

**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**

**Rule 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.

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 [OABCCrulescomments@delaware.gov](mailto:OABCCrulescomments@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, January 31, 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.

**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.

## 600 Licenses for Gatherings

### Rule 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 an eligible 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 an eligible 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 An organization recognized by the Internal Revenue Service or IRS as a tax-exempt club organized for pleasure or recreation, and substantially all of the activities of which are for such purposes, may not be granted a gathering license.
- 1.5 An organization that does not qualify as a tax-exempt, tax-deductible, charitable organization by the IRS may not be granted a gathering license.
- 1.6 The holder of the gathering license is responsible for the sale and service of alcoholic liquors. 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 non-profit organization that is issued a gathering license.

**"Eligible organization"** or **"organization"** means for purposes of this rule an entity recognized by the Internal Revenue Service or IRS as a tax-exempt organization, or a political or religious organization.

**"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 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.

#### 3.0 Gathering License - Requirements

- 3.1 An organization as defined in this rule shall submit an application in the form prescribed by the Delaware Alcoholic Beverage Control Commissioner and pay the appropriate fee.

- 3.2 The organization must submit proof of incorporation or formation.
- 3.3 The organization must submit a recent IRS Form 990 that has been filed by the non-profit organization and accepted by the IRS within the last 3 years. If the organization has been organized in the prior calendar year, the organization must submit proof from the IRS that non-profit status has been requested.
- 3.4 Religious organizations must file IRS Form 1065 or demonstrate a current affiliation with a church or diocese.
- 3.5 Political organizations must submit proof of current registration with the Delaware Department of Elections.
- 3.6 The organization 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 to the Office of the Alcohol Beverage Control Commissioner receipts, invoices, reports, statements, or other records documenting the purchase or donation of the alcoholic liquors served at the gathering and demonstrating that any and all proceeds from the sale or service of alcoholic liquors at the gathering were provided to the non-profit organization that obtained the gathering license. The Commissioner may furnish a form for this purpose.
  - 3.8.1 If an organization fails to submit the information required by subsection 3.8, future gathering licenses may not be granted to the organization.
  - 3.8.2 An organization that has obtained a biennial gathering license may submit the receipts, invoices, or other records required by subsection 3.8 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 non-profit organization with an affiliated licensee, the affiliated licensee shall not receive any proceeds from the gathering. For purposes of this rule, "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 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. 503 (01/01/24) (Prop.)**