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Introduction

Hospitality is central to the fabric of community life

Hospitality is central to the fabric of community life. Beyond the basic need for food and drink, humans seek opportunities to socialize with others, engage in conversation and form relationships. Because it facilitates the fulfillment of these needs, the hospitality industry continues to evolve and change in our society.

In early colonial America, the tavern was one of the most important institutions in the community and the tavern keeper was one of its most prominent and influential members. It was relationships formed in the tavern that helped shape early American history and the many governmental and social institutions constituting community life today.

Because the service of beer, wine and distilled spirits is often part of hospitality events and occasions, the role of the host in monitoring guest consumption of these beverages is important. Growing public concern about the economic and social costs of alcohol abuse continues to focus attention on the role social and commercial hosts can play in community prevention efforts.

What is the purpose of this guide?

This resource guide is designed to assist businesses seeking a license to sell or serve alcohol beverages. It is also designed for those who hold a license and want to expand their business or resolve a regulatory violation.

The guide provides answers to the most commonly asked questions about legal and social responsibilities. At the same time, the information presented will help you deal with changes in the marketplace to assure your business is responsive to the changing needs and demands of your current and future customers.

What is the Responsible Hospitality Council?

The Lincoln/Lancaster County Responsible Hospitality Council (RHC) is composed of individuals from diverse perspectives committed to the responsible sale and service of alcohol. This volunteer coalition provides a vehicle for discussing common concerns and identifying creative solutions to problems that occur with irresponsible alcohol service.

During the past five years the hospitality industry has witnessed dramatic changes in public attitudes about alcohol. Stricter drinking and driving laws have made many mindful of their consumption. Changes in demographics and the aging of the population are further eroding beverage alcohol sales. Predicted to continue through the end of the decade, many in the industry are ignoring these trends and the subsequent opportunities they present.

To assist the busy manager and provide basic information to service staff, The Practical Guide to Responsible Hospitality is dedicated to the alcohol issue. While in no way can this publication take the place of a formal training program, we hope it provides a reference for your questions about legal responsibilities in serving alcohol and encourages enrollment in a more comprehensive and interactive training program.

What is hospitality?

Hospitality is the service of food and beverages

Hospitality is creating environments to bring people together, to celebrate, to conduct business and to eat, drink and socialize. Those engaged in hospitality occupations do much more than simply serve their customers; they play an essential role in the formation and development of relationships. In short, "hospitality is building relationships".

Today, the hospitality industry includes many different types of businesses: bars, restaurants, taverns, hotels, motels, convention centers, sporting arenas, country clubs, golf courses, night clubs, dance clubs, foodservice operations in colleges, at airports, schools, and shopping malls.

People who enter an occupation in the hospitality industry often do so with a desire to help others. This need to provide service to make people's lives more comfortable and to see people enjoy themselves, defines the attitudes of many working in hospitality.

The hospitality industry is composed of many sectors, but can be divided into three main categories: social, commercial and supplier. Bars, restaurants, taverns, caterers, nightclubs, and brewpubs compose the commercial or so-called on-premise sector. Convenience stores, groceries stores and package stores compose the commercial off-premise sector. Wholesalers, distributors and all those companies and organizations provide the products (food, beverages, plates, kitchenware, etc.) and services (financing, insurance, accounting, advertising, public relations, etc.) to facilitate hospitality business and commerce.

Three primary areas of responsibilities

The nature of products and services provided by the hospitality industry places greater responsibility for the protection of public health and safety upon the owner and staff. Food, alcohol beverages and meeting space all require special attention to customer behavior. There are three primary areas of responsibility for any hospitality business:

- Access - being open to the public, providing meeting space and offering meals all require facilities be fully accessible and in compliance with special building codes. Because restaurants have a history of increased risk of fire, building codes are more stringent for building materials, exits, doors, etc. In addition, control of crowd size is critical to protecting the welfare of employees and guests in the event of a fire.
- Food - The perishability of food and the increased risks from improper food handling, storage and preparation require any business involved in food service to take special care and abide by all rules and regulations governing these areas.
- Alcohol - The service of beer, wine and distilled spirits is part of many hospitality settings and alcohol serving establishments have witnessed increasing responsibility to control intoxication and access to alcohol for underage guests.

While each of these responsibilities is important, this manual is dedicated primarily to the safe sale and service of alcohol beverages. The following sections provide specific information about legal responsibilities and conclude with suggestions for policies and practices to reduce risk of liability.

Alcohol

Service of alcohol is part of many hospitality occasions.

During the 60 years since the legalization of alcohol, the nature of the beverage and hospitality industry has changed dramatically. Driven by the glut of the population commonly referred to as the "baby-boomers," alcohol beverage consumption reached its peak in the late 1970's when this generation was in its twenties. The reduction of the minimum legal drinking age in many states prompted a proliferation of hospitality businesses catering to this youthful group.

Consumption of alcohol by underage persons, safety risks associated with intoxication and long term health problems caused by chronic over-consumption are often heavily influenced by the attitude and behavior of social and commercial hosts. More than any other single factor, the point of contact between the server or seller and the consumer may hold the greatest opportunity for the prevention of alcohol related problems.

It is this same moment of contact between the server and the guest that defines the success or failure of a business. Being responsive to guests' needs for quality products and services assures the profitability of a business. Ignoring the health and safety risks associated with certain guest behaviors increases the potential for liability against the establishment. Balancing the business's need to maintain a profitable operation with the legal and social responsibilities that protect public health and safety creates the greatest challenge for any owner or manager in the hospitality industry. By adopting responsible hospitality policies and practices a business can reduce liability risk and enhance the potential for increased profitability.

The community stakeholders

According to recent Gallop polls, 57 percent of the adult population regularly consumes beer, wine and distilled spirits. Most people actively seek out social settings and while enjoying alcohol beverages in a responsible manner. However, when alcohol is used inappropriately there are potential consequences for the drinker, and others affected by the drinker's actions. Individuals who become intoxicated put themselves and others at risk of injury and harm.

Decreased inhibitions often cause intoxicated individuals to behave differently than they might when sober. Physical assaults, vandalism, unwanted sexual advances, abusive language and verbal insults can and often do occur.

While many people who become intoxicated face nothing more than a hangover the following day, many are involved in incidents which cause personal injury or harm. A person who drives away from an establishment intoxicated is at risk for an alcohol related car crash. Impaired drivers may face legal risks. To most people this is embarrassing and expensive. The costs associated with a Driving While Intoxicated (DWI) arrest vary from state to state, but most, including Nebraska, impose harsh penalties (i.e., automatic license suspension, fines, educational requirements, and increased insurance premiums) upon DWI offenders.

Beyond the risks to the drinker, an employee who serves an intoxicated or underage person is subject to criminal penalties, including fines and a possible jail sentence. Servers who fail to fulfill their responsibilities are faced with potential civil and criminal liability, and the realization that their failure to intervene may have indirectly injured or killed someone.

The business owner is also held accountable for the actions of his/her employees. Violations under the Nebraska State Liquor Control Act or the rules and regulations of the Liquor Control Commission may result in an administrative citation. Possible penalties include suspension, revocation or cancellation of the liquor license. Repeated offenses can undermine the profitability and success of the business and take away employment opportunities.

Further, the industry itself can be damaged by the inappropriate use of alcohol. When a member of the industry engages in high risk serving practices, they damage not just the reputation of their establishment, but the image of the industry within the community.

Ultimately, the public suffers when an individual uses alcohol inappropriately. Everyone must pay the costs associated with alcohol abuse. We all share in the social and economic costs to compensate individuals who are harmed as a result of the irresponsible decisions made by both the drinker and server.

Fortunately, most people and hospitality businesses are responsible fulfilling their legal and social responsibilities. It is when either the server, or the drinker, or both fail to fulfill their personal

responsibilities that a domino effect occurs creating negative consequences for individuals and institutions within the community.

It is the purpose of those in the hospitality industry to maintain a profitable business, to keep people employed and to continue to provide a valuable service to the community. It is also important to recognize that the purpose of hospitality is to bring people together to form meaningful relationships. There is no benefit derived from the irresponsible and illegal sale of alcohol. While it may be difficult for a server to intervene and refuse alcohol service to a guest, it is important to understand the consequences that occur with the failure to take appropriate action.

Licensing - State Agencies

Why do I need a license to serve alcohol beverages?

Throughout the world and for most of recorded history, communities have attempted to reduce the risks associated with the inappropriate use of alcohol through regulatory controls. In addition, many governments rely upon taxes from the sale of beer, wine and distilled spirits to support public service programs. One of the most ambitious experiments in the control of alcohol abuse was prohibition. Evolving from a temperance movement that began almost a century earlier, the United States attempted to eliminate the availability of alcohol.

During the early years of prohibition, alcohol consumption declined dramatically, but over time, more people bought and used it illegally. Organized crime became a more significant force, and during the late 1920s as the country entered the Great Depression, the federal government dedicated an inordinate amount of resources to law enforcement.

In 1933, congress passed into law the 21st Amendment, repealing prohibition and establishing the current national regulatory system. Shifting the burden from the federal to the state level, each state was given the authority to regulate the manufacture, distribution, and sales of beer, wine and distilled spirits. Two regulatory systems evolved, now referred to as control states and license states.

In control states, the alcohol regulatory agency also serves as the wholesale and retailer of alcohol beverages, especially for off-premise consumption. They issue licenses for bars, restaurants and other businesses to serve alcohol beverages for on-premise consumption.

License states are not involved in with the distribution and sales of alcohol beverages. The state regulatory agency issues licenses to businesses to carry-out these functions.

Common to all state regulatory agencies is the promotion of "temperance" or the responsible consumption of alcohol. Through various rules and regulations, those obtaining a license to sell beer, wine and distilled spirits must comply with these restrictions. As with any administrative body, failure to comply with the regulations can result in penalties, including fines and the loss of the right to maintain a license.

What is the licensing system in Nebraska?

Nebraska is considered a "license state". Through what is known as the Nebraska Liquor Control Act, the Nebraska Legislature established the Nebraska Liquor Control Commission. The Commission consists of three members appointed by the Governor and approved by the Legislature, representing each of the three congressional districts. They each serve six year terms, with staggered ending terms every two years. They have final authority over a liquor license. An executive director, general counsel and administrative support staff carry-out the daily functions of the Commission, while the Nebraska State Patrol conducts investigations and enforcement. Local police and other law enforcement agents provide additional investigative and enforcement support. *Source: Nebraska Liquor Control Act Sec. 53-105*

What type of license do I need to serve alcohol beverages?

The required type of license depends upon the type of business operations. A manufacturer's license is required to produce the beverages, a wholesale license is required to distribute to businesses selling to the public, and a retail license is required to sell to the public. While there are various types of retail licenses, they fall into three main categories: on-premise, off-premise and one-day licenses.

Why are there different types of licenses?

The creation of the three-tiered system, with the manufacturer, wholesaler and retailer representing each tier, was created to prevent what is referred to as the "tied house". Government wanted to be able to

monitor and regulate each sector more effectively, prevent the creation of monopolies, and impose additional taxes and fees to create a valuable source of revenue during harsh economic times.

In Nebraska, there are 14 specific types of licenses. There is a manufacturer's license, an alcohol liquor (wine and distilled spirits) wholesaler license, beer wholesaler license, retail license, railroad license, airline license, boat license, non-beverage user's license, bottle club license, farm winery license, brewpub license, shipping license, special designated license and catering license.

What types of retail licenses are there?

The following are the major types of licenses available. There are other types of licenses available for special events and occasions. For further information about these you may contact the Nebraska Liquor Control Commission.

- Class 'C': Beer, wine and distilled spirits for on- or off-premise consumption.
- Class 'D': Beer, wine and/or distilled spirits for off-premise consumption (package liquor).
- Class 'I': Beer, wine and/or distilled spirits for on-premise consumption only.

Source: Nebraska Liquor Control Act Sec. 53-123

Where do I get a license? How long does it take?

A license may be obtained for the sale of alcohol beverages from the Nebraska Liquor Control Commission. The City of Lincoln requires that a Special Permit be approved for new or expanding alcohol sales establishments. An application can be received through the city planning department. The application process for on-sale and off-sale liquor establishments in the City of Lincoln takes at least three months. The process for obtaining the state license is 45 to 60 days.

How much does it cost?

Fees vary depending upon the type of license and size of business. The City of Lincoln requires payment of a processing fee of \$100 to \$300 and the state license fee ranges from \$50 to \$250. For the purposes

of raising revenue, the Liquor Control Act allows for an occupation tax to be collected by the city or village. This amount may not exceed double the amount of the license fee. Applicants are also required to submit copies of plot plans, obtain fingerprints of owners and manager of record and other necessary building permits.

Should I get professional help? If so, what kind?

Although it is not required, you may wish to retain a private attorney familiar with the state liquor laws, rules and regulations and other relevant local ordinances. Additional professional resources you may wish to consider include, but are not limited to; accountants, architects, trade associations and responsible beverage service training program providers.

What do I do first?

It is recommended you do not apply for a state license at the beginning of the approval process. The City of Lincoln is obligated to hold a public hearing for the state license within 21 days following receipt of your application from the state. The City must recommend issuance or refusal of your state license. If you apply for a state liquor license at the same time or before applying for the city's Special Use Permit, the City Council will not have heard your case and will recommend refusal of your state license. The application to the state for a liquor license should not be made any sooner than the scheduled first reading before the City Council

Make an appointment to meet with Lincoln City/Lancaster County planning staff to discuss the proposed location. This meeting allows the staff to identify any special problems that might affect an application at the proposed location.

Both the State Liquor Control Commission and the local planning department will provide the city clerk with a copy of your application. He/she will distribute the information to the appropriate local agencies for their review including the Lincoln Police Dept., the Lincoln/Lancaster County Health Dept., schools, public works, transportation, and any other agency or department that might have an interest in any particular application. It may be necessary for you to provide more specific information to any of these agencies. The Planning Department prepares a formal staff report and will recommend either approval, approval

with conditions or denial.

Source: Nebraska Liquor Control Act Sec. 53-131

Source: Lincoln Municipal Code Sec. 27.63.680

What other agencies do I need to contact?

The local Building and Safety Department must review and approve building plans for new construction and plans for interior finish for existing sites. Once approved, this process will involve the following inspections, building, fire prevention, electrical, heating, and plumbing.

Why might the state deny my application?

The State Liquor Control Commission is restricted by statute to approve or deny applications based on the following criteria: 1) applicant's fitness, willingness and ability to properly provide the service proposed, 2) applicant's ability to conform to Nebraska Liquor Control Act provisions, requirements, rules and regulations, 3) applicant's ability to demonstrate sufficient management and control over the licensed establishment, and 4) present or future public convenience and necessity.

The Commission will also consider the recommendation of the local governing body, existence of citizen's protest, existing population, nature of the neighborhood, existence or absence of other licenses, existing motor vehicle and pedestrian traffic, adequacy of existing law enforcement, zoning restrictions, sanitation or sanitary conditions and whether the type of business is consistent with the public interest.

Source: Nebraska Liquor Control Act Sec. 53-132 (Reissue 1984)

If the State Liquor Control Commission denies my application, what can I do?

If the State Liquor Control Commission denies your application, you may request a review of the final order from the district court of Lancaster County.

Source: Nebraska Liquor Control Act Sec. 53-1,116

After my application is approved, when can I open for business?

Retail licenses issued by the State Liquor Control Commission will be sent directly to the appropriate city or county clerk. The applicant will receive his/her license from the clerk upon proof of payment of fees, public notices, and/or city, village, or county occupation taxes.

Source: Nebraska Liquor Control Act Sec. 53-132(4)

Source: Nebraska Liquor Control Act Rules and Regulations R6-020

Once approved, do I need to renew my liquor license? How often?

A retail license may be automatically renewed by the commission without formal application. Full payment of the state registration and license fees must be made prior to the completion of the renewal process. This process is completed annually.

Class C licenses are automatically renewed beginning May 1. All other licenses are automatically renewed beginning November 1. Automatic renewals are posted in the local newspapers approximately four months prior to the renewal date. Written protests may be filed with the city clerk three months prior to the renewal. Protests filed by three or more persons will result in a hearing to determine whether or not the license should be allowed to continue operation.

Automatic renewal assumes that the information provided by the licensee on the original application is still valid.

The State Liquor Control Commission has the authority to require a licensee to submit an application at any time. The local governing body may also request the State Liquor Control Commission to require the re-submission of an application.

Source: Nebraska Liquor Control Act Sec. 53-135

Local Government

What is the role of local government?

The local governing body has assigned powers and duties within the Nebraska Liquor Control Act. They include, but are not limited to, 1) the authority to cancel or revoke licenses within their jurisdiction for cause or violations to the Liquor Control Act, 2) the authority to receive evidence on a proposed application and make a non-binding recommendation, 3) to receive signed complaints from citizens and act upon the complaints, and 4) the authority to authorize law enforcement to enter a license at any time to determine if any of the provisions of the liquor control act are being violated. Any cancellation or revocation action by a local governing body is subject to appeal to the State Liquor Control Commission.

Source: Nebraska Liquor Control Act Sec. 53-134 (Reissue 1984)

Source: Lincoln Municipal Code Sec. 5.04.040

What role does the public have in deciding about my license?

Most communities want to assure businesses and residents comply with the social norms of the community. While there are certain freedoms guaranteed by the constitution, members of a community, through the local planning process, can define the type, location and number of businesses it will allow. Through the process of licensing and issuance of permits, a community can place some restrictions on businesses that want to come into the community.

While most communities welcome new businesses because of the jobs, taxes and services created, they also want to make sure the business does not create problems or additional costs to the community. This is especially true regarding businesses wanting to sell and serve alcohol beverages.

What are the reasons local government would deny my right to open a business?

The local governing body is empowered to make non-binding recommendations to the State Liquor Control Commission who ultimately has the authority to approve or deny an application to sell or serve

alcohol beverages. However, you may be denied the right to open your business based on other criteria (i.e., failure to meet building and safety codes, failure to receive a special use permit).

Source: Nebraska Liquor Control Act Sec. 53-134 (Reissue 1984), Lincoln Municipal Code Sec. 5.04.040

If the local government denies my application, what can I do?

As discussed earlier, the local governing body is authorized to receive evidence on a proposed application and make a non-binding recommendation to the State Liquor Control Commission. If the local government recommends denial to the State Liquor Control Commission, you may wish to consult your attorney to discuss strategy prior to your hearing before the Commissioners.

After local approval, what next?

At the conclusion of the City Council hearing, the local governing body votes to approve or deny your application for a liquor license. Their non-binding recommendation is then forwarded to the Nebraska Liquor Control Commission. The Commission is restricted by statute to approve or deny your application based on the criteria listed in Sec. 53-132 (Reissue 1984).

General Responsibilities

What are my primary responsibilities?

When you apply to obtain a license to sell alcohol beverages, you assume the responsibility to comply with all state and local rules and regulations governing such activities. The following summarizes the important regulations. More detailed explanations follow.

On-off premise: Depending upon license type, alcohol is sold for consumption on the premise or off the premise. Allowing the opposite (i.e. allowing a person to open a beer in a convenience store), creates a liability risk against both the server/clerk and the licensee. This responsibility may extend beyond the physical building and can include parking areas surrounding the licensed premise.

Hours: No person shall sell at retail or dispense any alcohol beverage on any day between 2:00 a.m. and 6:00 a.m., for consumption **on** the premises. No person shall sell at retail or dispense any alcoholic liquor, including beer, on any day between 1:00 a.m. and 6:00 a.m. for consumption **off** the premises.

Employees: While a person needs to be 21 to purchase alcohol beverages, in certain circumstances, a person under the age of 21 can sell and serve alcohol beverages.

Drinking on duty: Although not prohibited by state law, the City of Lincoln forbids any licensee, manager or employee of such licensee or manager from drinking any alcohol beverage while on duty, and prohibits the sale or service of an alcohol beverage by such a person while under the influence of alcohol.

Age: It is illegal to allow a person under the age of 21 to consume alcohol beverages on a licensed premise. A licensee and employees must make every reasonable effort to prevent a minor from obtaining or consuming an alcohol beverage. The minor may not obtain, possess or consume under any circumstances, even when accompanied by a parent or guardian.

Promotions: No licensee shall sell or serve an unlimited quantity of beer, wine or distilled spirits at one price when those drinks are to be consumed on the premises. A person cannot be sold two or more drinks for that person's consumption on the premise for the price of one drink. A pitcher is not considered a drink, but no licensee can sell two or more pitchers for one price and there are no restrictions on the price of any single drink. No licensee shall mix or pour an alcohol beverage directly into the patron's mouth.

Intoxication: No licensee or employee of any licensee shall in any manner provide or allow possession of an alcohol beverage to or by a person who is intoxicated or incapacitated by alcohol and/or other drugs.

Am I required to post any signs or notices before opening?

The Nebraska Liquor Control Act requires each licensee to frame and display his/her license in plain view. In addition, businesses are required to prominently post two specific warning signs: one regarding the consumption of alcohol beverages during pregnancy and the other regarding minors attempting to purchase and adults attempting to purchase for minors. These signs are available to all retail licenses through the State Liquor Control Commission.

In addition, the Commission has established standards of honest advertising and representation. These standards include the use of only one interior illuminated sign as a "night light" during the hours the license is closed and restrictions on misleading, offensive or deceptive advertising. Point of sale promotions may not portray a child or symbols traditionally associated with children.

Source: Nebraska Liquor Control Act Sec. 53-148, 53-148.01 and 53-180.04

Source: Nebraska Liquor Control Act Rules and Regulations R6-001 and R6-019.010

Source: Lincoln Municipal Ordinance Sec. 5.04.170

Where can I buy alcohol to sell?

You must purchase alcohol liquor from a person licensed to handle product under the Nebraska Liquor Control Act. There is one exception to this rule: a licensee may purchase alcohol other than beer or wine from one or more off-premise retailers licensed to sell if the seller has met the requirements defined in the Liquor Control Act. Both the seller and the purchaser are obligated to keep accurate records of these transactions and report sales/purchases to the commission quarterly. A licensed retailer may not purchase in excess of \$300.00 of alcohol as allowed in this exception during any calendar year.

Source: Nebraska Liquor Control Act Sec. 53-175

What is the role of the wholesaler?

The wholesaler is responsible for importing alcohol, from both within and outside the state, for the purposes of sale or resale to retailers licensed under the Nebraska Liquor Control Act.

The State Liquor Control Commission has adopted a number of rules that govern the transactions that occur between the retailer and the wholesaler. Failure to comply with, or circumvent these rules may result in penalties against the businesses involved.

These rules prohibit the licensee from accepting credit from the wholesaler on purchases of beer and the receipt of credit beyond 30 days for the purchase of wine or distilled spirits. The same rule applies to the wholesaler, prohibiting the extension of credit to the retailer.

No retailer may purchase beer, wine or distilled spirits if they are delinquent on any account regardless of the distributor.

The wholesaler must report the extension or reception of credit on forms provided by the commission.

Beer wholesalers are permitted to give retailers quantity discounts on volume purchases. Discounts are calculated on the basis of sales made to the retailer.

Source: Nebraska Liquor Control Act Rules and Regulations R6-001 and R6-018.01G

Can the wholesaler provide me with signs, advertising, free product?

Licensed wholesalers may provide incentives and/or promotions of products sold to the retailer. This may include quantity discounts or free product with the purchase of a specific amount. Wholesalers may also assist off-sale establishments with on-premise sampling provided the licensee has a Class C license or obtains a special designated permit. Wholesalers may provide any licensee with signs and point of sale advertising provided the materials meet the standards as established under the rules of the State Liquor Control Commission.

Source: Nebraska Liquor Control Act Rules and Regulations R6-001 and R6-018.01G

What age must my employees be to serve alcohol?

Regardless of your license type, employees must be 19 years of age or older to sell or serve alcohol. In the city of Lincoln, an employee or other authorized representative of the licensee who is at least 21 years of age must be on duty at all times when alcohol is being sold or dispensed.

During the 1995 legislative session, the Nebraska State Legislature amended the Liquor Control Act to allow persons 16 years of age or older to stock, handle or carryout any alcohol beverage in the course of their employment.

Source: Nebraska Liquor Control Act Sec. 53-168.06

Source: Lincoln Municipal Code Sec. 5.04.115

Is it necessary for my managers or service staff to be trained?

The state of Nebraska does not require training for either service staff or managers. However, in January of 1993, the Lincoln City Council mandated completion of responsible beverage service training by either the manager of record or the licensee.

Source: Lincoln Municipal Code Sec. 5.04.035

Is it necessary for my manager to be licensed?

A corporation applying for a retail or wholesale license must also identify a resident manager qualified under the laws of Nebraska. If there is a change of manager due to departure, death or termination, a license corporation must file an application with the Liquor Control Commission for a new manager within 60 days. If a new manager's application is not filed within the 60 day time period and the corporation has not filed a request for hardship with the commission, the licensee may be subject to suspension, cancellation or revocation.

Source: Nebraska Liquor Control Act Rules and Regulations R2-009

What days and hours can I sell alcohol? What hours can I be open?

On-sale alcohol sales are restricted between the hours of 2:00 a.m. and 6:00 a.m. In an on-sale establishment, all beverages must be removed by 2:15 a.m. If a city provides by ordinance or resolution provisions for an earlier closing hour, all beverages must be removed within 15 minutes of the prescribed closing time.

Off-sale alcohol sales are restricted between 1:00 a.m. and 6:00 a.m.

Source: Nebraska Liquor Control Act 53-179

Source: Lincoln Municipal Code Sec. 5.04.130

Can I have a private party with friends or employees after closing?

Consumption in a licensed premise during restricted hours (between the hours of 2:15 a.m. and 6:00 a.m.) is strictly forbidden. This applies to all license owners and their employees. To avoid a violation relating to consumption after hours, make sure that all glasses containing alcohol are removed and the beverage disposed of prior to the 2:15 a.m. closing time.

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.01C and R6-019.01D

Source: Nebraska Liquor Control Act Sec. 53-179

Source: Lincoln Municipal Code Sec. 5.04.130 and 5.04.220

If a customer doesn't finish a drink, can they take it off premises?

If you are issued a license for on-premise consumption, a person cannot leave your premise with an alcohol beverage. Not only can the employee be cited by law enforcement and be fined, the licensee can be charged administratively and be subject to fines. One of the more common times when this situation occurs is near the end of the evening, when the establishment is closing. To reduce the likelihood of a guest leaving with an alcohol beverage, provide ample notice to customers you are preparing to close. Do not serve any alcohol beverages for at least one half hour prior to closing and station a person near the exit door. Not only does this reduce the chance a person will leave with an open container, you can also monitor customer behavior and intervene with a person who may have consumed too much alcohol. Establish a system to obtain alternative transportation for any guest who may have had too much to drink.

Can I allow a guest to try a bottle of beer on the premises, before buying a full case?

If you are issued a license for off-premise consumption, the person must leave in order to open an alcohol beverage container. This usually includes the parking lot.

If your business has been licensed to sell alcohol for consumption off premise, you may not allow a customer to consume a bottle in your store. However, if you hold a Class C license, which allows for both

on and off sale, you may allow the customer to purchase a bottle of beer and consume the product on your premise prior to the off-sale transaction.

Allowing a customer to consume alcohol in your parking lot is a violation under the State Liquor Control Act. Consumption of alcoholic liquors is prohibited, by the city of Lincoln, in parking areas unless authorized by the local governing body and a special designated permit issued.

The licensee may be held responsible for the activities that occur on property adjoining the licensed premise

Source: Nebraska Liquor Control Act Sec. 53-124(5c), Sec. 53-186 to 53-186.01

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.01H

Source: Lincoln Municipal Code Sec. 5.04.160

What types of on-premise promotions can I have?

The State Liquor Control Commission has identified a number of rules relevant to the promotion of alcohol. Many of these rules were created to deter practices or promotions which encourage the overconsumption of alcohol. A business may not sell an unlimited quantity of beer, wine or distilled spirits for a specific price (drink and drown nights). No licensee is allowed to sell or serve two or more drinks containing beer, wine or distilled spirits for one price (two-fers). A pitcher is not considered a drink. However, a licensee may not sell two or more pitchers for one price. Alcohol beverages may not be poured or mixed directly into a patron's mouth. Licensees are also restricted from adding alcohol to beer (i.e., boilermakers) or allowing any person to add alcohol to beer on the license premise. An on-sale establishment may conduct tasting or sampling activities promoting alcohol beverages.

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.01M and R6-019.01U

Source: Nebraska Liquor Control Act Sec. 53-174 and 53-183

What types of off premise promotions can I have?

Off-premise establishments are restricted from participating in tasting or sampling activities unless they have first obtained a special designated permit or hold a Class C license. All standards relevant to advertising and promotions cited in section VIII-B must be adhered to by the licensee. Off-premise establishments, unlike on-sale establishments, may engage in two for one sales or two for a specific price. The state of Nebraska does not regulate loss leader sales or discounting.

Source: Nebraska Liquor Control Act Rules and Regulations R6-002

Do I need to register or record the purchase of large quantities or kegs?

Licensees must record sales of alcohol liquor in excess of 20 wine gallons or more. The name and driver's license number (or other identification) of the purchaser must be recorded. These records must be made available to law enforcement upon request.

When containers with a liquid capacity of five or more gallons are sold at retail for off-premise consumption, the seller must record the date of the sale, the keg identification number and the purchaser's name, address and identification. This information is to be recorded on a form available through the State Liquor Control Commission. This information must be kept by the licensee at the establishment where the purchase was made for at least six months.

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.01U

Source: Nebraska Liquor Control Act Sec. 53-167.01 through 53-167.04

Additional Responsibilities

How old does a person have to be to purchase tobacco?

In the state of Nebraska, you must be 18 years of age or older to purchase cigarettes, cigarette papers, or tobacco in any form.

Source: Nebraska Revised Statutes Sec. 28-1419

If my employee is cited for selling tobacco to a minor, what happens to my business?

An employee who sells tobacco products to a person under the age of 18 is guilty of a misdemeanor punishable by a maximum of a \$500 fine, a 3 month jail term, or both. Establishments found guilty of tobacco sales to a minor may also receive a penalty for allowing illegal activity to occur on the licensed premise. Penalties may range from Penalty in Abeyance only, to license suspension, fine in lieu of license suspension or license revocation.

Source: Nebraska Revised Statutes Sec. 28-1425 (1989)

Source: Nebraska Liquor Control Act Rules and Regulations R6-019Q and R6-019R

What is gambling?

Gambling takes place when a person wagers "anything of value" on the "outcome of an event, contest or game in which the person has little or no control over the outcome" and the individual "has the chance to win something of value".

Source: Nebraska Revised Statutes Sec. 28-1101

What types of gambling are legal?

Legal forms of gambling are defined by the state constitution. There are six legalized forms of gambling; horseracing, Nebraska State Lottery, bingo, pickle cards, raffles or traditional ticket drawing lotteries, and keno. With the exception of horse racing, legal forms of gambling are controlled and regulated by the Nebraska Department of Revenue.

Source: Nebraska Department of Revenue

What kinds of games can I allow on my licensed premise? What types of games are illegal?

Any game where the outcome of the game is determined by the player's skill is allowed on the license premise. Examples include, but are not limited to, pool trivia games, shuffleboard, and darts.

Any game that requires the player to pay a fee to play, where the outcome of the game is determined by chance and not the players skills, and where the player can win something of value. Most casino games like draw poker, blackjack or 21, slots, video dog or horse races, dice, etc. fall within this category.

Source: Liquor Control Commission Newsletter Volume 7, Number 4 Summer, 1995

Age identification

What age must a person be to come into my establishment?

The law requires you to not sell or serve an alcohol beverage to anyone under the age of 21. A person can enter your establishment, but cannot be served alcohol. However, in the city of Lincoln, after the hour of 9:00 p.m., it is unlawful for any minor under the age of sixteen years to be in the premises, unless accompanied by a person who is at least twenty-one years of age.

Source: Lincoln Municipal Code Sec. 5.04.120

Do I need to "card" someone before serving them alcohol?

The law does not require you to check identification. It only prohibits you from selling or serving an alcohol beverage to a person under the age of 21.

The most obvious way to determine a person's age is to check identification. In the event an underage person is served, your only defense is if you checked the person's identification and recorded it in the age identification log book.

What do my employees need to know to be able to determine if someone is underage?

There are four important things an employee needs to know in verifying age. Enrolling staff in a responsible beverage service training program increases their knowledge and skills and helps you avoid liability. The following is just a brief summary.

What are the four most important things employees should know to verify age?

Why to check - Servers should check identification to avoid selling or serving underage persons. Serving an underage person may result in penalties against the server and licensee. The leading cause of death among young adults is alcohol related automobile crashes; servers can play an important role in protecting lives.

When to check - It is important to know the signs of immaturity. First, there are physical characteristics to look for including physique, complexion and lack of wrinkles on face and hands. Second, there are behavioral characteristics such as clothes and hair style, type of drink ordered, avoidance of eye contact, sending an older person to buy for them or appearing overconfident or defensive.

What to check - To establish proof of age for purchasing or consuming alcohol beverages, a person shall present or display only a valid driver's or operators' license, Nebraska state identification card, military identification card, alien registration or passport.

Source: Nebraska Liquor Control Act Sec. 53-180.06

How to check- Ask the person to remove the identification from the wallet. This allows a better opportunity to examine it more closely. Feel both sides of the identification and hold it up to a light. Determine if there are any cuts, type-overs or other indications of alteration. Look closely at the date of birth, the person's photo and physical description. Compare the eyes, nose and chin of the person with the photo; these physical features rarely change. Ask questions of the person: What is your address? What is your middle name? When were you born? What is your zodiac sign? What weight is listed on your identification?

What if someone is with their parent?

You cannot sell, serve or allowed to be sold or served any alcohol beverage to a person under the age of twenty-one at any time, regardless of whether or not they are with a parent or guardian. A parent or guardian permitting a minor to obtain alcohol is criminally liable.

Source: Nebraska Liquor Control Act Sec. 53-180.03

What can I do if an adult buys for a minor?

You have a legal duty to prevent the possession and consumption of alcohol by a minor on your premise. In addition to placing you and your establishment at risk, the adult and minor are committing a crime. You should establish a specific policy for service staff to follow. Businesses may require the guests to leave, may notify police, or simply remove the alcohol beverage and offer an alternative beverage. It is important to advise the adult about the seriousness of their action and follow the procedures you have established.

What is the age identification log book?

By regulation, every holder of a retail license shall maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcohol beverages. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser. In any prosecution of or any proceeding against any licensee charged with sale to a minor, the log book shall become evidence of a defense if the identification presented appeared valid.

Source: Nebraska Liquor Control Act Sec. 53-180.07

Intoxication

Why do people drink?

People have sought the euphoric effects of alcohol since the beginning of time. Gruel-- taking grain, grinding it up, mixing it with water and allowing it to sit in the sun, was the first fermentation of a product resulting in alcohol. Produced early in the history of man, gruel consumption resulted in pleasurable effects and increased the demand for grain. Some historians believe the growing of more grain for the production of gruel led to the development of agriculture.

In the Bible, Noah is cited as one of the first persons to farm grapes for the production of wine. Over time, the art of wine-making has become an important economic factor in countries throughout the world. The discovery of the distillation process in the late 1800s led to the development of distilled spirits. These

three beverage types· beer, wine and distilled spirits· together contribute significantly to what is commonly referred to as the hospitality industry.

While most people consume beverages containing alcohol in moderation, there are individuals who use these products inappropriately. The safety of the individual engaged in activities such as operating an automobile or machinery, or swimming or boating, can be at risk if they are impaired by alcohol. It is important for those who work in the hospitality industry to understand the risks and negative consequences associated with overconsumption.

Understanding the nature of alcohol and its effects on young people is particularly important. Alcohol is the leading cause of injury and death for people under the age of 21. Recognizing the high risk associated with youth alcohol consumption, many countries have established a minimum age at which young adults can purchase or consume alcohol. In the United States, 21 is the minimum legal drinking age. It is the responsibility of those who sell and serve alcohol to comply with both community standards and the legal responsibilities they have as a licensed establishment, and to support the drinking age laws by prohibiting the sale and service of alcohol to anyone under the age of 21.

Is there a limit on the size of a drink I can sell?

There is no limit on the size of drink you can sell, except if you promote it as a multiple drink (i.e. two-for-one, three-for-one, etc.). These types of promotions are prohibited.

Because people increasingly monitor their consumption, those selling and serving need to understand alcohol physiology, the laws and more profitable ways to guide and assist guests in making responsible choices. Customers counting their drinks want to know how much alcohol they are drinking. When unknowingly served more than a standard measure, "responsible" customers may become unintentionally involved in an incident or an arrest. A "standard drink" is 12 ounces of beer, 5 ounces of wine and a drink made with 1.5 ounces of 80 proof spirits.

Is there a limit on the number of drinks I can sell?

There is no state regulation dictating the number of drinks a customer may be served by an establishment. However, it is important for on-premise staff to understand basic alcohol physiology and its relationship to a standard drink. Nebraska's laws regarding sales to an intoxicated person are specifically related to the legal limit of consumption (.10). Both the server and the business can be cited for serving alcohol to a customer registering a blood alcohol level higher than the legal level prescribed by law. By monitoring the number of standard drinks that a guest consumes, action can be taken before a problem develops. In Lincoln, the law defines the responsibility even further, prohibiting sales or service to any person who is physically or mentally incapacitated by the consumption of alcohol beverages.

It is important to note that the laws governing sales to intoxicated individuals apply to off-premise businesses as well as on-premise. Retail clerks should be trained to identify the signs and symptoms of intoxication and management policies established supporting the refusal of service to guests displaying obvious impairment.

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.N

Source: Lincoln Municipal Code Sec. 5.04.070

How do I know if someone is intoxicated?

When alcohol is consumed, there are predictable physical and behavioral changes. As the amount of alcohol consumed increases, those changes become much more extreme.

Alcohol is considered a depressant because of its ability to inhibit brain functions and motor responses. It can also depress or block a person's inhibitions, causing uncharacteristic or abnormal behavior.

Alcohol does not require digestion and is absorbed directly into the bloodstream the moment it is consumed. Small amounts enter through tiny capillaries in the mouth. The remainder passes into the stomach, where as much as 20 percent is absorbed directly into the bloodstream. The rest passes into the small intestine where the absorption rate is much faster. The presence of food in the stomach (especially high fat and high protein foods), slows the passage of alcohol into the small intestine.

Carbon dioxide (such as found in carbonated beverages) speeds the passage of the alcohol from the stomach into the small intestines, increasing the rate of absorption. Champagne, sparkling wines and drinks mixed with carbonated soda can cause a person to feel the effects of alcohol much more quickly than those without the carbonation.

The valve which separates the stomach from the small intestine is called the pyloric valve. It is sensitive to the presence of alcohol and with large concentrations, it can remain closed. The alcohol trapped in the stomach by the closed valve can cause irritation resulting in nausea and vomiting. Physiologists believe this may protect a person from consuming too large a quantity of alcohol which could lead to alcohol poisoning and death.

Several factors must be considered when determining blood alcohol content (BAC) and its effects. How much alcohol was consumed? How large is the person consuming? How quickly did the alcohol get there? Is the blood alcohol level rising or declining? A 100 pound person consuming two drinks will have a greater BAC than a 200 pound person consuming the same number of drinks. Another factor to consider is the rate of absorption. As discussed, a person who has eaten will not feel the effects of alcohol as quickly as someone drinking on an empty stomach. Once in the bloodstream, alcohol is distributed throughout the body. Its effects continue until the body removes it. The liver is the primary metabolizing organ. It eliminates alcohol at the rate of approximately one standard drink per hour. Despite public opinion, nothing can increase the rate at which alcohol is metabolized including coffee, showers or vigorous exercise.

How many drinks can a person consume and still be below the legal limit of 0.08% BAC?

A good rule of thumb is the 2, 3, 4 rule. If a medium person (140 to 180 lbs.) consumes 3 standard drinks in one hour, the person will be below the legal limit. Since the body eliminates one drink per hour, add the number hours after the first the person drinks for and this is the safe drinking level. For example, a medium person can consume 5 standard drinks in 3 hours and be below the legal limit. A small person can consume 4 and a large person 6 drinks in the same time period. Remember, any amount of alcohol can impair a person's ability. The best way to avoid the negative consequences associated with drinking and driving is to not consume any alcohol prior to taking the wheel of a car.

What if the person isn't driving?

There are other risks associated with alcohol intoxication. Your duties to refuse service of alcohol to an intoxicated person are the same whether or not the person is driving a car. Because a group of people have a designated driver does not mean the others in the party can drink as much as they want. Because of the risk of injury to the drinker or others the drinker comes in contact with, developing a reputation as a business where it is okay to get "drunk" is not good for business.

Is this asking too much of my service staff?

Most people probably come to your establishment for reasons other than to drink and get drunk. They seek a place that is safe and comfortable. Your service staff should be working to create this type of atmosphere. Monitoring alcohol consumption and intervening with someone who is drinking too much is just a part of creating a safe and comfortable environment. Continuing to serve an intoxicated person not only increases your risk of liability, it could make other customers leave and go someplace else. It is better to serve moderate amounts to many instead of a lot to a few.

What rights do I have in refusing service to someone? Can they sue me if I am wrong?

Not only do you have a right to refuse service of alcohol to someone who is intoxicated, you have a legal duty. Failure to fulfill this duty creates more potential for liability than not doing it. While anyone can sue for any reason, they must first demonstrate they suffered damages. The court will most likely determine your intentions to protect the safety of the person and the public is more important than any embarrassment the person might have experienced because of your actions.

More importantly, with proper training for your service staff, you will be able to prevent situations which require an intervention resulting in conflict or an insulted customer.

Can my employees and I consume alcohol while working?

While there is no state regulation prevents licensees from consuming alcohol while on duty, the City of Lincoln forbids it. Besides the legal responsibility, it is important to remember alcohol impairs judgment and reason. Your employees assume responsibility for your business. It is only good sense to make sure they are functioning at their best whenever they are working. Not only is consuming alcohol while working against the law, it does not make good business sense.

Source: Lincoln Municipal Code Sec. 5.04.260

Why must we refuse service to an intoxicated person if they will not be consuming alcohol on my off-premise business?

The regulation forbidding service to an intoxicated person applies to all license types. If a person is already intoxicated, you're selling them more alcohol means they may become even more intoxicated, thus putting themselves and others at risk. It is better to refuse service and protect the customer and the public.

Source: Nebraska Liquor Control Act Rules and Regulations R6-019.01N

Source: Lincoln Municipal Code Sec. 5.04.070

Penalties

What types of penalties are there if we do not comply with the regulations?

There are three primary legal forces—administrative, criminal and civil. Understanding each of these and how they affect the way you conduct business is important. Administrative liability comes from rules and regulations imposed by regulatory agencies. Failure to comply can result in fines and suspension or revocation of your license and the right to do business. Criminal liability involves the responsibility of staff and management, and failure to conform to rules and regulations can result in personal liability. A good example of this is when alcohol is served to an obviously intoxicated person, where the server can be

fined and go to jail. Civil liability is where someone is injured, and the injured party seeks compensation from the business.

What happens to the minor who attempts to purchase? What are my rights to prosecute?

It is illegal for persons under the age of 21 to attempt the purchase of alcohol, purchase alcohol or possess alcoholic beverages. Young adults convicted of violations relevant to minors are subject to a fine of \$500.00 and/or 3 months in jail. Currently in the city of Lincoln, prosecuted minors face a sentence of \$100.00 plus court costs and probation.

Following are procedures you or your employees may wish to employ after identifying a minor attempting to purchase; 1) contact local law enforcement, 2) document relevant information from the confiscated identification, and 3) tell the individual you'd like to hold on to the ID until the officer gets here.

Remember, you may attempt to keep the minor on the license premise until the officer arrives. However, you may not use physical force unless provoked. The ID must be returned if requested. Provide a written description of the individual and vehicle type, color and license plate number if possible. It is not the responsibility of law enforcement to check questionable identification presented to a licensed establishment. When in doubt do not make the sale.

Finally, a business may pursue legal action against anyone whose illegal actions have put the liquor license in jeopardy.

Source: Nebraska Liquor Control Act Sec. 53-180.01 and 53-180.02

Source: Lincoln Municipal Code Sec. 5.04.090

What happens to the intoxicated person on my premise after I refuse to serve them?

A license is only prohibited from serving an intoxicated guest beverages containing alcohol. Wait staff may choose to offer alternative beverages or food in an effort to detain the guest and allow for alcohol in the system to metabolize.

If you choose to remove an intoxicated guest from your licensed premise, you may want to notify neighboring businesses in an effort to prevent further service to the individual. In the city of Lincoln, visibly intoxicated persons are taken to Cornhusker Place Detoxification Facility where they are detained until they register a BAC of .00 or until a responsible party arrives to pick them up.

What are the penalties for drinking and driving?

The penalties for a driver whose BAC registers above 0.08% may include a combination of the following penalties, administrative license revocation, monetary fines, license suspension, and/or jail.

What about customers who are alcoholic? Do I have any responsibilities?

The only legal restriction a licensee must comply with is the sale and service of alcohol to an intoxicated person. A tavern violation can be issued to the licensee and a criminal citation to the employee if the intoxicated guest, when tested, registers a BAC above the legal limit (.08).

Although there are no laws prohibiting sales to the "habitual drunkard", the licensee has a social responsibility to both their customer and the public at large to intervene when you suspect problematic drinking. There are many agencies available in our community who will assist you in understanding the resources available to those persons who may need treatment for the disease of alcohol.

If one of my employees is cited by the police, what happens to my business?

In all likelihood, if your employee has received a criminal citation for an alcohol violation, your business will receive a tavern violation under the rules and regulations of the State Liquor Control Act. In the city of Lincoln, tavern violations are reviewed within the Lincoln Police Department. Depending upon the violation and a variety of other factors, LPD may choose to hold the report in your file or send the violation to the State Liquor Control Commission for review.

Currently, the following tavern violations are automatically sent to the commission for review and action; sales to an intoxicated person, sales to a minor, and consumption on the licensed premise after hours.

Violations are reviewed monthly by the Internal Liquor Committee and if the committee identifies a pattern of repeat behavior, they may choose to request a meeting with the business owners/managers.

What happens to the employee?

Servers cited for violating either the State Liquor Control Act or local alcohol ordinances are charged with a criminal offense. Penalties range from fines up to \$1000 and/or 3 months in jail. Court costs, legal fees, personal embarrassment and time away from the job most also be considered when calculating the total cost of the violation.

Source: Lincoln Municipal Code Chapter 5.04 Alcoholic Liquor

Am I responsible for my employee's actions?

You are not exempt from responsibility for the actions of your employees. Even if you are not on the premise, any action by your employees in violation of the rules or regulations governing your business will result in penalties against you and your license.

What are the possible penalties against us?

Liquor Control Commission penalties are determined on a case by case basis. Consideration is given to the type of violation, the licensee's past record, and the circumstances surrounding each particular case. Penalties may range from Penalty In Abeyance only, to license suspension, fine in lieu of license suspension or license revocation.

Administrative hearings: How are regulations enforced?

The laws, rules, and regulations of the Nebraska Liquor Control Act are enforced by the Nebraska State Patrol's Liquor and Vice Division and local law enforcement. A licensee may not refuse or unreasonably delay law enforcement's demand for entry onto the licensed premise.

Source: Nebraska Liquor Control Act Sec. 53-1,105 to 53-1,121

Source: Lincoln Municipal Code Sec. 5.04.200

What responsibilities does local police have?

It is not unusual for local law enforcement officers to walk through a licensed establishment as a part of their regularly assigned duties. If at any time, an officer should observe a violation to either the state statutes or local ordinances governing the sale and service of alcohol, they are obligated to investigate and if necessary, issue a citation for the violation.

Source: Lincoln Municipal Code Sec. 5.04.200

What are the most common violations against licensees?

Forty-seven percent of the reported violations filed with the State Liquor Control Commission in 1993/1994 were for sales to minors. Consumption after hours, disturbances or assaults on the licensed premise, allowing illegal activities and sales to intoxicated persons combined to account for over 40% of the remaining violations filed.

Approximately 50% of the licenses cited in 1993/94 were suspended. Thirty-two of the 208 license suspensions were placed in penalty in abeyance. The average number of days suspended for each violation was 6.6. Ten licenses were canceled.

Source: Liquor Control Commission Newsletter Volume 7, Number 1 Fall, 1994

When am I notified of a violation?

A business is notified of a violation after a thorough investigation by law enforcement and subsequent review by the city or county attorney. Captains of the Lincoln Police Dept. review tavern reports weekly and recommend appropriate action. At that time, law enforcement officials may choose to pass the violation on to the State Liquor Control Commission or hold the report internally.

Currently, the Lincoln Police Dept. is sending all violations relevant to drinking after hours, sales to minors, and sales to intoxicated persons to the State Liquor Control Commission regardless of the licensee's record.

How long will it take before we are called before the licensing board?

The licensee is notified by the State Liquor Control approximately 3 weeks after the alleged violation. The hearing date is scheduled approximately 3 to 8 weeks following notification.

Forms waiving the licensee's right to hearing are included in the notification packet. If this course of action is chosen, the forms must be completed and returned to the Commission office by the date specified.

Source: Nebraska Liquor Control Act Rules and Regulations Chapter 1-Practice and Procedure

Source: Nebraska Liquor Control Act Sec. 53-1,104

Should I bring an attorney? My employees?

It is important to confer with your legal counsel whenever your business faces regulatory liability.

Depending upon the charges, the facts, and the potential penalty, you and your attorney can decide the best course of action. Sometimes you are required to present evidence and testimony, in which case bringing employees with you may help you and the administrative process.

What are the procedures during the hearing? Should I bring written documents?

Frosty Chapman, Executive Director of the State Liquor Control Commission, acts as the hearing officer for the administrative process. The Assistant Attorney General assigned to the Liquor Control Commission is present to represent the state. The hearing officer identifies the parties present and the facts relevant to the case. Opening statements are presented by both attorneys and the law enforcement officer who filed the violation presents the evidence.

The licensee may present documents and/or witnesses supporting innocence. The State Liquor Control Commissioner's may request specific information from the licensee. It is the obligation of the licensee to comply with this request. Following the conclusion of the evidence, the Commissioners openly discuss the facts of the case as presented and render final judgment.

Source: Nebraska Liquor Control Act Rules and Regulations Chapter 1-Practice and Procedure

Do I have a right to defend myself?

Unless the licensee cited should chose to waive their right to a hearing before the Commission, he or she has the right to retain counsel and/or represent their own legal interest during the administrative process.

Source: Nebraska Liquor Control Act Rules and Regulations R1-002.11

After the hearing, how long does it take to get a decision?

In most cases, judgment is rendered immediately following the discussion of the evidence.

If we are fined, how long do I have to pay?

Licensees found in violation of the State Liquor Control Act are subject to suspension, cancellation, or revocation of the license. When faced with a suspension order, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the prescribed time period.

The penalty for a first suspension is \$50 per day. Penalties for second and subsequent suspensions are \$100 per day. Licensee's found guilty of 4 violations of the same type, within a 4 year time span, may be subject to cancellation of their liquor license.

Licensee's electing to pay in lieu of license suspension must notify the commission within one week prior to the beginning of the suspension order. This notification must be accompanied by payment in full of the sum required by statute. If found guilty, licensees are also responsible for hearing costs.

Source: Nebraska Liquor Control Act Rules and Regulations Chapter 1-Practice and Procedure

Source: Nebraska Liquor Control Act Penalties Sec. 53-1,100 to 53-1,104

If our license is suspended, when do we have to close? Can we choose the dates?

The dates of suspension are defined by the Commission through an order issued following the hearing and subsequent judgment.

Source: Nebraska Liquor Control Act Sec. 53-1,104

Why might our license be revoked?

If a licensee is convicted of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties assigned, be required to forfeit his/her license. A revocation order may be issued by either the local governing body or the State Liquor Control Commission. Typically, a significant body of evidence will have been collected suggesting management's unwillingness or inability to adhere to the laws, rules, and regulations governing the sale and service of alcohol. This body of evidence includes, but is not limited to, frequency of violations, cooperation or non-cooperation with law enforcement, minor involvement, and educational efforts by the licensee.

Source: Liquor Control Commission Newsletter Volume 7, Number 1 Fall, 1994

Source: Nebraska Liquor Control Act Sec. 53-116.02

Can we appeal the decision?

A licensee may appeal a revocation or cancellation order rendered by the local governing body to the State Liquor Control Commission. The Commission has the authority to reverse, vacate, or modify the original order.

A licensee may request a rehearing twenty days after the decision of the commission to suspend, cancel or revoke a license. The commission will consider the application for rehearing at their next regularly

scheduled meeting. If the rehearing is granted, the commission will, as quickly as possible, hear the issues identified. Only one rehearing will be granted by the commission per application, per licensee.

A licensee may appeal a judgment rendered by the State Liquor Control Commission to the district court.

The court has the authority to reverse, vacate, or modify the original judgment.

Source: Nebraska Liquor Control Act Sec. 53-1,114

Source: Nebraska Liquor control Act Appeal Procedures Sec. 25-1901

Local control

After we receive our license, what role does local government play?

The local government is responsible for the revocation or cancellation of problem licenses, the authorization of law enforcement to investigate suspect licenses, the receipt of citizen complaints and action on such complaints, and the collection of evidence on license applications for the purpose of making a non-binding recommendation to the State Liquor Control Commission.

Source: Nebraska Liquor Control Act Sec. 53-134 (Reissue 1984)

What is the Internal Liquor Committee?

In 1993, the Lincoln City Council formally created an Internal Liquor Committee comprised of three (3) city council members. The Lincoln City Attorney, city planning, law enforcement, and a local prevention professional serve as advisors to the committee. The purpose of the committee is to review public complaints and LPD issued citations/violations to existing liquor licensees. If upon review, the committee determines the licensee is establishing a history of repeat offenses, they may request an informal hearing to discuss council/committee concerns with the current owner/manager. Together, the group may suggest a strategy for reducing the problems identified. Although the recommendations may not be enforced, non-compliance is viewed unfavorably. Licensees addressing the committee may bring legal counsel but because the review is regarded as informal, legal counsel is not necessary.

Source: Internal Liquor Committee

Can the local government impose penalties against us?

Although the local governing body does not have the authority to suspend a license for a violation to the Nebraska Liquor Control Act, it does have the authority to cancel or revoke. The Internal Liquor Committee can, and does, communicate problems and concerns to the State Liquor Control Commission. Significant committee concerns are often referred to the entire city council for their review and action.

Source: Nebraska Liquor Control Act Sec. 53-134 (Reissue 1984)

What can we do to avoid problems?

As the saying goes, "an ounce of prevention is worth a pound of cure." You are better to avoid liability than defend yourself. There are three things to do to avoid problems:

Define your mission: What is the purpose of your business? It is important for you to control your business rather than have your business control you. Most people get into this business to provide a service to the public, get recognition for this service, and make a profit. Few enter the business with the intention of selling to underage or intoxicated people.

Policies: Your policies should reflect your mission. At the same time, they should provide a structure for your staff to work within so they do not unintentionally violate the law. Everything you do should promote responsible drinking decisions by those who chose to consume alcohol beverages and respect those who make a decision to abstain.

Training: Your staff need the knowledge and skills required to fulfill your mission and comply with your policies.

Facilities: Fire safety

What building permits do I need before applying for an alcohol license?

The proposed plan for your new or existing business must be reviewed by, and receive approval from, the Department of Building and Safety. Once plans are submitted, Department staff route the application for review and comment by the appropriate inspectors. This review process is designed to ensure that the

proposed site meets both municipal zoning and building codes. Cost of the review process is based on a combination of factors that include, but are not limited to, square footage, use, and construction type.

The plan review process takes approximately two weeks to complete. After the review is completed, staff will meet with the applicant to discuss problems and/or concerns. At the conclusion of this process construction and/or remodeling may begin.

Building and Safety provides a 24 hour inspection line. As each part of the construction plan is completed (plumbing, electrical, heating, etc.), a message can be left with the inspection line, and an inspector will visit your location (usually within 24 hours).

The proposed site must have an approved entrance that adequately protects the public health, safety and welfare. Any relocation or remodeling to the entrance must be approved by the Lincoln Police Department. Decisions made by the Department may be appealed to the Lincoln City Council.

Source: Lincoln Municipal Code Sec. 5.04.140 and Sec. 5.04.250

What are the important issues for fire safety?

There is no greater risk to a hospitality business than a fire. Before your liquor license is issued by the State Liquor Control Commission, the Department of Building and Safety's Bureau of Fire Prevention will inspect your premise for compliance with the city's current fire codes. These codes include, but are not limited to panic bars on all the exterior doors, fire extinguishers, and an emergency lighting system that is regularly tested and maintained. The fire inspector is responsible for determining the maximum number of customers allowed into your licensed premise at any given time. This number, commonly referred to as the occupancy rate, is roughly calculated by dividing total square footage open to customers by fifteen.

Additional exits may be required with larger occupancy rates. The state requires at least two exits for up to 499 customers, at least three for up to 999 customers and at least four for 1000+ customers. Total disregard for, or inattention to, state and local fire codes will place not only your liquor license in jeopardy, but public health and safety as well.

How can I work to ensure customer safety and security?

Easy access and proper lighting increase the customers' perception of personal safety and security in the event of an emergency. Local fire officials have a number of options available when overcrowding is identified. Exceeding your posted occupancy rate is a criminal violation. Violations referred to the city attorney's office for prosecution may result in fines up to \$500.00.

Persistent problems may result in vacating patrons from the building and temporarily closing the business. Multiple violations can result in the cancellation or revocation of your liquor license.

Finally besides the legal risks associated with overcrowding, it also reduces the ability of your service staff to properly monitor your customers. Control of crowd size allows wait staff to improve service to customers, resulting in increased sales and rewards for your servers.

Food Service

What are our responsibilities if we want to serve food?

It is unlawful for any person to operate a food establishment without first obtaining a permit from the Health Director as defined by the "Lincoln Food Code." The purpose is to safeguard the public from potential health hazards related to food.

Source: Lincoln Food Code 8.20.080

What permits do we need? Where do we get them?

An application for permit to operate a food establishment must be submitted to the Health Director on forms provided by the Health Director. In addition, a food permit holder cannot operate a food establishment without at least one food manager in charge of the operation or knowingly permit a person to work as an employee if such person does not hold a valid food manager or food handler permit. The Health Department address is:

3140 'N' Street

Lincoln NE 68510

(402) 441-8000

Source: Lincoln Food Code 8.20.080, 8.20.190

How long does it take to get a permit? How much does it cost?

Upon receipt of an application and the applicable permit fee for a food establishment permit, the Health Director shall make an inspection to determine if the proposed establishment complies with the provisions of the Lincoln Food Code and any other applicable law or standard. The Health Director shall complete the inspection and issue or deny the permit within a reasonable amount of time not to exceed thirty days. The fee for a new permit for a food establishment is \$200, the renewal fee is \$135. All food establishment permits shall expire on the thirty-first day of May each year.

Source: Lincoln Food Code 8.20.100, 8.20.150

What is a food handler's permit? Why is it necessary?

There are three levels of permits issued to managers and employees or other people who engage in food procurement, storage, display, delivery, preparation, or service, or comes in contact with food utensils or equipment, or whose employment status in an approved operation involves a food related activity or duty that may affect the public health. The purpose is to assure a thorough knowledge of food safety and sanitation procedures, including the principles of proper hygiene, cleaning and sanitizing.

Source: Lincoln Food Code 8.20.030

What training is required for staff who prepare food? Serve food?

You are required to have at least one Food Manager Permit holder in charge of the operation. It is also unlawful to knowingly permit a person to work as an employee if such a person does not hold a valid food

manager or food handler permit. A food permit holder is required to arrange for and require employees to obtain and keep food manager and food handler permits. An owner, supervisor, or other person in charge of a food establishment shall maintain an up to date list of all employees working in the food establishment on a form provided by the Health Director. A food permit holder shall provide the minimum applicable training for the food permit holder's employees as required by the applicable sanitation and regulations.

Source: Lincoln Food Code 8.20.100, 8.20.190

Where can I get training?

Lincoln/Lancaster County Health Department

3140 North Street

Lincoln NE 68510

(402) 441-8000

What do I need to be concerned about when serving food?

Your primary responsibility is to not serve adulterated food. Adulterated food is food that is not safe for use as food because:

- Contains a diseased, contaminated, filthy, putrid, or decomposed substance.
- Does not contain an essential ingredient that was omitted or removed during preparation or processing.
- Is stored, prepared, packaged, served, vended, or otherwise provided under unsanitary conditions.
- Is stored in a container that potentially contaminates the food.

In addition, you cannot serve food from a diseased animal; an animal that died by any means other than approved means, or any food that is otherwise unsafe for use as food.

Source: Lincoln Food Code 8.20.030

What happens if a customer gets sick because of food served in my establishment?

A food permit holder, owner, manager, or other person in charge of a food establishment shall notify the Health Director within 36 hours after the time he or she knows or should know that a person has complained to the food establishment about a food related illness after eating food at the food permit holder's food establishment.

Source: Lincoln Food Code 8.20.240

What should I do to prevent others from getting sick?

In addition to following proper food preparation and storage procedures, it is required that a food permit holder not allow a person who knows that s/he is afflicted with a communicable disease or knows that s/he is a carrier of a communicable disease to act in a capacity that transmits or creates a likely risk of transmitting the disease to a patron or another person as a result of any food related activity in an approved food establishment. Any person afflicted with diarrhea, vomiting, boils, infected wounds, sores, or an acute respiratory infection shall not act as an employee in an approved food operation.

Source: Lincoln Food Code 8.20.240

When does the health department conduct inspections?

The Health Director shall inspect a temporary food service as frequently as necessary to assure compliance with the Lincoln Food Code. For all other permitted food establishments, the Health Director shall inspect the same at least once every 180 days. The food permit holder shall accommodate the Health Director in the inspection, making available employee records and food purchase records.

Source: Lincoln Food Code 8.20.260

What are the most common violations?

The most common violations are improper storage temperatures, improper employee hygiene, cross contamination of foods, use of products beyond safe time limits.

If we are cited by the health department, what penalties do we face?

If the Health Director determines that the permit holder is in violation of the Lincoln Food Code, the Health Director may revoke the permit or the Health Director may suspend the permit for an appropriate period of time not to exceed ninety days. The Health Director may suspend any permit issued under the Lincoln Food Code if the Health Director finds that a permit holder, owner, manager, or other person in charge of a food establishment or the food establishment itself is in serious violation of the Lincoln Food Code and is thereby causing an immediate and substantial hazard to the public health.

The permittee may request a hearing before the Health Director, and the Health Director shall conduct such hearing within three days for immediate suspension and within fourteen days for any other request. The Health Director will make a final determination within ten days after the hearing, and such decision will be final and binding upon the City and upon the person making the request. The decision may be appealed to district court as provided by law.

Any person whose permit has been suspended may apply for reinstatement of such permit. The application shall provide the same information as for a new permit and shall also include a statement signed by the applicant that the conditions causing suspension of the permit have been corrected.

Any person who is found to have violated any provision of this chapter or any standard or regulation adopted hereunder shall be subject to a fine of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six months, or both.

Source: Lincoln Food Code 8.20.260, 8.20.290, 8.20.300, 8.20.340

Education and training

Where can I get more information about managing my business?

There are many sources of information for you to manage your business. You need to make the time to access the information. Various trade publications are available at no cost. Adult education seminars are offered at local colleges or by various professional and trade associations. A listing of local contacts is included at the back of this handbook.

Should I join a trade association? What one? What are the benefits?

Trade associations provide many services and opportunities to develop your business. However, you will not receive most benefits unless you become involved. Paying dues is not enough to be a member of an association.

There are generally two types of associations you can belong to. One is a trade or business association. This can be specific to your type of business, such as the Lincoln Package Beverage Association. Other types of trade associations are for general businesses, such as the Chamber of Commerce. Both types provide advocacy for businesses regarding legislation, insurance, and public relations. They also provide educational programs, may offer technical assistance on employment issues and other types of management problems, and may also produce periodic publications.

The other type of organization is a professional association. This type advocates for a specific occupational or professional group such as hotel sales managers, chefs, catering executives, etc. The purpose of these associations is to create an information network, enhance job skills, and assist in job placement and recruitment.

Both types of associations usually offer annual or periodic conferences or trade shows, access to reduced insurance plans, publications, and sample policies and signage. More importantly, however, is the opportunity to meet with other professionals in your field, learn about new trends, equipment, products, and services, and ways to build your business and enhance your industry image in the community.

Can I get responsible beverage service training for my staff?

Currently, there are three primary sources for responsible beverage service training. The Responsible Beverage Service Program, sponsored by the Lincoln Council on Alcoholism and Drugs, can provide both you and your staff with a comprehensive training program designed to increase the skills and attitudes necessary to provide quality hospitality service. The Nebraska Restaurant Association provides, for its membership, a service seminar developed by the National Restaurant Association's Education Foundation. Both programs are taught by facilitators with hands-on experience in the hospitality industry. The Nebraska State Patrol, as well as the Lincoln Police Department, provides limited training specific to recognizing false identification.

Policies

What are policies?

Policies make it easier for staff to intervene in problem situations without offending or being offended by the customer. They also can reduce liability in the event of an injury related to the activities of the staff or business.

Policies can decrease business costs by eliminating waste or duplicative efforts. Insurance and legal costs can be minimized by reducing the number of claims filed by either employees or customers. A safer, more secure and comfortable work environment can both reduce staff turnover and increase customer return rate. Employee performance can be better evaluated and improved incentive based compensation systems can be implemented.

How are policies created?

Policies are created in various ways. One of the most common is in response to a situation resulting in some form of loss or liability. New governmental rules or regulations can force the development of new policies, as can recent court decisions expanding potential liability.

One of the best ways to develop policies is to continually monitor your business, assess changes in customer demands or community standards, and be aware of proposed and pending legislation.

Anticipating trends and creating subsequent policies is a sure way to gain more commitment from staff and customers to your changes. Including all concerned parties in policy development is therefore critical to effective implementation and follow-up.

Essential Elements of an Effective Policy

It is possible to provide sample policies for each type of establishment utilizing this handbook. However, there are certain elements of a policy or training that can be followed to allow staff to more easily understand the policies. The following are recommended as essential elements of an effective policy:

- WHO is supposed to do it? Who is the person responsible for carrying-out a specific action?
- WHAT is to be done? What are the specific actions to be taken?
- WHEN is it to be done? Under what circumstances? Specific days? Times? In response to specific customer behavior?
- WHERE can help be obtained? Who is the supervisor to report to or get more information from?
- WHY is it necessary? What is the purpose of the policy? To increase sales; give better service; reduce liability; because it is the law; to fulfill the organization mission; reduce costs? Why should the action be performed?
- HOW is the person compensated; how does the person performing the action benefit; will it increase sales and tip income; will it reduce personal liability? If the task is done properly, will it increase compensation to the employee? Are there penalties for not performing the task?

Suggested Policies

Promote Group Interaction

- Arrange seating to make forming small groups easier.
- Prevent overcrowding to allow people to be able to sit or stand together in small groups where they can converse and engage in comfortable social interaction
- Maintain appropriate volume on music to allow for easy conversation.
- When appropriate, encourage staff to introduce people to each other.
- Provide suggestions for social hosts on room settings.

Promote Food

- Whenever possible, make food available when alcohol beverages are served.
- In bar or lounge areas, provide appetizers or small serving selections that can be shared among group members.
- Train servers and clerks to offer suggestions of food and beverage pairings, i.e. what wines or beers go better with what menu items.
- Create incentives for sales of appetizers and other food items served with beverages.
- Train servers and clerks to assist customers in selecting appropriate food and beverage pairings.

Create Safe Environments

- Create an environment that is perceived as safe and accommodating for women. This would include proper lighting in parking areas and at entrances, proper lighting in the establishment, and avoiding advertisements, posters, or displays that would be offensive to women.
- Identify employees through some type of uniform to provide guests with an opportunity to quickly identify staff.
- Train service staff to be receptive and responsive to all guests, making every effort to be accommodating.
- When marketing to families, prepare menus and promotions appealing to children as well as adults. Make seating comfortable and accessible.
- Provide training to staff on security measures and conflict resolution techniques for handling situations creating threats to customer safety.
- Controlling intoxication will result in an environment that reduces the risk for unwanted sexual advances experienced by both the guest and staff.

Make Abstainers Comfortable

- Maintain a selection of popular alternative non-alcoholic beverages.
- Allow staff to taste the beverages and develop ways to describe and promote the products to people seeking alternatives.
- Create incentive programs for staff to promote alternative beverage sales.
- Whenever alcohol beverages are listed on menus or promotions, list alternative non-alcoholic beverages.

- Have drink recipe contests for staff to create interesting alternatives.

Don't Make Drinking the Focus

- Provide games, dancing, music, and other activities.
- Develop contests focusing on these activities.
- Train service staff to encourage customer participation in activities.
- Advertisements and promotions emphasize activities rather than drink specials.

Encourage Responsible Drinking

- Do not have drink specials which encourage quick or quantity drinking, i.e. shooters, penny drinks, or "fishbowl" type drinks.
- Promote quality instead of quantity. Maintain a selection of premium products and train service staff about the various beverages, how they are made, and what distinguishes one brand or type from another.
- Create a premium wine by the glass program.
- Create a premium beer program, i.e. beers from around the world, beer of the week club, etc.
- Establish systems to monitor consumption by customers. Assign service staff to stations, develop a check system to keep track of time and quantity of drinks consumed, and establish drink limits for pacing or intervention with customers drinking too much too quickly.
- Use standard pours for drinks and train staff to understand why and how to maintain these serving sizes. Serve single drinks only. Do not stack drinks.
- Define specific behaviors for staff to identify for intervention and refusal of alcohol service.
- Conduct staff meetings to discuss problem situations, customers causing conflicts, or other issues involving intoxication.

Host Responsibility

- Require all service and management staff to be trained in responsible beverage service.
- Maintain adequate staffing to properly supervise customers.
- Train service staff in good service, developing communication and suggestive selling techniques.
- Have strict policies forbidding consumption of alcohol by employees before or during working hours.
- Define a chain of command for reporting and intervening with problem situations.

- Maintain good relations with law enforcement and invite law enforcement personnel to staff meetings.
- Establish an employee assistance program.

Drinking is Not a Rite of Passage

- Maintain strict controls on access to alcohol by underage people through training and incentives for proper age identification.
- Minimize or eliminate the use of advertising that equates drinking alcohol with increased success or status.
- Assure proper supervision of premise to protect from the transfer of alcohol from adults to underage people.
- Provide educational messages about responsible drinking, drink limits, and rules against abuse and intoxication