

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 193**

Introduced by Howard, 9.

Read first time January 07, 2011

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Commission; to  
2 amend sections 53-1,115 and 84-914, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 payment of costs for certain proceedings before the  
5 commission as prescribed; to harmonize provisions; and to  
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 53-1,115, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           53-1,115 (1) A copy of the rule, regulation, order, or  
4 decision of the commission denying an application or suspending,  
5 canceling, or revoking a license or of any notice required by any  
6 proceeding before it, certified under the seal of the commission,  
7 shall be served upon each party of record to the proceeding before  
8 the commission. Service upon any attorney of record for any such  
9 party shall be deemed to be service upon such party. Each party  
10 appearing before the commission shall enter his or her appearance and  
11 indicate to the commission his or her address for such service. The  
12 mailing of a copy of any rule, regulation, order, or decision of the  
13 commission or of any notice by the commission, in the proceeding, to  
14 such party at such address shall be deemed to be service upon such  
15 party.

16           (2) Within thirty days after the service of any rule,  
17 regulation, order, or decision of the commission suspending,  
18 canceling, or revoking any license upon any party to the proceeding,  
19 as provided for by subsection (1) of this section, such party may  
20 apply for a rehearing with respect to any matters determined by the  
21 commission. The commission shall receive and consider such  
22 application for a rehearing within thirty days after its filing with  
23 the executive director of the commission. If such application for  
24 rehearing is granted, the commission shall proceed as promptly as  
25 possible to consider the matters presented by such application. No

1 appeal shall be allowed from any decision of the commission except as  
2 provided in section 53-1,116.

3 (3) Upon final disposition of any proceeding, costs shall  
4 be paid by the ~~party or parties against whom a final decision is~~  
5 ~~rendered. Costs may be taxed or retaxed to local governing bodies as~~  
6 ~~well as individuals.~~ applicant or, in the case of suspension,  
7 cancellation, or revocation of a license, by the licensee. Only one  
8 rehearing referred to in subsection (2) of this section shall be  
9 granted by the commission on application of any one party.

10 (4) For purposes of this section, party of record means:

11 (a) In the case of an administrative proceeding before  
12 the commission on the application for a retail, craft brewery, or  
13 microdistillery license:

14 (i) The applicant;

15 (ii) Each individual protesting the issuance of such  
16 license pursuant to subdivision (1)(b) of section 53-133;

17 (iii) The local governing body if it is entering an  
18 appearance to protest the issuance of the license or if it is  
19 requesting a hearing pursuant to subdivision (1)(c) of section  
20 53-133; and

21 (iv) The commission;

22 (b) In the case of an administrative proceeding before a  
23 local governing body to cancel or revoke a retail, craft brewery, or  
24 microdistillery license:

25 (i) The licensee; and

1 (ii) The local governing body; and

2 (c) In the case of an administrative proceeding before  
3 the commission to suspend, cancel, or revoke a retail, craft brewery,  
4 or microdistillery license:

5 (i) The licensee; and

6 (ii) The commission.

7 Sec. 2. Section 84-914, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 84-914 In contested cases:

10 (1) An agency may admit and give probative effect to  
11 evidence which possesses probative value commonly accepted by  
12 reasonably prudent persons in the conduct of their affairs and  
13 exclude incompetent, irrelevant, immaterial, and unduly repetitious  
14 evidence. An agency shall give effect to the rules of privilege  
15 recognized by law. Any party to a formal hearing before an agency,  
16 from which a decision may be appealed to the courts of this state,  
17 may request that the agency be bound by the rules of evidence  
18 applicable in district court by delivering to the agency at least  
19 three days prior to the holding of the hearing a written request  
20 therefor. Such request shall include the requesting party's agreement  
21 to be liable for the payment of costs incurred thereby and upon any  
22 appeal or review thereof, including the cost of court reporting  
23 services which the requesting party shall procure for the hearing.  
24 All costs of a formal hearing shall be paid by the party or parties  
25 against whom a final decision is rendered, except that, in a hearing

1 before the Nebraska Liquor Control Commission under section 53-1,115,  
2 all costs of such formal hearing shall be paid as provided in  
3 subsection (3) of such section;

4           (2) The hearing officer or a designee, at the request of  
5 any party or upon the hearing officer's own motion, may administer  
6 oaths and issue subpoenas, discovery orders, and protective orders in  
7 accordance with the rules of civil procedure except as may otherwise  
8 be prescribed by law. Subpoenas and orders issued under this  
9 subsection may be enforced by the district court;

10           (3) All evidence including records and documents in the  
11 possession of the agency of which it desires to avail itself shall be  
12 offered and made a part of the record in the case. No factual  
13 information or evidence other than the record shall be considered in  
14 the determination of the case. Documentary evidence may be received  
15 in the form of copies or excerpts or incorporated by reference;

16           (4) Every party shall have the right of cross-examination  
17 of witnesses who testify and shall have the right to submit rebuttal  
18 evidence;

19           (5) An agency may take official notice of cognizable  
20 facts and in addition may take official notice of general, technical,  
21 or scientific facts within its specialized knowledge and the rules  
22 and regulations adopted and promulgated by such agency. Parties shall  
23 be notified either before or during the hearing or by reference in  
24 preliminary reports or otherwise of material so noticed. Parties  
25 shall be afforded an opportunity to contest facts so noticed. The

1 record shall contain a written record of everything officially  
2 noticed. An agency may utilize its experience, technical competence,  
3 and specialized knowledge in the evaluation of the evidence presented  
4 to it; and

5 (6)(a) No party in a contested case or other person  
6 outside the agency having an interest in the contested case shall  
7 make or knowingly cause to be made an ex parte communication to the  
8 hearing officer or to an agency head or employee who is or may  
9 reasonably be expected to be involved in the decisionmaking process  
10 of the contested case.

11 (b) No hearing officer or agency head or employee who is  
12 or may reasonably be expected to be involved in the decisionmaking  
13 process of the contested case shall make or knowingly cause to be  
14 made an ex parte communication to any party in a contested case or  
15 other person outside the agency having an interest in the contested  
16 case.

17 (c) No agency head or employee engaged in the  
18 investigation or enforcement of a contested case shall make or  
19 knowingly cause to be made an ex parte communication to a hearing  
20 officer or agency head or employee who is or may reasonably be  
21 expected to be involved in the decisionmaking process of the  
22 contested case.

23 (d) The hearing officer or agency head or employee who is  
24 or may reasonably be expected to be involved in the decisionmaking  
25 process of the contested case who receives or who makes or knowingly

1 causes to be made an ex parte communication set forth in subdivisions  
2 (6)(a) through (c) of this section shall file in the record of the  
3 contested case (i) all such written communications, (ii) memoranda  
4 stating the substance of all such oral communications, and (iii) all  
5 written responses and memoranda stating the substance of all oral  
6 responses to all the ex parte communications. The filing shall be  
7 made within two working days of the receipt or making of the ex parte  
8 communication. Notice of the filing, with an opportunity to respond,  
9 shall be given to all parties of record.

10 (e) The prohibitions of subdivision (6) of this section  
11 shall apply beginning at the time notice for hearing is given. An  
12 agency may designate an earlier time, but such earlier time shall be  
13 required to be set forth in the agency's rules of procedure.

14 (f) The prohibitions contained in subdivisions (6)(a) and  
15 (b) of this section shall not apply to ex parte communications to or  
16 from an elected official. However, the disclosure requirements  
17 contained in subdivision (6)(d) of this section shall apply to ex  
18 parte communications to or from an elected official.

19 Sec. 3. Original sections 53-1,115 and 84-914, Reissue  
20 Revised Statutes of Nebraska, are repealed.