

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 339**

Introduced by Howard, 9.

Read first time January 15, 2015

Committee: General Affairs

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

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

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

15 (2) Within thirty days after the service of any rule, regulation,  
16 order, or decision of the commission suspending, canceling, or revoking  
17 any license upon any party to the proceeding, as provided for by  
18 subsection (1) of this section, such party may apply for a rehearing with  
19 respect to any matters determined by the commission. The commission shall  
20 receive and consider such application for a rehearing within thirty days  
21 after its filing with the executive director of the commission. If such  
22 application for rehearing is granted, the commission shall proceed as  
23 promptly as possible to consider the matters presented by such  
24 application. No appeal shall be allowed from any decision of the  
25 commission except as provided in section 53-1,116.

26 (3) Upon final disposition of any proceeding, ~~no costs shall be paid~~  
27 ~~by the party or parties against whom a final decision is rendered.~~ Costs  
28 may be taxed or retaxed to the applicant, any individual protesting the  
29 issuance of the license, local governing bodies, or, in the case of  
30 suspension, cancellation, or revocation of a license, the licensee as  
31 ~~well as individuals.~~ Only one rehearing referred to in subsection (2) of

1 this section shall be granted by the commission on application of any one  
2 party.

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

4 (a) In the case of an administrative proceeding before the  
5 commission on the application for a retail, craft brewery, or  
6 microdistillery license:

7 (i) The applicant;

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

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

13 (iv) The commission;

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

17 (i) The licensee; and

18 (ii) The local governing body; and

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

22 (i) The licensee; and

23 (ii) The commission.

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

26 84-914 In contested cases:

27 (1) An agency may admit and give probative effect to evidence which  
28 possesses probative value commonly accepted by reasonably prudent persons  
29 in the conduct of their affairs and exclude incompetent, irrelevant,  
30 immaterial, and unduly repetitious evidence. An agency shall give effect  
31 to the rules of privilege recognized by law. Any party to a formal

1 hearing before an agency, from which a decision may be appealed to the  
2 courts of this state, may request that the agency be bound by the rules  
3 of evidence applicable in district court by delivering to the agency at  
4 least three days prior to the holding of the hearing a written request  
5 therefor. Such request shall include the requesting party's agreement to  
6 be liable for the payment of costs incurred thereby and upon any appeal  
7 or review thereof, including the cost of court reporting services which  
8 the requesting party shall procure for the hearing. All costs of a formal  
9 hearing shall be paid by the party or parties against whom a final  
10 decision is rendered except for proceedings under section 53-1,115;

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

17 (3) All evidence including records and documents in the possession  
18 of the agency of which it desires to avail itself shall be offered and  
19 made a part of the record in the case. No factual information or evidence  
20 other than the record shall be considered in the determination of the  
21 case. Documentary evidence may be received in the form of copies or  
22 excerpts or incorporated by reference;

23 (4) Every party shall have the right of cross-examination of  
24 witnesses who testify and shall have the right to submit rebuttal  
25 evidence;

26 (5) An agency may take official notice of cognizable facts and in  
27 addition may take official notice of general, technical, or scientific  
28 facts within its specialized knowledge and the rules and regulations  
29 adopted and promulgated by such agency. Parties shall be notified either  
30 before or during the hearing or by reference in preliminary reports or  
31 otherwise of material so noticed. Parties shall be afforded an

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

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

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

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

20 (d) The hearing officer or agency head or employee who is or may  
21 reasonably be expected to be involved in the decisionmaking process of  
22 the contested case who receives or who makes or knowingly causes to be  
23 made an ex parte communication set forth in subdivisions (6)(a) through  
24 (c) of this section shall file in the record of the contested case (i)  
25 all such written communications, (ii) memoranda stating the substance of  
26 all such oral communications, and (iii) all written responses and  
27 memoranda stating the substance of all oral responses to all the ex parte  
28 communications. The filing shall be made within two working days of the  
29 receipt or making of the ex parte communication. Notice of the filing,  
30 with an opportunity to respond, shall be given to all parties of record.

31 (e) The prohibitions of subdivision (6) of this section shall apply

1 beginning at the time notice for hearing is given. An agency may  
2 designate an earlier time, but such earlier time shall be required to be  
3 set forth in the agency's rules of procedure.

4 (f) The prohibitions contained in subdivisions (6)(a) and (b) of  
5 this section shall not apply to ex parte communications to or from an  
6 elected official. However, the disclosure requirements contained in  
7 subdivision (6)(d) of this section shall apply to ex parte communications  
8 to or from an elected official.

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