

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

AN 2025-01

**ADVISORY NOTICE ON THE IMPLEMENTATION OF N.J.S.A 33:1-12.39 (INACTIVE LICENSES),  
AS AMENDED BY P.L. 2023, C. 290**

**IMPORTANT UPDATED INFORMATION FOR RENEWALS FOR 2025-2026 LICENSE TERM**

On January 16, 2024, Governor Murphy signed a liquor license reform law that, among other things, amended N.J.S.A. 33:1-12.39, the section of the law addressing the renewal of inactive licenses.<sup>1</sup> When signing this legislation, the Governor stated:

For the first time in nearly a century, New Jersey has shown the fortitude to tackle an age-old problem that has stifled economic growth and hampered the dreams of countless small business owners . . . We knew this wasn't going to be an easy lift – nothing that has been entrenched for nearly a century ever is. Together with our partners in the Legislature, we are laying new ground rules to help our breweries and distilleries flourish while at the same time creating new opportunities for smaller and more diverse mom-and-pop establishments to set up shop or expand in New Jersey and help transform our downtowns.<sup>2</sup>

One of the ways chosen by the Legislature to implement the Governor's goals was to address inactive licenses. Specifically, the amended law encourages the activation or transfer of inactive licenses so that they can be put into productive use and new businesses with liquor licenses can be opened in underserved areas. Under the amended law, inactive license holders no longer apply to the Director of the Division of Alcoholic Beverage Control (Division or ABC) for "12.39 relief"<sup>3</sup> before a municipal issuing authority is authorized to renew a license. Authority over the renewal of inactive licenses now falls squarely on municipalities.

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<sup>1</sup> In liquor license parlance, an "inactive license" is a license that is sited at a physical premises but is not actively used. An inactive license that is not sited at a physical premises is known as a "pocket license."

<sup>2</sup> Press Release, Office of the Governor, "Governor Murphy Signs Legislation Overhauling New Jersey's Liquor License Laws for the First Time in Nearly a Century," dated January 16, 2024, <https://www.nj.gov/governor/news/562024/approved/20240116c.shtml>.

<sup>3</sup> "12.39 relief" was the process under the pre-amended N.J.S.A. 33:1-12.39 by which an inactive license holder could petition the Director for a determination that the inactive license holder demonstrated "good cause" to authorize the municipal issuing authority to renew an inactive license. See also N.J.A.C. 13:2-43.1 to -43.7.

This amendment was intended to stop the practice that allowed inactive licenses to be indefinitely renewed and to promote the entry of new liquor-licensed businesses into New Jersey's economy.

The Division has received many inquiries from municipalities and license holders on the interpretation of the amendments to N.J.S.A. 33:1-12.39 and the concept of "active use" under P.L. 2023, c. 290. The purpose of this Advisory Notice is to clarify and explain the amendments to N.J.S.A. 33:1-12.39 as they apply to the holders of inactive plenary and seasonal retail consumption (e.g., bars and restaurants) and distribution licenses (e.g., liquor stores) (collectively referred to as Class C licenses). This Advisory Notice does not apply to Club Licenses and Plenary Retail Transit licenses.<sup>4</sup> In drafting this Advisory Notice, the Division has sought to give full effect to both the language of the statute and the goals sought to be accomplished as enunciated by both the Governor and the Legislature. See Circus Liquors, Inc. v. Middletown, 1991 N.J. 1, 12 (2009), quoting Cammarata v. Essex County Park Commission, 26 N.J. 404, 411 (1958) ("Authority delegated to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent."); see also New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978) (holding that "the grant of authority to administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and . . . to effectuate fully the legislative intent."); N.J.S.A. 33:1-73 (Title 33 is to be liberally construed.)

#### **I. The Division's Interpretation of N.J.S.A. 33:1-12.39(a) and -12.39(d)**

The amended law provides, in pertinent part:

- a. On and after the effective date of P.L. 2023, c. 290 [August 1, 2024], a **Class C license** as defined in R.S. 33:1-12 shall not be renewed if the license has not been **actively used** in connection with the operation of a licensed premises within two consecutive license terms. A license that remains inactive at the end of the two-year period shall expire, provided, however, the governing body of a municipality may **in its discretion** extend the period during which the license may remain inactive for **an additional year**. [Emphasis added.]

On its face, N.J.S.A. 33:1-12.39(a) applies to Class C licenses – plenary and seasonal retail *consumption* licenses and plenary and limited *distribution* licenses. The Division interprets this section to mean that, after August 1, 2024, a Class C license that has not been "actively used" for two consecutive years, which **cannot** be renewed, shall expire, unless the

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<sup>4</sup> Neither Club licenses nor Plenary Retail Transit licenses are subject to the population limitation in N.J.S.A. 33:1-12.14. This means that these licenses do not become "inactive" and can be issued or re-issued by the respective issuing authorities.

municipality, in the exercise of its discretion, renews the license for an additional year. By way of example, if an inactive Class C license was not actively used for the 2023-2024 and 2024-2025 license terms, a municipality may exercise its discretion and renew it for the 2025-2026 license term.

However, a different standard applies to *inactive plenary retail consumption licenses existing on the date of this Act*, which have been placed into “quartiles.” Pursuant to amended N.J.S.A. 33:1-12.39(d), the law states:

The [D]irector shall divide the **inactive plenary retail consumption licenses** that were placed on inactive status prior to [August 1, 2024] into quartiles based on the total length of time that the licenses have been inactive.<sup>5</sup> The licenses shall be **transferred pursuant to subsection c. of this section**<sup>6</sup> in accordance with the following schedule:

- (1) the quartile that has been inactive for the longest period of time shall be transferred pursuant to subsection c. of this section within one year of the effective date of P.L. 2023, c. 290 [August 1, 2025];
- (2) the quartile that has been inactive for the second longest period of time shall be transferred pursuant to subsection c. of this section within two years of the effective date of P.L. 2023, c. 290 [August 1, 2026];
- (3) the quartile that has been inactive for the third longest period of time shall be transferred pursuant to subsection c. of this section within three years of the effective date of P.L. 2023, c. 290 [August 1, 2027];
- (4) the quartile that has been inactive for the shortest period of time shall be transferred pursuant to subsection c. of this section within four years of the effective date of P.L. 2023, c. 290 [August 1, 2028].

[Emphasis added.]

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<sup>5</sup> See [AO 2024-03](#), Administrative Order Granting Blanket 12.39 Relief to Inactive Municipally Issued Class C Retail Licenses and Establishing Quartiles under P.L. 2023, c. 290, dated May 9, 2024.

<sup>6</sup> Because of the reference to subsection c, the Division interprets this language to mean that an inactive license holder may conduct any of the activities authorized by that subsection (e.g., “actively use,” transfer to another person intending to use the license, or participate in an intermunicipal transfer pursuant to N.J.S.A. 33:1-24.3a). For Division guidance on intermunicipal transfers, see [AN 2024-05](#), Advisory Notice Regarding Intermunicipal License Transfer Statute (N.J.S.A. 33:1-24.3a), dated July 26, 2024.

One of the purposes of this Advisory Notice is to explain how subsections a. and d. of N.J.S.A. 33:1-12.39 interact and can be reconciled. For example, if an inactive retail consumption license holder is in the fourth quartile, and by law, has until August 1, 2028 to “actively use” or transfer its license either within or outside its municipality, then a municipal issuing authority must be authorized to renew that license through August 1, 2028. The limitations on renewal of inactive licenses in section a. should not preclude the renewal of this license. Otherwise, the significance of being in the fourth quartile becomes meaningless. Both sections a. and d. must be read in a manner as to give meaning to each section.

In passing the amendments to N.J.S.A. 33:1-12.39, the Legislature intended to address the scarcity of liquor licenses by requiring the holders of inactive licenses to either activate their licenses or sell/transfer them to entities that would put these licenses into active use in either the original municipality or in a contiguous one. The goal was not to eliminate these licenses. As stated by Governor Murphy, “[T]hese changes will substantially boost accessibility [to licenses] by injecting as many as 1,356 licenses into the market, a roughly 15% increase over the 8,905 active retail consumption licenses presently being used.”<sup>7</sup> The Division is reading the 12.39 amendments in a way that will accomplish this legislative purpose.<sup>8</sup>

The Division believes that harmonizing sections a. and d. is required to give meaning to the quartiles. Specifically, if an inactive plenary retail consumption license falls within the third or fourth quartile, it has until August 1, 2027 or August 1, 2028, respectively, to actively use or transfer the license either within the originating municipality or to a contiguous municipality. And, the governing bodies of the municipalities in which these third and fourth quartile licenses are located, therefore, must have the inherent authority to renew these inactive licenses during the applicable licensing terms. See Inganmort v. Ft. Lee, 62 N.J. 521, 533 (1973), quoting NJ Constitution, Art. IV, §7, para. 11 (Municipalities may exercise powers expressly granted to them and also powers necessarily or fairly implied by, or incidental to, the express grants.)

The Division notes that the quartiles in N.J.S.A. 33:1-12.39(d) only apply to inactive plenary and seasonal retail consumption licenses, not to plenary or limited retail distribution licenses. As such, section d. does *not* apply to liquor stores or limited distribution licenses

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<sup>7</sup> Press Release, Office of the Governor, dated January 16, 2024, <https://www.nj.gov/governor/news/562024/approved/20240116c.shtml>.

<sup>8</sup> When the language of a statute is ambiguous or susceptible to more than one plausible interpretation, the Division may look to extrinsic guides, such as legislative history, sponsor statements, and the Governor’s press releases. In doing so, the Division’s goal is to implement the objectives sought to be achieved by the Legislature and to avoid “absurd” results. See Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572-573 (2012) (Recognizing that an “enactment that is part of a larger statutory framework should not be read in isolation, but in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme.”)

(e.g., warm beer licenses). Inactive plenary and limited distribution licenses should be renewed in accordance with the plain language of N.J.S.A. 33:1-12.39(a).

## II. “Active Use”

In 1983, former Director John F. Vassallo issued an opinion interpreting the term “actively used” as used in the context of N.J.S.A. 33:1-12.39 (pre-amendment). See A.B.C. Bull. 2432, Item 4 (August 31, 1983). There, he concluded that the definition of “actively used” was “[m]eaningful full-time operation, with a present intent of the licensee to operate for an unlimited duration . . .” That opinion was written in response to a request about whether a seasonal license could be open for one-day per year and satisfy the requirement of active use. In defining the term “active use,” Director Vassallo acknowledged that the Division’s goal was to ensure that the legislative intent behind the statute’s words was reached “by construing the phrase sensibly and in a manner to avoid anomalous or absurd results.” Ibid. (citations omitted).

Former Director Vassallo construed the meaning of the term strictly because, at that time, inactive license holders had the opportunity to apply for 12.39 relief and were not harmed by delays related to permit approvals and construction issues if the Director granted 12.39 relief and authorized the municipality to renew the inactive license. However, with the elimination of 12.39 relief by the amendments set forth in P.L. 2024, c. 290, those types of delays may have an outsized impact on the ability of a licensee to commence actual operation.

As such, today, the Division must re-interpret the phrase “actively used” in the context of the recent legislative amendments. As noted above, the intent and purpose of this law is to encourage the activation or transfer of inactive licenses so that they can be put into productive use and spur economic development throughout the State.

In most cases, opening a licensed establishment (other than a turn-key business) requires significant planning, applications, approvals, and construction. This time-consuming process frequently takes more than two years<sup>9</sup> to accomplish. For example, the Division is aware of on-going projects that require certain State approvals that may take years to obtain; have applied for but have not obtained municipal approvals; where entities have spent hundreds of thousands of dollars hiring professionals and applying for a liquor license transfer; or are engaged in on-going construction that may not be completed by the statutory deadlines. These inactive licenses are well on their way to becoming activated and open for business, which is one of the goals of the new law.

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<sup>9</sup> Under N.J.S.A. 33:1-12.39(a), a license that has not been “actively used” for two consecutive terms shall not be renewed.

To further the legislative purpose of the new law, the Director believes that she must look at the term “active use” in a manner that reflects the current economic and practical realities of opening a licensed establishment. In the Director’s view, a municipality may consider and balance certain factors that demonstrate whether a licensee has taken significant steps to activate the license. Among the factors to be considered in determining whether an inactive license is being “actively used” include, but are not limited to:

1. Whether the license holder has retained professionals to assist in activating the license (e.g., planners, architects, attorneys, developers);
2. Whether the license holder has applied for all necessary federal, State, and local permits needed to open a licensed establishment;
3. Whether the license holder has entered into a lease agreement for the property where the license will be sited, or whether the license holder has purchased the property where the license will be sited;
4. Whether construction of the project where the license will be sited has commenced and the current status of the construction; and
5. Whether the license holder has made a significant and concrete financial investment toward activation of the license at a premises.

Analysis of these factors by a municipality will allow it to determine, on a case-by-case basis, whether a license is being “actively used” for purposes of N.J.S.A. 33:1-12.39. These same factors apply when interpreting the term “active use” in the context of the intermunicipal transfer section of the new law. See N.J.S.A. 33:1-24.3a(e).

Using this guidance, the governing body of a municipality may decide, in the ordinary course, to grant or deny an application for renewal of an inactive license. If a licensee is aggrieved by the municipality’s determination, it may appeal to the Director in accordance with N.J.S.A. 33:1-22.

The Division reserves its right to alter or amend this guidance should facts or circumstances change.

  
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