

Do I need a Liquor License?

The Alcohol/Tobacco Enforcement Division of the Nebraska State Patrol believes that a liquor license is required for most circumstances. In any event it is always the safest practice to have a liquor license to avoid any potential problems from not having one; here is a step by step guide to help you determine if you're in compliance with the Nebraska Liquor Control Act. State statutes are included in this explanation to clarify the explanation.

1 - **Are alcoholic beverages involved?** The Nebraska Liquor Control Act defines alcohol, alcoholic liquor, beer, near beer, spirits, and wine liquor, if the beverages you're serving falls within any of these definitions you may need a license.

53-103. Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

53-103.01. Alcohol, defined.

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol.

53-103.02. Alcoholic liquor, defined.

(1) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy that contains more than one-half of one percent alcohol.

(2) The Nebraska Liquor Control Act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes.

53-103.03. Beer, defined.

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer.

53-103.24. Near beer, defined.

Near beer means beer containing less than one-half of one percent of alcohol by volume.

53-103.38. Spirits, defined.

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

53-103.42. Wine, defined.

Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

2 - **Will alcoholic beverages be sold?** The Nebraska Liquor Control Act defines what sell, sale, and to sell means under the Act.

2A - **If I don't take the money, but am only taking orders, is that selling?** The Nebraska Liquor Control Act includes taking an order or soliciting an order as part of the definition of sell.

If your event falls into any of those categories, a license is needed.

53-103. Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

53-103.33. Sale, defined.

Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee.

53-103.35. Sell, defined.

Sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

53-103.36. Sell at retail and sale at retail, defined.

Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175.

3 - **Will alcoholic beverages be consumed or sampled?** The Nebraska Liquor Control Act also defines these two terms.

53-103. Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

53-103.11. Consume, defined.

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

53-103.34. Sampling, defined.

Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period.

4 – **If I'm not selling alcohol, but it's included in the price of an event, do I need a license?**

It is our opinion that if money is paid to attend or participate in an event and alcohol is included as part of that price, then alcohol is being sold and a license is required. This includes charity events, fundraisers that include a meal, or where other entertainment is included in addition to alcohol being available to those in attendance. Including free will donations, and/or throwing money into the hat. It's not required that anyone actually consume alcohol, but if alcohol is included in the purchase price to gain admission, then it is part of the sale and a license is required. 53-1,100, 53-168.06 and 53-189 addresses who needs a liquor license.

53-1,100. Violations; general penalty.

Any person (1) who manufactures, imports for distribution as a wholesaler, or distributes or sells alcoholic liquor at any place within the state without having first obtained a valid license to do so under the Nebraska Liquor Control Act, (2) who makes any false statement or otherwise violates any of the provisions of the act in obtaining any license under the act, (3) who, having obtained a license under the act, violates

any of the provisions of the act with respect to the manufacture, possession, distribution, or sale of alcoholic liquor or with respect to the maintenance of the licensed premises, or (4) who violates any other provision of the act for which a penalty is not otherwise provided, shall for a first offense be guilty of a Class IV misdemeanor and for a second or subsequent offense shall be guilty of a Class II misdemeanor. Each day any person engages in business as a manufacturer, wholesaler, or retailer in violation of the act shall constitute a separate offense. In any prosecution in which a person is charged with an offense arising out of the failure to obtain a valid license as provided in subdivision (1) of this section, evidence of the failure of the accused to produce such license upon demand shall constitute prima facie proof that a license has not been issued by the commission to such person.

53-168.06. General prohibition; exceptions.

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in the Nebraska Liquor Control Act. Nothing in the act shall prevent (1) the possession of alcoholic liquor legally obtained as provided in the act for the personal use of the possessor and his or her family and guests; (2) the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests; (3) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians; (4) the possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony; (5) persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor; (6) persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; (7) persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or (8) persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment.

5 – **If I give the alcohol away, that means I don't need a license, right?** The Nebraska Liquor Control Act provides that alcohol cannot be given away to avoid any other requirements of the Liquor Control act.

You cannot give alcohol away to avoid the requirement for a liquor license.

53-189. Giving or selling liquor to evade law declared unlawful.

The giving away or delivery of any alcoholic liquor for the purpose of evading any provision of section 53-188 or the taking of orders or making of agreements, at or within any governmental subdivision, while such sales are prohibited, for the sale or delivery of any alcoholic liquor, or any other shift or device to evade any provision of the Nebraska Liquor Control Act, shall be held to be an unlawful selling.

6- **If we let people bring their own we don't need a license.** The Nebraska Liquor Control Act provides that any place open to the public where alcohol is allowed to be consumed, is required to be licensed. 53-103(40) defines consume.

A license is required if alcohol is allowed to be consumed even if those attending bring their own alcohol.

7- So then, if it's not open to the public, it's a private party or event, then a license isn't needed, right?

53-186.01 does not specify what open to the public means, so we take a common sense approach; if there is a guest list prepared in advance, and no one not on the list is allowed in, then it's a private event. However if the list is ignored, or there is no control at the places of entry and/or there is uncontrolled access to the alcohol then it's not considered a private event.

53-103. Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

53-103.11. Consume, defined.

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

53-186.01. Consumption of liquor in public places; license required; exception; violations; penalty.

(1) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

(5) Any person violating subsection (2) of this section shall be guilty of a Class III misdemeanor.

8- If I am selling out of my house, or taking my beverages for sampling and possible sale to private residence, is a license needed?

Sales and sampling have been addressed above, and the venue or location of the sale would apply regardless of the type of building. (53)178 prohibits selling alcohol in dwellings assessable to the public, 53-198 provides for liens to be placed on premises that are found to be operated in violation of the act and a method to declare them a common nuisance. Although these two provisions may, not always be applicable to private residences.

53-178. Sale at retail; forbidden in dwelling or lodging house; exceptions.

Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premises which have any access which leads from such premises to any other portion of the same building or structure used for dwelling or lodging purposes, and which is permitted to be used or kept accessible for use by the public. This provision shall not prevent any connection between such premises and such other portion of the building or structure which is used only by the licensee, his family and personal guests.

53-198. Places operated in violation of act; declared common nuisances; violations; penalty.

Any room, house, building, boat, structure, or place of any kind where alcoholic liquors are sold, manufactured, bartered, or given away in violation of the Nebraska Liquor Control Act or where persons are permitted to resort for the purpose of drinking same in violation of the act, or any place where such liquors are kept for sale, barter, or gift in violation of the act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of the act. If it is proved that the owner of any building or premises has knowingly suffered the same to be used or occupied for the manufacture, sale, or possession of alcoholic liquors contrary to the provisions of the act, such building or premises shall be subject to a lien for and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of the act. Such lien shall be immediately enforced by civil action in any court having jurisdiction by the county attorney of the county wherein such building or premises is located or by one of the assistant attorneys general assigned to the commission when directed by the commission.