

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

FINAL

ORDER

601 (Formerly Rule 35.1) Gathering Licenses

SUMMARY OF THE EVIDENCE

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.
2. Pursuant to 4 Del.C. § 304, the Alcoholic Beverage Control Commissioner intends to amend 4 DE Admin. C. 601 to clarify requirements for a gathering license, including recognition by the Internal Revenue Service as a charitable organization, standards for a floor plan, and prohibiting an affiliated license from receiving proceeds from a gathering where the non-profit organization includes members of a licensed manufacturer of beer, wine, or spirits. Other proposed changes include additional defined terms, changes to clarify entities as non-profit organizations, and defining the meaning of social, economic, and civic groups.
3. Notice of the proposed regulation change was published in the January 1, 2024, edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.
4. Because the published notice included an outdated email address for submitting public comments, a general notice was published February 1, 2024, to afford the public an additional thirty (30) days to submit written comment to a current email address, until March 4, 2024.
5. Public comments were received for the proposed updates to the regulation, all of which are supportive and positive of the changes.
6. Having provided the opportunity for public comment on the proposed regulation in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., the Commissioner determines minor, non-substantive changes are needed to 3.10 in that an affiliated licensee of a nonprofit volunteer fire company or nonprofit religious or political organization is not to receive any alcohol proceeds from a gathering.
7. A copy of the Final Regulation at 4 DE Admin. Code 601 with the above non-substantive changes is attached hereto.

FINDINGS OF FACT

The Commissioner finds that it is necessary to adopt the proposed regulation with minor, non-substantive edits in order to clarify requirements for a gathering license, including recognition by the Internal Revenue Service as a charitable organization, standards for a floor plan, and prohibiting an affiliated license from receiving proceeds from a gathering where the non-profit organization includes members of a licensed manufacturer of beer, wine, or spirits.

NARRATIVE ASSESSEMENT OR STATEMENT

Pursuant to 29 Del.C. § 10118(b)(3), the Commissioner reviewed the proposed changes and states that an assessment is not practical for this regulation, or that an impact, if any, would be de minimis on the achievement of the State's greenhouse gas emissions reduction targets and the State's resiliency to climate change.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 4 DE Admin. Code 601 in which the text of the final regulation shall be in the form referenced herein and therefore the regulation shall be adopted in accordance with this Order. The effective date of this Order shall be ten days after the publication of this Order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 12th day of September, 2024 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

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, ~~[and] 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)

28 DE Reg. 318 (10/01/24) (Final)