

DEPARTMENT OF STATE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)
4 **DE Admin. Code** 601

PROPOSED

PUBLIC NOTICE

601 (Formerly Rule 35.1) Gathering Licenses

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to gathering licenses issued by the Office of the Alcoholic Beverage Control Commissioner.

The Commissioner previously noticed and published proposed changes to 4 **DE Admin Code** 601 in the January 1, 2024 edition of the *Delaware Register of Regulations* and afforded a 30 day period for public comment. The Commissioner published a General Notice on February 1, 2024, to extend the public comment period an additional 30 days, until March 4, 2024, because of a nonfunctioning email address included in the notice.

Based upon the comments received during the public comment period, which has expired, the Commissioner determined that substantive changes to the regulation are needed and hereby notices and proposes additional changes for public comment. These additional changes relate primarily to how a nonprofit organization is defined; the new proposed changes track specific language used by the Internal Revenue Service. In addition, the proposed changes include a specific post-gathering event report, a report which requests 3 numbers related to the sales and net proceeds of alcohol, including total alcohol sales and/or portion of ticket sales related to alcohol; costs of the alcohol; and the net proceeds from the sale of alcohol at the event.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 10th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to oabccquestions@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

Summary of Proposal

4 **DE Admin. Code** 601 is updated to clarify requirements for a gathering license. Those include that the Internal Revenue Service must recognize the organization as a charitable organization; the floor plan must show the location of the

gathering as stated in the rule; and an affiliated license, as described in 4 **DE Admin. Code** 601, is prohibited from receiving proceeds from a gathering where the nonprofit organization includes members of a licensed manufacturer of beer, wine, or spirits.

Further updates include a revised Section 2.0 that sets forth proposed defined terms in underline. The current Section 2.0 regarding gathering license requirements is struck-through and moved to a new Section 3.0 with proposed changes in underline.

Additional proposed changes include clarifying entities as nonprofit organizations and defining the meaning of social, economic, and civic groups.

Statutory Authority 4 Del.C. §304.

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

601 (Formerly Rule 35.1) Gathering Licenses

1.0 Purpose and Scope

- 1.1 This ~~rule~~ regulation implements the definition of "gathering of persons" under the Delaware Liquor Control Act. ~~"Gathering of persons" or "gathering" means a banquet, picnic, bazaar, fair, or similar private gathering, or similar public gathering, where food or drink are sold, served, or dispensed by non-profit organizations such as churches, colleges, universities, volunteer fire companies, political parties, or other similar non-profit groups having a common civic, social, educational, or religious purpose, or where entrance tickets are sold or entrance fees are required by those non-profit organizations.~~
- 1.2 The purpose of a licensed gathering of persons is to raise funds or to further the stated mission and goals of the nonprofit organization.
- 1.3 To qualify for a license, the event to be licensed as a gathering of persons is one which is planned, coordinated, and hosted by or on behalf of the nonprofit organization and is advertised to the public as an event that will raise funds or otherwise further the stated mission and goals of the organization.
- 1.4 The holder of the gathering license is responsible for the sale and service of alcoholic liquors. The sale and service of alcoholic liquors includes the purchase, receipt, storage, and dispensing of alcoholic products. All proceeds from the sale or service of alcoholic liquors pursuant to a gathering license shall be retained by the holder of the gathering license and shall not be shared with other persons, businesses, or organizations.

2.0 Gathering License Definitions

- 2.1 ~~The organization must be a not-for-profit organization.~~
- 2.2 ~~The organization must submit proof of incorporation or file an alternative, for example, Articles of Association.~~
- 2.3 ~~Form 990 must be filed with the Delaware Alcoholic Beverage Control Commissioner. If the organization is new, proof from the Department of Treasury that non-profit status has been requested must be filed with the application.~~
- 2.4 ~~Religious organizations must file Form 1065.~~
- 2.5 ~~Political organizations must be registered and acknowledged by the Department of Elections.~~
- 2.6 ~~Application must be completed and submitted with proper fee.~~
- 2.7 ~~Daily gathering applications must be completed and submitted ten (10) working days prior to the scheduled gathering.~~

The following words and terms, when used in this regulation, have the following meaning:

"Affiliated licensee" means a licensed manufacturer of beer, wine, or spirits whose members, all or in part, are members of a nonprofit organization that is issued a gathering license.

"Gathering of persons" or "gathering" is defined in 4 Del.C. §101(22) and means a banquet, picnic, bazaar, fair, or similar private gathering, or similar public gathering, where food or drink are sold, served, or dispensed by nonprofit organizations such as churches, colleges, universities, volunteer fire companies, political parties, or other similar nonprofit groups having a common civic, social, educational, or religious purpose, or where entrance tickets are sold or entrance fees are required by those nonprofit organizations.

"Social, civic and educational groups" or "groups" as used in 4 Del.C. §101(22) and defined by the IRS, means nonprofit social welfare organizations and business leagues (operated exclusively to promote social welfare or

common business interests in which no earnings inure to the benefit of a private individual or shareholder); veterans organizations; fraternal orders and societies; and nonprofit entities organized with members, for exempt purposes, supported by membership dues/assessments, with earnings that do not benefit a person having a personal or private interest in the organization's activities, and with organizational documents that do not contain any discriminatory provisions.

3.0 Gathering License - Requirements

- 3.1 A group as defined in this regulation shall submit an application in the form prescribed by the Delaware Alcoholic Beverage Control Commissioner and pay the appropriate fee.
- 3.2 The group must submit proof of incorporation or formation.
- 3.3 The group must submit a recent IRS Form 990 that has been filed by the nonprofit group and accepted by the IRS within the last 3 years. If the group has been organized in the prior calendar year, it must submit proof from the IRS that nonprofit status has been requested.
- 3.4 Religious groups must file IRS Form 1065 or demonstrate a current affiliation with a church or diocese.
- 3.5 Political groups must submit proof of current registration with the Delaware Department of Elections or with the Federal Election Commission.
- 3.6 The group must submit a floor plan of the premises where the gathering will take place, to include all seating, alcohol service areas, alcohol storage, entertainment areas, food service and preparation areas, and all points of ingress and egress.
- 3.7 A daily gathering license application must be completed and submitted 10 working days prior to the first scheduled gathering listed on the application.
- 3.8 Within 60 days after a licensed gathering has taken place, the holder of the license shall submit a completed and signed post event report (a sample form can be obtained from the Office) which shall include: total alcohol sales and/or portion of ticket sales related to alcohol; cost of the alcohol; and the net proceeds from the sale of alcohol at the event. The holder of the license may submit all information by electronic means.
 - 3.8.1 If a group fails to submit the information required by subsection 3.8 of this regulation, future gathering licenses may not be granted to the organization.
 - 3.8.2 A group that has obtained a biennial gathering license may submit the report required by subsection 3.8 of this regulation on a quarterly basis, in lieu of 60 days after each event. Failure to submit the information required may result in cancellation of the biennial gathering license.
- 3.9 If a gathering license is issued to a nonprofit group with an affiliated licensee, the affiliated licensee shall not receive any alcohol proceeds from the gathering. For purposes of this regulation, "proceeds from the gathering" does not include the purchase of alcoholic beverages provided for the gathering.
- 3.10 The requirements of subsections 3.2, 3.3, 3.8 and 3.9 of this regulation shall not apply to a volunteer fire company, a religious organization, or a political organization.

19 DE Reg. 775 (02/01/16)

27 DE Reg. 756 (04/01/24) (Prop.)