

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 Thursday, the 7th day of September 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-LCC2 (Requirements for Licensees). The subject matter and scope of the rule-making action is:

1. To Adopt Amendments to Rule 237-LCC2 (Requirements for Licensees).
These updates to Chapter 2 have a purpose of updating language but also makes a few substantive changes. The changes are a clarification regarding the legal ability to work in Nebraska, a codification of current Commission policy regarding Hardship status, and a clarification that false statements made to Nebraska State Patrol Investigators is the same as a false statement to the Commission. The proposed changes also define "seasonal licenses", move satellite locations rules to Chapter 13, and makes changes to Special Designated license applications, and removes an older rule that is no longer needed. The proposed changes affect the regulated industry.

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 September 7th, 2023. 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 18th day of July 2023.

NEBRASKA LIQUOR CONTROL COMMISSION




(Executive Director)

CHAPTER 2 – GENERAL REQUIREMENTS FOR LICENSEES

001 GENERAL REQUIREMENTS

01.01 The licensee shall, at all times, be responsible for the licensed premises and for the control, sale and dispensing of alcoholic liquors permitted by the license. Only the licensee may receive the proceeds resulting from the sale or dispensing of alcoholic liquor except (a) a manager may receive a percentage of gross or net sales as employment compensation, (b) a landlord may receive a percentage of gross sales as rent, (c) the franchisor may receive a percentage of gross sales as a franchise fee and (d) except whereas otherwise provided by the provisions of the Nebraska Liquor Control Act.

01.02 In cases wherein the Commission has fixed certain requirements and prescribed certain conditions upon which a license is granted or is permitted to continue in full force and effect by order of the Commission, whether such requirements or conditions are imposed at a formal hearing, by a written notice or in a written stipulation, such requirements or conditions shall be deemed a part of the license issued by the Commission as though actually endorsed thereon; and any violation or breach of any such requirements or conditions is prohibited.

02 PARTNERSHIP WHEN BUSINESS OPERATED ON PERCENTAGE OR SHARE BASIS

02.01 Any license covering premises financed or operated on a percentage or share of the business basis will be considered a partnership between the parties involved insofar as the rights and duties of the licensee of record under his license are concerned.

03 TRANSFER OF STOCK OF TERMINATED LICENSE

03.01 When a licensee has discontinued business under his license and his license has been terminated, he may apply in writing to the Commission for permission to transfer his stock of alcoholic liquors to another qualified licensee. He shall furnish the Commission with an inventory of the liquors contemplated in such transfer.

03.02 The licensee who desires to purchase such stock of liquor shall also apply in writing to the Commission for permission to make such purchase and he shall report to the Commission in writing the quantity, brands, and types of such liquor purchased and the address to which it was actually delivered after the purchase.

04 TEMPORARY OPERATING PERMITS

04.01 Someone other than a licensee may operate a business holding a liquor license if all of the following criteria are met:

004.01A A formal application for a new license must be on file with the Commission.

004.01B A request for a temporary operating permit must be filed with the application.

004.01C Temporary operating permits may not exceed 90 days in total duration.

04.01 D If the sale of the business fails to occur, the previous licensee can be reinstated during the pendency of the temporary operating permit upon request of the previous license holder.

04.02 Any violations occurring during the pendency of a temporary operating permit will be adjudicated in the following manner:

004.02A Any violations occurring during the temporary operating permit will be used and conferred upon a license if issued. Any violation may be used to determine the fitness of the applicant to receive the requested license.

05 LICENSE APPLICATION REQUIREMENTS

05.01 A person applying for a license of any kind, except those issued under Neb. Rev. Stat. 53-124.11, shall file with their license application (1) birth certificate, ~~or~~ naturalization papers, permanent resident card, or employment authorization card proving ~~United States citizenship~~ the ability to legally work in the State of Nebraska, and (2) the required fingerprints card(s) and fee(s). Fingerprints filed with the Nebraska Liquor Control Commission within the past two years of the filing of the application shall meet this requirement.

005.01A For corporations, fingerprints are required of the Chief Executive Officer, the manager, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation. For nonprofit corporations and governmental subdivision, this shall only mean the manager. [No citizenship or residency requirements per Sec. 53-125(9)]

005.01B Fingerprints of spouses, including those ineligible to hold a license, will not be required upon receipt of a signed affidavit of no interest, upon the form provided by the Nebraska Liquor Control Commission.

05.01 C For corporations owning shares in the applicant's corporation, the Chief Executive officer and/or President and any shareholder owning in the aggregate more than twenty-five percent of the stock of the corporation shall file an affidavit on a form supplied by the Commission stating that they are eligible to hold a license under the Nebraska Liquor Control Act.

05.02 Any proposed change from a profit to a nonprofit or from a nonprofit to a for profit license shall require the filing of a new application.

05.03 Any change from an individual license to a partnership, when adding a spouse, or when an individual or partnership incorporates, with no additional partners, or from a corporation to an individual, shall not require the filing of a new application, but may be done by the filing of an affidavit with the Nebraska Liquor Control Commission.

06 RESIDENCY REQUIREMENTS

06.01 Any licensee, required to be a state resident must be a registered voter in Nebraska and must, if a vehicle is owned, have at least one such owned vehicle registered in Nebraska.

06.02 Additionally, all licensees are required to do any two of the following:

006.02A Own or rent property in Nebraska;

006.02B Have a mailing address in Nebraska;

006.02C Actually reside in Nebraska;

006.02D Use a Nebraska address on tax returns.

08 TRADE NAME

08.01 The Liquor Control Commission shall be notified in writing of any change in an operating trade name (DBA). Notification shall be made by licensee within thirty (30) days of change.

09 MANAGER APPLICATION

09.01 Upon departure, death or termination of a manager, a licensed corporation shall file an application with the Liquor Control Commission for a new manager within sixty (60) days. Should the corporation be unable to establish a manager within sixty (60) days, the corporation may apply for a hardship.

09.01a Corporation Manager Hardship. The Manager Hardship, if approved will allow for continuous operation of the license without a manager in place for a period of time determined by the Commission staff at the time of hardship application.

10 FALSIFICATION OF APPLICATION

10.01 No applicant for a liquor license, or partner, principal, agent or employee of any applicant for a liquor license shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director, ~~or employees, or agents as defined in Neb. Rev. Stat. 53-117(3)~~. Any violation of this provision may result in denial of application for a liquor license or, in the event that a license has already been issued, suspension, cancellation or revocation of such license.

11 FALSIFICATION OF INFORMATION

11.01 No licensee or partner, principal, agent or employee of any licensee shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director, ~~or employees, or agents as defined in Neb. Rev. Stat. 53-117(3)~~. Any violation of this provision may result in suspension, cancellation or revocation of such license.

12 DEFINITIONS

12.01 "School" shall mean a building which is used as a place for the instruction of pupils in elementary or high school grades, and which is owned, leased, or otherwise under the jurisdiction and control of a public school district or the administrative body of a private, denominational or parochial school accredited by the State Board of Education, provided, that a satellite location that is not adjacent to the school's primary location and which serves not more than 25% of the number of students enrolled at such school shall not be considered a "school" for purposes of Neb. Rev. Stat. Rec. 53-177. A student attending a satellite location and the school's primary location shall be counted as served by the satellite location.

12.02 "College" shall mean a technical community college, a state college, or a private college approved by the Nebraska Coordinating Commission for Postsecondary Education.

12.03 "University" shall mean two or more colleges under a central administration, offering baccalaureate and/or graduate degree program.

12.04 "Campus" shall mean any buildings owned, leased, or otherwise under the jurisdiction and control of the administration of a college or university, which are used as a place for the education of students or for student living quarters, and the grounds surrounding such buildings, provided that a satellite location that is not adjacent to a university or college's primary location and which serves not more than 25% of the number of students enrolled at such university or college shall not be considered a "campus" for purposes of Neb. Rev. Stat. Sec 53-177. A student attending a satellite location and the university or college's primary location shall be counted as served by the satellite location.

13 SPECIAL DESIGNATED LICENSES

13.01 Except as provided for in 013.04 all applications for a special designated license, with local governing body approval, and proper fees, must be received by the Commission at least ~~ten~~ seven working days prior to the event. Such notice is ~~required~~ to enable a reasonable notification to the ~~Nebraska State Patrol, local law enforcement, the fire marshal, and the sanitation division of the Department of Agriculture.~~ Applications not received at least ten working days prior to the event will not be processed to appropriate state agencies. If local governing body approval is received and proper fees are paid, the Commission may issue with internal Administrative Approval under the five working days.

13.02 In connection with each event, the applicant must ~~estimate the~~ provide a written showing of estimated size of the crowd and confirm ~~how it intends to assure~~ that alcohol will not be served to minors and intoxicated persons.

13.03 Each of the following conditions, unless waived or modified as herein provided, shall apply to all Special Designated Liquor Licenses issued to organizations that do not hold a valid retail or caterer's liquor license.

013.03A Events attended by more than 150 people that includes minors unaccompanied by a parent (excluding minors acting as service personnel and minors attending as program or entertainment participants) shall conduct age checking at the entrance to the licensed area and all adults shall be identified with wrist bands that are destroyed by removal.

013.03B At events attended by more than 150 people which do not involve a sit down meal served to all attendees simultaneously there shall be a minimum of one security person for attendees up to 200 and one more security person for each 200 additional. Security personnel whether paid or volunteer shall have no duties other than maintaining order and enforcing all liquor laws and license conditions including prohibiting minors and intoxicated attendees from consuming or possessing alcohol. All security personnel shall be dressed in distinctive clothing with visual markings identifying them as security personnel.

013.03C The individual designated on the license as the event supervisor shall be in the licensed area at all times alcohol is being served and the immediate post clean up period. If the event supervisor is to be absent from the licensed premise during any part of the designated period, the event supervisor must designate a person to be in charge in his/her absence.

013.03D All workers performing duties for the sponsoring organization at the licensed event whether paid or volunteers shall refrain from consuming alcohol while on duty during the event and any immediate post event clean up period.

013.03E If minors are in attendance at events of more than 150 people (excluding minors attending as service personnel and minors attending as program or entertainment participants) alcoholic drinks shall be served in distinctively different containers than those in which non-alcoholic drinks are served.

~~**013.03F** At outdoor events attended by more than 150 people where nonattendees have access to property adjacent to any portion of the licensed area all open areas (defined below) with the exception of a reasonably sized access and exit aisle shall have double row fencing with plastic or wood snow fence materials (or equal). The two rows of fence shall be at least 4 feet apart with clear space between the two rows of fence. Open areas are all portions of the licensed area which adjoin areas that can be used or occupied by non-attendees where there is not a solid wall or chain link fence at least 6 feet in height. Except for people entering and exiting the licensed area all attendees shall remain inside the interior row of fencing.~~

13.03 G F Any condition may be waived or modified by the Liquor Control Commission upon a showing by the applicant that such condition is not necessary for the promotion of the health, safety and welfare of the people of the state.

13.04 Applications for Special Designated Liquor Licenses by non-licensees requesting a waiver or modification of conditions along with the reasons and justification for such waiver or modification must be received by the Liquor Control Commission at least ~~30 calendar days prior to the licensed event.~~ at the time of application. When no waiver or modification is required the Commission must receive Special Designated Liquor License applications at least ~~10~~ 7 working days prior to the licensed event.

13.05 All Special Designated Liquor Licenses issued to organizations that do not hold a valid retail or caterer's liquor license will list all the applicable conditions that are a part of that license.

13.06 It is the declared policy of the Commission that Special Designated Licenses should not be used to avoid the oversight and accountability imposed upon a regular retail license. Therefore, applications for Special Designated Licenses may be denied if the proposed location could otherwise be granted a regular license and if such regular license best serves the purposes of the Liquor Control Act. To help accomplish this policy any location that has received twelve (12) Special Designated Licenses in one calendar year shall have any further applications set for hearing to make a determination whether additional licenses are justified prior to the issuance of the requested Special Designated License.

12.05 "Church" shall mean a building where people regularly assemble for worship and for the administration of such offices and is held out to the public as a house of worship and used predominately for the honor of religion and includes, but is not limited to, a building such as a mosque, synagogue or a temple.

12.06 "Guest" shall mean a patron of a club, as defined in Sec. 53-103(20), who comes to the club at the invitation of a member and who uses the club's services or facilities while accompanied by that member. Nothing herein shall prevent clubs from entering into reciprocity agreements to enable a member of one club to use the services or facilities of another club.

12.07 Outdoor area shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors and which is contained by a permanent fence, wall or other barrier approved by the Commission and shall be in compliance with all building and fire, or other applicable local ordinances.

12.08 "Seasonal license" shall mean any license used for a specified period of time within the current year for the sale or service of alcoholic liquors. Such specified period of time shall be supplied to the Commission.

~~**012.08** Satellite Locations: Craft Breweries, a holder of a Class L craft brewery liquor license under Neb. Rev. Stat. 53-123.14, and a holder of a manufacturing license under Neb. Rev. Stat. 53-123.01(2), a holder of a Class Z Micro Distillery license under Neb. Rev. Stat. 53-123.16, and a holder of a Class Y Farm Winery License under Neb. Rev. Stat. 53-123.11, may hold additional retail licensed locations as authorized by Neb. Rev. Stat. 53-123.14 and 53-123.01(2), hereinafter called Satellite Locations. A Satellite Location must be licensed for the sale of alcohol at retail and conform to all other requirements for a retail license. To qualify as a Satellite Location, it must be wholly owned in common by the holder of the Class L brewery license under Neb. Rev. Stat. 53-123.14, or the holder of the manufacturing license under Neb. Rev. Stat. 53-123.01(2), the holder of a Class Z Micro Distillery license under Neb. Rev. Stat. 53-123.16, or a holder of a Class Y Farm Winery License under Neb. Rev. Stat. 53-123.11. Such Class L brewery licensee under Neb. Rev. Stat. 53-123.14, or manufacturing licensee under Neb. Rev. Stat. 53-123.01(2), Class Z Micro Distillery license under Neb. Rev. Stat. 53-123.16, or Farm Winery License under Neb. Rev. Stat. 53-123.11, may transfer product produced at the licensed brewery to its Satellite Locations without the use of a Nebraska Wholesaler. However, proper documentation of all quantities of transfers shall be maintained by such Class L brewery licensee under Neb. Rev. Stat. 53-123.14, or manufacturing licensee under Neb. Rev. Stat. 53-123.01(2), Class Z Micro Distillery license, under Neb. Rev. Stat. 53-123.16 or Farm Winery License under Neb. Rev. Stat. 53-123.11. Any sale to any licensed retailer other than a Satellite Location must be accomplished through a Nebraska Wholesaler.~~