

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

)	AO-2024-03
)	
IN THE MATTER OF 12.39 RELIEF)	
FOR INACTIVE MUNICIPALLY)	ADMINISTRATIVE ORDER
ISSUED CLASS C RETAIL LICENSES)	GRANTING BLANKET 12.39
FOR THE 2024-2025 LICENSE TERM)	RELIEF TO INACTIVE
)	MUNICIPALLY ISSUED CLASS C
)	RETAIL LICENSEES AND
)	ESTABLISHING QUARTILES
)	UNDER P.L. 2023, c.290

BY THE INTERIM DIRECTOR:

The Alcoholic Beverage Control Act (“ABC Act”) provides the authority to a governing board or body of a municipality (“municipal issuing authority”) to issue and renew Class C retail licenses as set forth in N.J.S.A. 33:1-12 within its respective borders. See also N.J.S.A. 33:1-19; N.J.S.A. 33:1-24; N.J.S.A. 33:1-12.13. These licenses are in effect for a one-year term, beginning on July 1 of each year. N.J.S.A. 33:1-26. A license that has been inactive (i.e., not actively used for two full license terms) cannot be renewed by a municipal issuing authority unless the licensee submits a verified petition to the Director of the Division of Alcoholic Beverage Control (“Division”) and receives a special ruling based on good cause shown. N.J.S.A. 33:1-12.39.¹ This is commonly referred to as “12.39 relief.”

On January 16, 2024, Governor Philip D. Murphy signed legislation ([S-4265/A-5912](#)), codified as P.L. 2023, c.290, which among other things, amended N.J.S.A. 33:1-12.39 effective

¹ Inactive licensees are required to pay a \$100 fee for filing a verified petition seeking 12.39 relief. N.J.S.A. 33:1-12.39.

on August 1, 2024. This new law provides that an inactive Class C license shall not be renewed if it has not been actively used in connection with the operation of a licensed premises within two consecutive license terms. If the license remains inactive at the end of this two-year period, it will expire unless the municipal issuing authority extends the period and renews the license for an additional year. The Division notes that the two-year period of inactivity is measured from the effective date of the new law: August 1, 2024.

Pursuant to the terms of the new law and concurrent with the effective date of sections 3 through 6 of the new law, on August 1, 2024, inactive Class C licensees will no longer be able to petition the Director for good cause to receive 12.39 relief in order for the municipal issuing authorities to renew inactive licenses.

In addition, as discussed below, the new law requires the Director to divide inactive plenary retail consumption licenses into quartiles² based on the total length of time the licenses have been inactive. Inactive plenary retail consumption licenses in each quartile must be placed into active use or transferred within the statutory timeframes set forth in the new law.

The ABC Act is intended in part to maintain trade stability within the alcoholic beverage industry. N.J.S.A. 33:1-3.1(b)(7). As of the date of this Order, ABC estimates that more than 1,300 inactive Class C licenses will be impacted by the new law. The Division recently met with representatives of the industry, including attorneys representing municipalities and retail licensees. Common feedback among these representatives and the Division is that the August 1, 2024, effective date of the relevant provisions of the new law occurring shortly after the annual expiration of licenses on June 30, 2024, will prompt uncertainty among inactive licensees regarding the status and potential expiration of their licenses, unless the Division takes action to

² In statistics, quartiles are a type of “cut point,” which divide data points into four parts.

alleviate these concerns. Otherwise, the Division anticipates that instability, disruption, and arbitrary license devaluations could occur across the retail tier.

Specifically, the expiration of all licenses on June 30 before the provisions related to inactive licenses take effect on August 1 creates a one-month gap concerning the renewal status of these licenses. This Order is intended, in part, to fill that gap and provide guidance to the municipal issuing authorities for the upcoming 2024-2025 license term.

One of the primary duties of the Division is to supervise municipal issuing authorities in the execution of their duties under the ABC Act. In the interests of fairness and stability, and to avoid the potential and unintended lapse of hundreds of licenses that have been inactive for two or more consecutive license terms, the Director has collective good cause to issue this Order granting “blanket” 12.39 relief for the upcoming 2024-2025 license term to all eligible inactive Class C licensees, without requiring each of them to submit individual petitions and pay the corresponding \$100 filing fees. The Division will describe below which Class C inactive license holders are eligible for this relief.

The Director has ample authority to issue this Order granting blanket 12.39 relief. Pursuant to N.J.S.A. 33:1-39, the Director has broad authority to issue special rulings and findings “as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of [the ABC Act]. . . .” The Supreme Court interpreted this provision to include the Director’s explicit, as well as inherent, powers to ensure a stable and well-regulated alcoholic beverage industry. See Heir v. Degnan, 82 N.J. 109, 121 (1980). Indeed, the case law makes clear that the power to regulate the sale of alcoholic beverages is “practically limitless.” R & R Marketing, LLC v. Brown-Forman Co., 158 N.J. 170, 176 (1999) (quoting Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400, 412 (1983)). Moreover, the

Legislature intended for the Director to have implied authority to deal fairly with parties when executing his or her extensive authority over alcoholic beverage licenses. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 13 (2009). This Order is consistent with the spirit and intent of N.J.S.A. 33:1-12.39, which gives the Director the authority to grant 12.39 relief under the current circumstances in order to prevent the unintended lapse of hundreds of inactive Class C licenses and the potential chaos and uncertainty that may ensue within the industry.

I. Eligibility for Blanket 12.39 Relief.

In order to qualify for blanket 12.39 relief, inactive Class C licensees must otherwise qualify for renewal by doing the following:

- 1) File a timely renewal application (POSSE online or paper template renewal application) for the 2024-2025 license term not later than June 30, 2024 (30-day grace period until July 30, 2024 pursuant to N.J.S.A. 33:1-12.13); and
- 2) Pay the State filing fee and municipal renewal filing fee for the 2024-2025 license term not later than June 30, 2024 (30-day grace period until July 30, 2024 pursuant to N.J.S.A. 33:1-12.13).

A licensee is NOT eligible for the blanket 12.39 relief granted in this Order if a licensee has any outstanding issues for any prior term, such as the license has not been renewed because of a prior issue with 12.18 relief³ and/or 12.39 relief. All prior outstanding issues with the license, including any pending objections to renewal, must be resolved first before a licensee may benefit from the relief granted in this Order.

³ “12.18 relief” refers to relief sought by a license pursuant to N.J.S.A. 33:1-12.18 to renew a license that has not been timely renewed. Under the new law, the Division retains its authority to act upon petitions seeking 12.18 relief and to grant such petitions upon a finding that a licensee’s failure to timely renew was due to circumstances beyond his control or other extraordinary circumstances.

While the Director finds there is collective good cause to justify blanket 12.39 relief, it remains within the purview of the municipal issuing authority to grant or deny an inactive licensee’s renewal application for the 2024-2025 license term in the reasonable exercise of its discretion. Municipalities must review each individual inactive license file prior to issuing a resolution renewing the license for the 2024-2025 license term, or any prior term, and must be mindful that the blanket 12.39 relief described in this Order does not remedy past outstanding issues with the license. It should also be noted that no municipality may renew an inactive license for the 2024-2025 license term unless the licensee receives tax clearance (regular or “temporary”) from the New Jersey Division of Taxation. Municipal issuing authorities are advised to contact the Division to discuss specific licenses and whether they are eligible for the relief provided in this Order.

II. Establishment of Quartiles under P.L. 2023, c.290; August 1, 2025 deadline.

Beyond the relief being granted today, the Division is also providing further observations concerning the new law effective on August 1, 2024.

Subsection (c) of the new law requires that inactive Class C licenses must either be:

- (1) actively used by the license holder;
- (2) transferred in a private transaction for fair market value to another person who intends to use the license; or
- (3) transferred from a sending municipality to a receiving municipality in accordance with the new law governing intermunicipal transfers.⁴

⁴ Only plenary retail consumption licenses are eligible for intermunicipal transfer between contiguous municipalities.

Inactive Class C license holders are encouraged to take steps to comply with subsection (c) because, under the new law, some of these licenses will expire in accordance with the quartiles established under subsection (d) and will no longer be allowed indefinite periods of inactivity.

Subsection (d) of the new law requires the Director to divide all inactive plenary retail consumption licenses into quartiles based on the total length of time the licenses have been inactive. The Division completed this analysis, and has divided these licenses into the following quartiles, by license term: first quartile, 1993-1994 through 2000-2001; second quartile, 2001-2002 to 2008-2009; third quartile, 2009-2010 to 2016-2017; and fourth quartile, 2017-2018 to 2023-2024. Inactive plenary retail consumption licenses must be actively used or transferred before the statutory quartile deadlines. The Division has posted on its website a breakdown of these quartiles so that licensees are able to identify the quartile within which they fall. That information is available here: <https://www.nj.gov/oag/abc/downloads/Quartile List for Public.xlsx>

The Division notes that there are approximately 30 inactive plenary retail consumption licenses in the first quartile, that is plenary retail consumption licenses that have been inactive since the 2000-2001 license term earlier. The Division reminds these licensees that first quartile licenses must be transferred or actively used by **August 1, 2025** or face expiration. Although the new law gives municipal issuing authorities the discretion to extend inactive licenses for an additional license term, the Director advises first quartile licensees not to rely on further extensions and indefinite periods of inactivity as they have in the past.

The Division will continue evaluating the effect of the new law on inactive licenses, especially as it pertains to the quartiles, and will provide further guidance to licensees and municipal issuing authorities, as appropriate. In addition, questions concerning the new law pertaining to intermunicipal license transfers between contiguous municipalities should be directed

to the Division. Finally, the Division intends to promulgate regulations, as necessary, to implement the new law.

Accordingly, based on the foregoing, it is on this 10th day of May, 2024,

ORDERED that there is collective good cause to grant blanket 12.39 relief to all inactive Class C licensees who need it for the 2024-2025 license term without having to file a verified petition and pay a \$100 filing fee; and

IT IS FURTHER ORDERED that in order to qualify for blanket 12.39 relief, an inactive licensee must: 1. timely file a renewal application (POSSE online or paper template renewal application) for the 2024-2025 license term not later than June 30, 2024 (30-day grace period until July 30, 2024); and 2. pay the requisite State filing fee and municipal renewal fee for the 2024-2025 license term not later than June 30, 2024 (30-day grace period until July 30, 2024);

IT IS FURTHER ORDERED that the blanket 12.39 relief granted herein will not apply to inactive licenses that have any outstanding issues, including pending 12.18 relief and/or 12.39 relief, or objections to renewal, for any prior term(s); and

IT IS FURTHER ORDERED that no municipal issuing authority may renew any license (inactive or active) for the 2024-2025 license term unless the licensee files a renewal application (POSSE online or paper template renewal application) not later than June 30, 2024 (30-day grace period until July 30, 2024), pays the requisite State filing fee and municipal renewal fee not later than June 30, 2024 (30-day grace period until July 30, 2024), and receives tax clearance (regular or “temporary”) from the New Jersey Division of Taxation; and

IT IS FURTHER ORDERED that the Director may issue additional Orders to clarify and address problems not anticipated by this Order.


KIRSTIN L. KRUEGER
INTERIM DIRECTOR