensed premises. This license is no longer being issued. The existing licenses can be renewed or transferred but must be located on premises operated and conducted by the licensee primarily as a food store where groceries or other foodstuffs, such as meat, are sold. The fee for this license is set by the municipality between **\$31** and **\$63** per year.

PLENARY RETAIL TRANSIT LICENSE (“13”). This license is the only retail license which is solely issued by the Director of the Division of A.B.C. rather than by a municipality. It permits the sale of alcoholic beverages in open containers for immediate consumption on railroad trains, airplanes, boats and in limousines only while they are in transit. This license is necessary for trains to serve alcoholic beverages in club cars, etc., while traveling through New Jersey, for airplanes to serve alcoholic beverages on aircraft in New Jersey or to stock the aircraft with the alcoholic beverages while in New Jersey, for limousines to provide alcoholic beverages while traveling on New Jersey roadways and for boats that dock or travel on New Jersey waterways to serve alcoholic beverages. The fees are **\$375** per year for a railroad or airline company. Boats are licensed per boat, with the fee depending on the length of the boat and ranging from **\$63** to **\$375**. Limousines are licensed per vehicle at a fee of **\$31** per year. This Plenary Retail Transit License is necessary whether the drinks are sold on a per drink basis or are included “gratuitously” in the price of the transportation.

CLUB LICENSE (“31”). The fee for this license is set by the municipality between **\$63** and **\$188** per year. (See “Club License.”)

LICENSES – WHOLESALE

WHAT ARE WHOLESALE LICENSES?

Alcoholic beverage licenses issued for the purpose of wholesaling or distributing alcoholic beverages exclusively to retail licensees are “Class B” licenses and are set forth in N.J.S.A. 33:1-11. They include Plenary Wholesale (“23”), Limited Wholesale (“25”), Wine Wholesale (“26”) and State Beverage Distributor’s (“19”) licenses. These licenses are issued by the Director of the Division of A.B.C. at fees ranging from **\$1,031** to **\$8,750** per year. (See “State Beverage Distributor’s License.”)

LIENS ON LICENSES

CAN A LIEN, ATTACHMENT OR WRIT OF EXECUTION BE ISSUED AGAINST A RETAIL LICENSEE?

An alcoholic beverage license is not generally subject to lien, levy or attachment and subsequent sale to satisfy a creditor's debt or judgment. It can be sold as an asset in certain federal or State bankruptcy or insolvency proceedings. A creditor seeking to collect a judgment can levy upon fixtures and equipment that are located within the licensed premises and also on any alcoholic beverages contained therein, subject to whatever rights other persons may have. In the event that alcoholic beverages are sold to satisfy a judgment, the seller must obtain a special permit from the Division of A.B.C. to authorize their sale. (See "Close-out Sales.")

There is one other situation when the rights to sell a license can be attached and that occurs when the Internal Revenue Service or the New Jersey Division of Taxation serves a notice of lien and levy for nonpayment of federal taxes or State taxes. When the I.R.S. or the New Jersey Division of Taxation does serve such notice upon the licensee, with copies to the municipal issuing authority and the Division of A.B.C., the law permits the I.R.S. and the New Jersey Division of Taxation to offer the license for sale at public auction. The successful bidder will receive from the I.R.S. or the New Jersey Division of Taxation the right to apply for a transfer of the license. Thereafter, the local issuing authority may either approve or disapprove the transfer in the reasonable exercise of its powers. Once the lien and levy by the I.R.S. or by the New Jersey Division of Taxation has been served, the current licensee cannot attempt to transfer its interest in the license to anyone else until the lien or levy has been released. A licensee, however, can continue to operate after the lien or levy is served; and, if the license certificate was seized, a copy identified as a duplicate should be obtained from the issuing authority.

Finally, some private contracts for the sale of the license contain provisions which require the re-transfer of the license under various conditions. The Division considers such provisions to be void and unlawful attempts to prevent the free and unfettered transfer of the license in violation of N.J.S.A. 33:1-26 and subjects the license to sanction.

LOCAL A.B.C. BOARD – See "*Alcoholic Beverage Control Boards*"

LOCAL CONTROL

WHAT CONTROLS AND RESTRICTIONS CAN A LOCAL MUNICIPALITY ADD IN ADDITION TO THOSE REQUIRED BY THE STATE?

Any municipality may, without prior approval, pass laws (ordinances) which regulate the number and types of licenses to be issued, the hours between which the sale of alcoholic beverages may be made and whether Sunday sales are permitted. Subject to the approval of the A.B.C. Director, a municipality can also regulate the conduct of any business licensed to sell alcoholic beverages and all the activities that take place on the premises. The municipality may also prohibit anyone from having an interest in more than one retail license in that community, exceptions are provided for individuals appointed by court order to operate a licensed business. (N.J.S.A. 33:1-12, 1-32 and 1-40.)

LOCAL PROHIBITION

MAY THE GOVERNING BODY OF A MUNICIPALITY REFUSE OR FAIL TO ENACT AN ORDINANCE ESTABLISHING THE NUMBER, KIND AND CLASSIFICATION OF LICENSES FOR THE PURPOSES OF ALCOHOLIC BEVERAGE ACTIVITY IN THAT COMMUNITY?

The Alcoholic Beverage Control Law permits the governing body of a municipality to determine whether or not any retail sales of alcoholic beverages will be permitted in that community. The governing body may determine that no retail licenses will be issued. Even if it does this, however, there is a provision in State law for the Director to issue a permit in lieu of a club license to a local chapter of a non-profit national or state organization or to a non-profit golf and country club, provided certain requirements are met.

MAGAZINES

ARE LICENSEES PERMITTED TO SELL MAGAZINES ON THEIR LICENSED PREMISES?

Consumption licensees are prohibited from selling magazines or newspapers as such sales would be considered “other mercantile businesses” not permitted under the specific restrictions of the consumption licensed privilege. On the other hand, distribution licensees, unless prohibited by local ordinance, can have other mercantile businesses in or upon the licensed premises. (See “Merchandise – Sale by Retail Licensees.”)

MANUFACTURER’S REBATES – See “Advertising” and “Coupons”

MEASUREMENT OF ALCOHOLIC CONTENT

HOW IS THE QUANTITY OF ALCOHOL INDICATED IN THE DIFFERENT TYPES OF ALCOHOLIC BEVERAGES?

In distilled spirits, the alcohol content is indicated in “Proof,” which is equal to twice the actual percentage of alcohol. For example, a distilled spirit which is shown to be 60 proof contains 30% alcohol. The alcoholic content of wine is indicated in percentage by volume. This gives the actual percentage of the beverage that is alcohol. For beer and other malt alcoholic beverages, although the percentage of alcohol is not shown on the label, the alcohol content is usually given in percentage of alcohol by weight. This percentage number will usually appear to be slightly less than it would if the alcohol content were shown by volume.

MERCHANDISE – SALE BY RETAIL LICENSEES

IS THERE ANY LIMITATION AS TO WHAT A RETAIL LICENSEE CAN SELL BESIDES ALCOHOLIC BEVERAGES?

Unless prohibited by local ordinance, there is no restriction on the sale of other items or the conduct of other business by Plenary Retail Distribution licenses. No ordinance can prohibit the Plenary Retail Distribution licensee from selling certain items such as prepackaged gift merchandise with glassware, novelty wearing apparel (T-shirts, caps, etc.) identified with the name of the licensed establishment, cigars, cigarettes,

packaged crackers, chips, nuts and other similar snacks, ice and non-alcoholic beverage mixers. (N.J.S.A. 33:1-12.)

Plenary and Seasonal Retail Consumption Licensees, including those with the “Broad Package Privilege” (“32”), do not have a similar privilege. Under the statute, they may not conduct any “other mercantile business” except certain related activities which the law enumerates: running a hotel or restaurant (including the sale of mercantile items incidental to such businesses), the sale of prepackaged gift merchandise, novelty wearing apparel (T-shirts, caps, etc.) identified with the name of the licensed establishment, cigars, cigarettes, packaged crackers, chips, nuts and other similar snacks, ice and non-alcoholic beverage mixers; and, if the premises is also a bowling alley, the sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and non-alcoholic beverages. (N.J.S.A. 33:1-12.) Division of A.B.C. policy has also considered certain entertainment and amusement activity, including live performances, bands, singers, dancers, juke boxes, pinball and shuffleboard machines, video game machines, pool tables, etc., as intrinsic items to the operation of a bar or tavern and they are, therefore, not prohibited “mercantile business.” Note that other businesses conducted on the licensed premises must be disclosed on page 4 of the license application. (See “Licenses – Retail.”)

MINI-BARS

ARE MINI-BARS OR IN-ROOM SYSTEMS DEVICES PERMITTED IN HOTELS IN NEW JERSEY, AND IF SO, WHAT CRITERIA MUST BE MET?

Use of mini-bars and similar devices in hotel or motel rooms which are basically small, sometimes refrigerated cabinets which contain alcoholic beverages normally in containers of 12 ounces for malt alcoholic beverages, 375 ml for wine and 50 ml for spirits are permitted in hotel and motel rooms in New Jersey. They are Bell Captain (A.B.C. Bulletin 2014, Item 1), RoboBar (A.B.C. Bulletin 2451, Item 2) and ServiComm (A.B.C. Bulletin 2455, Item 2).

The criteria that mini-bars must meet are as follows:

- (1) The system can only be utilized by a plenary retail consumption licensee having a hotel or motel as part of the licensed premises.
- (2) The rooms in which the dispensing units are located must be part of the licensed premises.
- (3) The dispensing units must be electronically connected to the front desk and must be capable of individual lock-out. This is necessary to prevent access to any alcoholic beverages contained therein where any of the primary parties to whom the room is rented are under the age of 21.
- (4) Automatic timing or similar device must be utilized to lock-out the entire system during the hours when the sale of alcoholic beverages for consumption on the premises is prohibited.

- (5) The licensee must, before utilizing the system, advise the Division of A.B.C. and local issuing authority of its existence, the rooms in which the units are located and the specific nature of the system.

Licensees are reminded that ultimate responsibility for any violation of their use rests with the licensee and care should be taken to ensure that no violations of the Alcoholic Beverage Control Act occur as a result of misuse of these systems.

MIXED CASE SALES

MAY RETAIL LICENSEES OFFER DISCOUNTS ON CASES AND MIXED CASES?

A package store retailer is permitted to offer a discount to a consumer for the purchase of a same or mixed case of either all wine, all beer or all distilled spirits. N.J.A.C. 13:2-23.16(a)(2)(iv). The discount may not drop the price of the product below the retailer's cost.

MORAL TURPITUDE

WHAT IS A CRIME INVOLVING AN ELEMENT OF "MORAL TURPITUDE?"

The term "moral turpitude" denotes a serious crime from the viewpoint of society in general and usually contains elements of dishonesty, fraud or depravity. Such crimes are generally but not exclusively contained in the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1, et seq., and are subject to indictment and punishment by confinement for over one year in state prison. (See "Eligibility, Determination of" and "Rehabilitation Employment Permit/Disqualification Removal.")

MUNICIPAL FEES

HOW ARE LICENSE FEES DETERMINED?

Annual renewal fees for retail licenses are established by local ordinance in accordance with the provisions of State law. (N.J.S.A. 33:1-12.) (See "Licenses – Retail.") Some retail licenses are issued and renewed by the ABC Director because it is considered a "conflict license." (See "Conflict License.") In all such cases the municipality may still collect all applicable fees at time of renewal. If the municipality wishes to increase the annual renewal fee, it may adopt an ordinance doing so, but the increase cannot exceed 20% of the fee for the prior year. (N.J.S.A. 33:1-12.)

In addition to the annual fee for the retail license, the governing body may, by ordinance, also impose a fee of up to \$50 to fund a Tourist Development Commission (N.J.S.A. 40:52-7) and, for Retail Consumption Licenses, an additional fee of up to \$200 to fund a municipal license retirement program (N.J.S.A. 40:48-2.42.) (See "Retirement of Consumption Licenses.")

NON-ALCOHOLIC BEVERAGES

MAY A LICENSEE ENGAGE IN THE SALE OF NON-ALCOHOLIC BEVERAGES, AND MAY THESE BEVERAGES BE SOLD TO AN INDIVIDUAL UNDER THE AGE OF 21?

Yes. Non-alcoholic and alcohol-free beverage products may be sold by licensees as well as non-licensees. Non-alcoholic beverages are products that contain ½ of 1% or less of alcohol. Alcohol-free beverage products contain NO alcohol. Neither are governed by the Alcoholic Beverage Control Act. Since they are not “alcoholic beverages,” these products may be sold to an individual under the age of 21. If there is any question whether or not a product is considered a non-alcoholic or alcohol-free beverage, a licensee should contact the Division of Alcoholic Beverage Control. (See “Alcoholic Beverages.”)

NOTICE AND PETITION OF APPEAL

WHAT IS A “NOTICE AND PETITION OF APPEAL?”

Procedurally, you must send the Director of the Division of ABC three items:

- (1) A “**Notice and Petition of Appeal**” must contain the following information:
 - (a) The licensee’s legal name (i.e., Joe’s Bar, Inc.); 12-digit license number; trade name (i.e., Tic Tack Club) and a phone number and address where the licensee can be reached.
 - (b) The full name, address and telephone number of the city or town’s municipal office.
 - (c) If the appeal is from a denial of a license transfer or issuance and a written objection was submitted, the objector’s full name, address and phone number must be stated in the Notice and Petition of Appeal.
 - (d) The proceedings below must be described. For example, A 15-day suspension was imposed upon the licensee for sale to a minor. @Where a suspension is involved, please state the date the suspension is to start and when it is to finish.
 - (e) A copy of the Municipal Resolution setting forth the action must be attached to the Notice and Petition of Appeal. If you do not have the Resolution, state the date of the action being appealed from.
 - (f) The grounds for the appeal must be stated. For example, Ahe decision of the municipality was erroneous. @
 - (g) The relief (both interim and final) you are asking for must be stated.

X For example, for ***Interim Relief***, a licensee might request a stay of a suspension or an Order extending a prior license where renewal has been denied.

- X For example, for ***Final Relief***, a licensee might request reversal of a finding of guilt and/or payment of a monetary penalty in compromise of the penalty imposed by the municipality.

NOTE: The Notice and Petition of Appeal must be signed by either the licensee (sole proprietor, general partner, president, vice-president) or an attorney who represents the licensee in the appeal.

- (2) An **Affidavit of Service** which states that a copy of the Notice and Petition of Appeal has been served upon the local issuing authority (either personally or by way of regular mail).
- (3) A **\$100 Filing Fee** (check or money order made payable to “Division of ABC@”

NUMBER OF LICENSES – See “Licenses - Retail” and “Two-License Limitation”

OPEN BARS

ARE LICENSEES PERMITTED TO HOLD AND ADVERTISE “OPEN BAR” EVENTS?

An “Open Bar” event offering the public unlimited availability of any alcoholic beverages for a set price is generally prohibited. (N.J.A.C. 13:2-23.16(a)1.) The Division of A.B.C. has recognized an exception for New Year’s Eve parties where tickets are not available for purchase at the door.

If the event is a private party or an event for which tickets are sold by a non-profit organization and the licensee has not advertised the event to the general public, an “open bar” may be included in the package furnished by the licensee to the organization or private party. (See A.B.C. Bulletin 2440, Item 2.) Licensees are reminded that they continue to be responsible for the alcoholic beverage activity which takes place at such functions or parties held on their licensed premises, including, but not limited to, the obligation to ensure that no underage persons or people who are actually or apparently drunk or intoxicated are served or consume alcoholic beverages.

Licensees are further reminded that, with an open bar event, they are still responsible for including the sales tax in the billing and remitting same to the Division of Taxation.

OTHER MERCANTILE BUSINESS – See “Merchandise – Sale by Retail Licensees”

PACKAGE GOODS SALES BY RETAIL CONSUMPTION LICENSEES

WHAT RESTRICTIONS ARE THERE ON THE SALE AND DISPLAY OF PACKAGE GOODS BY RETAIL CONSUMPTION LICENSEES?

Unless the license carries the “Broad Package Privilege” (“32”), package goods can only be displayed for sale in and sold from the principal public barroom. The Regulations contain many restrictions. For example, they specify that package goods may only be displayed in an area behind the principal bar or on two-foot wide shelving along perimeter walls of that principal barroom. Unless the licensee has an

approved floor plan that was approved by the A.B.C. Director prior to the late 1970's, the stacking of package goods on the floor or in bins or by placing gondolas within the interior area of the barroom is not allowed. The burden is on the licensee to produce a copy of the approved floor plan, and absent same, it must strictly adhere to the restrictions contained in the regulations. (N.J.S.A. 33:1-12.23; N.J.A.C. 13:2-35.) (See "Closing Time.")

Within the above noted limitations, all Plenary and Seasonal Retail Consumption Licensees may sell package goods unless they operate restaurants, bowling alleys with at least 20 lanes or at an international airport and hold their licenses as exceptions to the law which limits anyone from having an interest in more than two retail licenses. These licenses are prohibited from selling any package goods. (N.J.S.A. 33:1-12.32.) (See "Two-License Limitation.")

Club Licensees and Plenary Retail Transit Licensees are prohibited from selling package goods at all times. (N.J.S.A. 33:1-12.)

PATRONS, EXCLUDING

CAN I EXCLUDE PERSONS UNDER 21 YEARS OF AGE OR OLDER OR ANY OTHER PERSON I BELIEVE IS UNDESIRABLE TO MY BUSINESS?

Because of the near strict liability imposed upon licensees for failure to rigidly adhere to all A.B.C. laws and regulations (such as for sale to underage persons, or to persons apparently intoxicated, or allowing a brawl, etc.), the Division of A.B.C. has had a long history of treating the licensee as the master of his premises, with the right to exclude anyone he chooses. Notwithstanding that such exclusion may not violate A.B.C. laws or regulations, however, licensees should be aware that other State or federal laws (most likely Civil Rights Laws) can be implicated by such decisions. It is our understanding that age is not a part of the Civil Rights Laws, and therefore, licensees can generally exclude persons under any selected age. The licensee can impose a minimum dress code and exclude patrons that do not comply (for example: no shirt, no shoes, no service). In addition, a licensee can exclude any patron that exhibits signs of intoxication, is under the influence of narcotics, is unruly or causes a disturbance.

PAYMENT OF FEES

HOW MUST FEES OR MONETARY PENALTIES BE PAID TO THE DIVISION OF A.B.C.?

All fees or monetary penalties due to the Division of A.B.C. must be paid by certified check, money order, cashier's check or treasurer's check issued by a bank. Trust or business checks drawn on accounts of New Jersey attorneys will also be accepted. All checks should be made payable to the Division of Alcoholic Beverage Control and should identify the purpose of the check and reference a license or file number if one is involved. No cash will be accepted. (See "Fee Schedule" at the end of this Handbook.)

PENALTY – EFFECT ON MULTIPLE LICENSES

IF A LICENSEE OWNS OR HAS AN INTEREST IN MORE THAN ONE RETAIL LICENSE AND ONE OF THE LICENSES IS SUBJECT TO AN ORDER OF SUSPENSION OR REVOCATION, DOES THIS AFFECT ANOTHER RETAIL LICENSED BUSINESS?

An Order of Suspension generally applies to the specific license and the specific location where that particular license is sited. Other retail licenses owned by the same licensee are usually not directly affected by an Order of Suspension.

Generally, an Order of Revocation does have consequences involving other licenses that may be owned by the person(s) whose license has been revoked. The Alcoholic Beverage Control Law prohibits any person who has an interest in an alcoholic beverage license which is revoked from having any interest in any other license for a period of two years from the effective date of revocation. Therefore, if a license is revoked, the individuals who have an interest in that license must immediately divest the interest in any other licenses that they held. Additionally, a second revocation forever prohibits a person from having any interest in an alcoholic beverage license in New Jersey. (N.J.S.A. 33:1-31.) (See “Penalty Schedule.”)

PENALTY - EFFECT ON USE OF PREMISES

IF A RETAIL LICENSE IS SUSPENDED, WHAT ACTIVITY, IF ANY, MAY BE CONDUCTED ON THE LICENSED PREMISES?

An Order of Suspension prohibits the licensee from engaging in any alcoholic beverage activity in or upon the licensed premises, except for the storage of alcoholic beverages on hand or, with the written permission of the A.B.C. Director, for the return of alcoholic beverages to wholesalers or manufacturers. This prohibition means that the suspended licensee cannot sell, serve, deliver or permit the consumption of any alcoholic beverages on the licensed premises. There can be no “bring your own bottle – B.Y.O.B.” activity. The licensee cannot receive delivery of any alcoholic beverages nor can the licensee advertise that the licensed premises are closed for any reason, such as “closed for repairs” or “closed for vacation,” other than that the license has been suspended by order of the Division of Alcoholic Beverage Control. A sign that states only that the premises are closed and will re-open on a stated date is permitted. (N.J.A.C. 13:2-23.27.) Penalties assessed against the license or a person having an interest in the license must be noted on page 6 of the license application.

Other regular, *bona fide* non-alcoholic business activities which can lawfully be conducted on the retail licensed premises can continue while a license is under suspension. For example, a license suspension for a retail licensee which operates a bowling establishment would not prohibit the continued operation of the bowling facilities; a *bona fide* restaurant could continue to serve food and non-alcoholic beverages to the general public during a period of suspension. (Make certain that you have noted that you have such other businesses being conducted on your licensed premises on page 4 of the license application.) Caution is advised that no alcoholic beverage consumption is allowed on a suspended premises. Therefore, patrons cannot bring in and consume their own alcoholic beverages. Additionally, no activity is permitted which is not allowed on a licensed premises when the license is not suspended.

PENALTY SCHEDULE

On December 3, 2001, the Division adopted various amendments to Subchapter 19 regarding how the Division conducts disciplinary proceedings against licensees. These regulations detailed specific penalties and defined what constituted a violation for the purpose of penalty enhancement for repeat violations. This regulation replaced the prior penalty schedule in ABC Bulletin No. 2450, Item 2 (June 2, 1987). The new schedule applies to all violations occurring after December 3, 2001. When an investigation or inspection is conducted, a report will be presented to the ABC Enforcement Bureau. The licensee will receive notice of required corrective action in a warning letter or a notice of a fine in lieu of prosecution or formal charges. Warning letters or notices of a fine in lieu of prosecution are issued for administrative violations involving minor infractions such as missing or incorrect documents or failure to receive or maintain certain permits. Normally, warning letters and fine notices are issued when the individual violations do not exceed a one-day suspension and cumulatively do not exceed five suspension days as set forth in the penalty schedule in N.J.A.C. 13:2-19.11.

For more serious violations, charges will be filed against the licensee. The Notice of Charges will specifically identify the nature of the charge and the amount of suspension the Enforcement Bureau is seeking, should the charges be proven. The licensee will have 30 days to enter a plea which can be extended an additional 30 days for good cause. If the licensee fails to enter a plea within that time period, the regulations provide that a plea of non-vult will automatically be entered, and the Enforcement Bureau will seek from the Director of the Division of A.B.C. an Order of Suspension in the amount of days as set forth in the original Notice of Charges. For example, if the licensee is charged with sale to an underage person, the Division of A.B.C. would seek a 15-day suspension which the Director could issue without any further notice. Therefore, it is extremely important that a licensee follow the instructions and enter a necessary plea.

The penalty schedule also sets forth penalties for first, second, third and fourth violations. A violation is defined as any breach of duty or responsibility imposed by the Alcoholic Beverage Control Act and its regulations. These breaches of duty are set forth as specific violations on the penalty schedule. Each violation constitutes a separate chargeable offense.

Therefore, if an individual serves 3 underage persons, each sale to each underage person will constitute a separate violation, or a 15-day suspension for each underage person for a total of 45 days. If an individual should serve an underage on Monday and then serve another underage person on Wednesday, the second violation would constitute a successive violation since it occurred outside a 24-hour period. The penalty for a successive violation would be treated as a second offense. The penalty for a second successive violation according to the penalty schedule is 30 days. This penalty schedule is not binding upon the Director, and depending on aggravating or mitigating circumstances, the penalty can be increased or decreased. The penalty imposed is within the sole discretion of the Director.

The regulations set forth that the Director may, in his sole discretion, accept a monetary offer in compromise for all or part of the suspension. The Director is under no obligation to accept an offer in compromise. When deciding whether to accept a monetary offer in compromise, the Director may consider factors such as the nature of the offense, whether it constitutes a first, second or third offense, mitigating or aggravating circumstances and the stage of the proceedings at which the monetary offer in compromise is requested.

Generally, if the Director accepts a monetary offer in compromise, it will be based on a formula used to determine the per diem profit the licensee would make if it were open for that day. The Division accepts a minimum of \$100 per diem for retail licensees. In determining what type of plea to enter, the licensee can enter a plea of non-vult and request that the Director accept a compromise offer and deduct 20% of the proposed suspension. All questions regarding the specific penalties are set forth in the Penalty Schedule¹ which follows:

<u>Statute, Regulation or Bulletin Item</u>	<u>Code</u>	<u>Description</u>	<u>First Violation²</u>	<u>Second Violation²</u>	<u>Third Violation²</u>	<u>Fourth Violation²</u>
<u>N.J.S.A. 33:1-25, 26, 31a and 52</u>	<u>A&A</u>	<u>Aiding and abetting</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.5(c)</u>	<u>ACTIV</u>	<u>Illegal activity on the licensed premises</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-24.10(a)1-6</u>	<u>ADV1</u>	<u>Improper advertising</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-24.10(a)7</u>	<u>ADV2</u>	<u>Improper cooperative advertising</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.13(a)2</u>	<u>APP1</u>	<u>Failure to provide a copy of the most recent full application and/or current renewal application</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(a)</u>	<u>APP2</u>	<u>Failure to timely notify of change in fact on the license application</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(b)</u>	<u>APP3</u>	<u>Failure to notify of corporate structure change</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.S.A. 33:1-25</u>	<u>APP4</u>	<u>Failure to disclose or false, misleading or inaccurate answer to a question on an application, which would not by itself result in a disqualification for licensure</u>	<u>10</u>	<u>20</u>	<u>30</u>	

¹ The description of the penalties in this schedule is not intended to provide a complete description of the violation. The governing standard is set forth in the referenced statute or regulation.

² Number refers to days of license suspension.

<u>N.J.S.A. 33:1-25</u>	<u>APP5</u>	<u>Failure to disclose or false, misleading or inaccurate answer to a question of material fact on an application</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.S.A. 33:1-26</u>	<u>APP6</u>	<u>Lease out of the license</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.32</u>	<u>BOOKS1</u>	<u>Failure to have true book or books of account available on the licensed premises, but produced within 7 business days of demand</u>	<u>2</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.32</u>	<u>BOOKS2</u>	<u>Failure to maintain true book or books of account or failure to produce true book or books of account within 7 business days of demand</u>	<u>30</u>	<u>60</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.15 or 23.23</u>	<u>BOT1A</u>	<u>Contaminated or low proof bottles (1-5 bottles)</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-23.15 or 23.23</u>	<u>BOT1B</u>	<u>Contaminated or low proof bottles (6 or more bottles)</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.19</u>	<u>BOT2</u>	<u>Substitution of beverages</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.9(a)</u>	<u>BOT3</u>	<u>Tampering/adulterated alcohol</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-35.1 and 35.5 or 35.2 and 35.4</u>	<u>BPP1</u>	<u>Broad package privilege violation (improper sale or display)</u>	<u>10</u>	<u>30</u>	<u>60</u>	
<u>N.J.A.C. 13:2-35.1 and 35.2</u>	<u>BPP2</u>	<u>Broad package privilege violation (insufficient equipment and/or bar)</u>	<u>10</u>	<u>30</u>	<u>60</u>	
<u>N.J.A.C. 13:2-23.12</u>	<u>BULK</u>	<u>Transfer of inventory without a bulk permit</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-23.13(a)1</u>	<u>CERT</u>	<u>License certificate not conspicuously displayed</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.A.C. 13:2-1.9(d)</u>	<u>CHECK</u>	<u>Return of an unpaid check to Division or issuing authority (penalties will include original check amount and administrative costs)</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-8.13</u>	<u>CLUB1</u>	<u>Advertising availability of alcoholic beverages to the public</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-8.8, 9 and 11</u>	<u>CLUB2</u>	<u>Sale beyond the scope of the club license, including, but not limited to, sale to non-member or social affair permittee</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-26.1</u>	<u>COOP1</u>	<u>Purchase of alcoholic beverages by a non-member</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-26.1</u>	<u>COOP2</u>	<u>Allowed a person not qualified and/or minor permittee to order for member or employee of cooperative</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-26.1</u>	<u>COOP3</u>	<u>Allowed a purchase by a non-member retailer under cooperative</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-24.8</u>	<u>COST</u>	<u>Sale of alcoholic beverages below cost</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-24.6(a)6</u>	<u>CPL1</u>	<u>Sale of alcoholic beverages not listed on a "Current Price List"</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-24.6(a)6</u>	<u>CPL2</u>	<u>Sale or acceptance of alcoholic beverages upon terms other than set forth on a "Current Price List"</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-24.6(a)1 and 2</u>	<u>CPL3</u>	<u>Failure to maintain an "Historical Price List" and "Marketing Manual"</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-24.4</u>	<u>CRED1</u>	<u>Wholesaler extended credit to retailer on COD status</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-24.4</u>	<u>CRED2</u>	<u>Retailer received credit from wholesaler while on COD status</u>	<u>15</u>	<u>30</u>	<u>45</u>	

<u>N.J.A.C. 13:2-24.1</u>	<u>DISC1</u>	<u>Terms of sale of alcoholic beverages offered in discriminatory manner</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-24.2</u>	<u>DISC2</u>	<u>Offers service to a licensee in a discriminatory manner</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-26 and N.J.A.C. 13:2-14.5</u>	<u>DISQ1</u>	<u>Employed a criminally disqualified person</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-25, 26</u>	<u>DISQ2</u>	<u>Criminally disqualified licensee</u>	<u>Revocation</u>			
<u>N.J.A.C. 13:2-23.13(a)3</u>	<u>E141-A1</u>	<u>Employees list not complete or available on the licensed premises</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-23.13(a)3</u>	<u>E141-A2</u>	<u>Employees list not complete or available on the licensed premises and criminally disqualified employee</u>	<u>15</u>	<u>30</u>	<u>45</u>	
<u>N.J.A.C. 13:2-14.1 and/or 14.2</u>	<u>EMIN</u>	<u>Employing a minor without a permit</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-23.31(b)2i</u>	<u>EPOL1</u>	<u>Employed a law enforcement officer without approval</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.31(b)2ii</u>	<u>EPOL2</u>	<u>Employed a law enforcement officer in jurisdiction where law enforcement officer serves</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.25</u>	<u>ESOL</u>	<u>Employment of a solicitor by a retailer</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-12a</u>	<u>FETAL</u>	<u>Failure to display Fetal Alcoholic Syndrome warning poster</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.S.A. 2A:40-1/ N.J.A.C. 13:2-23.7 Bull. 2430, Item 3/ Bull. 2437, Item 4</u>	<u>GAMB1</u>	<u>Failure to notify of placement of approved video game within 48 hours of placement</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB2</u>	<u>Raffling of sealed containers of alcoholic beverages without a permit</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.7(a)5</u>	<u>GAMB3</u>	<u>Gambling paraphernalia on the licensed premises</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.7(a)</u>	<u>GAMB4A</u>	<u>Non-criminal gambling activity on the licensed premises</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.7(a)</u>	<u>GAMB4B</u>	<u>Criminal gambling activity on the licensed premises</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.7(a)</u>	<u>GAMB5</u>	<u>Unapproved video or slot machine or other gambling device on the licensed premises</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.7(a)4</u>	<u>GAMB6</u>	<u>Video or slot machine or other gambling device playing for money or other valuable thing</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7A</u>	<u>Criminal gambling activity on the licensed premises involving an employee</u>	<u>90</u>	<u>Revocation</u>		
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7B</u>	<u>Criminal gambling activity on the licensed premises involving a licensee</u>	<u>Revocation</u>			
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7C</u>	<u>Non-criminal gambling activity on the licensed premises involving an employee</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7D</u>	<u>Non-criminal gambling activity on the licensed premises involving a licensee</u>	<u>10</u>	<u>20</u>	<u>30</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-35/ N.J.A.C. 13:2-23.30</u>	<u>HIND1</u>	<u>Employee hindering an investigation</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-35/ N.J.A.C. 13:2-23.30</u>	<u>HIND2</u>	<u>Licensee hindering an investigation</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-38.1 or 38.2</u>	<u>HRS1</u>	<u>Sale of alcoholic beverages before or after the legal hour or in violation of a municipal ordinance</u>	<u>10</u>	<u>20</u>	<u>30</u>	

<u>N.J.S.A. 33:1-31h and N.J.A.C. 13:2-38.1 or 38.2</u>	<u>HRS2</u>	<u>Presence of non-employee(s) after the legal hour set by a municipal ordinance</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-20</u>	<u>INSIG</u>	<u>Alcoholic beverages transported without a transit insignia</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-20.4(b) or 23.32</u>	<u>INV1</u>	<u>Failure to have invoices available at the licensed premises, but produced within 7 business days of demand</u>	<u>1</u>	<u>5</u>	<u>10</u>	
<u>N.J.A.C. 13:2-20.4(b) or 23.32</u>	<u>INV2</u>	<u>Failure to maintain invoices or failure to produce invoices within 7 business days of demand</u>	<u>30</u>	<u>60</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.6(a)1</u>	<u>LEWD1</u>	<u>Lewd activity on the licensed premises</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.6(a)1</u>	<u>LEWD2</u>	<u>Lewd activity with audience participation on the licensed premises</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.14</u>	<u>LEWD3</u>	<u>Lewd material on the licensed premises</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.S.A. 33:1-12</u>	<u>MERC</u>	<u>Conducted other mercantile business on the licensed premises</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.5(b)</u>	<u>NARC1</u>	<u>Narcotic activity on the licensed premises</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.5(b)</u>	<u>NARC2</u>	<u>Narcotic paraphernalia on the licensed premises</u>	<u>45</u>	<u>90</u>	<u>Revocation</u>	
<u>N.J.A.C. 13:2-23.5(b)</u>	<u>NARC3</u>	<u>Narcotic activity on the licensed premises involving an employee</u>	<u>90</u>	<u>Revocation</u>		
<u>N.J.A.C. 13:2-23.5(b)</u>	<u>NARC4</u>	<u>Narcotic activity on the licensed premises involving a licensee</u>	<u>Revocation</u>			
<u>N.J.A.C. 13:2-23.6(a)3</u>	<u>NUIS1</u>	<u>Licensed business conducted in such a manner to become a nuisance (quality of life – noise, litter, urination, etc.)</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.6(a)3</u>	<u>NUIS2</u>	<u>Licensed business conducted in such a manner to become a nuisance (police intervention – public safety or rights being violated)</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-31(h)</u>	<u>ORDIN</u>	<u>Violation of any ordinance, resolution or regulation of an issuing authority or governing body</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.S.A. 33:1-31</u>	<u>ORDER</u>	<u>Violation of an order of the Director or of an issuing authority</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-9.3</u>	<u>POSS</u>	<u>Failure to maintain continuing possession and exclusive control of licensed premises</u>	<u>Indefinite Suspension + 10 Days</u>	<u>Indefinite Suspension + 20 Days</u>	<u>Indefinite Suspension + 30 Days</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.16</u>	<u>PP</u>	<u>Prohibited promotion</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.10</u>	<u>PROHD</u>	<u>Accepted delivery from a non-licensed carrier</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.12(a) or (b)</u>	<u>PROHP</u>	<u>Purchased alcoholic beverages from a prohibited source</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.12(b)</u>	<u>PROHS</u>	<u>Sale of alcoholic beverages to a prohibited receiver (retailer-retailer)</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.1(a)</u>	<u>PULA</u>	<u>Sale to a person under the legal age, but over the age of 18</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.1(a)</u>	<u>PULA/M</u>	<u>Sale to a person under the age of 18 years</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-24.11</u>	<u>REBATE</u>	<u>Prohibited consumer rebate</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C.13:2-23.24</u>	<u>RET</u>	<u>Retailer received – parallel to SOL3</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-11, 2c</u>	<u>SBD1</u>	<u>Sale of less than 144 fluid ounces of malt alcoholic beverages in original containers</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.S.A. 33:1-11, 2c</u>	<u>SBD2</u>	<u>Sale of "chilled" malt alcoholic beverages</u>	<u>5</u>	<u>10</u>	<u>20</u>	

<u>N.J.S.A. 33:1-12</u>	<u>SCOPE</u>	<u>Sale or consumption beyond the scope of the license</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.S.A. 33:1-52/ N.J.A.C. 13:2-16.11(a) and/or 16.11(c)</u>	<u>SOL1</u>	<u>Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or to retail licensee with family member involved</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-16.12</u>	<u>SOL2</u>	<u>Solicitor employed by or connected in business capacity to a retail licensee</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-16.11(b)</u>	<u>SOL3</u>	<u>Solicitor offered a cash rebate, free goods or other incentive not contained on Current Price List</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-31(e)</u>	<u>STAMP</u>	<u>Federal Tax Stamp not available</u>	<u>1</u>	<u>3</u>	<u>5</u>	
<u>N.J.A.C. 13:2-23.21</u>	<u>STOR1</u>	<u>Storage of alcoholic beverages off the licensed premises without a permit or not in a licensed warehouse</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.21</u>	<u>STOR2</u>	<u>Storage of alcoholic beverages for a time period exceeding 72 hours following receipt of a delivery for a fellow co-op member</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.A.C. 13:2-23.27</u>	<u>SUSPV</u>	<u>Prohibited activity during license suspension</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.A.C. 13:2-23.22(a)</u>	<u>TAP</u>	<u>Tap connected to a container of malt alcoholic beverages not truly indicating name or brand</u>	<u>5</u>	<u>10</u>	<u>20</u>	
<u>N.J.S.A. 33:1-31(d)</u>	<u>TAX</u>	<u>Knowing failure to pay taxes described in N.J.S.A. 33:1-31</u>	<u>15</u>	<u>30</u>	<u>60</u>	
<u>N.J.A.C. 13:2-23.1(b)</u>	<u>TOX1</u>	<u>Sale of alcoholic beverages to an intoxicated patron</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-23.20</u>	<u>TOX2</u>	<u>Licensee or employee working at licensed premises while intoxicated</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
<u>N.J.A.C. 13:2-20.4(a)</u>	<u>TRANS</u>	<u>Transporting alcoholic beverages without proper documents</u>	<u>10</u>	<u>20</u>	<u>30</u>	
<u>N.J.S.A. 33:1-25</u>	<u>UI1</u>	<u>Undisclosed person, not otherwise disqualified, with a beneficial interest in a liquor license or licensed business</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>
<u>N.J.S.A. 33:1-26</u>	<u>UI2</u>	<u>Person under the age of 18 or criminally disqualified person with an undisclosed beneficial interest a liquor license or licensed business</u>	<u>Revocation</u>			
<u>N.J.S.A. 33:1-12.31</u>	<u>UI3</u>	<u>Acquiring a beneficial interest in more than two retail liquor licenses</u>	<u>Revocation</u>			
<u>N.J.S.A. 33:1-43/ N.J.A.C. 13:2-16.12</u>	<u>UI4</u>	<u>Solicitor with an undisclosed business relationship to or a beneficial interest in a retail license</u>	<u>Revocation</u>			
<u>N.J.A.C. 13:2-23.31</u>	<u>UI5</u>	<u>Police officer, peace officer or any other person whose power or duties include the enforcement of the Alcoholic Beverage Law or regulations with an undisclosed beneficial interest in a liquor license</u>	<u>Revocation</u>			
<u>N.J.S.A. 33:1-43</u>	<u>UI6</u>	<u>A brewery, winery, distillery, rectifying and blending plant or wholesale licensee with an undisclosed interest in a retail liquor license</u>	<u>Revocation</u>			
<u>N.J.A.C. 13:2-16.11 and 23.28</u>	<u>WHOL</u>	<u>Wholesaler responsible for solicitor violating N.J.A.C. 13:2-16.11(a), (b) and/or (c)</u>	<u>30</u>	<u>60</u>	<u>90</u>	<u>Revocation</u>

PERSON

WHO IS A "PERSON" UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS?

When used in any of the Alcoholic Beverage Control Laws or regulations, as well as in the Handbook, the term "person" generally refers to an individual, partnership, corporation or any group or association of individuals or the manager, agent, security officer or employee of any of them. (N.J.S.A. 33:1-1.)

PERSON-TO-PERSON TRANSFER – See "*License Transfer*" and "*Buying a License*"

PLACE-TO-PLACE TRANSFER – See "*License Transfer*"

POCKET LICENSE

WHAT IS A "POCKET LICENSE?"

A "Pocket License" is a type of inactive license which does not have a site or licensed premises. Therefore, it is said to be "in the licensee's pocket" until a place-to-place transfer is approved by the issuing authority to a licensed premises. (See "Inactive License.")

POLICE OFFICER EMPLOYMENT

CAN A REGULAR POLICE OFFICER BE EMPLOYED ON A LICENSED PREMISES WHEN OFF DUTY?

The Alcoholic Beverage Control Law requires that local police shall use "all due diligence to detect violations" of that law (N.J.S.A. 33:1-71). Given this mandate, employment of local police officers on a licensed premises could easily present the appearance of (if not an actual) conflict of interest. Consequently, a licensee may not employ a regular police officer who is a member of the local police or who has regular duties and responsibilities in the municipality where the license is located.

A licensee, however, may request permission to employ a regular police officer who does not have duties and responsibilities in that community. Before doing so, the police officer must obtain the written consent of his or her police chief and must also give notice of the intended off-duty employment to the chief of police in the municipality where the licensed premises is located. The licensee, in requesting permission of the A.B.C. Director to employ such police officer, should write or send the Division copies of the consent of and notice to the chiefs of police and identify the period and type of employment.

If the police officer will sell, serve, possess or deliver any alcoholic beverages during the course of the employment by the licensee, such officer cannot be armed or wear any uniform or badge identifying him or her as a police officer. Additionally, no police officer may be employed by a licensee in excess of 24 hours a week.

When a licensee has circumstances that require the use of trained police officers to provide crowd or traffic control or security for money, the municipality may assign regular police officers to the licensed premises

for these purposes. The municipality may either bill the licensee for such cost or may require the licensee to prepay for the services. In no event, however, may the licensee directly hire or pay these police officers. (See N.J.A.C. 13:2-23.31; N.J.S.A. 33:1-26.1.)

It must be emphasized that the Division of A.B.C. regulates licensees, not police officers. If a police officer has a question about his or her employment regarding a licensed premises, the officer should direct his/her questions to the New Jersey State Division of Criminal Justice, Police Services Bureau.

PRECEDENT PENALTIES

WHAT ARE THE “PRECEDENT PENALTIES” FOR A.B.C. VIOLATIONS?

The Division published a penalty schedule listing the presumptive penalties for the most common violations of the A.B.C. laws and regulations. Those penalties are the starting point for a first offense of that type. They can be increased or decreased based upon aggravating or mitigating circumstances. A second, similar offense within two years resulting in the doubling of the penalty; a third, similar offense resulting in the tripling of the penalty. Generally a fourth (and in some cases a third) similar violation results in the presumptive penalty of revocation. It should further be noted that some violations are so serious that revocation is presumed for a first violation. (See “Penalty Schedule.”)

PRE-MIXED DRINKS

MAY A LICENSEE PRE-MIX DRINKS TO BE SERVED TO THE GENERAL PUBLIC? IF SO, WHAT ARE THE REQUIREMENTS?

Yes. A licensee may offer pre-mixed drinks (drinks that are made in quantity before service), however, it must meet the following requirements:

- (1) All pre-mixed drinks not consumed during the day they are mixed must be destroyed prior to the commencement of the licensee’s next business day.
- (2) The licensee must affix a label to any open or sealed container of pre-mixed drinks describing its contents. The minimum label requirements are:
 - (a) identification of the type(s) and brand(s) of alcoholic beverages,
 - (b) identification of all other ingredients either by generic or brand names and
 - (c) an approximation of percentage by volume of alcohol that each drink will contain at the time of service to a consumer.

- (3) In the event that pre-mixed drinks are dispensed through an automatic system including fountains, electronic systems or pressurized systems, the label requirements as described in (2) above or its equivalent must also be conspicuously displayed where the consumer ordering the pre-mixed drink can see it.
- (4) Under no circumstance may a licensee use as a container for the pre-mixed drink a previously filled or emptied originally labeled alcoholic beverage container. (See A.B.C. Bulletin 2454, Item 3; see also “Automatic Dispensers.”)

PRIZES – See “Contest Prizes” and “Contests”

PROMOTIONS

WHAT PROMOTIONS MAY A RETAIL LICENSEE PARTICIPATE IN?

N.J.A.C. 13:2-23.16 permits a licensee to engage in promotional activities. However, a licensee cannot offer a free drink, gift, prize or anything of value conditioned upon the purchase of an alcoholic beverage. A licensee can offer a branded or unique glassware or souvenir in connection with a single purchase, consumer mail-in rebates (in accordance with N.J.A.C. 13:2-24.11), permitted manufacturer’s sweepstakes and contests and discounts offered on the purchase of alcoholic beverages for off-premises consumption to consumers by retailers. A licensee can also offer a set price for a meal which includes a single alcoholic beverage drink and a single bottle of wine or champagne to guests staying at a licensed hotel or motel as part of a specialty package.

A licensee may not offer more than one free drink per patron or one free drink coupon ticket in a twenty-four hour period. A licensee cannot offer an unlimited availability of alcoholic beverages for a set price except for private parties that are not sponsored by the licensee (such as weddings, birthday parties), events held by social affair permittees or New Year’s Eve parties sponsored by a licensee whereupon a set price for attendance includes an open bar.

It is prohibited to require or allow a consumer to pre-purchase more than one drink at a time by tickets, tokens or admission fees as a condition for entrance into a licensed premises or as a requirement for service or entertainment. A price, gift or award cannot be offered which consists of alcoholic beverages, coupons or gift certificates redeemable for alcoholic beverages (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).

All prizes and promotions shall not be given to, nor shall any contest be open to, any individual under the legal age to purchase or consume alcoholic beverages, any supplier, wholesaler, distributor, retailer, affiliates, employees or members of their immediate family.

PROOF – See “Measurement of Alcoholic Content”

PROOF GALLON

WHAT IS A “PROOF GALLON?”

“Proof Gallon” is a term used to describe the alcoholic strength of distilled spirits. The term “Proof Gallon” is strictly one gallon of distilled spirits at 100 proof, which is therefore half alcohol. The term can also be used to describe the alcohol equivalence, or the ratio of volume to percentage of alcohol. Thus, two gallons of distilled spirits of 50 proof is also one proof gallon. (See “Measurement of Alcoholic Content” and “Wine Gallon.”)

PURCHASE FROM UNAUTHORIZED SOURCE

FROM WHOM CAN A RETAIL LICENSEE PURCHASE ALCOHOLIC BEVERAGES?

A retail licensee is permitted to purchase alcoholic beverages for resale only from New Jersey licensed wholesalers or suppliers. If such New Jersey distributor lists an alcoholic beverage product in its C.P.L. or offers it for sale to retail licensees, the retailer may presume it is properly authorized to be sold and the retailer may then purchase it and offer it for sale to the consumer unless the retail licensee has actual knowledge to the contrary.

Generally, a retail licensee may not purchase alcoholic beverage products from any wholesaler or any other person who is not properly licensed by the New Jersey Division of A.B.C., nor may any such products be purchased from another retail licensee. (N.J.S.A. 33:1-2; N.J.A.C. 13:2-33.1.) (See “Brand Registration” and “Retailer to Retailer Sale.”)

RAFFLE BY LICENSEE – See “Gambling”

RAFFLE TICKETS

CAN A LICENSEE ACTIVELY PROMOTE AND SELL CHANCES FOR A RAFFLE BEING RUN BY A BONA FIDE, NON-PROFIT OR CHARITABLE ORGANIZATION?

Yes. Raffle tickets for a raffle properly licensed by the Legalized Games of Chance Commission, N.J.S.A. 5:8-50, may be sold on a licensed premises by a patron or by a licensee provided that the licensee is not compensated for selling or permitting the sale of the tickets. (See “Gambling.”)

REBATES

ARE MANUFACTURERS’ REBATES PERMITTED BY A RETAILER ADVERTISING THE REDUCTION IN COST?

The rebate regulation allows manufacturers to offer rebates on purchases. N.J.A.C. 13:2-24.11. Retailers may also advertise a reduction in the cost of an alcoholic beverage product based on a manufacturer’s rebate provided the retailer has the rebates to distribute and if the retailer conspicuously advertises that the reduction in cost is because of the manufacturer’s rebate. (See “Coupons.”)

RECORDS – PERMIT FOR OFF-PREMISE STORAGE OF BUSINESS RECORDS

I DON’T HAVE THE SPACE OR THE FACILITIES TO MAINTAIN MY BUSINESS RECORDS ON THE LICENSED PREMISE. IS THERE A PROCEDURE THAT WOULD ALLOW ME TO MAINTAIN THE

RECORDS AT A LOCATION OTHER THAN THE LICENSED PREMISE?

A.B.C. regulations require that all business records be maintained on the licensed premise and be available for inspection by either A.B.C. personnel or the local police (N.J.A.C. 13:2-23.32). Failure to maintain the records on the licensed premise may result in the suspension or revocation of the license. However, the A.B.C. recognizes that there are business circumstances where maintaining the records in this manner is impracticable and not cost effective. A.B.C. regulation N.J.A.C. 13:2-29.4 allows a licensee to petition the Director to relax the records rule. The Director may, in the sound exercise of his or her discretion, issue a permit for the off-premise storage of business records listed in N.J.A.C. 13:2-23.32(a)(5), (b) and (c) that will permit the storage of these records at a specifically identified location. When granted by the A.B.C., the licensee is issued a permit that must be affixed to the publicly displayed alcoholic beverage license.

Should the A.B.C. or the local police department want to see all or a portion of the licensee's records, the licensee shall produce the records within seven days of receiving the request. Production within this timeframe will be considered a timely access to the records and will not subject the licensee to penalty for failure to produce the records.

The permit is valid for one year, running concurrently with the alcoholic beverage license (July 1st through June 30th). The application for the permit is available on the A.B.C. Internet web site at: <http://www.nj.gov/oag/abc/downloads/Off-Premise-Storage-Form.pdf>.

REHABILITATION EMPLOYMENT PERMIT/DISQUALIFICATION REMOVAL

CAN A LICENSE BE HELD BY OR CAN A LICENSEE EMPLOY SOMEONE WHO HAS BEEN CONVICTED OF A CRIME?

A person who has been convicted of a crime containing an element of moral turpitude (which, by definition, excludes a disorderly persons offense) cannot have an interest in an alcoholic beverage license nor can they be employed by a licensee unless:

- (1) The Director has issued an Order Removing Criminal Disqualification or
- (2) A *Rehabilitation Employment Permit*, or a *Temporary Work Letter* has been issued by the Division of A.B.C. to authorize such employment.

CRIME OF MORAL TURPITUDE

The term "moral turpitude" denotes a serious crime from the viewpoint of society in general and usually contains elements of dishonesty, fraud or depravity. Such crimes are generally but not exclusively contained in the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and are subject to indictment and punishment by confinement for over one year in State prison. Conviction of a disorderly persons offense, an arrest without conviction or placement in a pretrial intervention (P.T.I.) program, does not cause a person to be statutorily disqualified from holding an interest in a license or being employed by a licensee,

provided such person is otherwise qualified.

ORDER REMOVING CRIMINAL DISQUALIFICATION

In order for the disqualification to be removed, a convicted person must wait at least five years after the date of the conviction or release from confinement (whichever is later) and then must file an application along with the appropriate fee with the Division of A.B.C. The petition must establish that the person has conducted himself/herself in a law-abiding manner during the period after his/her conviction and that his or her association with the alcoholic beverage industry of the State would not be contrary to the best interests of the public. If these facts are verified after investigation by the A.B.C. Investigations Bureau, the A.B.C. Director may issue an *Order Removing Criminal Disqualification*. Once that disqualification is removed, there is no prohibition from holding a license or being employed by a licensee, if otherwise qualified. If it is later determined that the removal was based upon false or fraudulent statements by the petitioner, such disqualification removal will be revoked and the petitioner may be subject to criminal sanctions. (N.J.S.A. 33:1-31.2; N.J.A.C. 13:2-15.1 to 15.4.)

A person who receives an *Order Removing Criminal Disqualification* must continue to disclose the underlying crimes that are the subject of the order in any license application as well as the A.B.C. Agency Docket Number assigned to the order. In addition, when completing the A.B.C. Employee List (E-141-A), the person would answer “Yes” to “Convicted of a Crime – Yes/No” and list the Agency Docket Number assigned to the order in the column “A.B.C. Employment Permit No. (If Held).”

REHABILITATION EMPLOYMENT PERMIT

For a convicted person to be employed by a licensee, such person must first apply to the Division of A.B.C. for a *Rehabilitation Employment Permit* by filing an application together with the appropriate fee. Generally, there is no minimum waiting period after the date of conviction to file such application, except that no application will be accepted if the person is still in jail, even if in a work release program. The applicant may also file an application to receive a “temporary work letter” to authorize employment upon a licensed premises pending a determination on their permit application. Whether or not such temporary work letter is issued is up to the sole discretion of the Director and, if issued, can be made subject to conditions and can be revoked or canceled.

After completion of an investigation by the A.B.C. Investigations Bureau, the A.B.C. Director will review the matter. If the Director is satisfied that permitting the applicant to be employed would not be contrary to the best interests of the public, the Division of A.B.C. will issue a *Rehabilitation Employment Permit* which will be effective until December 21st of the year in which issued. The permit may have conditions which limit the license location and/or type of work authorized. If employment is to continue after the expiration of the permit, the permittee must apply to the Division of A.B.C. for an annual renewal. After a five-year (minimum) period (from the date of conviction or release from confinement), an application can be made to remove the disqualification for issuance of an *Order Removing Criminal Disqualification*. Once removal is granted, no further *Rehabilitation Employment Permit* renewals are necessary. (N.J.A.C. 13:2-14.)

A person who receives a *Rehabilitation Employment Permit* must continue to disclose the underlying crimes

that are the subject of the permit on the A.B.C. *Employee List* (E-141-A), as well as the A.B.C. Agency Docket Number assigned to the permit. When completing the A.B.C. *Employee List* (E-141-A), the person would answer “Yes” to “Convicted of a Crime – Yes/No” and list the Agency Docket Number assigned to the permit in the column “A.B.C. Employment Permit No. (If Held).”

A person holding a *Rehabilitation Employment Permit* cannot own a license.

DUTIES OF LICENSEES

When employing someone, a licensee must inquire as to whether that person has been convicted of a crime.

If so, the licensee should require the person to present a removal of disqualification, valid Rehabilitation Employment Permit or determination of eligibility prior to the start of the employment. While a disqualification removal or Rehabilitation Employment Permit application is being processed, the Division of A.B.C. can issue a “temporary work letter” which the licensee must keep on file. To knowingly allow a criminally disqualified person to work upon the premises without authorization from this Division subjects the license to a presumptive suspension for at least 30 days. (See “Eligibility, Determination of” and “Fee Schedule” at the end of this Handbook.)

REQUESTING INTERIM RELIEF

WHAT IS INTERIM RELIEF?

(Regarding interim relief, see N.J.S.A. 33:1-22, 31 and N.J.A.C. 13:2-17.8 to 17.10.)

If you are requesting Interim Relief, the ABC requires a signed copy of the Resolution from the issuing authority (city/town). If you are unable to provide the ABC with a copy of the Resolution, someone who has personal knowledge of the facts must submit an affidavit that the issuing authority’s action against the license was as follows: (then explain in detail).

WHAT ARE THE TIME LIMITS FOR REQUESTING INTERIM RELIEF?

(See N.J.S.A. 33:1-22, 31 and N.J.A.C. 13:2-17.3.)

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 filed 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 filed 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. **Non-action on the part of the issuing authority (city/town) may appealed as follows:**

- (1) Application for **Issuance**: 45 days from the date of a duly filed application for issuance of a new license, unless applicant consents to an extension. N.J.A.C. 13:2-2.10(a).

- (2) Application for **Renewal**: 90 days after expiration of term. N.J.A.C. 13:2-2.10(b).
- (3) Application for **Transfer**: 60 days of the date of filing the application. N.J.A.C. 13:2-7.7(d).

NOTE: For the time period to begin, the application filed must be fully complete, all fees must be paid and all required disclosures must have been made by the applicant. Appeals should be sent to:

Jose Rodriguez, Deputy Attorney General
New Jersey Division of Alcoholic Beverage Control
140 East Front Street, 5TH Floor
*P.O. Box 087
Trenton, New Jersey 08625-0087

***NOTE: IF SENDING VIA OVERNIGHT MAIL SERVICE, DO NOT INCLUDE P.O. BOX NUMBER!**

RESTAURANT – See “Concessionaire’s Agreement”

Also, make certain that you have indicated you are conducting this type of business on page 4 of the license application.

RETAIL LICENSE APPLICATION

WHAT IS THE “RETAIL LICENSE APPLICATION?”

The completed license application form constitutes the official license file and is the document used to establish the record ownership of the license, to identify the licensed premises and to set forth all other information necessary to the issuance of the license and the operation of the licensed business. The license application form is the means by which all licenses, both Division of A.B.C. and municipally-issued, file for the following transactions: person-to-person transfer; place-to-place transfer (including expansion or reduction of premises); dissolution of partnership; change of corporate structure; extension to executor, administrator, trustee or other court-appointed fiduciary and new license, Special Concessionaire Permit or Special Permit for a Golf Facility. In addition, it is used for annual renewal of the license, Special Concessionaire Permit or Special Permit for a Golf Facility unless a short form renewal application is issued by the Division of A.B.C.

The individual pages of the license application form are also used to amend information when completion of the full application is not required. A copy of the last full twelve-page application filed and any amendments thereto must be kept at all times on the licensed premises and be available for inspection by an authorized official. (N.J.S.A. 33:1-25.) (See “Documents and Records.”)

RETAIL SAMPLES

ARE RETAIL LICENSEES PERMITTED TO GIVE SAMPLES OF ALCOHOLIC BEVERAGES TO THEIR CUSTOMERS?

No. Generally, any giving of alcoholic beverages is a “sale” under the definition in the Alcoholic Beverage Control Law. Therefore, giving a sample to a customer, whether by drink or in a sealed container, would be a sale below cost, which is prohibited by regulation. (N.J.A.C. 13:2-24.8.) Complimentary drinks and samples, however, are allowed under certain circumstances. (See “Complimentary Drinks” and “Tasting Events and Samplings.”)

RETAILER TO RETAILER SALE

CAN A RETAIL LICENSEE SELL TO OR PURCHASE ALCOHOLIC BEVERAGES FROM ANOTHER RETAIL LICENSEE?

No. Generally, a retail licensee is not permitted to sell alcoholic beverages to or purchase alcoholic beverages from another retail licensee. (N.J.A.C. 13:2-23.12.) (See “Borrowing Alcoholic Beverages.” Also see “Close-out Sales.”)

RETIREMENT OF CONSUMPTION LICENSES

WHAT IS A “LICENSE RETIREMENT PROGRAM,” AND DOES IT APPLY TO ALL LICENSES?

The municipal issuing authority may, by ordinance, establish a license retirement program but only for retail consumption licenses and only in municipalities where the number of existing retail consumption licenses exceeds one for every 2,000 of population. Under this program, the municipality can contract with existing licensees and pay them up to \$30,000.00 to retire or return their license to the municipality. This license cannot be reissued to any applicant and the program cannot be used when the number of licenses reaches one for every 3,000 in population. The program is funded by imposing a \$200.00 surcharge over and above the annual licensing fee. The actual payment to the retiring licensee is spread over several years depending on the amount of money in the fund.

An interested licensee should contact the municipal clerk to find out if such a program exists in its town and the terms and procedures of the program. It should be noted, however, that this program *only* applies to Plenary Retail Consumption Licenses and no other retail license. (N.J.S.A. 40:48-2.40 through 2.43.)

RUM COOLERS

ARE “RUM COOLERS” THE SAME AS WINE COOLERS?

No. Rum coolers, while relatively low in proof of alcohol, nevertheless are made from distilled spirits, while wine coolers are made from wine. As a result, in most municipalities, wine coolers can be sold for off premises consumption before 9:00 a.m. and after 10:00 p.m. (which are the hours that package goods of distilled spirits are prohibited by State regulation) while rum coolers can only be sold between 9:00 a.m. and 10:00 p.m. (See “Closing Time” and “Package Goods Sales by Retail Consumption Licensees.”)

SACRAMENTAL WINE

CAN A RETAIL LICENSEE SELL WINE DIRECTLY TO A CHURCH OR SYNAGOGUE FOR CEREMONIAL PURPOSES?

Yes, but the sale price must not be below cost. Additionally, no church or synagogue can then re-sell such wine to its parishioners since same would be a sale of alcoholic beverages without a license. (See “Cost” and “Sales Tax.”)

SALES TAX

WHEN IS A RETAIL LICENSEE REQUIRED TO COLLECT SALES TAX?

As of July 1, 1990, all retail sales of alcoholic beverages are subject to New Jersey sales and use tax. This includes package goods as well as alcoholic beverages sold for on-premises consumption. The tax is on all types of alcoholic beverages. The tax is generally charged on all retail purchases. However, some parties may be exempt (non-profit organizations, *i.e.*, churches). In those cases, certain permits must be presented and recorded. For the correct procedure, the licensee should contact the Division of Taxation.

HOW MUST THE SALES TAX BE LISTED?

Generally, the sales tax must be separately stated on all bills, receipts or sales slips issued to customers. If bills or sales slips are not issued to customers, the sales tax must be included in the unit price of the alcoholic beverages. (“Unit Price” is the total amount of the item, including the sales tax, which is either rung up on the cash register or recorded in some other system of accounting for sales.) If sales tax is included in the unit price of the alcoholic beverages, a sign must be displayed in the place of business that states, “*The price of all alcoholic beverages includes the appropriate New Jersey sales and use tax.*”

All sales tax must be remitted to the New Jersey Division of Taxation either quarterly or monthly depending on the amount of tax collected.

WHAT DOCUMENTS DO YOU NEED TO COLLECT SALES TAX?

Since all licensees must collect and remit sales tax, the law requires that the licensees must register with the Division of Taxation as a collecting entity and receive a Sales Tax Certificate of Authority number. Failure to register and receive a Sales Tax Certificate of Authority number is a violation of the Division regulation which could lead to suspension of the license. All questions should be directed to the Division of Taxation. (See A.B.C. Bulletin 2457, Item 5; see also “Documents and Records.”)

SAMPLES FROM WHOLESALERS

CAN A WHOLESALER PROVIDE SAMPLES TO A RETAIL LICENSEE?

Yes, a wholesaler, through its solicitors, may provide to a retail licensee samples of alcoholic beverages sold

by the wholesaler. However, the wholesaler is required to obtain from the Division of A.B.C. an Omnibus Permit or a separate Sampling Permit to provide samples. The samples will usually be given by a licensed solicitor employed by the wholesaler. The solicitor, in transporting the product, must have the correct paperwork identifying the products as samples. The samples given to the retail licensee or his employee may not be resold. The wholesaler or solicitor is also required to maintain a record of the persons and licensees to whom samples are given. A retailer might be asked to sign or acknowledge receipt of such samples. (See A.B.C. Bulletin 2441, Item 5.) (See “Tasting Events and Samplings.”)

SEARCH WARRANTS – See “A.B.C. Investigations Bureau”

SEIZURE OF LICENSES

WHO CAN SEIZE A LICENSE?

Both the U.S. Internal Revenue Service and the N.J. Division of Taxation are authorized to seize alcoholic beverage licenses for failure to pay outstanding tax liabilities. If seized, the licensee may continue in business by obtaining a copy of the license certificate from the issuing authority with it being endorsed by the municipal clerk/A.B.C. Secretary as follows:

“The original certificate has been seized on _____ by the (Internal Revenue Service) (NJ Division of Taxation).

/s/ _____
(Municipal Clerk/A.B.C. Secretary)”

The license cannot be transferred by the licensee while the seizure continues.

SEVEN DAY NOTICE TO PRODUCE RECORDS

MY BUSINESS WAS INSPECTED BY THE A.B.C. OR LOCAL POLICE. DURING THE INSPECTION, THE OFFICERS REQUESTED DOCUMENTS OR OTHER PHYSICAL ITEMS THAT I COULD NOT IMMEDIATELY PRODUCE. AS A RESULT, THEY ISSUED A “SEVEN DAY NOTICE” REQUIRING ME TO PRODUCE THE RECORDS OR ITEMS. WHAT MUST I DO?

The licensee is required to contact the requesting agency within seven days of receipt of the notice and arrange for the production of the requested records or items. Failure to produce the records or items may result in the suspension or revocation of the alcoholic beverage license.

SILENT PARTNER – See “Undisclosed Interest”

SOCIAL AFFAIR PERMIT

WHAT IS A “SOCIAL AFFAIR PERMIT,” AND WHEN IS ONE REQUIRED?

A Social Affair Permit allows an organization operating solely for civic, religious, educational, charitable, fraternal, social or recreational purposes, and not for private gain, to apply for a Special Permit to serve

alcoholic beverages at a fund-raising event. **NO MORE THAN TWELVE SUCH DAILY PERMITS WILL BE ISSUED TO ANY ONE ORGANIZATION IN A CALENDAR YEAR, AND NO MORE THAN 25 PERMITS CAN BE ISSUED FOR ANY ONE PREMISES OR LOCATION IN A CALENDAR YEAR.** (N.J.S.A. 33:1-74; N.J.A.C. 13:2-5.1.)

The terms of the Social Affair Permit allows the permittee to purchase the alcoholic beverages to be served at the function from either a wholesaler or from a retail licensee who can sell package goods. Other terms, including hours of sale, responsibilities, transportation, storage and return of the alcoholic beverages are specifically identified within the language of the permit itself.

In order for a Club Licensee to conduct affairs that are open to non-members or the general public, the Club can be issued a Social Affair Permit and, in fact, must obtain one if alcoholic beverages are to be sold at the affair. In such case, however, the Club Licensee may draw the alcoholic beverages from its regular inventory. (See “Club License” and “Fee Schedule” at the end of this Handbook.)

SOLICITOR OR SALESMAN – See “Advertising”

SPECIAL ANNUAL CONCESSIONAIRE PERMIT

WHAT IS A “SPECIAL ANNUAL CONCESSIONAIRE PERMIT,” AND WHEN IS ONE REQUIRED?

The sale of alcoholic beverages in any public building belonging to, or under the control of the State or any political subdivision except the National Guard, requires the issuance of a “Special Concessionaire Permit” by the A.B.C. Director. This annual permit is issued to a private vendor who has a contract with the unit of government to provide services to the public. The permit, for example, is issued to a vendor to provide alcoholic beverages for consumption on premises such as the Meadowlands, state college pubs, municipally-owned golf courses, marinas or similar facilities. (N.J.S.A. 33:1-42; N.J.A.C. 13:2-5.2.)

SPORTS POOL – See “Gambling”

SPORTS TEAMS SPONSORSHIP – See “Athletic Team Sponsors”

STATE BEVERAGE DISTRIBUTOR’S LICENSE

WHAT IS A “STATE BEVERAGE DISTRIBUTOR’S (S.B.D.) LICENSE?”

A State Beverage Distributor’s License is a “Class B” wholesale license which permits the sale of un-chilled beer and other malt alcoholic beverage products in quantities of at least 144 fluid ounces (equal to two six-packs) and chilled kegs of draught beer in specified sizes.

The S.B.D. licensee may operate as a wholesaler and sell to retailers. At the same time, or without wholesaling, the S.B.D. licensee can also sell to consumers at retail. Nothing else, however, other than the malt alcoholic beverage products and non-alcoholic beverages, may be sold on the licensed premises.

As a “Class B” license, the S.B.D. License is issued by the Division of A.B.C. It can be located anywhere in the State. No more than 72 S.B.D. licenses can be issued. These licenses are also subject to petitioning the Director for renewal if they have been inactive for two full license terms just as an inactive retail license must do. (N.J.S.A. 33:1-11.6.) (See “Inactive License.”)

STOCKHOLDER CHANGE

WHAT MUST A CORPORATE RETAIL LICENSEE DO WHEN THERE IS A CHANGE IN THE PERSONS WHO OWN THE CORPORATION’S STOCK?

Any change that involves one percent or more of the stock of a corporation that holds a retail license must be reported to the issuing authority within 10 days after the stock change takes place. If the change affects less than one-third of the stock of the corporation, the licensee need only amend the application by filing an amended page 11 and also 7 and 8, if applicable. If the change affects one-third or more of the stock, a full 12-page application is required. Changes in partnerships and other types of legal entities are treated in the same manner as a stockholder change of a corporate license. Publication of a legal notice advising of the change is required if the new holder of the stock does not already hold one percent or more of the stock at the time of transfer. The issuing authority is not required to approve a stockholder change by resolution and no approval prior to the change in stockholders is needed. No fee is required. (N.J.A.C. 13:2-2.14 through 2.16.)

All new shareholders holding one percent or more corporate stock must be fully qualified to hold an alcoholic beverage license, and they will be investigated by the issuing authority. When the stock of a corporate licensee is owned in whole or in part by other corporations, information on each corporation with an interest must be submitted on pages 7, 8 and 11.

When a full license application is filed indicating a change in one-third or more of the corporate stock, the Division of A.B.C. will alter the license number to show an increase in the 4th set of digits, which shows the generation number of the license. (See “Retail License Application” and “License Number.”)

STORAGE OF ALCOHOLIC BEVERAGES

MAY A RETAIL LICENSEE STORE ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES?

Generally, alcoholic beverages can only be stored in an area that is included in the licensed premises or in a licensed public warehouse. In case of a temporary need to store alcoholic beverages elsewhere, a licensee may apply to the Division of A.B.C. for a special permit to store off the licensed premises.

A member of a cooperative is authorized to accept the delivery of the cooperative’s purchase order and to keep same on his/her premises for a period not to exceed 72 hours following the delivery so that fellow members may pick up their portion of the order. (N.J.A.C. 13:2-23.21.)

If a retail licensee is required to place alcoholic beverages into inactive or “dead” storage, usually as the result of a fire, flood, eviction or the like, a permit may be issued for this purpose. Application is made to

the Division of A.B.C. by letter explaining the circumstances. The permit will only be issued through the following June 30th. (See “Fee Schedule” at the end of this Handbook.)

SUBSTITUTING BEVERAGES

MAY A LICENSEE SUBSTITUTE ONE BRAND OF ALCOHOLIC BEVERAGES WHEN ANOTHER HAS BEEN ORDERED BY A CUSTOMER?

No alcoholic beverage or non-alcoholic beverage other than what has been ordered may be substituted by a licensee or employee. If an ordered brand is not available, the patron must be so informed and the order re-taken. (N.J.A.C. 13:2-23.19.)

MAY A LICENSEE REFUSE TO SELL OR SERVE ALCOHOLIC BEVERAGES TO A PERSON IT BELIEVES IS ACTUALLY OR APPARENTLY INTOXICATED AND AT THE SAME TIME OFFER AN ALTERNATIVE NON-ALCOHOLIC BEVERAGE SUCH AS COFFEE OR SODA?

The licensee not only is permitted but required to refuse to serve alcoholic beverages to a patron it believes is intoxicated. A licensee may offer this patron a non-alcoholic beverage such as coffee or soda. However, a licensee cannot make this sale if the only way to do so is to represent it as an alcoholic beverage. Therefore, if an apparently intoxicated patron only wants an alcoholic beverage, the licensee should not serve him anything. (See A.B.C. Bulletin 2450, Item 4; see also “Intoxicated Patrons.”)

SUPER BOWL POOLS – See “Gambling”

SUPPLIER

WHAT IS A “SUPPLIER?”

“Supplier” is a term used in the alcoholic beverage industry to collectively refer to manufacturers or producers (brewers, vintners, distillers and rectifiers and blenders), bottlers and importers of alcoholic beverages. (See “Licenses – Manufacturing.”)

SUSPENSION – See “Penalty - Effect on Use of Premises”

TAP MARKERS

MUST EACH TAP MARKER ON A LICENSED PREMISES ACCURATELY BEAR THE BRAND WHICH IS TRULY BEING SERVED FROM THAT TAP?

Yes, tap markers must indicate the name of the brand of the alcoholic beverage product being drawn from the tap and must be in full view of the purchaser when the tap is located at a bar at which consumers are served. (N.J.A.C. 13:2-23.22(a).) (See “Automatic Dispensers.”)

TASTING EVENTS AND SAMPLINGS

MAY RETAIL LICENSEES PARTICIPATE IN TASTING EVENTS AND SAMPLINGS?

A **Tasting event** is a scheduled event hosted by a licensee or permittee, which is not open to the public and for which invitations are provided to guests 24 hours in advance. A **Sampling** is 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.

For licensees and permittees who are allowed to sell alcoholic beverages in open containers (such as consumption licensees), the parameters for conducting tasting events and samplings include:

- (1) Tasting events are not to be open to the general public but are to be limited to invitations given 24 hours in advance.
- (2) Tasting events and samplings are not to be offered to or allowed to be consumed by any person under the legal age to consume alcoholic beverages or by any intoxicated persons.
- (3) Tasting events and samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.
- (4) All tasting events and samplings must be from the inventory of the licensee.

For retail distribution licensees (package goods stores), the parameters for conducting tasting events and samplings include:

- (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 or sampling.
- (2) Seating of any kind and any bars for the purpose of samplings or tasting events on a distribution licensed premises are prohibited.
- (3) Only cheese, crackers, chips, dips and similar snack foods are permitted to be served at a tasting and only cheese and crackers are permitted to be served at a sampling.
- (4) Distribution licensees holding a tasting event must notify the Division of Alcoholic Beverage Control, in writing, at least ten days in advance of conducting a tasting event. (The notice shall describe the place, time and products to be featured at the event.)
- (5) Only 12 bottles of wine may be open and offered at each tasting event. (For purposes of this regulation, an alcoholic beverage product means each specific individual brand registered alcoholic beverage product being offered.)
- (6) Only one tasting event is permitted in a 24-hour period.

- (7) At a tasting event, each patron/customer is limited to four one-and one-half ounce samples.
- (8) Samplings on a retail distribution licensed premises are limited to the hours of 9:00 a.m and 10:00 p.m.
- (9) Patrons/customers are limited to four one-and one-half ounce samplings in any 24-hour period.
- (10) Samplings may not be offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated persons.
- (11) Samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.
- (12) Only six bottles of wine may be open at any one time on a plenary retail distribution licensed premise for the purpose of sampling.
- (13) 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.)
- (14) 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.
- (15) Once a bottle is opened for the purpose of sampling, it cannot be returned to the supplier.
- (16) No samplings of distilled spirits, beers or malt alcoholic beverages may be provided by a Plenary Retail Distribution Licensee.

Suppliers, manufacturers or wholesalers of alcoholic beverages holding an annual special permit as provided in current regulation N.J.A.C. 13:2-37.1(a)(7) may participate in consumer tasting events and samplings hosted by licensees and permittees who are allowed to sell alcoholic beverages in open containers as well as distribution licensees. As provided in this existing regulation, each solicitor or duly authorized representative participating in consumer tasting events must hold an additional **\$200.00** permit and comply with the 10-day advance reporting requirement.

TEEN NIGHTS OR 18 TO PARTY, 21 TO DRINK

CAN A LICENSEE HOLD A “TEEN NIGHT,” A TEENAGE DANCE OR AN “18 TO PARTY, 21 TO DRINK” ON LICENSED PREMISES? WHAT RESPONSIBILITIES DOES THE LICENSEE HAVE?

“TEEN NIGHT” OR TEENAGE DANCES

Teen only nights are permitted if they do not violate local ordinances. Even though alcoholic beverages are not being sold, the licensee is still under the same restrictions and has the same responsibilities that it would have if alcoholic beverages were being served. The licensee must be sure that no State laws, rules, regulations or local ordinances are being violated by anyone on the licensed premises at any time.

“18 TO PARTY, 21 TO DRINK” EVENTS

These events are permitted, provided they do not violate local ordinances. During these events, the greatest risk facing the licensee is the “pass-off” of alcoholic beverages from persons of legal age to those that are not of legal age. While not prohibited, the A.B.C. does not condone these events. Any possession or consumption of alcoholic beverages by persons under the legal age may result in the arrest of the person(s) involved and in an administrative action to suspend or revoke the license. The A.B.C. will consider the “18 to party, 21 to drink” event as an aggravating factor when determining the penalty against the license.

TEMPORARY RETAIL STORAGE – See *“Storage of Alcoholic Beverages”*

TIED AND COMBINATION SALES

WHAT IS A “TIED SALE,” AND ARE THERE ANY RESTRICTIONS?

A “tied sale” is the offering or selling of any alcoholic beverage product conditioned on the purchase of another product. For example, if a retailer offered a decanter bottle that could only be purchased by buying a 1.75 liter bottle of the same or a different alcoholic beverage, it would be a “tied sale” since the sale of the decanter is “tied” to the purchase of the 1.75 liter bottle. Such a practice is prohibited. (N.J.A.C. 13:2-24.9(a); see also N.J.A.C. 13:2-23.16.)

WHAT IS A “COMBINATION SALE,” AND ARE THERE ANY RESTRICTIONS?

A “combination sale” is the offering or selling of any alcoholic beverage together with another alcoholic beverage or with some other suitable object, at a single price for the unit. Retailers (not wholesalers) may sell any combination of alcoholic beverages, with or without other suitable objects, provided that the selling price is not below the cost of the alcoholic beverages to the retailer. Retailers may offer discounts to consumers on combinations of products for off premises consumption.

It should be carefully noted that the restrictions on “tied” and “combination” sales do not apply to the sale of a prepackaged gift item (such as a liqueur packaged with cordial glasses or two or more bottles of wine packed in a wooden gift case) if it comes from the manufacturer. (N.J.A.C. 13:2-24.9(b).)

TIED-HOUSE STATUTE

WHAT IS MEANT BY “TIED-HOUSE?”

“Tied-house” is a term used to describe a mutual interest between a producer or wholesaler of alcoholic

beverages and a retailer of alcoholic beverages. With certain very limited exceptions, no “tied-house” interest is permitted. This means that a retail licensee, unless covered by those very limited exceptions enumerated in the “tied-house” statute, may not have any interest, even in an indirect way, in any producer or wholesaler of alcoholic beverages, and such a producer or wholesaler may not have any retail interest in New Jersey. (N.J.S.A. 33:1-43; N.J.A.C. 13:2-23.25.) (See A.B.C. Bulletin 2432, Item 3.)

The “tied-house” restrictions limit what activities and services a solicitor or salesperson can undertake on a retail licensed premises or for a retail licensee. (See A.B.C. Bulletin 2437, Item 6, and A.B.C. Bulletin 2452, Item 3; see also Advertising.)

TOURNAMENTS – See “*Card Playing/Dart Games*” and “*Gambling*”

TRADE ASSOCIATION

WHAT IS A “TRADE ASSOCIATION?”

A trade association is an organization of licensees which is designated to promote their common interests. There is no requirement that licensees join or belong to a trade association, but the Division of A.B.C. encourages participation of licensees in trade associations since it simplifies and facilitates communication with licensees concerning their problems and responsibilities.

TRADE NAME

WHAT REQUIREMENTS AFFECT A RETAIL LICENSEE’S USE OF A TRADE NAME?

A “trade name” may be used by any retail licensee, whether such licensee is a corporation, partnership or sole proprietor. If a corporation, the licensed corporation must file a “certificate of registration of fictitious name” with the Secretary of State of New Jersey every five years. (N.J.S.A. 14A:2-2.1.) A partnership or sole proprietorship must file a trade name with the county clerk of the county in which the licensed premises is or will be located. (N.J.S.A. 56:1-1 and 1-2.)

The trade name must also be identified on page 2 of the license application and any change must be reported to the issuing authority upon its occurrence by amending that page of the application. (See “Retail License Application.”) Any trade name used by a licensee must not be misleading as to the nature of business being conducted (for example, a Plenary Retail Consumption Licensee (“33”) may not use the trade name, “XYZ Liquor Store,” but “XYZ Bar & Liquors” would be permitted).

If the name under which the licensed business operates is the same as the actual name of the licensed person, partnership or corporation, no fictitious name registration is necessary, nor is it required to show a trade name on the Retail License Application.

TRANSIT INSIGNIA PERMIT

WHAT PERMIT IS REQUIRED BY A RETAIL LICENSEE TO BE ABLE TO DELIVER ALCOHOLIC BEVERAGES TO A CUSTOMER?

A retail licensee's Retail Distribution License or Retail Consumption License, which is not restricted from selling package goods, allows the licensee to deliver the alcoholic beverages to a customer. (See "Home Deliveries.") Such deliveries, however, must be made in a vehicle owned or leased by and under the control of the retail licensee and must have a Transit Insignia properly affixed. The Transit Insignia is issued for a 12-month period ending August 31 of each year. The insignia is issued for a specific vehicle and may not be transferred to another vehicle. If a vehicle having a Transit Insignia is sold or disposed of, the insignia or sticker must first be removed and the Division must be notified of the sale. (N.J.A.C. 13:2-20.1 through 20.10.) (See "Fee Schedule" at the end of this Handbook.)

TRANSPORTATION OF ALCOHOLIC BEVERAGES FOR PERSONAL USE

IS THERE ANY LIMITATION ON THE AMOUNT OF ALCOHOLIC BEVERAGES A PERSON CAN TRANSPORT FOR PERSONAL USE?

There are no quantity limits on the amount of alcoholic beverages a person can transport within this State for his/her own personal use. There are still limits on the amount of alcoholic beverages a person can personally carry into the State (1/4 barrel or one case not in excess of 12 quarts of malt alcoholic beverages, one gallon of wine and two quarts of other alcoholic beverages) within one 24-hour period even if it is for their own personal use. To transport more than this, a person can obtain an Import for Personal Consumption Permit from the Division. (See "Fee Schedule" at the end of this Handbook.)

Lawful transportation of alcoholic beverages for one's personal use out of the State is dependant upon the laws of the State into which the alcoholic beverages are transported.

Transportation of any quantity of alcoholic beverages for commercial purposes without the proper license, permit or insignia is strictly prohibited. (See "Transit Insignia Permit.")

TWO-LICENSE LIMITATION

IS THERE A LIMIT TO THE NUMBER OF RETAIL LICENSES IN WHICH A PERSON MAY HAVE AN INTEREST?

Unless a person held an interest in more than two retail licenses (except plenary retail transit licenses) prior to August 3, 1962, a person may not have any interest in more than a total of two retail licenses. There are some exceptions which permit the acquiring of more than two licenses if such licenses are retail consumption licenses and are used for a hotel of at least 50 sleeping rooms, a restaurant, a bowling facility of 20 lanes or more or at an international airport. Where this exception applies, except for hotels, no package goods can be sold. (N.J.S.A. 33:1-12.31 to 12.37.) (See "Local Control" and "Package Goods Sales by Retail Consumption Licensees.")

Being a member of a club which holds a Club License or holding less than 10 percent or less of the stock of a publicly-traded corporation which owns a retail license does not constitute an interest for the purpose of this two-license limitation.

See also “Local Control” for an explanation of a municipal restriction that can be placed on the number of retail licenses that a person may hold in a community.

UNDISCLOSED INTEREST

WHAT IS AN “UNDISCLOSED INTEREST?”

The Alcoholic Beverage Control Laws require that every person who has an interest in the alcoholic beverage license must be disclosed, unless that interest amounts to less than one percent of the stock of a corporation. This disclosure is made by completing page 10A of the retail license application with each person’s name, address, date of birth and social security number, together with an identification of the nature of the interest. If a person who has an interest is not so disclosed on page 10A of the retail license application, that person holds an “undisclosed interest” in the license, and the license is thereby in violation. Persons deemed to have equitable or beneficial interests in the license must have same disclosed, even if technically they are not considered stock holding interests.

Often an undisclosed interest exists because the person who has the interest which is not disclosed is disqualified from having an interest in an alcoholic beverage license. This could be by reason of having been convicted of a crime (N.J.S.A. 33:1-25; see “Rehabilitation Employment Permit/Disqualification Removal”), already having an interest in two retail licenses (N.J.S.A. 33:1-12.31; see “Two License Limitation”), having an interest or being employed in violation of the “tied-house” statute (N.J.S.A. 33:1-43; see “Tied-House Statute”) or having had an interest in a license that was revoked within the last two years or having twice had an interest in a license that was revoked. (N.J.S.A. 33:1-31.) Where the interest in a license was not disclosed due to one of these reasons and that interest is a substantial or controlling one, absent mitigating circumstances, the license is subject to revocation. (See A.B.C Bulletin 2443, Item 6.)

It is also a violation to not disclose an interest for any other reason. Where, however, the person holding the undisclosed interest is not disqualified from holding an interest in an alcoholic beverage license, that situation will generally not result in a revocation penalty, but the license may still be subject to a substantial suspension. Each such case will be determined based on the facts and circumstances surrounding the non-disclosure.

VIDEO GAMES

WHAT VIDEO GAMES ARE PERMITTED ON A LICENSED PREMISES?

Video games which are for entertainment purposes only and whose outcome depends on skill as opposed to chance are permitted on licensed premises. Most video games which have a card, horse racing, dice, roulette, slot machine or similar format have been prohibited. Some video games have been permitted if they have been pre-approved by the Director. Approval is only given to a game which cannot be used for gambling purposes and has no means to accumulate and erase credits. The approved games generally accept only four coins or two one dollar bills at a time. These machines also have lock out coils which prohibit the machine from accepting additional coins or bills. Where a game of this nature is approved, a licensee must,

within 48 hours of the placement of a game on the premises, notify the Division of A.B.C. of the placement, giving the name of the machine, its serial number, the name and address of who placed the machine, as well as the name, address and license number of the licensee. (See A.B.C. Bulletin 2434, Item 9; 2435, Item 4; and 2437, Item 4.) Also, make certain the license application indicates on page 4 that such amusement games are on the licensed premises.

Having a non-approved video game on the premises is a violation which will subject the license to sanction for a gambling violation; individuals holding the license may be subject to criminal penalties and civil forfeiture of the video machine as well as the penalties lodged against the license by this Division. (See “Gambling” and “Penalty Schedule.”)

WINE COOLERS – See “Rum Coolers”

WINE “DOGGY BAGS”

MAY A PATRON TAKE FROM A RESTAURANT AN UNFINISHED PORTION OF A BOTTLE OF WINE IN AN ALCOHOLIC BEVERAGE VERSION OF A “DOGGY BAG?”

Yes. It is the policy of the State to encourage moderation in the consumption of alcoholic beverages. To permit a diner to take home an unfinished portion of the bottle of wine, rather than consume it all to prevent “waste” of his purchase, furthers that policy. Thus, an unfinished bottle of wine may be re-corked and the patron can take it with him. Removal of other open containers of alcoholic beverages from the licensed premises, such as a glass of wine, a mixed drink or an opened bottle or can of beer, is still prohibited.

Licensees should caution patrons using wine “doggy bags” that the wine should be placed in the trunk of the patron’s car while in transit because Motor Vehicle Law prohibits the consumption of alcoholic beverages in a car and the presence of a container with its original seal broken in a motor vehicle (buses, taxi cabs and limousines are excluded) can give rise to a presumption that the unfinished bottle was consumed in the car.

WINE GALLON

WHAT IS MEANT BY THE TERM “WINE GALLON?”

The term “Wine Gallon” is nothing more than the name given by the alcoholic beverage industry to an ordinary liquid gallon (128 fluid ounces). (See “Proof Gallon.”)

FEDERAL REGULATIONS

CLOSURE ON LIQUOR BOTTLES

WHAT TYPE OF CLOSURES ARE REQUIRED TO BE ON LIQUOR BOTTLES?

Distilled spirits products bottled after July 1, 1985, no longer bear federal paper strip stamps over the caps.

These bottles must have tamper-evident closures which are designed to require breaking in order to gain access to the contents of the bottles. Examples of these types of closures are paper seals, metal roll-on caps, cello-seals with tabs and foil capsules with zip tabs.

COMMERCIAL BRIBERY (FEDERAL)

WHAT ACTIVITIES ARE PROHIBITED BY THE COMMERCIAL BRIBERY PROVISIONS IN THE FAA ACT?

An industry member is prohibited from inducing, either directly or indirectly, a retailer to purchase that industry member's products to the exclusion of other products sold in interstate or foreign commerce. Industry members include manufacturers, importers and wholesalers of alcoholic beverage products. Inducements considered to be commercial bribery would include the offering or giving of a bonus, premium, compensation or other thing of value to any officer, employee or representative of the retailer.

CONSIGNMENT SALES (FEDERAL)

WHAT IS A "CONSIGNMENT SALE?"

"Consignment sales" are arrangements in which the retailer is under no obligation to pay for alcoholic beverage products until they are sold by that retailer.

WHAT TYPE OF ACTIVITIES ARE RETAILERS PROHIBITED TO BE INVOLVED IN CONCERNING CONSIGNMENT SALES?

Retailers are prohibited to purchase, offer to purchase or contract to purchase alcoholic beverage products on consignment, under conditional sale, with the privilege of return or on any basis other than a *bona fide* sale. Additionally, a retailer cannot be required by a supplier to purchase other products from such supplier as part of any sale.

MAY A RETAILER RETURN PRODUCTS TO A SUPPLIER FOR ANY REASON?

Under certain circumstances, retailers may return products to a supplier. These include: defective products; errors in products delivered; products which may no longer be lawfully sold (e.g., size of the bottle is no longer allowed); termination of the retailer's business or franchise; change in product (e.g., formula, proof); discontinued products and return from seasonal dealers if the products are likely to spoil during the off season. The return of overstocked or slow-moving products and the return of seasonal products (e.g., holiday decanters) are not considered allowable returns for "ordinary and unusual commercial reasons."

EXCLUSIVE OUTLET (FEDERAL)

WHAT IS PROHIBITED UNDER THE EXCLUSIVE OUTLET PROVISIONS OF THE FAA ACT?

Industry members are prohibited from requiring, by agreement or otherwise, that a retailer purchase alcoholic beverage products from such industry member to the exclusion of other products sold in interstate or foreign commerce. As used here, industry members include manufacturers, importers and wholesalers of alcoholic beverages. This provision includes purchases coerced by industry members through acts or threats of harm as well as voluntary purchase agreements.

FEDERAL ALCOHOL ADMINISTRATION ACT

WHAT TYPES OF ACTIVITIES ARE ENFORCED BY THE FEDERAL ALCOHOL ADMINISTRATION ACT (FAA ACT)?

The FAA Act enforces basic permit, trade practice, labeling and advertising requirements of the alcoholic beverage industry. Although retail dealers should be aware of all the trade practice provisions in their dealings with wholesalers, only the consignment sale provisions specifically impose restrictions on their business practices.

BRIEFLY, WHAT TOPICS ARE INCLUDED IN THE TRADE PRACTICE PROVISIONS OF THE FAA ACT?

The four types of trade practice activities enforced by the FAA Act include tied houses, exclusive outlets, commercial bribery and consignment sales.

LIQUOR BOTTLES

ARE THERE ANY FEDERAL REQUIREMENTS REGARDING EMPTY LIQUOR BOTTLES?

Liquor bottles may not be refilled. Refilling a liquor bottle or adding any substance (including water) to a liquor bottle is subject to a fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both. With certain exceptions, it is prohibited for anyone other than the retailer who emptied the contents of a liquor bottle to possess used liquor bottles. These exceptions include:

- X the assembly of used liquor bottles for delivery back to a bottler or importer;
- X the assembly of used liquor bottles for destruction;
- X the disposition or sale of unusual or distinctive bottles as collector's items or for other purposes not involving the packaging of any product for sale or
- X the assembly of used bottles for recycling the glass.

RETAIL DEALER

WHO IS CONSIDERED A "RETAIL DEALER" UNDER FEDERAL LAW?

Every person who sells, or offers for sale, distilled spirits, wine or beer to any person other than a dealer is considered a retail dealer.

WHAT FEDERAL REQUIREMENTS ARE IMPOSED ON RETAIL DEALERS?

Retailers must obtain a special tax stamp. Also, they are required to maintain records of receipt of all liquor, wine and beer showing the quantities received, from whom received and the date received. Retailers that sell liquor, wine or beer in quantities of 20 gallons or more to one person at one time are required to prepare and keep a record of such sale, showing the date, name and address of the purchaser, kind and quantity of products sold and the serial number of all full cases of liquor involved. The Federal Alcohol

Administration Act prohibits retailers from entering into consignment sale agreements with industry members.

SPECIAL OCCUPATIONAL TAX STAMP

WHAT IS A "SPECIAL TAX STAMP?"

NOTE: AS OF OCTOBER 1, 2005, CONGRESS HAS SUSPENDED THE REQUIREMENT FOR A LICENSEE TO OBTAIN A SPECIAL OCCUPATIONAL TAX STAMP.

A "special tax stamp" is the receipt for payment of the special occupational tax. It is not a federal license and does not offer any privileges to the retailer.

ARE RETAILERS LIABLE FOR THE SPECIAL TAX?

Yes. Every retail dealer must pay the special tax before commencing business *and* before July 1 of each year thereafter, at the following rates depending on the products sold:

- Distilled spirits, wine & beer
- Beer only.

HOW IS THE SPECIAL TAX PAID?

Every retailer is required to file a special tax return (TTB Form 5630.5) with payment to the federal Tax and Trade Bureau, P.O. Box 371962, Pittsburgh, Pennsylvania, 15250-7962. Payment by check or money order should be made payable to "Tax and Trade Bureau." Form 5630.5 must be filed with payment before commencing business *and* before July 1 each year thereafter.

WHAT IS REQUIRED FOR RETAIL LICENSEES WHO CHANGE THEIR LOCATION OR HAVE A CHANGE IN CONTROL OR OWNERSHIP OF THEIR BUSINESS?

Changes in the location of a business must be registered with the TTB within 30 days of the change by completing a new Form 5630.5 (marked "Amended Return") and surrendering their special tax stamp or endorsement. A special tax stamp may not be sold or transferred to a new owner of the business unless there is only a change in control to any of the following persons:

- X the widow (or widower), child, executor or other legal representative of a deceased retailer;
- X the husband or wife succeeding to the business of his or her living spouse;
- X receiver or trustee in bankruptcy, or an assignee for benefit of creditors or
- X partners remaining after the death or withdrawal of a member of the partnership.

TIED-HOUSE (FEDERAL)

WHAT IS PROHIBITED UNDER THE TIED-HOUSE PROVISIONS OF THE FAA ACT?

An industry member (manufacturer, wholesaler or importer of alcoholic beverages) is prohibited from inducing a retailer to purchase products from such industry member to the exclusion of other products sold in interstate or foreign commerce. With certain exceptions, industry members are prohibited from the following activities:

- X acquiring or holding interest in any retail license;
- X acquiring any interest in the property owned, occupied or used by a retailer;
- X furnishing, giving, renting, lending or selling to a retailer any equipment, fixtures, signs, supplies, money, services or other thing of value;
- X paying or crediting a retailer for any advertising, display or distribution service;
- X guaranteeing any loan or repayment of any financial obligation of a retailer;
- X extending credit to a retailer in excess of the usual and customary credit period and
- X requiring a retailer to take and dispose of a certain quota of products.

WHOLESALE DEALER

WHO IS CONSIDERED A "WHOLESALE DEALER" UNDER FEDERAL LAW?

Every person who sells, or offers for sale, distilled spirits, wine or beer to another dealer is considered a wholesale dealer. Wholesale dealers are required to pay the special tax, obtain a basic operating permit and adhere to certain trade practice, operational and record-keeping requirements.

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FEE SCHEDULE

PERMIT	FEE
AD INTERIM PERMIT	\$ 75.00 plus \$5.00 per day
ANNUAL PLENARY RETAIL CONSUMPTION LICENSE RENEWAL FEE	\$200.00
APPEAL	\$100.00
CATERING PERMIT	\$100.00 for each 24-hour period
CO-OP PURCHASING	\$ 15.00 per member
EXTENSION OF PREMISES	\$ 75.00 for each 24-hour period
IMPORT FOR PERSONAL CONSUMPTION	\$ 50.00
MINOR- S EMPLOYMENT PERMIT	\$ 15.00
REHABILITATION EMPLOYMENT PERMIT/ DISQUALIFICATION REMOVAL	\$125.00
SOCIAL AFFAIR PERMIT	\$100.00/\$150.00 per day
STORAGE OF ALCOHOLIC BEVERAGES PERMIT	\$25.00 plus \$2.00 per day
TRANSFER FEE – PERSON-TO-PERSON	\$200.00
TRANSFER FEE – PLACE-TO-PLACE	\$200.00
TRANSFER FEE – COMBINATION OF PERSON-TO-PERSON AND PLACE-TO-PLACE	\$200.00
TRANSIT INSIGNIA PERMIT	\$ 50.00 per vehicle

Most permit applications can be found on the Division of Alcoholic Beverage Control's Website at: www.nj.gov/lps/abc, or contact the Division at 609-984-2830, and an application will be sent to you.