

SENATE, No. 2105

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Permits municipalities to recover certain costs and fees from alcoholic beverage licensees charged with violations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning alcoholic beverage licensees and amending
2 R.S.33:1-31.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.33:1-31 is amended to read as follows:

8 33:1-31. Any license, whether issued by the director or any
9 other issuing authority, may be suspended or revoked by the
10 director, or the other issuing authority may suspend or revoke any
11 license issued by it, for any of the following causes:

- 12 a. Violation of any of the provisions of this chapter;
- 13 b. Manufacture, transportation, distribution or sale of alcoholic
14 beverages in a manner or to an extent not permitted by the license
15 or by law;
- 16 c. Nonpayment of any excise tax or other payment required by
17 law to be paid to the State Tax Commissioner;
- 18 d. Failure to comply with any of the provisions of **【**subtitle 8 of
19 the Title Taxation (s.54:41-1 et seq.)**】** R.S.54:41-1 et seq.;
- 20 e. Failure to have at all times a valid, unrevoked permit, license
21 or special tax stamp, or other indicia of payment, of all fees, taxes,
22 penalties and payments required by any law of the United States;
- 23 f. Failure to have at all times proper stamps or other proper
24 evidence of payment of any tax required to be paid by any law of
25 this State;
- 26 g. Any violation of rules and regulations;
- 27 h. Any violation of any ordinance, resolution or regulation of
28 any other issuing authority or governing board or body;
- 29 i. Any other act or happening, occurring after the time of
30 making of an application for a license which if it had occurred
31 before said time would have prevented the issuance of the license;
32 or
- 33 j. For any other cause designated by this chapter.

34 No suspension or revocation of any license shall be made until a
35 five-day notice of the charges preferred against the licensee shall
36 have been given to him personally or by mailing the same by
37 registered mail addressed to him at the licensed premises and a
38 reasonable opportunity to be heard thereon afforded to him.

39 A municipal issuing authority may impose an assessment for
40 reasonable costs and attorney's fees on a licensee in any case where
41 (1) the municipal issuing authority issues charges and holds a
42 disciplinary hearing and determines that the licensee has violated a
43 statute, regulation, or municipal ordinance or (2) the municipal
44 issuing authority and the licensee enter into a settlement agreement
45 after issuance of the charges and the licensee concedes liability. As

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 used in this section, “reasonable costs” shall include, but not be
2 limited to, video or audio recording of hearings and transcripts or
3 tapes; publishing notices; postage; copying; service of process;
4 witness fees; costs of municipal employees, such as police officers
5 required to attend the proceedings if such costs are not included in
6 their normal pay; experts; and all other expenses incurred as a result
7 of and in connection with the filing, prosecution, and settlement of
8 the charges. “Attorneys fees” shall include all reasonable hours at
9 the billing rate paid to the attorneys by the municipality, including
10 both the municipal attorney and the prosecuting attorney, for all
11 work reasonably incurred in connection with the filing, prosecution,
12 and settlement of the charges.

13 The municipal issuing authority shall determine the costs and
14 fees and inform the licensee in writing of the amount assessed and
15 the basis for the assessment. The licensee shall file any appeal of
16 the assessment not more than 10 days after receiving a written
17 explanation of the assessment. The municipal issuing authority
18 shall make a final determination within 30 days after receiving the
19 licensee’s appeal in writing or on the date of its next regularly
20 scheduled meeting if it is more than 30 days after receipt of the
21 appeal in writing. The licensee may appeal the final determination
22 of the municipal issuing authority to the director within 30 days
23 after the personal service or mailing by registered mail of the
24 written notice by the municipal issuing authority of the action taken
25 against the licensee. If the municipal issuing authority and the
26 licensee resolve the charges against the licensee after the issuance
27 of the charges, the municipal issuing authority and the licensee may
28 agree that the licensee shall pay a specific assessment for fees.

29 A suspension or revocation of license shall be effected by a
30 notice in writing of such suspension or revocation, designating the
31 effective date thereof, and in case of suspension, the term of such
32 suspension, which notice may be served upon the licensee
33 personally or by mailing the same by registered mail addressed to
34 him at the licensed premises. Such suspension or revocation shall
35 apply to the licensee and to the licensed premises.

36 A revocation shall render the licensee and the officers, directors
37 and each owner, directly or indirectly, of more than 10% of the
38 stock of a corporate licensee ineligible to hold or receive any other
39 license, of any kind or class under this chapter, for a period of two
40 years from the effective date of such revocation and a second
41 revocation shall render the licensee and the officers, directors and
42 each owner, directly or indirectly, of more than 10% of the stock of
43 a corporate licensee ineligible to hold or receive any such license at
44 any time thereafter. Any revocation may, in the discretion of the
45 director or other issuing authority as the case may be, render the
46 licensed premises ineligible to become the subject of any further
47 license, of any kind or class under this chapter, during a period of
48 two years from the effective date of the revocation.

1 The director may, in his discretion and subject to rules and
2 regulations, accept from any licensee an offer in compromise in
3 such amount as may in the discretion of the director be proper under
4 the circumstances in lieu of any suspension of any license by the
5 director or any other issuing authority. Any assessment by a
6 municipal issuing authority for costs and attorney's fees shall be
7 paid directly to that municipal issuing authority and shall not be
8 included in any monetary payment for an offer in compromise.

9 No refund, except as expressly permitted by **【section】** R.S.33:1-
10 26 **【of this Title】**, shall be made of any portion of a license fee after
11 issuance of a license; but if any licensee, except a seasonal retail
12 consumption licensee, shall voluntarily surrender his license, there
13 shall be returned to him, after deducting as a surrender fee 50% of
14 the license fee paid by him, the prorated fee for the unexpired term;
15 provided, that such licensee shall not have committed any violation
16 of this chapter or of any rule or regulation or done anything which
17 in the fair discretion of the director or other issuing authority, as the
18 case may be, should bar or preclude such licensee from making
19 such claim for refund and that all taxes and other set-offs or
20 counterclaims which shall have accrued and shall have become due
21 and payable to this State or any municipality, or both, have been
22 paid. Such refund, if any, shall be made as of the date of such
23 surrender. The surrender of a license shall not bar proceedings to
24 revoke such license. The refusal of the other issuing authority to
25 grant any refund hereunder shall be subject to appeal to the director
26 within 30 days after notice of such refusal is mailed to or served
27 upon the licensee. Surrenders of retail licenses shall be promptly
28 certified by the issuing authority to the director. Surrender fees
29 shall be accounted for as are investigation fees. If any licensee to
30 whom a refund shall become due under the provisions of this
31 section shall be indebted to the State of New Jersey for any taxes,
32 penalties or interest by virtue of the provisions of **【subtitle 8 of the**
33 **Title Taxation (s. 54:41-1 et seq.)】** R.S.54:41-1 et seq., it shall be
34 the duty of the issuing authority before making any such refund,
35 upon receipt of a certificate of the State Tax Commissioner
36 evidencing the said indebtedness to the State of New Jersey, to
37 deduct therefrom, and to remit forthwith to the State Tax
38 Commissioner the amount of such taxes, penalties and interest.

39 In the event of any suspension or revocation of any license by
40 the other issuing authority, the licensee may, within 30 days after
41 the date of service or of mailing of said notice of suspension or of
42 revocation, upon payment to the director of a nonreturnable filing
43 fee of **【\$100.00】** \$100, appeal to the director from the action of the
44 other issuing authority in suspending or revoking such license
45 which appeal shall act as a stay of such suspension or revocation
46 pending the determination thereof unless the director shall
47 otherwise order. When any person files with any other issuing

1 authority written complaint against a licensee specifying charges
2 and requesting that proceedings be instituted to revoke or suspend
3 such license, he may appeal to the director from its refusal to
4 revoke or suspend such license or other action taken by it in
5 connection therewith within 30 days from the time of service upon
6 or mailing of notice to him of such refusal or action. The director
7 shall thereupon fix a time for the hearing of the appeal and before
8 hearing the same shall give at least five days' notice of the time so
9 fixed to such licensee, other issuing authority and appellant.

10 (cf: P.L.1992, c.188, s.11)

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12 2. This act shall take effect immediately.

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15 STATEMENT

16
17 This bill permits municipalities to assess certain costs against an
18 alcoholic beverage retail licensee who violates a statute, regulation,
19 or municipal ordinance.

20 Specifically, the bill permits a municipal issuing authority to
21 assess and retain the costs and attorney's fees it incurred pursuing
22 disciplinary charges against a licensee. These fees may be assessed
23 when (1) the municipal issuing authority issues charges, holds a
24 disciplinary hearing, and determines that the licensee has violated a
25 statute, regulation, or municipal ordinance, or (2) the municipal
26 issuing authority and the licensee enter into a settlement agreement
27 after issuance of the charges, and the licensee concedes liability.

28 Under the provisions of this bill, the municipal issuing authority
29 is to determine the costs and fees and inform the licensee in writing
30 of the amount assessed and the basis for the assessment. If the
31 licensee objects to the amount of the assessment, the licensee is
32 required to file an appeal of the assessment within 10 days after
33 receipt of the assessment. The bill provides that the municipal
34 issuing authority is to make a final determination within 30 days
35 after receiving the licensee's appeal in writing, or at its next
36 regularly scheduled meeting if that is more than 30 days after
37 receipt of the appeal. The bill permits the licensee to appeal the
38 final determination to the Director of the Division of Alcoholic
39 Beverage Control in the Department of Law and Public Safety.

40 In order to facilitate settlement of the charges, and to reduce
41 costs for all parties, the bill also provides that if the municipal
42 issuing authority and the licensee resolve the charges against the
43 licensee after issuance of the charges, the municipal issuing
44 authority and the licensee may agree to a specific assessment.

45 Finally, the bill provides that any assessment by a municipal
46 issuing authority for costs and attorney's fees would be paid
47 directly to that municipal issuing authority and is not to be included
48 in any monetary payment to the director as an offer in compromise.

1 The director, in his discretion, is authorized to accept such offers
2 from licensees in an amount the director deems proper in lieu of a
3 license suspension by the director or any other issuing authority.

4 Under current law, municipalities are charged with the primary
5 authority to regulate alcoholic beverage licenses for retail sales
6 which are issued in that municipality. These are the licenses issued
7 generally to restaurants, bars, and liquor stores. While
8 municipalities bear much of the expense in investigating and
9 prosecuting charges brought against licensees for violations, they
10 are not authorized to impose or collect fees to offset the substantial
11 costs of prosecution. If a licensee appeals a suspension imposed by
12 the municipality to the Director of the Division of Alcoholic
13 Beverage Control, the director may convert the suspension into a
14 monetary penalty which is paid to the division for deposit into the
15 State's general fund.

16 Current law (R.S.33:1-12) permits municipalities to require
17 licensees to pay an annual license fee, which is established by
18 ordinance and may range from \$250 to \$2,500, to mitigate the
19 expenses of administering their licenses. According to the sponsor,
20 increasing this fee would pass the cost of prosecuting violators on
21 to all licensees, including the majority who comply with all statutes,
22 regulations and ordinances.