

## NOTICE

NOTICE is hereby given that the Nebraska Liquor Control Commission will hold a public hearing pursuant to Neb. Rev. Stat. Sec. 84-907, on Tuesday, the 2nd day of March, 2021 at 9:00 a.m., at its offices on the 1st Floor of the State Office Building, located at 301 Centennial Mall, South, Lincoln, Nebraska.

The purpose of the hearing is to take testimony and evidence about the amendments to Rule 237-LCC6 (Licensee Operations). The subject matter and scope of the rule-making action is:

1. To Adopt Amendments to Rule 237-LCC6 (Licensee Operations).  
The proposed Rule encompasses an update in language, an expanded definition and use of Quantity Discounts, a clarification to the Disturbance Rule based on case law and a new section relating to common carriers and required reporting in order to adequately record the shipments of alcohol. The change in rules will aid the Commission, the Nebraska State Patrol, and local law enforcement in enforcement of the Liquor Control Act.

Draft or working copies of the proposed rules are available at the office of the Nebraska Liquor Control Commission, or at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508. There is no expected fiscal impact from adopting this rule on state agencies, regulated persons, or political subdivisions.

All interested persons may attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments prior to hearing which will be made part of the hearing record at the time of hearing if received by the Nebraska Liquor Control Commission on or before March 2, 2021. If auxiliary aids or reasonable accommodations are needed to participate in the hearing, please call the Commission at (402) 471-2571 a minimum of ten (10) days prior to the date of hearing.

Dated this 29<sup>th</sup> day of December, 2020.

NEBRASKA LIQUOR CONTROL COMMISSION

  
(Executive Director)

**DRAFT**

**CHAPTER 6 LICENSEE OPERATIONS**

**001 SIGNS**

**001.01** The Nebraska Liquor Control Act, Chapter 53, Section 118, establishes in the Commission, the power to promulgate a Rule or Regulation establishing standards of honest advertising and representation.

**001.02** Signs, ~~and~~ advertisements and electronic media shall will not contain:

**001.02A** Any statement, illustration, design, device or representation that is false or misleading;

**001.02B** Any statement, illustration, design, device or representation which is obscene or indecent or which is obnoxious or offensive to the commonly and generally accepted standards of fitness and good taste;

**001.02C** Any statement of, or reference to, a price of an alcoholic liquor which is deceptive or misleading or tends to deceive or mislead;

**001.02D** Any illustration which is not dignified, modest and in good taste;

**001.02E** Any scene which promotes the sale of alcoholic liquors, including beer, to minors in which is portrayed a child or objects suggestive of the presence of a child or in any manner portrays the likeness of a child or contains the use of figures or symbols which are traditionally associated with children;

**001.02F** Any statement, design, device or representation relating to any refund, exchange, or money-back guarantee, irrespective of truth or falsity;

**001.02G** Any reference by name or other identification to any other licensed retailers;  
or

**001.02H** Any statement, design, device, or representation which the Nebraska Liquor Control Commission finds to be likely to mislead the consumer.

## 002 SAMPLING/TASTING

### 002.01 Sampling

~~002.01A~~ Retailers and their employees may sample limited quantities of beer, wine or spirits furnished or dispensed by a manufacturer or wholesaler whether the license permits consumption on or off the licensed premises. (53-123.02)

### 002.01B Conditions

~~002.01B1~~ sampling may also be done on the premises of a licensed wholesaler by a licensed retailer (53-123.02, 53-123.03);

~~002.01B2~~ consumption shall will not exceed more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four hour period (53-103(37));

~~002.01AB3~~ no samples may be given unless all taxes, including the Nebraska Excise Tax, have been paid,

~~002.01BB4~~ no samples should be shipped or brought into the State of Nebraska except directly to the Nebraska Wholesalers.

### 002.02 Tasting

~~002.02A~~ Representatives of manufacturers, wholesalers, brewpubs, ~~and~~ farm wineries, and craft distillers may dispense limited quantities of beer, wine or spirits (that has been invoiced to retailers) to customers on a retail premises licensed for on premises consumption.

### 002.02B Conditions

~~002.02B1~~ representatives of manufacturers, wholesalers, brewpubs, ~~and~~ farm wineries and craft distillers shall will not sell beer, wine or spirits directly to a consumer,

~~002.02B2~~ tastings samples shall are allowed be for the express purpose of allowing customers to determine the grade, type and quality of alcoholic beverages,

~~002.02B3~~ tastings shall are be exempt from the multiple drinks rule (6-019.01U).

### **003 KEG REGISTRATION REQUIREMENTS**

**003.01** Where the purchaser obtains more than one keg for off-premises consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction must contain the registration number from the fully completed form as a reference and be signed by the purchaser. Such keg registration declaration and receipt forms which contain the reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed registration and declaration receipt.

**003.02** The keg registration label must be placed on the upper one-third of the keg.

### **010 ALCOHOLIC BEVERAGE PRODUCTS/PASS THROUGH WHOLESALE LICENSED PREMISE**

**010.01** In order to accurately collect the taxes imposed by Neb. Rev. Stat. 53-160 through 53-164.02 and facilitate compliance with Nebraska law, all alcoholic beverages manufactured out of this State that have been purchased for resale in this State ~~shall~~ will prior to being resold at retail, physically come into the possession of a licensed wholesaler and be unloaded into and distributed from the licensed wholesaler's warehouse in this State.

### **011 BEER DELIVERY AND TAX COLLECTION**

**011.01** The excise tax imposed by Nebraska Revised Statute 53-160 ~~shall~~ will be collected by and accounted to the Commission as set forth in 011.01A, 011.01B, and 011.01C.

~~**011.01A** For all beer produced by a manufacturer or craft brewery licensee and consumed or sold at retail on such licensee's licensed premises, the tax on beer shall will be determined at the time of its removal for consumption or retail sale at the licensee's licensed premises, and shall will be paid by the manufacturer or craft brewery.~~

**011.01A** The tax on all beer produced by a manufacturer or craft brewery licensee and consumed or sold at retail on the licensee's licensed premises is determined at the time of its removal for consumption or retail sale and is to be paid by the manufacturer or craft brewery.

**011.01B** For all beer produced by a manufacturer or craft brewery licensee located in Nebraska for intrastate retail sale in Nebraska off of such licensee's licensed premises or Satellite locations, such beer ~~shall~~ will prior to being resold at retail, be sold to, and come into the physical possession of a wholesale licensee and be unloaded into and distributed from either the licensed wholesaler's warehouse or vehicles in the State and the tax on such beer ~~shall~~ will be determined at the time of its removal from the licensed premises and ~~shall~~ will be paid by the manufacturer or

craft brewery licensee. The transfer ~~shall~~ must be documented by an executed bill of lading.

**011.01C** For all beer sold to a wholesale licensee from the holder of a shipper's license the tax is due upon the beers delivery to a license wholesaler, and such beer must come into the physical possession of a wholesale licensee and distributed from the wholesale licensee's warehouse. The transfer from the shipper's licensee to the wholesale licensee ~~shall~~ must be documented by an executed bill of lading.

**011.01D** Any purchases, sales, practices, or transactions entered into between any manufacturer, craft brewery, wholesaler, or retailer, with the intent to circumvent or evade the provisions of this regulation ~~shall~~ will be considered in violation ~~thereof~~ and ~~shall~~ will be subject to citation and possible administrative sanction to include suspension, cancellation or revocation.

## **012 DOCK SALES**

**012.01** Any sale of alcoholic liquors from the dock or licensed premise of a manufacturer, distributor, or wholesaler ~~shall~~ will include on the proper invoice the signature of the retailer or retailer's agent who receives delivery of the same at the time of the purchase. It ~~shall~~ will be the responsibility of the manufacturer, distributor, or wholesaler to ensure that the retailer is properly licensed and that the retailer's agent is bona fide and acting solely on behalf of the authorizing retailer.

## **015 ACCEPTABLE FORMS OF PAYMENT**

**015** Acceptable forms or means of payment between retail licensee and wholesale licensee for purchases of alcoholic beverages (beer, wine, spirits).

**015.01** Retailers business check (The check must carry the name of the business as so licensed with Commission. The name ~~shall~~ will mean the current D.B.A. or corporate name. If licensed as a proprietorship or partnership, the name of the individual or partner or D.B.A.)

**EXCEPTIONS:**

**015.01A** A personal check of the licensee or holder of a temporary operating permit may be accepted by wholesaler if supported by a copy of the liquor license.

~~**015.01B** If the business is under a temporary operating permit, the new operator shall will submit a check with the name of the business. Same criteria as 015.01.~~

**015.02** Coins

**015.03** Currency

**015.04** Debit and Credit cards (card must carry the name of the retail business as licensed with Commission and signed by licensee or authorized agent.)

~~**015.05** Credit cards (card must carry the name of the retail business as licensed with Commission and signed by licensee or authorized agent.)~~

**015.06** Cashier check, Bank Money Order, or Certified Check  
(The remitter must be the licensee or authorized agent.)

~~**015.07** Bank Money Order (The remitter must be the licensee or authorized agent.)~~

~~**015.08** Certified Check (The remitter must be the licensee or authorized agent.)~~

~~**015.09** Travelers Check (Must carry the signature of the licensee or authorized agent.)~~

~~**015.10**~~ **06** Payment for beer from a licensed retailer to a licensed beer wholesaler must be completed by the end of the business day from time of the sale.

~~**015.11**~~ **07** Any electronic transfer of funds from a retailer to a wholesaler with respect to beer must be completed within twenty-four hours of the sale and in the case of wine or spirits within thirty days of the sale.

## 0016 TRADE PRACTICE POLICIES

~~A~~No wholesale licensee, shipper licensee, manufacturer licensee, ~~and~~ craft brewery licensee, farm wineries, and craft distillers, (collectively referred to as an "industry member") ~~may furnish a retail licensee, with equipment, supplies, services, or other things of value, under conditions and within the limitations prescribed.~~ will, directly or indirectly, give any premium, gift, free goods, or other things of value in connection with the sale, distribution, or sale and distribution of alcoholic liquor and no retail licensee shall directly or indirectly receive any premium, gift, free goods, or other things of value from an industry member, except under the conditions and within the limitations prescribed.

### 016.01 PRODUCT DISPLAYS

#### 016.01A GENERAL

**016.01A1** The act by industry member of giving or selling product displays to a retailer is allowed provided that the conditions and limitations prescribed in 016.01C of this rule are met.

#### 016.01B DEFINITION

**016.01B1** Product displays means any alcoholic liquor racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold shelves or display consumer products.

#### 016.01C CONDITIONS AND LIMITATIONS

**016.01C1** The total value of all product displays given or sold by an industry member under 016 of this rule may not exceed \$300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of \$300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

**016.01C2** All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

**016.01C3** The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

## **016.02 POINT OF SALE ADVERTISING MATERIALS AND CONSUMER ADVERTISING SPECIALTIES**

### **016.02A GENERAL**

**016.02A1** The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer is allowed provided that the condition and limitations prescribed in 016.02C of this rule are met.

### **016.02B DEFINITIONS**

**016.02B1** Point of sale advertising materials are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

**016.02B2** Consumer advertising specialties are items that are designed to be carried away by the consumer, such as trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

### **016.02C CONDITIONS AND LIMITATIONS**

**016.02C1** All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

**016.02C2** The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.



## **016.03 EQUIPMENT AND SUPPLIES**

### **016.03A GENERAL**

**016.03A1** The act by an industry member of selling equipment or supplies to a retailer is allowed if the equipment or supplies are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of the sale. The act by an industry member of installing dispensing accessories at the retailer establishment is allowed as long as the retailer bears the cost of initial installation. The act by an industry member of furnishing, giving, or selling coil cleaning service to a retailer of distilled spirits, wine, or malt beverages is allowed.

### **016.03B EQUIPMENT AND SUPPLIES**

**016.03B1** Equipment and supplies means glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. "Dispensing Accessories" include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

### **016.03C NEWSPAPER CUTS**

**016.03C1** Newspaper cuts, mats, or engraved blocks for use in retailers advertisements may be given or sold by an industry member to a retailer selling the industry members products.

### **016.03D COMBINATION PACKING**

**016.03D1** The act by an industry member of packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers is allowed.

## **016.04 EDUCATIONAL SEMINARS**

### **016.04A GENERAL**

**016.04A1** An industry member may give or sponsor educational seminars for retailers and their employees. Examples would be seminars dealing with use of a retailers equipment, training seminars for employees of retailers, or tours of industry members plant premises. This rule does not authorize an industry member to pay a retailer expenses in conjunction with an educational seminar (such as travel and lodging). This does not preclude providing nominal hospitality during the event.

## **016.05 STOCKING, ROTATION AND PRICING SERVICE**

### **016.05A GENERAL**

**016.05A1** Industry members may, at a retail establishment, stock, and rotate ~~and affix the price to~~ the distilled spirits, wine, or malt beverages which they sell, provided products of another industry members are not altered or disturbed.

### **016.05B SHELF PLAN AND SHELF SCHEMATICS**

**016.05B1** The act of an industry member of providing a shelf plan or shelf schematic for distilled spirits, wine, or malt beverages is allowed. When requested by a retailer, an industry member may, pursuant to the plan or schematic, rearrange or reset all or part of a liquor store or liquor department.

## **016.06 PARTICIPATION IN RETAILER ASSOCIATION ACTIVITIES**

### **016.06A GENERAL**

**016.06A1** The following acts by an industry member participating in retailers association activities is allowed.

**016.06A1A** Displaying ~~it's~~ their products at a convention or trade show.

**016.06A1B** Renting display booth space if the rental fee is the same or paid by all exhibitors at the event.

**016.06A1C** Providing its own hospitality which is independent from association sponsored activities.

**016.06A1D** Purchasing tickets to functions and paying registration fees if the payment or fees are the same as paid by all attendees, participants or exhibitors at the event.

**016.06A1E** Making payments for advertisements in programs or brochures issued by retailers associations at a convention or trade show. If payment or fees are the same as paid by all other patrons or exhibitors.

## **016.07 PERMIT TO SOLICIT FOR FUTURE SALES**

**016.07A** The Commission may issue a permit for wholesale sales for future delivery to retailers which authorizes the permittee to promote the sale of beer, wine, and spirits through methods such as solicitations, display, advertising and personal contact with licensed retailers and their agent, servants, and employees. A person holding the permit under this regulation may give samples of beer, wine, and spirits to retailers provided the alcoholic beverages first came to rest at a wholesale licensed premise and the state excise taxes paid. The permit under this section is only required of persons employed by a holder of a shipping license issued by the Commission and who reside in the State of Nebraska. Shipping license holders ~~shall~~ will furnish the Commission with the names of all employees engaged in activities requiring a permit under this section and ~~shall~~ will notify the Commission whenever an employee begins or terminates employment. Upon leaving employment, an employee ~~shall~~ will submit his or her permit to the Commission for cancellation. Every person holding a permit under this section ~~shall~~ will exhibit it upon request to any prospective purchaser or agent of the Commission or Nebraska State Patrol. A permit holder ~~shall~~ will retain and preserve industry promotional cost records for Commission review for a period of three years. Every person holding a permit under this section ~~shall~~ will be obligated to follow all Trade Practice Policies, Chapter 6, 016 contained in Commission Rules and Regulations. Every permit holder, employer, or shipper is subject to citation for any violation of the Trade Practice Rules and Regulations. The application for the new permit ~~shall~~ will be submitted upon such forms as the Commission may prescribe.

## **017 EMPLOYMENT OF MINORS**

### **017.01 Age 16 - Upon reaching 16 -**

~~**017.01A** An employee may stock inventory, sack and carry out alcoholic liquor from licensed establishments, although she/he must be accompanied by a person 21 years of age or over. (Can be the purchaser.) (53-168.06)~~

**017.01A** An employee may handle alcoholic liquor in the course of their employment.

**017.01A1** A grocery pick-up lane is considered a carry-out function.

~~**017.01B** An employee may remove liquor containers as a waiter, waitress or busboy support staff of a restaurant, hotel, etc. (53-168.06)~~

**017.01B** An employee may remove and dispose of alcoholic liquor containers for the convenience of his or her employer and customers in the course of his or her employment;

~~**017.01C** An employee may not scan or accept payment regarding any sale of alcoholic liquor.~~

**017.01C** An employee may complete a transaction for the sale of alcoholic liquor in the course of his or her employment if he or she is not handling or serving alcoholic liquor.

**017.02** Age 19 - Upon reaching 19 –

A person may serve or sell alcoholic liquor in the course of his or her employment.

~~**017.02A** An employee may serve (includes bartending) and sell alcoholic liquor. (53-168.06)~~

~~**017.02B** An employee may place orders and accept deliveries in the normal course of business with licensed wholesalers.~~

**017.03** Immediate underage family members are not exempt from the provisions of this rule.

**018 CREDIT: WHOLESALER/RETAILER**

**018.01** Pursuant to the authority granted in the Liquor Control Act and to meet the requirements contained in Regulations No. 122 (originally issued as FFA Regulation No. 8) issued by the Bureau of Internal Revenue of the United States Treasury Department, the Nebraska Liquor Control Commission hereby adopts the following rule:

**018.01A** No person, partnership, firm or corporation holding a retailer's license under the Nebraska Liquor Control Act will accept or receive credit from any manufacturer, distributor or wholesaler on purchases of beer and no retailer ~~shall~~ will accept or receive credit from any manufacturer, distributor or wholesaler on purchases of alcoholic liquors, except beer, for a period exceeding 30 days from the date of delivery of any such merchandise.

**018.01B** No manufacturer, distributor or wholesaler ~~shall~~ will extend credit to any such retailer on sales of beer and no manufacturer, distributor or wholesaler ~~shall~~ will extend credit to any such retailer on sales of alcoholic liquors, excluding beer, for a period exceeding 30 days from the date of delivery of any such merchandise.

**018.01C** No retailer ~~shall~~ will purchase, accept or receive any alcoholic liquors, including beer, from any manufacturer, distributor or wholesaler if such retailer is delinquent on any account for alcoholic liquors, including beer, to any manufacturer, distributor or wholesaler.

**018.01D** No manufacturer, distributor or wholesaler ~~shall~~ will sell or otherwise furnish any such alcoholic liquor, including beer, to any retail licensee who is delinquent on any account to any other manufacturer, distributor or wholesaler, providing that such delinquency is known to such manufacturer, distributor or wholesaler.

**018.01E** Every manufacturer, distributor, wholesaler and retailer ~~shall~~ will report to the Commission such information concerning the extending or receiving of credit on such forms as the Commission may hereafter prescribe and at such times as the Commission ~~shall~~ will hereafter determine. Such reports ~~shall~~ will be by affidavit and sworn to by all licensees.

**018.01F** Any purchases, sales, practices or transactions entered into between any manufacturer, distributor or wholesaler and any retailer, with the intent to circumvent or evade the provisions of this regulation, ~~shall~~ will be considered as a violation thereof.

**018.01G** ~~Beer~~ Wholesalers ~~shall~~ will be permitted to give retailers quantity discounts on volume purchases but such discounts ~~shall~~ will be calculated on the basis of sales made to each licensee at the time of the sale and not result in any accrued accumulated at retroactive discount. Individual retail licensees, groups of licensees, or licensees holding more than one retail license ~~shall~~ will not be permitted to combine purchases for purposes of obtaining such quantity discounts.

**018.01G1** Quantity Discount defined: A Quantity discount is a change to the purchase price based upon the quantity purchased. The regular price of the alcoholic liquor sold and any quantity discount must be stated on the invoice as well as the basis for the discount. It does not include the exchange of free goods or other products.

**018.01G2** Any quantity discount must be made available to all similarly situated licensees for alcoholic liquors bearing the same brand or trade name and of like age and quality. A Wholesaler or Farm Winery licensee may create a quantity discount offer and place reasonable conditions to accept the offer, but the effort of such conditions cannot be designed to be, or result in the quantity discount offer only being available to specific licensees, groups of licensees, or class of licensees.

**018.01G3** Return of product: The State of Nebraska will follow the applicable Federal regulations on the return of alcoholic product.

## **019 ILLEGAL CONDUCT: ALL LICENSEES**

**019.01** Persons, partnerships, and/or corporations holding licenses issued pursuant to the provisions of the Nebraska Liquor Control Act, Section 53-101, et seq., R.R.S. 1943, will be subject to citation and possible administrative sanction to include suspension or revocation for violation of the following:

**019.01A** Sale to Minor; Defense: No licensee or partners, principals, agents or employees of any licensee shall sell any alcoholic liquors to any person who is a minor as defined in Section 53-103(23) of the Nebraska Liquor Control Act except that proof of the following shall constitute an absolute defense:

**019.01A1** The purchaser falsely represented in writing and supported with other documentary proof specifically; a Driver's License, Nebraska State Identification Card, Military Identification Card, Alien Registration Card or Passport that he was of legal age to purchase alcoholic liquor; and

**019.01A2** That the appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to any documentary description of appearance presented by the purchaser; and

**019.01A3** The sale was made in good faith and in reliance upon the written representation, other documentary evidence, the appearance of the purchaser, and in the belief the purchaser was of legal age to make such purchase; or

**019.01A4** The sale was made with the knowledge of and in cooperation with a duly authorized law enforcement officer or agent of the Nebraska Liquor Control Commission. (53-180, 53-180.07)

**019.01B** Minor in Possession Within Licensed Premise: No licensee or agent, principal, partner or employee of any licensee ~~shall~~ will permit any person who is a minor as defined in Section 53-103(23) of the Nebraska Liquor Control Act to possess for the purpose of consumption any alcoholic liquor in any licensed premises. A licensee who has established the defense of (A) above ~~shall~~ will be deemed to have not acted carelessly. (53-180.02)

**019.01C** Hours of Operation: No licensee or partner, principal, agent or employee ~~shall~~ will permit the sale, dispensing or delivery of any alcoholic liquor in or from the licensed premises during hours not permitted by local ordinance or by the provisions of state law. (53-179)

**019.01D** Open Containers During Prohibited Hours: No licensee or partner, principal, agent or employee of any licensee ~~shall~~ will permit any alcoholic liquor, in open containers to remain in the possession or control of any person for the purpose of consumption 15 minutes after the time set for concluding the sale of alcoholic liquor, by state law or by local ordinance whichever is earlier. (53-179(3))

**019.01E** Silent Partners; Profit Sharing: No licensee or partner, principal, agent or employee of any Retail Liquor License ~~shall~~ will permit any other person not licensed or included as a partner, principal, or stockholder of any Retail Liquor License to participate in the sharing of profits or liabilities arising from any Retail Liquor License. (~~53-1,100~~)(53-149 and 53-131.01)

**019.01F** Disturbance: No licensee or partner, principal, agent or employee of any licensee ~~shall~~ will allow any unreasonable disturbance, as such term is defined below, to continue without taking the steps, as set forth below, within a licensed premise or in adjacent related outdoor areas.

**019.01F1** A “Disturbance” as used in this section ~~shall~~ will mean any brawl, fight, or other activity which may endanger the patrons, employees, law enforcement officers, or members of the general public within licensed premises or adjacent related outdoor area. Such term ~~shall~~ will include incidents involving, but not necessarily limited to: drug dealing; intoxicated individuals; soliciting of prostitution; or any physical contact between the licensee's agents or employees and its customers, involving any kissing, or any touching of the breast, buttock or genital areas. Any brawl fight or other activity which results in serious injury to any patron, employee or members of the general public ~~shall~~ will be reported to law enforcement. Serious injury means any gunshot wound, knife or other stab wound or any other injury requiring medical treatment onsite or transportation to a medical facility for treatment. Licensees and their employees ~~shall~~ will not prohibit or interfere in any way with a patron who chooses to contact law enforcement in the event they are assaulted on the premises. A Licensee will also not create through its action or inaction a situation where a disturbance had reasonable foreseeability of occurring.

**019.01F2** Unless there is reason to believe that a licensee or partner, principal, agent or employee of any licensee would endanger himself/herself or others, such person ~~shall~~ will take such action as is reasonably necessary to terminate the disturbance. Physical force should be exercised only in extreme circumstances and should be limited to the force reasonably required to terminate the disturbance and remove the individual from the licensed premise, without endangering any patron or other person.

**019.01F3** In the event efforts taken in accordance with the preceding subparagraph are not successful or if there is reason to believe that the licensee, partner, principal, agent or employee of any licensee may create a danger to himself/herself or others, than in such event, such person ~~shall~~ will immediately contact law enforcement personnel to assist in properly handling the disturbance. In the event law enforcement and/or medical personnel are summoned, the directions and/or orders given by such law enforcement or medical personnel ~~shall~~ will be followed.

**019.01F4** A licensee who has conformed with the procedure as set forth in this section ~~shall~~ will be deemed to have not permitted a disturbance to occur and continue. Licensees who wish to document their compliance with this rule may maintain a log in which they document disturbances or other unusual occurrences.



**019.01F5** A Licensee is guilty of allowing a disturbance to occur if, by its inaction or action, created or contributed to the circumstances which gave rise to the disturbance, such actions or inactions may include, but are not limited to security, entertainment, third party contracts such as promoters, and/or rejecting advice of law enforcement or the Commission in regards to the conduct.

**019.01G** Entry Into Premise by Law Enforcement Officer: No licensee or partner, principal, agent or employee of any licensee ~~shall will~~ refuse to permit or unreasonably delay in permitting any law enforcement officers, duly appointed investigator, inspector, agent or auditor of the Nebraska Liquor Control Commission entry onto the licensed premises at any time ~~demand for such entry is made by such law enforcement officer, investigator, inspector, agent or auditor of the Nebraska Liquor Control Commission.~~

**019.01H** Removal of Alcoholic Liquors From Premise: No licensee or partner, principal, agent or employee of any licensee ~~shall will~~ allow any alcoholic liquor to be removed from a licensed premises except where a license is held permitting off-premises sales and then only in original unopened containers.

**019.01I** Sale For Resale: No licensee or partner, principal, agent or employee other than provided for in 53-175, ~~shall will~~ engage, directly or indirectly, in any transaction including or conspiring as to the resale of any liquors owned by him as a licensee, nor permit the sale or delivery of any alcoholic liquor in such quantities that would place a reasonable-minded person on notice that such liquor might be intended for resale. A defense may be established by the licensee by obtaining from any such suspected purchaser a statement in writing that the purchase is not being made for the purpose of reselling the alcoholic liquors.

**019.01J** Refilling; Substitution: No licensee or partner, principal, agent or employee of any licensee ~~shall will~~ fill or refill, in whole or in part, any original package of alcoholic liquor, with the same or any other kind, quantity, quality or proof of alcoholic liquor and no licensee or partner, principal, agent or employee of any licensee ~~shall will~~ have in his possession for sale at retail, any containers of any kind containing alcoholic liquor, except in original packages. (53-184)

**019.01K** Delinquent Credit: No licensee or partner, principal, agent or employee of any licensee ~~shall will~~ fail to pay for upon delivery, any purchases of beer and ~~shall will~~ not accept credit from any manufacturer, distributor or wholesaler of alcoholic liquors namely, spirits or wine, for a period of 30 days. Any purchases of alcoholic liquors for which payment has not been made in full within 30 days of the date of invoice ~~shall will~~ constitute a delinquency and ~~shall will~~ subject the licensee to citation (53-168).

**019.01L** Sale of License: No licensee or partner, principal, agent or employee of any licensee ~~shall~~ will sell or offer to sell any interest in any liquor license to any other person. In any sale of a business possessing a liquor license, no value may be placed upon the existence of the license itself and the placing of any such value upon the license by the seller of any such business ~~shall~~ will subject the seller-licensee to citation.

**019.01M** Sell on Credit to Consumer: No licensee or partner, principal, agent or employee of any licensee not exempted by the provisions of Section 53-183, ~~shall~~ will sell or furnish alcoholic liquor at retail to any person on credit, except that a major credit card may be used in the purchase of alcoholic liquors. The term "major" credit card ~~shall~~ will mean any nationally recognized credit card, excluding any card, distributed by an entity that holds a retail license issued by Nebraska. (53-183)

**019.01N** Sell to Visibly Intoxicated Person/Mentally Incapacitated Person/Person Incapacitated by Drugs. No licensee or partner, principal, agent or employee of any licensee shall sell, serve, or furnish alcoholic beverages or allow possession of alcoholic beverages on the licensed premise to any person who is or has become intoxicated and/or incapacitated by the consumption of alcoholic beverages and/or other drugs or who is mentally incapacitated. Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor or drugs so as to diminish the person's ability to think and act in the manner of an ordinary prudent and cautious person in full possession of his or her faculties using reasonable care under like circumstances. A person ~~shall~~ will be deemed to be intoxicated when it can be plainly determined by appearance, conduct, and/or demeanor. A change in demeanor and/or behavior as time passes is also an indicator of intoxication. Other indicators include, but are not limited to:

**019.01N1** Problems with balance, inability to maintain balance, i.e., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, head on bar;

**019.01N2** Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable to pick up change, clumsy, uncoordinated movements;

**019.01N3** Strong smell of alcohol;

**019.01N4** Slurred speech, i.e., thick tongue, uncontrollable voice pitch, muttering, argumentative, aggressive or belligerent, making inappropriate comments, crude behavior.

**019.01N5** Bloodshot and/or glassy eyes, i.e., flushed face;

**019.01N6** Condition of clothes and hair, i.e., disheveled appearance, messy hair, unzipped clothing;

**019.01N7** Careless with money, urging other people to have another drink, annoying other guests and servers, complaining about drink prices, complaining about drink strength or preparation.

**019.01N8** Unusual behavior, i.e., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior.

**019.01N9** A concentration of eight hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood, a concentration of eight hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, or a concentration of eight hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine. This indicator may only be used in conjunction with at least one other indicator that demonstrates visible intoxication.

**019.01O** Notices: Every licensee ~~shall~~ will cause his license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises. (53-148) The warning to minor and adults sign and the pregnancy poster must also be on display in a prominent place. (53-180.04 and 53-103.04)

**019.01P** No retail licensee may deliver alcoholic liquor to a consumer, except:

**019.01P1** Holder of a special designated license or a caterer's license used in conjunction with a special designated license may deliver to the licensed location or to a location expressly authorized by the Commission in writing pursuant to Chapter 4 of the Rules and Regulations of the Commission.

**019.01P2** A retail licensee ~~and~~ or holder of a shipping license, may deliver or cause to be delivered by its agent, delivery service or common carrier to a consumer alcoholic beverages provided that the consumer has paid the licensee for the alcoholic liquors prior to delivery by cash, credit or debit card, and that the licensee has verified that the sale has not been made to a minor, nor that delivery will be made to a minor. Any package to be delivered by a delivery service or common carrier for the holder of a shipping license ~~shall~~ will have a label stating "adult signature required"

measuring at least three by five inches in size placed on the package by the licensee.

**019.01P3** The retail licensee or holder of a shipping license is responsible for any violations of the Nebraska Liquor Control Act and/or the Rules and Regulations of the Nebraska Liquor Control Commission which occur as a result of the delivery of alcoholic liquors, including, but not limited to, sales to minors.

**019.01P4** The driver for the agent must be 21 years of age.

**019.01Q** Other Illegal Activities: The Commission finds that certain illegal activities may induce individuals to enter licensed premises and that the Commission has an interest in insuring that licensees do not use illegal means to promote the sale and consumption of alcohol. The Commission also believes the consumption of alcohol could impair judgement and could lessen inhibitions, causing some consumers to engage in illegal activities or to be victims of illegal activities on or about licensed premises, endangering the health, safety and welfare of individuals. The Commission, therefore, finds there is a nexus between the consumption of alcohol and certain illegal activities that occur within licensed premises or in adjacent related outdoor areas.

Such activities are: drug-related offenses, prostitution or pandering, assaults, sexual assaults, homicide, gambling, vandalism, weapons-related offenses, theft, disturbing the peace, violations of statutes or local ordinances relating to entertainment, acceptance of food stamps for the sale of alcohol or otherwise in violation of federal laws or regulations, and any offense referred to in Section 53-125 (4) or (5), whether or not there has been a plea of guilty or a conviction in criminal court.

If the Commission finds by a preponderance of the evidence that a licensee or employee or agent of a licensee has committed any of the foregoing illegal activities or has knowingly allowed such offense to be committed by others on the licensed premises or adjacent related outdoor areas, the Commission may suspend, cancel or revoke such license.

**019.01R** Penalties: Upon a determination by the Nebraska Liquor Control Commission that any licensee licensed by it has violated any of the provisions of the Nebraska Liquor Control Act (53-101 through 53-1,200) or the Rules and Regulations of the Nebraska Liquor Control Commission that license may be subjected to cancellation, revocation or suspension or other administrative sanction such as the Commission may order.

## **019.01S SANITATION**

**019.01S1** Sanitary conditions, conducive to public health and welfare, must be maintained at all times, in, on or about licensed premises, by meeting minimum sanitary standards as set forth in the Nebraska Food Service Code. The minimum standards ~~shall~~ will require at least two restrooms for establishments that provide on premise consumption of alcoholic beverages. The licensee may request an exemption and if it is found by the Commission that such waiver does not create an issue to the public, health, safety, or welfare it will be granted.

## **019.01T QUANTITATIVE SALES**

**019.01T1** All licensees ~~shall~~ will maintain ~~or~~ on their licensed premises records presently required by federal regulation concerning sales of alcoholic liquor, in an amount of twenty wine gallons or more (27 CFR 194) Such records ~~shall~~ will include a record of the name and driver's license number or other identification of the person making the purchase. All licensees ~~shall~~ will make such records available to any Nebraska Liquor Control personnel or any other law enforcement officer at any time demand for such is made.

## **019.01U DRINKING PROMOTIONS**

**019.01U1** No licensee ~~shall~~ will sell, or serve for on-premises consumption, an unlimited quantity of beer, wine, or spirits at a specific price.

**019.01U2** No licensee ~~shall~~ will sell or serve two or more drinks containing beer, wine, or spirits to a person for that person's consumption on the licensed premises for one price. A pitcher or bucket of beer ~~shall~~ will not be considered a drink, however, no licensee ~~shall~~ will sell two or more pitchers or buckets of beer for one price.

**019.01U3** Nothing in this rule shall will limit, or in any way restrict, the price which may be charged by any licensee for a single drink containing beer, wine, or spirits to be consumed on the licensed premises.

**019.01U4** No licensee ~~shall~~ will mix or pour alcoholic beverages directly into a patron's mouth. The so-called upside-down drinks are prohibited.

## **019.01W SPECIAL DESIGNATED PERMIT/DELIVERY AND RETURN OF ALCOHOLIC BEVERAGES**

**019.01W1** Delivery and return of alcoholic beverages must be made within seven (7) days prior and subsequent to the date of the event.

**019.01W2** If storage is to be off the licensed premises, written request must be made to and written approval received from the Commission covering the location and dates of the storage.

**019.01W3** After the completion of the event for which a special designated permit is obtained, the permittee may remove open containers of alcoholic liquor from the premise. A licensee with a catering permit may store open containers of alcoholic liquor used for catered events provided the alcoholic liquor is stored in a separate and secure area of the licensed premise.

## **019.01X ADULT ENTERTAINMENT**

**019.01X1** No licensee or partner, principal, agent or employee of any licensee ~~shall~~ will employ or permit any person under the age of nineteen to provide sexually explicit entertainment within a licensed premises; nor ~~shall~~ will any person under the age of nineteen be employed or permitted within a licensed premises while unclothed in any sexually explicit manner.

## **020 CANCELLATION/DENIAL OF LICENSES**

**020.01** Where approval or authorization for issuance of any liquor license has been made by the Commission subject to any condition and that condition is not met the applicant ~~shall~~ will be subject at all times during this period of non-issuance to an Order of the Commission to show cause why the approval should not be cancelled and the application denied for failure to meet the conditions for issuance.

**020.02** Where a license has been approved by the Commission and forwarded to the city, village or county clerk, as the case may be, for the collection of the appropriate fees and issuance and the applicant does not complete the licensing process by paying such appropriate fees and obtaining such license within twenty-one calendar days from the receipt by the city clerk, village or county clerk, as the case may be, for the license, the clerk ~~shall~~ will immediately return the license to the Commission and the applicant ~~shall~~ will be subject to an Order of the Commission directing the applicant to show cause why the approval of the license should not be cancelled and the application denied.

**020.03** Where a license has been issued and the licensee for any reason during the license year fails to operate the license for a total of thirty continuous days or sixty total days the licensee ~~shall~~ will be subject to an Order of the Commission directing that the licensee show cause why the license should not be cancelled for non-use.

**020.04** Where a license has been issued and the licensee finds that the licensee ~~shall~~ will not be able to maintain continuous operation during the license year as a result of fire, tornado, flood, loss of lease or some other reason constituting a hardship the licensee ~~shall~~ will apply to the Commission within thirty days of the occurrence constituting hardship for permission to voluntarily cease operations and maintain the licensee's license for a period of time not to exceed the end of the licensed year for which the license was issued. Any such status afforded ~~shall~~ will be reviewable by the Commission within sixty days of the end of any license year in which such status has been afforded. Failure to afford such status or the revision of such status ~~shall~~ will subject the licensee to an Order of the Commission to show cause why the licensee's license should not be cancelled.

**020.05** Failure on the part of the licensee to show good cause for either (A) the licensee's non-compliance with conditions of issuance, (B) the licensee's non-completion of the licensing process by the paying of the appropriate fees and obtaining the license from local officials, (C) the licensee's non-use or (D) the licensee's non-operation due to hardship ~~shall~~ will result in the license being cancelled or the previous preliminary approval being rescinded and the application denied.

**020.06** Licenses that have been suspended, cancelled or revoked by the Commission, but are operating under a judicial stay may be renewed according to the renewal statutes. However, any license renewed while suspended, cancelled or revoked but operating under judicial stay ~~shall~~ will be subject to the same suspension, cancellation, or revocation that was attached to the original license once the judicial stay is dissolved.

## **021 COMMON CARRIER AND ALCOHOL SHIPMENTS**

“Common Carrier” means a company that transports goods, on reasonable request, on regular routes and at set rates.

A Common Carrier that carries or transports alcoholic liquor into this State to a consumer in this State will complete an application on a form prescribed by the Commission and will submit quarterly reports to the Commission. A report required under this section must include all of the following about each delivery to a consumer in this State during the preceding calendar quarter:

- A) The name and business address of the person that ships alcoholic liquor
- B) The name and address of the recipient of alcoholic liquor
- C) The weight of alcoholic liquor delivered to the consignee
- D) The date of the delivery
- E) If no shipments are made during the quarter. Notification of such is required.

Said reports will be filed by the 15<sup>th</sup> of months following the quarter, i.e. (January-March submit by April 15; April- June submit by July 15, July-September submit by October 15; October- December submit by January 15).