

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Division of Alcoholic Beverage Control Rules
Solicitor's Permits; Trade Member Discrimination; Marketing and
Advertising

Proposed Amendments: N.J.A.C. 13:2-16.3, 16.11,
16.14, 19.11, and 24.2

Authorized by: Jerry Fischer, Director
Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-3.1, 33:1-39; and 33:1-67

Calendar Reference: See summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2009-168

Send written comments no later than August 14, 2009 to:

Jerry Fischer, Director
Division of Alcoholic Beverage Control
140 East Front Street
P.O. Box 087
Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing to amend its rules regarding solicitor permits to strengthen the State of New Jersey's three-tier distribution system and to ensure that the principles of fair trade and open competition are upheld throughout the State's liquor industry. Safeguarding these principles is one of the duties of the Division's Director as mandated by N.J.S.A. 33:1-3. The Division is also proposing to delete the existing "grandfather" clause in N.J.A.C. 13:2-16.11. These proposed amendments are necessary to remediate unfair trade practices found in the wholesale industry, many of which have evolved from the very trade practices targeted in the Division's revision of these rules in 1999.

Currently, N.J.A.C. 13:2-16.11 prohibits solicitors from soliciting any order for the sale of alcoholic beverages from a retail licensee in which an immediate family member of the solicitor has a direct or indirect interest. This rule was amended in 1999 to remedy abuse in the industry discovered by a Division investigation at that time. That investigation revealed that wholesalers were illegally rebating or "kicking back" a percentage of solicitors' commissions to retailers who regularly purchased from them. This practice was most prevalent with high volume retailers and the result was that the retailers' incomes were subsidized by these illegal rebates or

“kickbacks.” Complaints by industry members further evidenced a trend whereby some of the large-volume retailers would request that a wholesaler hire the retailer’s relative as the solicitor to that retailer’s accounts. The 1999 amendment was adopted to combat this trend by prohibiting solicitors hired after February 16, 1999 from soliciting retail accounts held by members of their immediate family. Thus, the intent of the 1999 amendment was to prevent illegal rebates, maintain trade stability and foster a competitive three-tier system of distribution in the liquor industry. Those solicitors who were calling upon their relative’s accounts prior to February 16, 1999 were permitted to continue to do so pursuant to a grandfather clause.

A more recent investigation by the Division has uncovered a variation of the previous illegal trade practices. This investigation established that certain solicitors, who were permitted to service retail accounts held by a member of the solicitor’s immediate family pursuant to the grandfather clause of N.J.A.C. 13:2-16.11, performed no services for their relative’s retail accounts but were paid commissions for sales made to those accounts. Since these solicitors were compensated on a commission basis, the more merchandise the retailer purchased from the wholesaler employing the relative, the more money the retailer’s relative was paid.

Because N.J.A.C. 13:2-16.11 prohibited solicitors hired after February 16, 1999 from servicing their relative's retail accounts, competing wholesalers began to hire the immediate family members of retailers and swap accounts of equal purchase volume in an effort to circumvent the rule. In other words, a wholesaler would hire Solicitor A (an immediate family member of Retailer A) and Solicitor B (an immediate family member of Retailer B). Retailer A and Retailer B would have a similar, or equal, purchase history with the wholesaler. Solicitor A would be assigned to Retailer B, and would receive commissions based on purchases made by that retailer. Similarly, Solicitor B would be assigned to Retailer A, and would receive commissions on purchases made by that retailer. The wholesaler could thus ensure that both Retailer A and Retailer B purchased products, and the retailers could ensure their relatives would have a significant income. In most instances, the relative hired as a solicitor was a retailer's spouse.

Many of the spouses or immediate family members hired as solicitors were not required to perform any duties or services. These relative solicitors were hired simply for the relationship to the retailer, and many of them never called upon accounts, never made a sale to a retailer and never even appeared at the wholesaler's offices. The Division's investigation

established that many large-volume retailers do not even need or want a solicitor assigned to their accounts because they have sophisticated ordering systems in place. Paying commissions to a solicitor when no services are rendered is a violation of N.J.A.C. 13:2-24.2. The fact that the relative solicitors did not render services in exchange for the commissions paid to them further establishes that the commissions paid were no more than rebates or “kickbacks” to the large volume retailers.

This activity created a competitive advantage for the wholesalers employing those relatives because it ensured the retailers would purchase from them. The retailers whose relatives were employed as solicitors also gained a competitive advantage because the commissions could subsidize their household incomes and allow them to lower their prices. As a result, other wholesalers and retailers sought out ways to compete with these subsidies. In sum, the Division’s recent investigation demonstrated that further restrictions are necessary to continue to prevent illegal rebates, maintain trade stability and foster a competitive three-tier system of distribution in the liquor industry. Moreover, the Division’s recent investigation established that the wholesalers were only offering or agreeing to hire the spouse or immediate family members of large-volume retailers. Because the commissions earned by the relative solicitor provided an

incentive for the retailer to purchase from the wholesaler, this practice is antithetical to free competition. In addition, the ability to have a spouse or immediate family member hired by a wholesaler to reap the benefits of commissions on that retailer's purchases was not offered to all retailers, but rather only to high-volume retailers on a cost benefit analysis. This practice is discriminatory and placed the lower volume retailers at a competitive disadvantage, in violation of N.J.S.A. 33:1-89 and 33:1-90.

The proposed amendments are intended to combat the abuse revealed by the Division's recent investigation. Specifically, the amendments to N.J.A.C. 13:2-16.11 will prohibit the issuance of a new solicitor's permit to any person whose relative has a direct or indirect financial interest in any retail license. In addition, the proposed amendments expand the definition of "immediate family member" to include the solicitor's husband, wife, son, daughter, grandson, granddaughter, brother, sister, father, mother, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law and daughter-in-law. All persons holding a solicitor's permit as of the effective date of these proposed amendments will be permitted to keep and renew that permit as long as the solicitor complies with all permit conditions. However, based on the proposed amendments, these conditions will include a requirement that no solicitor whose

immediate family member has a direct or indirect financial interest in a retail license will be permitted to call upon, or receive compensation for sales made to, any retail account in which an immediate family member of any solicitor of the employing wholesaler has a direct or indirect financial interest.

To ensure the duties and responsibilities of a solicitor and its wholesaler employer are understood, the Division proposes to amend N.J.A.C. 13:2-16.3 to define “bona fide solicitor” and include a non-exhaustive list of duties a solicitor is expected to perform. Also, the Division proposes to amend this section to require that a solicitor application must be notarized by a Notary Public and shall constitute a representation on behalf of the solicitor and the wholesaler that the solicitor is performing the duties of a bona fide solicitor. The proposed amendment to N.J.A.C. 13:2-16.14 will prohibit a wholesaler from paying compensation to a solicitor, and the proposed amendment to N.J.A.C. 13:2-24.2 will prohibit a solicitor from receiving compensation, unless that solicitor is bona fide. Additional amendments to N.J.A.C. 13:2-16.14 prohibit a wholesaler from hiring a person whose immediate family has a direct or indirect financial interest or participates in the operation of a retail license, and also prohibit a wholesaler from assigning a solicitor with such a family member to such an account.

This section also requires disclosure from every solicitor with an immediate family member with an interest in the operation of a retail license. This disclosure must set forth the relationship and certify that the solicitor has not been assigned to any accounts in which an immediate family member of that solicitor, or an immediate family member of any solicitor employed by that wholesaler, has any direct or indirect financial interest or participates in the operation thereof.

The Division is also proposing to amend its Penalty Schedule, N.J.A.C. 13:2-19.11(i), to change existing and include new violations in the penalty schedule in accordance with the other proposed amendments. The proposed amendment would include a presumptive penalty of a 15-day license suspension for a solicitor's first violation of selling to or receiving commissions without substantially performing the duties required of a solicitor or for receiving commissions based on sales to a prohibited account. The proposed amendment would include a precedent penalty of a 30-day suspension for a first violation by a wholesaler for paying commissions to a solicitor who did not substantially perform the duties required of a solicitor, or for paying commissions to a solicitor based on sales made to a prohibited account, or for hiring a solicitor whose immediate family member has a direct or indirect interest in a retail account.

Furthermore, the Division proposes to delete the “grandfather” clause set forth in N.J.A.C. 13:2-16.11(e), which excluded from the rule all solicitors who held a solicitor’s permit on or before February 16, 1999. This proposed deletion is intended to remedy the abuse revealed by the Division’s recent investigation. In conjunction with the other proposed amendments, this will have the effect of denying any solicitor the privilege to provide services to any account owned by a relative as defined in the proposed amendments.

As the Division has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments are intended to curb the identified past abuses discussed in the above Summary. These abuses have the effect of lessening competition in the alcoholic beverage industry and threaten the independence and separation of the three-tier distribution system. These practices also violate the tied-house statute (N.J.S.A. 33:1-43b), which prohibits a retailer from having a direct or indirect interest in a wholesaler and vice versa.

The Division's recent investigation (discussed in detail in the above Summary) has established the dangers of allowing immediate family members of retailers to become solicitors. If such practices are permitted to continue, wholesalers will seek to hire more and more relatives of retailers in an effort to gain a competitive edge. Instead of competition being driven by prices, services and product catalogs, purchasing decisions will be based on which wholesaler hires the retailer's relatives. The wholesalers for which it is not economically feasible to hire relatives of retailers will be at a competitive disadvantage and will seek out other illegal methods of competition, such as free goods, extended or favorable credit terms, or other forms of "kickbacks." Small-volume retailers not offered the opportunity to have a relative hired as a solicitor will seek other methods to increase their income, such as purchasing from prohibited sources, selling below cost, or demanding "kickbacks" or illegal credit terms. Lastly, solicitors not related to a retailer will be pressured by retailers to provide illegal incentives in order to retain retail accounts. This practice, unless stopped, will affect both tiers of the industry, change buying patterns and threaten the stability of the industry. Moreover, this practice will deprive the marketplace of the benefits of free competition as contemplated by the Alcoholic Beverage Control Act.

The Division's proposed amendments expand upon the amendments previously adopted in 1999, to correct and prevent violations that have arisen as trade practices within the wholesale industry evolve. Specifically, the proposed amendments are intended to end the wholesalers' practice of hiring the immediate family members of retailers as solicitors and will ensure that no solicitor is paid commissions based on sales to accounts in which an immediate family member has an interest. Solicitors currently employed by a wholesaler who are immediate family members of retailers may remain solicitors as long as they satisfy all conditions and do not service or receive commissions on retail accounts in which their immediate family member or an immediate family member of any solicitor employed by the same wholesaler has a direct or indirect financial interest.

Wholesalers will be prevented from swapping accounts between relative solicitors in an effort to circumvent the prohibition. Therefore, the proposed amendments will eliminate the grandfather clause and will require wholesalers to re-assign those solicitors servicing an immediate family member's account to non-related accounts.

To prevent future "no-show" solicitor positions, and thus the large commissions paid to solicitors assigned to high-volume retail accounts that do not wish to order through a solicitor, the proposed amendment to

N.J.A.C. 13:2-16.3 will include a requirement that only bona fide solicitors shall receive a solicitor's permit. The term "bona fide solicitor" is defined as "a solicitor who performs duties and responsibilities for each retail account assigned to the solicitor" and includes a non-exhaustive list of duties and responsibilities a solicitor is generally expected to perform. All applications must be signed by the solicitor and the employing wholesaler and must be notarized by a notary public. The filing of a solicitor's permit application will constitute acknowledgment and representation by both the wholesaler and the solicitor that the solicitor must, and does, substantially perform the required solicitor duties. If a question arises as to whether a solicitor is bona fide, the burden will be on the solicitor and/or wholesaler to demonstrate compliance with N.J.S.A. 13:2-16.3.

The proposed amendment to N.J.A.C. 13:2-16.4 is intended to place affirmative duties upon wholesalers to ensure compliance with N.J.A.C. 13:2-16.3 and 13:2-16.11. Wholesalers may not hire immediate family members of retailers as solicitors and must ensure that those solicitors who are immediate family members of retailers and permitted to continue as solicitors do not service or receive commissions on accounts in which their immediate family member, or the immediate family member of any other solicitor, has a direct or indirect financial interest. Wholesalers are also

obligated to ensure solicitors receiving commissions are bona fide pursuant to the proposed amendment to N.J.A.C. 13:2-16.3. In addition, the proposed amendment to N.J.A.C. 13:2-24.2 further prohibits wholesalers from paying commissions to solicitors who are not bona fide solicitors or to solicitors who are assigned to or service prohibited accounts.

Finally, the Division proposes to amend its penalty section, N.J.A.C. 13:2-19.11(i), to change existing or include new violations in the penalty schedule in accordance with the proposed amendments. According to the proposed amendment, the presumptive penalty for a solicitor's first violation of selling to or receiving commissions without substantially performing the duties required of a solicitor or for receiving commissions based on sales to a prohibited account will be a 15-day suspension. In the proposed amendment, the precedent penalty for a first violation by a wholesaler for paying commissions to a solicitor who did not substantially perform the duties required of a solicitor, or for paying commissions to a solicitor based on sales made to a prohibited account, or for hiring a solicitor whose immediate family member has a direct or indirect interest in a retail account will be a 30-day suspension.

Economic Impact

The amendments proposed for the rules concerning solicitor's permits are intended to address the violations and abuses found within the wholesale and retail industries. These proposed amendments will prohibit the wholesale industry's long-standing practice of hiring the relatives of retailers as solicitors and paying those relative solicitors commissions based on sales to the relative retailer's accounts, or based on accounts similar to the relative retailer's purchase history. The proposed amendments will also prohibit wholesalers from paying commissions on accounts to "no show" solicitors and will require all solicitors to perform duties and responsibilities for every retail account to which they are assigned. There will be a negative economic impact upon the relative solicitors, since the proposed amendments will prevent such solicitors from conducting prohibited activity, thereby eliminating the income such activity provided.

Overall, the economic impact will be beneficial to the alcoholic beverage industry because it will level the playing field. The proposed amendments are intended to prevent the payment of illegal rebates, or "kick backs," in the form of commissions paid to the retailer's relative. Discrimination in favor of large-volume retailers will end, and thus smaller retailers will obtain a more competitive position. Moreover, the proposed

amendments will ensure the holders of solicitor's permits are bona fide solicitors performing duties and services in exchange for commissions. Lastly, the revised penalty schedule, although causing a negative impact on those found to have violated the rules, is intended to deter anti-competitive conduct and will produce an overall positive economic impact.

Consequently, the proposed amendments will assist the Division in promoting free competition and trade stability, thereby strengthening the New Jersey's three-tier system of distribution. They are intended to further stimulate free competition, since with these regulatory changes, decisions regarding accounts will be based on true value-added services from the solicitor and not on familial relationships. These proposed amendments represent the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

Federal Standards Statement

A Federal standards analysis is not required since the amendments proposed for the solicitor's permit rules are dictated and in accordance with N.J.S.A. 33:1-1 et seq., and there are no Federal requirements or standards applicable.

Jobs Impact

The Division does not anticipate any net gain or loss of jobs in New Jersey as a consequence of the proposed amendments. The proposed amendments are intended to prohibit wholesalers from hiring, in the future, immediate family members of retail licensees as solicitors. These solicitor positions are not eliminated, but rather conditions of employment are added. Current holders of solicitor permits whose immediate family members have a direct or indirect financial interest in a retail licensee will be prohibited from servicing their immediate family member's retail accounts and retail accounts in which another solicitor's immediate family member has a direct or indirect interest. To comply with the proposed amendments, however, the wholesaler need only reassign the solicitor to non-related retail accounts. Additionally, should an immediate family member of a solicitor gain a direct or indirect financial interest in a retail licensee, the solicitor may apply to the Division for relaxation of these regulations pursuant to N.J.A.C. 13:2-9.1. Accordingly, the Division does not anticipate a negative jobs impact.

Agricultural Industry Impact

The amendments proposed for the solicitor's permit rules will have no impact on the agricultural industry in this State.

Regulatory Flexibility Analysis

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a “small business” means any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. Most retail licensees are small businesses, as well as many wholesalers. The proposed amendments do not require professional services for compliance, but rather require simple recordkeeping on the part of wholesalers and reporting obligations on the part of wholesalers and holders of solicitor’s permits.

Wholesalers are required to ensure solicitors hired do not have immediate family members with a direct or indirect financial interest in a retail licensee. Wholesalers must also ensure that a solicitor whose immediate family member has a direct or indirect interest in a retail licensee is not assigned to his or her immediate family member’s accounts or any retail accounts in which another solicitor’s immediate family member has a direct or indirect financial interest. Wholesalers must also police solicitors to ensure they are bona fide. Both wholesalers and solicitors must ensure commissions are only paid on retail accounts for which the assigned solicitor is bona fide. Wholesalers and solicitors must certify on annual renewal applications that the solicitor does not have any immediate family members

with a direct or indirect interest in a retail licensee, or, if they do, that they do not service any account in which their immediate family member, or the immediate family member of another solicitor, has a direct or indirect interest. Wholesalers and solicitors must also certify that the solicitor is a bona fide solicitor. The burden is placed on the wholesaler and solicitor to show compliance with the proposed amendments.

The proposed amendments apply to all wholesalers and solicitors, regardless of business size. There is no distinction between large-volume and small-volume wholesalers and retailers. The compliance requirements must be uniform for all liquor license holders, as all have the same privileges and responsibilities, based on the type of license held, not the size of the business. As stated in the Social Impact Statement, the proposed amendments are intend to prevent and prohibit discrimination in favor of large businesses within New Jersey's alcoholic beverage industry.

Smart Growth Impact

The Division does not believe that the proposed amendments will have any impact upon the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the amendments concern the regulation of alcohol in the State.

Smart Growth Development Impact

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the amendments concern the regulation of alcohol in the State.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:2-16.3 Eligibility for permit

- (a)** Solicitor's permits may be issued only to bona fide [employees] **solicitors** of Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licensees with the exception that no solicitor's permits shall be issued

to employees of a bonded warehouse bottling licensee which holds no other type of Class A or Class B license.

- (b) No solicitor's permit shall be issued to any person whose immediate family member has any direct or indirect interest or participates in the operation of a retail license. This prohibition shall apply to all persons hired as solicitors by any wholesaler, except as provided in (c) below.**
- (c) A solicitor who has held a solicitor's permit and has been employed by a wholesaler prior to the effective date of this subsection and whose immediate family member has any direct or indirect interest or participates in the operation of a retail license shall be permitted to remain a solicitor and submit annual renewal applications for his or her solicitor's permit as long as the solicitor is in compliance with all the provisions of N.J.A.C. 13:2-16.1**
- (d) "Immediate family member" as used in this section means husband, wife, son, daughter, grandson, granddaughter, brother, sister, father, mother, aunt, uncle, niece, nephew, brother-in-law,**

sister-in-law, father-in-law, mother-in-law, son-in-law and daughter-in-law.

(e) For purposes of this section, “bona fide solicitor” means a solicitor who performs substantial duties and responsibilities for each retail account assigned to the solicitor. These duties and responsibilities include, but are not limited to, physically calling on accounts and covering routes, taking orders for the purchase of alcoholic beverages, preparing and presenting professional sales presentations to retailers, attending company and supplier sponsored meetings, utilizing information provided by the company to keep up-to-date on company brands and competitive brand pricing, assisting retailers with on-premise promotions and attending such events, maintaining and using tasting notes, and installing supplied point of sale material.

(f) The filing of an initial application for a solicitor’s permit shall constitute a representation by both the solicitor and the employing wholesaler that the applicant is expected to substantially perform the duties referenced in (e) above, during the term of the permit.

- (g) The filing of a renewal application for a solicitor's permit shall constitute a representation by both the solicitor and the employing wholesaler that the applicant substantially performed the duties referenced in (e) above, during the preceding permit term, and is expected to continue to do so during the term for which renewal is sought.**
- (h) All applications for solicitors' permits must be notarized by a Notary Public. The applicant and the person signing on behalf of the employing wholesaler must personally appear before the Notary Public at the time of notarization.**
- (i) Wholesalers shall maintain a data base or list of all solicitors whose immediate family members have an interest in a plenary retail license and shall certify this information on annual renewal applications.**
- (i) The filing of an application for a solicitor's permit for a person who did not substantially perform the duties referenced in (e) above, during the preceding permit term, or who is not expected to continue to do so during the term for which renewal is sought, or which does not satisfy the requirements of subsection (g) above,**

shall constitute a violation by the applicant and/or the employing wholesaler.

- (k) In any disciplinary proceeding related to whether a solicitor performs the duties referenced in (e) above, it shall be the burden of the wholesaler and/or solicitor, as the case may be, to demonstrate that the solicitor is bona fide.**

13:2-16.11 Restrictions on permittee

(a)–(b) (No change.)

- (c) [As of February 16, 1999, no] **No** holder of a solicitor's permit shall offer for sale or solicit any order for the purchase or sale of any alcoholic beverage, **or receive any commission or compensation, directly or indirectly, based on sales to** any retail [licensee] **license** in which an immediate family member of the solicitor has any direct or indirect financial interest or participates in the operation [of the retail licensee] **thereof**.

- [(d) The term immediate family member as used in this chapter means husband, wife, son, daughter, grandson, granddaughter, brother, sister, father, mother, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, or daughter-in-law.]

(d) No holder of a solicitor's permit whose immediate family member has any direct or indirect interest or participates in the operation of a retail license shall offer for sale or solicit any order for the purchase or sale of any alcoholic beverage, or receive any commission or compensation, directly or indirectly, based on sales to any retail license in which an immediate family member of another solicitor employed by the same wholesaler has any direct or indirect financial interest or participates in the operation thereof.

[(e) The provisions of (c) and (d) above do not apply to any solicitor who has been issued a solicitor's permit on or before February 16, 1999.]

(e) For purposes of this section, the term "immediate family member" shall be the same as the definition set forth in N.J.A.C. 13:2-16.3(d).

(f) All persons applying for a solicitor's permit or the annual renewal of a solicitor's permit shall certify on the solicitor's permit application that either:

- 1. The solicitor does not have any immediate family members, as defined by (e) above, that have a direct**

or indirect interest in, or participate in the operation of, a retail license; or

2. The solicitor's immediate family member or members, as defined by (e) above, have a direct or indirect interest in, or participate in the operation of, a retail license. The solicitor shall fully identify all such family members, the retail license number and the relationship to the solicitor. The solicitor shall certify that he or she is in compliance with (c) and (d) above.

(g) All persons holding a solicitor's permit or applying for a solicitor's permit shall notify his or her employing wholesaler and the Division of Alcoholic Beverage Control within 10 days of receiving notification that an immediate family member, as defined in (e) above, has obtained a direct or indirect interest in, or participates in the operation of a retail license.

13:2-16.14 Responsibilities of employer

(a) No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual

to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

- (b) **No wholesaler shall pay compensation, whether by commission or otherwise, to a solicitor unless the solicitor substantially performed the duties referenced in N.J.A.C. 13:2-16.3(e) throughout the period and for each account for which the compensation is paid.**
- (c) **No wholesaler shall hire a person whose immediate family member has a direct or indirect financial interest or participates in the operation of a retail license.**
- (d) **No wholesaler shall assign a solicitor to any retail account or pay commission or compensation to a solicitor for sales to any retail account in which an immediate family member of the solicitor has any direct or indirect financial interest or participates in the operation thereof.**
- (e) **No wholesaler shall assign a solicitor to any retail account in violation of N.J.A.C. 13:2-16.11(c) or 13:2-16.11(d).**

- (f) For every solicitor whose immediate family member has any direct or indirect interest in, or participates in the operation of a retail license, the employing wholesaler shall submit, upon each annual renewal application, a statement disclosing all retail accounts assigned to the solicitor and a certification that the solicitor has not been assigned to any accounts in which an immediate family member of that solicitor, or an immediate family member of any solicitor employed by that wholesaler, has any direct or indirect financial interest or participates in the operation thereof.**
- (g) For purposes of this section, the term “immediate family member” shall be the same as the definition set forth in N.J.A.C. 13:2-16.3(d).**

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

(a)-(h) (No change.)

(i) Penalty Schedule

<u>Statute,</u> <u>Regulation or</u> <u>Bulletin Item</u>	<u>Code</u>	<u>Description</u>	<u>First</u> <u>Violation</u>	<u>Second</u> <u>Violation</u>	<u>Third</u> <u>Violation</u>	<u>Fourth</u> <u>Violation</u>
...

<p>N.J.S.A 33:1-52; N.J.A.C. 13:2-16.11[(a) and/or 16.11 (c)]; <u>N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1</u></p>	<p>SOL1</p>	<p>Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or [to a retail licensee with a family member involved] <u>offered to sell or sold to, or received compensation based on purchases made by or sales made to, a retail license in which the solicitor's or another solicitor's immediate family has a direct or indirect interest.</u></p>	<p>15</p>	<p>30</p>	<p>45</p>	<p>Revocation</p>
<p>...</p>	<p>...</p>	<p>...</p>	<p>...</p>	<p>...</p>	<p>...</p>	<p>...</p>

<u>N.J.A.C. 13:2-16.3</u>	<u>SOL4</u>	<u>Solicitor held a solicitor's permit and/or received compensation based upon sales to or purchases made by retail licenses but did not substantially perform the duties required of a solicitor as defined in N.J.A.C. 13:2-16.3(e).</u>	<u>15</u>	<u>30</u>	<u>45</u>	<u>Revocation</u>
...
N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-23.28	[WHOL] <u>WHOL1</u>	Wholesaler responsible for solicitor violating [N.J.A.C. 13:2-16.11(a), (b) and/or (c)] <u>N.J.A.C. 13:2-13.16.3 and/or N.J.A.C. 13:2-16.11</u>	30	60	90	Revocation

<p><u>N.J.A.C. 13:2-16.14</u></p>	<p><u>WHOL2</u></p>	<p><u>Wholesaler hired, as a solicitor, a person whose immediate family member has a direct or indirect financial interest in a retail license, in violation of N.J.A.C. 13:2-16.14 and/or wholesaler assigned a solicitor, whose immediate family member has a direct or indirect interest in a retail license to an account in which that solicitor's or any solicitor's family member has a direct or indirect interest in the retail license.</u></p>	<p><u>30</u></p>	<p><u>60</u></p>	<p><u>90</u></p>	<p><u>Revocation</u></p>
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<p>N.J.A.C. 13:2- 16.14</p>	<p>WHOL3</p>	<p><u>Wholesaler paid commission to a solicitor, whose immediate family member has a direct or indirect interest in a retail license, based upon sales made to or purchases made by a retail licensee in which the solicitor's or another solicitor's immediate family member has a direct or indirect interest.</u></p>	<p><u>30</u></p>	<p><u>60</u></p>	<p><u>90</u></p>	<p><u>Revocation</u></p>
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13:2-24.2 Discrimination in services, facilities or equipment

(a) (No change.)

(b) No solicitor shall receive compensation, whether by commission or otherwise, unless the solicitor performed the duties referenced in N.J.A.C. 13:2-16.3(e) throughout the period and for each account for which the compensation is paid.

(c) No solicitor whose immediate family member, as defined in N.J.A.C. 13:2-16.3(d), has a direct or indirect financial interest or participates in the operation of a retail license, shall receive any commission or compensation, directly or indirectly, based on sales to any retail license in which an immediate family member of another solicitor employed by the same wholesaler has any direct or indirect financial interest or participates in the operation thereof.