
TECHNICAL ISSUES: TITLE 32B, ALCOHOLIC BEVERAGE CONTROL ACT

As part of the enrolling process for S.B. 167 (2010 G.S.), which recodifies the Alcoholic Beverage Control Act, certain technical issues were found, but could not be corrected without legislative action. The following highlights possible resolution of these technical issues. This is not a comprehensive analysis of the recodification or the need for any other changes. For further information, you may contact the Office of Legislative Research and General Counsel.

Specific Language Issues

Subsection 32B-1-203(2)(b):

(2) The commission:

- (a) may not issue a license to a person who violates this section; and
- (b) may ~~[not renew;]~~ suspend, ~~[or]~~ revoke, or not renew the license of a licensee who violates this section.

Subsection 32B-1-306(3):

(3) determining whether an individual fails to accurately disclose the ~~[person's]~~ individual's criminal history on an application or document filed with the department or commission;

Subsections 32B-2-401(1) and (2):

(2) For purposes of ~~[this part]~~ Subsection 32B-2-404(1)(b)(iii), the number of ~~[state stores, package agencies, and licensees located within the limits of a municipality or county]~~ premises:

- (a) is the number determined by the department to be so located;
- (b) includes the aggregate number of premises of the following:
 - (i) a state store;
 - (ii) a package agency; and
 - (iii) a retail licensee~~]; except for an on-premise beer retailer];~~ and
- (c) for a county, consists only of the number located within an unincorporated area of the county.

Subsection 32B-2-404(1)(b)(iii):

(iii) 20% to municipalities and counties on the basis of the percentage of ~~[state stores, package agencies, liquor licensees, and beer licensees]~~ the following in the state that are located in each municipality and county :

- (A) state stores;
- (B) package agencies;
- (C) retail licensees; and
- (D) off-premise beer retailers ; and

Subsection 32B-3-303(1)(e):

- (e) three or more adjudicated violations of this title within the last two years by a retail licensee or by staff of the retail licensee that result in a criminal citation or an administrative referral to the department relating to:
 - (i) the sale, offer for sale, or furnishing of ~~[alcohol]~~ an alcoholic product to a minor;
 - (ii) the sale, offer for sale, or furnishing of ~~[alcohol]~~ an alcoholic product to a person actually, apparently, or obviously intoxicated;
 - (iii) the sale, offer for sale, or furnishing of ~~[alcohol]~~ an alcoholic product after the lawful hours for the sale or furnishing; or
 - (iv) acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title.

Subsection 32B-3-307(4)(a):

(4) (a) A hearing held under this ~~[chapter]~~ part shall be conducted under the authority of the commission.

Subsection 32B-4-507(1):

- (1) Except as provided in Subsection (2), a commissioner, the director, or a department employee may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of staff by:
 - (a) a manufacturer of liquor;
 - (b) a supplier of liquor to the department; or
 - (c) an importer of liquor to the department.

Subsection 32B-4-422(2)(d)(ii):

- (ii) allow a person on the premises of the following to have more than one spirituous liquor beverage at a time:
 - (A) a full-service restaurant licensee;
 - (B) a person operating under a full-service restaurant sublicense;
 - (C) an on-premise banquet licensee;
 - (D) a person operating under an on-premise banquet ~~[license]~~ sublicense; or
 - (E) a single event permittee.

Subsection 32B-5-303(2):

(2) (a) (i) A ~~beer retailer~~ retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the ~~beer retailer~~ retail licensee purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a ~~beer retailer~~ retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the ~~beer retailer~~ retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the ~~beer retailer~~ retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the ~~beer retailer~~ retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

Subsection 32B-5-308(2)(b):

(b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Subsection 32B-6-205(8):

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

Subsection 32B-6-305(8):

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

Subsection 32B-6-405(5):

(5) The bond amount required for a ~~full-service restaurant~~ club license is the penal sum of \$10,000.

Section 32B-9-302:

32B-9-302. Definitions.

As used in this ~~chapter~~ part:

Miscellaneous Issues

- Should Section 32B-4-510, Advertising prohibited -- Exceptions, be moved from Chapter 4, Criminal Offenses and Procedure Act, to Chapter 1, which includes miscellaneous provisions? The focus of the section is advertising by the department or a package agency, and the powers of the commission related to advertising.
- Should Section 32B-2-604, Bond related to package agency, be amended to include provisions now found in other bonding statutes such as:
 - if a posted surety bond is canceled due to negligence, the department may assess a \$300 reinstatement fee
 - no part of a posted bond may be withdrawn during the period of the package agency or while a termination proceeding is pending
 - a posted bond may be forfeited if the package agency is terminated
 - the department may make a claim against a posted bond for money owed the department without a package agency first being terminated?These provisions are possibly not needed if a package agency agreement itself resolves any issues.