

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

ALCOHOLIC BEVERAGE CONTROL ACT AMENDMENTS

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address various issues related to the regulation of alcoholic products.

Highlighted Provisions:

This bill:

- ▶ modifies definitions related to prohibited interests, relationships, and actions;
- ▶ modifies the type of licenses that if held by a manufacturing facility that also holds a package agency allows the manufacturing facility to sell an alcoholic product on additional days;
- ▶ modifies the times during which restaurants may sell, offer for sale, or furnish an alcoholic product;
- ▶ modifies bond amount for on-premise beer retailers;
- ▶ removes an unnecessary cross reference related to notifying the department of closures and transfers of licenses; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

32B-2-209 (Effective 07/01/11)

32B-2-605 (Effective 07/01/11)

32B-6-205 (Effective 07/01/11)

32B-6-305 (Effective 07/01/11)

32B-6-404 (Effective 07/01/11)

32B-6-705 (Effective 07/01/11)

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31 32B-6-706 (Effective 07/01/11)

32 32B-6-902 (Effective 03/01/12)

33 32B-6-905 (Effective 03/01/12)

34

35 Statutory text:

36 **32B-2-209 (Effective 07/01/11). Prohibited interests, relationships, and actions.**

37 (1) As used in this section:

38 (a) "Applicable department employee" means a department employee who is:

39 (i) designated as a deputy or assistant director;

40 (ii) a chief administrative officer of a division within the department;

41 (iii) a department compliance officer; or

42 (iv) an employee directly performing licensing or compliance functions of the

43 department.

44 (b) "Immediate family" means an individual's:

45 (i) spouse; or

46 (ii) child who is younger than 18 years of age.

47 (c) "Permit" does not include:

48 (i) an industrial or manufacturing use permit; or

49 (ii) a scientific or educational use permit.

50 (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and
51 Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable
52 department employee may not:

53 (a) have a pecuniary interest, whether as the holder of stock or other securities other
54 than a mutual fund, in a person who applies for or holds a package agency, license, permit,
55 or certificate under this title;

56 (b) otherwise have a conflict of interest with a person who applies for or holds a
57 package agency, license, permit, or certificate under this title;

58 (c) have an office, position, or relationship, or be engaged in a business or avocation
59 that interferes or is incompatible with the effective and objective fulfillment of the duties of
60 office or employment;

61 (d) have a direct business relationship with a person subject to administrative action
62 under this title;

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63 (e) accept a gift, gratuity, emolument, or employment from:

64 (i) a person who applies for or holds a package agency, license, permit, or certificate
65 under this title; or

66 (ii) an officer, agent, or employee of a person who applies for or holds a package
67 agency, license, permit, or certificate under this title, except that a commissioner, the
68 director, or an applicable department employee may accept a gift from an officer, agent, or
69 employee if the gift is equal to or less than \$50; or

70 (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
71 any person to any office or employment with a person who applies for or holds a package
72 agency, license, permit, or certificate under this title.

73 (3) An immediate family member of a commissioner, the director, or an applicable
74 department employee may not:

75 (a) have a pecuniary interest, whether as the holder of stock or other securities other
76 than a mutual fund, in a person who applies for or holds a package agency, license, permit,
77 or certificate under this title;

78 (b) otherwise have a conflict of interest with a person who applies for or holds a
79 package agency, license, permit, or certificate under this title;

80 (c) have an office, position, or relationship, or be engaged in a business or avocation
81 that interferes or is incompatible with the effective and objective fulfillment of the duties of
82 office or employment of the commissioner, director, or applicable department employee for
83 whom the person is immediate family;

84 (d) accept a gift, gratuity, emolument, or employment from:

85 (i) a person who applies for or holds a package agency, license, permit, or certificate
86 under this title; or

87 (ii) an officer, agent, or employee of a person who applies for or holds a package
88 agency, license, permit, or certificate under this title, except that an immediate family
89 member may accept a gift from an officer, agent, or employee if the gift is equal to or less
90 than \$50; or

91 (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
92 any person to any office or employment with a person who applies for or holds a package
93 agency, license, permit, or certificate under this title.

94 (4) An officer, agent, attorney, or employee of a person who applies for or holds a

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95 package agency, license, permit, or certificate under this title may not directly or indirectly
96 solicit, request, or recommend to the governor, any state senator, the commission, or the
97 department the appointment of any person:

- 98 (a) as a commissioner;
- 99 (b) as director of the department; or
- 100 (c) to a department staff position.

101 (5) (a) A commissioner shall disclose during a meeting of the commission a potential
102 violation of this section, including the existence and nature of a professional, financial,
103 business, or personal interest with a person who holds, or an applicant for, a license, permit,
104 or certificate issued under this title that may result in a violation of this section.

105 (b) After a commissioner makes a disclosure under Subsection (5)(a):

106 (i) the commission may, by motion, determine whether there is a potential violation of
107 this section;

108 (ii) if the commission determines that there is a potential violation of this section:

109 (A) the commission shall notify the governor; and

110 (B) the commissioner may not vote on any matter that would result in the potential
111 violation of this section; and

112 (iii) if the commission determines that there is not a potential violation of this section,
113 a commissioner may elect whether to vote on the issue that gives rise to the disclosure under
114 Subsection (5)(a).

115 (c) The commission shall record any declaration of a potential violation of this section
116 in the minutes of the meeting.

117

118 **32B-2-605 (Effective 07/01/11). Operational requirements for package agency.**

119 (1) (a) A person may not operate a package agency until a package agency
120 agreement is entered into by the package agent and the department.

121 (b) A package agency agreement shall state the conditions of operation by which the
122 package agent and the department are bound.

123 (c) (i) If a package agent or staff of the package agent violates this title, rules under
124 this title, or the package agency agreement, the department may take any action against the
125 package agent that is allowed by the package agency agreement.

126 (ii) An action against a package agent is governed solely by its package agency

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127 agreement and may include suspension or revocation of the package agency.

128 (iii) Notwithstanding that this part refers to "package agency" or "package agent," staff
129 of the package agency or package agent is subject to the same requirement or prohibition.

130 (2) (a) A package agency shall be operated by an individual who is either:

131 (i) the package agent; or

132 (ii) an individual designated by the package agent.

133 (b) An individual who is a designee under this Subsection (2) shall be:

134 (i) an employee of the package agent; and

135 (ii) responsible for the operation of the package agency.

136 (c) The conduct of the designee is attributable to the package agent.

137 (d) A package agent shall submit the name of the person operating the package
138 agency to the department for the department's approval.

139 (e) A package agent shall state the name and title of a designee on the application for
140 a package agency.

141 (f) A package agent shall:

142 (i) inform the department of a proposed change in the individual designated to
143 operate a package agency; and

144 (ii) receive prior approval from the department before implementing the change
145 described in this Subsection (2)(f).

146 (g) Failure to comply with the requirements of this Subsection (2) may result in the
147 immediate termination of a package agency agreement.

148 (3) (a) A package agent shall display in a prominent place in the package agency the
149 record issued by the commission that designates the package agency.

150 (b) A package agent that displays or stores liquor at a location visible to the public
151 shall display in a prominent place in the package agency a sign in large letters that consists
152 of text in the following order:

153 (i) a header that reads: "WARNING";

154 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
155 can cause birth defects and permanent brain damage for the child.";

156 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
157 [insert most current toll-free number] with questions or for more information.";

158 (iv) a header that reads: "WARNING"; and

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159 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is
160 a serious crime that is prosecuted aggressively in Utah."

161 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font
162 style than the text described in Subsections (3)(b)(iv) and (v).

163 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
164 same font size.

165 (d) The Department of Health shall work with the commission and department to
166 facilitate consistency in the format of a sign required under this section.

167 (4) A package agency may not display liquor or a price list in a window or showcase
168 that is visible to passersby.

169 (5) (a) A package agency may not purchase liquor from a person except from the
170 department.

171 (b) At the discretion of the department, liquor may be provided by the department to a
172 package agency for sale on consignment.

173 (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place
174 other than as designated in the package agent's application, unless the package agent first
175 applies for and receives approval from the department for a change of location within the
176 package agency premises.

177 (7) A package agency may not sell, offer for sale, or furnish liquor except at a price
178 fixed by the commission.

179 (8) A package agency may not sell, offer for sale, or furnish liquor to:

180 (a) a minor;

181 (b) a person actually, apparently, or obviously intoxicated;

182 (c) a known interdicted person; or

183 (d) a known habitual drunkard.

184 (9) (a) A package agency may not employ a minor to handle liquor.

185 (b) (i) Staff of a package agency may not:

186 (A) consume an alcoholic product on the premises of a package agency; or

187 (B) allow any person to consume an alcoholic product on the premises of a package
188 agency.

189 (ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

190 (10) (a) A package agency may not close or cease operation for a period longer than

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191 72 hours, unless:

192 (i) the package agency notifies the department in writing at least seven days before
193 the closing; and

194 (ii) the closure or cessation of operation is first approved by the department.

195 (b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package
196 agency shall immediately notify the department by telephone.

197 (c) (i) The department may authorize a closure or cessation of operation for a period
198 not to exceed 60 days.

199 (ii) The department may extend the initial period an additional 30 days upon written
200 request of the package agency and upon a showing of good cause.

201 (iii) A closure or cessation of operation may not exceed a total of 90 days without
202 commission approval.

203 (d) The notice required by Subsection (10)(a) shall include:

204 (i) the dates of closure or cessation of operation;

205 (ii) the reason for the closure or cessation of operation; and

206 (iii) the date on which the package agency will reopen or resume operation.

207 (e) Failure of a package agency to provide notice and to obtain department
208 authorization before closure or cessation of operation results in an automatic termination of
209 the package agency agreement effective immediately.

210 (f) Failure of a package agency to reopen or resume operation by the approved date
211 results in an automatic termination of the package agency agreement effective on that date.

212 (11) A package agency may not transfer its operations from one location to another
213 location without prior written approval of the commission.

214 (12) (a) A person, having been issued a package agency, may not sell, transfer,
215 assign, exchange, barter, give, or attempt in any way to dispose of the package agency to
216 another person, whether for monetary gain or not.

217 (b) A package agency has no monetary value for any type of disposition.

218 (13) (a) Subject to the other provisions of this Subsection (13):

219 (i) sale or delivery of liquor may not be made on or from the premises of a package
220 agency, and a package agency may not be kept open for the sale of liquor:

221 (A) on Sunday; or

222 (B) on a state or federal legal holiday.

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223 (ii) Sale or delivery of liquor may be made on or from the premises of a package
224 agency, and a package agency may be open for the sale of liquor, only on a day and during
225 hours that the commission directs by rule or order.

226 (b) A package agency located at a manufacturing facility is not subject to Subsection
227 (13)(a) if:

228 (i) the package agency is located at a manufacturing facility licensed in accordance
229 with Chapter 11, Manufacturing and Related Licenses Act;

230 (ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing
231 and Related Licenses Act, holds:

232 (A) a full-service restaurant license;

233 (B) a limited-service restaurant license; ~~or~~

234 (C) a beer-only restaurant license; or

235 (D) dining club license;

236 (iii) the restaurant or dining club is located at the manufacturing facility;

237 (iv) the restaurant or dining club sells an alcoholic product produced at the
238 manufacturing facility;

239 (v) the manufacturing facility:

240 (A) owns the restaurant or dining club; or

241 (B) operates the restaurant or dining club;

242 (vi) the package agency only sells an alcoholic product produced at the
243 manufacturing facility; and

244 (vii) the package agency's days and hours of sale are the same as the days and
245 hours of sale at the restaurant or dining club.

246 (c) (i) Subsection (13)(a) does not apply to a package agency held by a resort
247 licensee if the package agent that holds the package agency to sell liquor at the resort does
248 not sell liquor in a manner similar to a state store.

249 (ii) The commission may by rule define what constitutes a package agency that sells
250 liquor "in a manner similar to a state store."

251 (14) (a) Except to the extent authorized by commission rule, a minor may not be
252 admitted into, or be on the premises of a package agency unless accompanied by a person
253 who is:

254 (i) 21 years of age or older; and

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255 (ii) the minor's parent, legal guardian, or spouse.

256 (b) A package agent or staff of a package agency that has reason to believe that a
257 person who is on the premises of a package agency is under the age of 21 and is not
258 accompanied by a person described in Subsection (14)(a) may:

259 (i) ask the suspected minor for proof of age;

260 (ii) ask the person who accompanies the suspected minor for proof of age; and

261 (iii) ask the suspected minor or the person who accompanies the suspected minor for
262 proof of parental, guardianship, or spousal relationship.

263 (c) A package agent or staff of a package agency shall refuse to sell liquor to the
264 suspected minor and to the person who accompanies the suspected minor into the package
265 agency if the minor or person fails to provide any information specified in Subsection (14)(b).

266 (d) A package agent or staff of a package agency shall require the suspected minor
267 and the person who accompanies the suspected minor into the package agency to
268 immediately leave the premises of the package agency if the minor or person fails to provide
269 information specified in Subsection (14)(b).

270 (15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed
271 container.

272 (b) A person may not open a sealed container on the premises of a package agency.

273 (c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or
274 furnish liquor in other than a sealed container:

275 (i) if the package agency is the type of package agency that authorizes the package
276 agency to sell, offer for sale, or furnish the liquor as part of room service;

277 (ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

278 (iii) subject to:

279 (A) staff of the package agency providing the liquor in person only to an adult guest in
280 the guest room;

281 (B) staff of the package agency not leaving the liquor outside a guest room for
282 retrieval by a guest; and

283 (C) the same limits on the portions in which an alcoholic product may be sold by a
284 retail licensee under Section 32B-5-304.

285 (16) On or after October 1, 2011, a package agency may not sell, offer for sale, or
286 furnish heavy beer in a sealed container that exceeds two liters.

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287 (17) The department may pay or otherwise remunerate a package agent on any
288 basis, including sales or volume of business done by the package agency.

289 (18) The commission may prescribe by policy or rule general operational
290 requirements of a package agency that are consistent with this title and relate to:

291 (a) physical facilities;

292 (b) conditions of operation;

293 (c) hours of operation;

294 (d) inventory levels;

295 (e) payment schedules;

296 (f) methods of payment;

297 (g) premises security; and

298 (h) any other matter considered appropriate by the commission.

299

300 **32B-6-205 (Effective 07/01/11). Specific operational requirements for a** 301 **full-service restaurant license.**

302 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
303 Requirements, a full-service restaurant licensee and staff of the full-service restaurant
304 licensee shall comply with this section.

305 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
306 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

307 (i) a full-service restaurant licensee;

308 (ii) individual staff of a full-service restaurant licensee; or

309 (iii) both a full-service restaurant licensee and staff of the full-service restaurant
310 licensee.

311 (2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant
312 licensee shall display in a prominent place in the restaurant a list of the types and brand
313 names of liquor being furnished through the full-service restaurant licensee's calibrated
314 metered dispensing system.

315 (3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee
316 shall store an alcoholic product in a storage area described in Subsection (12)(a).

317 (4) (a) An individual who serves an alcoholic product in a full-service restaurant
318 licensee's premises shall make a written beverage tab for each table or group that orders or

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319 consumes an alcoholic product on the premises.

320 (b) A beverage tab required by this Subsection (4) shall list the type and amount of an
321 alcoholic product ordered or consumed.

322 (5) A person's willingness to serve an alcoholic product may not be made a condition
323 of employment as a server with a full-service restaurant licensee.

324 (6) ~~[(a)]~~ A full-service restaurant licensee may not sell, offer for sale, or furnish ~~[liquor]~~
325 an alcoholic product at the licensed premises on any day during the period that:

326 ~~[(i)]~~ (a) begins at midnight; and

327 ~~[(ii)]~~ (b) ends at 11:29 a.m.

328 ~~[(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during~~
329 ~~the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer~~
330 ~~retailer, except that a full-service restaurant licensee may not sell, offer for sale, or furnish~~
331 ~~beer before 11:30 a.m. on any day.]~~

332 (7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant
333 business from the sale of food, which does not include:

334 (a) mix for an alcoholic product; or

335 (b) a service charge.

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

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

341 (9) (a) Subject to the other provisions of this Subsection (9), a patron may not have
342 more than two alcoholic products of any kind at a time before the patron.

343 (b) A patron may not have more than one spirituous liquor drink at a time before the
344 patron.

345 (c) An individual portion of wine is considered to be one alcoholic product under
346 Subsection (9)(a).

347 (10) A patron may consume an alcoholic product only:

348 (a) at:

349 (i) the patron's table;

350 (ii) a counter; or

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351 (iii) a seating grandfathered bar structure; and

352 (b) where food is served.

353 (11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an
354 alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar
355 structure that is not a seating grandfathered bar structure.

356 (b) At a seating grandfathered bar structure a patron who is 21 years of age or older
357 may:

358 (i) sit;

359 (ii) be furnished an alcoholic product; and

360 (iii) consume an alcoholic product.

361 (c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure
362 a full-service restaurant licensee may not permit a minor to, and a minor may not:

363 (i) sit; or

364 (ii) consume food or beverages.

365 (d) (i) A minor may be at a seating grandfathered bar structure if the minor is
366 employed by a full-service restaurant licensee:

367 (A) as provided in Subsection 32B-5-308(2); or

368 (B) to perform maintenance and cleaning services during an hour when the
369 full-service restaurant licensee is not open for business.

370 (ii) A minor may momentarily pass by a seating grandfathered bar structure without
371 remaining or sitting at the bar structure en route to an area of a full-service restaurant
372 licensee's premises in which the minor is permitted to be.

373 (12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee
374 may dispense an alcoholic product only if:

375 (a) the alcoholic product is dispensed from:

376 (i) a grandfathered bar structure;

377 (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting
378 at the grandfathered bar structure if that area is used to dispense an alcoholic product as of
379 May 12, 2009; or

380 (iii) an area that is:

381 (A) separated from an area for the consumption of food by a patron by a solid,

382 translucent, permanent structural barrier such that the facilities for the storage or dispensing

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383 of an alcoholic product are:

384 (I) not readily visible to a patron; and

385 (II) not accessible by a patron; and

386 (B) apart from an area used:

387 (I) for dining;

388 (II) for staging; or

389 (III) as a lobby or waiting area;

390 (b) the full-service restaurant licensee uses an alcoholic product that is:

391 (i) stored in an area described in Subsection (12)(a); or

392 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:

393 (A) immediately before the alcoholic product is dispensed it is in an unopened

394 container;

395 (B) the unopened container is taken to an area described in Subsection (12)(a) before

396 it is opened; and

397 (C) once opened, the container is stored in an area described in Subsection (12)(a);

398 and

399 (c) any instrument or equipment used to dispense alcoholic product is located in an

400 area described in Subsection (12)(a).

401 (13) A full-service restaurant licensee may state in a food or alcoholic product menu a

402 charge or fee made in connection with the sale, service, or consumption of liquor including:

403 (a) a set-up charge;

404 (b) a service charge; or

405 (c) a chilling fee.

406

407 **32B-6-305 (Effective 07/01/11). Specific operational requirements for a**

408 **limited-service restaurant license.**

409 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational

410 Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant

411 licensee shall comply with this section.

412 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action

413 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

414 (i) a limited-service restaurant licensee;

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415 (ii) individual staff of a limited-service restaurant licensee; or

416 (iii) both a limited-service restaurant licensee and staff of the limited-service
417 restaurant licensee.

418 (2) (a) A limited-service restaurant licensee on the licensed premises may not sell,
419 offer for sale, furnish, or allow consumption of:

420 (i) spirituous liquor; or

421 (ii) a flavored malt beverage.

422 (b) A product listed in Subsection (2)(a) may not be on the premises of a
423 limited-service restaurant licensee except for use:

424 (i) as a flavoring on a dessert; and

425 (ii) in the preparation of a flaming food dish, drink, or dessert.

426 (3) In addition to complying with Section 32B-5-303, a limited-service restaurant
427 licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

428 (4) (a) An individual who serves an alcoholic product in a limited-service restaurant
429 licensee's premises shall make a written beverage tab for each table or group that orders or
430 consumes an alcoholic product on the premises.

431 (b) A beverage tab required by this Subsection (4) shall list the type and amount of an
432 alcoholic product ordered or consumed.

433 (5) A person's willingness to serve an alcoholic product may not be made a condition
434 of employment as a server with a limited-service restaurant licensee.

435 (6) ~~[(a)]~~ A limited-service restaurant licensee may not sell, offer for sale, or furnish
436 wine ~~[or]~~ , heavy beer , ~~or beer~~ at the licensed premises on any day during the period that:

437 ~~[(i)]~~ (a) begins at midnight; and

438 ~~[(ii)]~~ (b) ends at 11:29 a.m.

439 ~~[(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during~~
440 ~~the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer~~
441 ~~retailer, except that a limited-service restaurant licensee may not sell, offer for sale, or furnish~~
442 ~~beer before 11:30 a.m. on any day.]~~

443 (7) A limited-service restaurant licensee shall maintain at least 70% of its total
444 restaurant business from the sale of food, which does not include a service charge.

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

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447 the licensed premises.

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

450 (9) (a) Subject to the other provisions of this Subsection (9), a patron may not have
451 more than two alcoholic products of any kind at a time before the patron.

452 (b) An individual portion of wine is considered to be one alcoholic product under
453 Subsection (9)(a).

454 (10) A patron may consume an alcoholic product only:

455 (a) at:

456 (i) the patron's table;

457 (ii) a counter; or

458 (iii) a seating grandfathered bar structure; and

459 (b) where food is served.

460 (11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an
461 alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar
462 structure that is not a seating grandfathered bar structure.

463 (b) At a seating grandfathered bar structure a patron who is 21 years of age or older
464 may:

465 (i) sit;

466 (ii) be furnished an alcoholic product; and

467 (iii) consume an alcoholic product.

468 (c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure
469 a limited-service restaurant licensee may not permit a minor to, and a minor may not:

470 (i) sit; or

471 (ii) consume food or beverages.

472 (d) (i) A minor may be at a seating grandfathered bar structure if the minor is
473 employed by a limited-service restaurant licensee:

474 (A) as provided in Subsection 32B-5-308(2); or

475 (B) to perform maintenance and cleaning services during an hour when the
476 limited-service restaurant licensee is not open for business.

477 (ii) A minor may momentarily pass by a seating grandfathered bar structure without
478 remaining or sitting at the bar structure en route to an area of a limited-service restaurant

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479 licensee's premises in which the minor is permitted to be.

480 (12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant
481 licensee may dispense an alcoholic product only if:

482 (a) the alcoholic product is dispensed from:

483 (i) a grandfathered bar structure;

484 (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting
485 at the grandfathered bar structure if that area is used to dispense an alcoholic product as of
486 May 12, 2009; or

487 (iii) an area that is:

488 (A) separated from an area for the consumption of food by a patron by a solid,
489 translucent, permanent structural barrier such that the facilities for the storage or dispensing
490 of an alcoholic product are:

491 (I) not readily visible to a patron; and

492 (II) not accessible by a patron; and

493 (B) apart from an area used:

494 (I) for dining;

495 (II) for staging; or

496 (III) as a lobby or waiting area;

497 (b) the limited-service restaurant licensee uses an alcoholic product that is:

498 (i) stored in an area described in Subsection (12)(a); or

499 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:

500 (A) immediately before the alcoholic product is dispensed it is in an unopened
501 container;

502 (B) the unopened container is taken to an area described in Subsection (12)(a) before
503 it is opened; and

504 (C) once opened, the container is stored in an area described in Subsection (12)(a);

505 and

506 (c) any instrument or equipment used to dispense alcoholic product is located in an
507 area described in Subsection (12)(a).

508 (13) A limited-service restaurant licensee may state in a food or alcoholic product
509 menu a charge or fee made in connection with the sale, service, or consumption of wine or
510 heavy beer including:

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- 511 (a) a set-up charge;
- 512 (b) a service charge; or
- 513 (c) a chilling fee.

514

515 **32B-6-404 (Effective 07/01/11). Types of club license.**

516 (1) To obtain an equity club license, in addition to meeting the other requirements of
517 this part, a person shall:

518 (a) whether incorporated or unincorporated:

519 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal
520 purpose;

521 (ii) have members;

522 (iii) limit access to its licensed premises to a member or a guest of the member; and

523 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold
524 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

525 (b) own, maintain, or operate a substantial recreational facility in conjunction with a
526 club house such as:

527 (i) a golf course; or

528 (ii) a tennis facility;

529 (c) have at least 50% of the total membership having:

530 (i) full voting rights; and

531 (ii) an equal share of the equity of the club; and

532 (d) if there is more than one class of membership, have at least one class of
533 membership that entitles each member in that class to:

534 (i) full voting rights; and

535 (ii) an equal share of the equity of the club.

536 (2) To obtain a fraternal club license, in addition to meeting the other requirements of
537 this part, a person shall:

538 (a) whether incorporated or unincorporated:

539 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal
540 purpose;

541 (ii) have members;

542 (iii) limit access to its licensed premises to a member or a guest of the member; and

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- 543 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold
544 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;
- 545 (b) have no capital stock;
- 546 (c) exist solely for:
- 547 (i) the benefit of its members and their beneficiaries; and
- 548 (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
549 patriotic, or religious purpose for the benefit of its members or the public, carried on through
550 voluntary activity of its members in their local lodges;
- 551 (d) have a representative form of government;
- 552 (e) have a lodge system in which:
- 553 (i) there is a supreme governing body;
- 554 (ii) subordinate to the supreme governing body are local lodges, however designated,
555 into which individuals are admitted as members in accordance with the laws of the fraternal;
- 556 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings
557 at least monthly; and
- 558 (iv) the local lodges regularly engage in one or more programs involving member
559 participation to implement the purposes of Subsection (2)(c); and
- 560 (f) own or lease a building or space in a building used for lodge activities.
- 561 (3) To obtain a dining club license, in addition to meeting the other requirements of
562 this part, a person shall:
- 563 (a) maintain at least the following percentages of its total club business from the sale
564 of food, not including mix for alcoholic products, or service charges:
- 565 (i) for a dining club license that is issued an original license on or after July 1, 2011,
566 60%; and
- 567 (ii) for a dining club license that is issued on or before June 30, 2011:
- 568 (A) 50% on or before June 30, 2012; and
- 569 (B) 60% on and after July 1, 2012; and
- 570 (b) obtain a determination by the commission that the person will operate as a dining
571 club licensee, as part of which the commission may consider:
- 572 (i) the square footage and seating capacity of the premises;
- 573 (ii) what portion of the square footage and seating capacity will be used for a dining
574 area in comparison to the portion that will be used as a lounge or bar area;

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575 (iii) whether full meals including appetizers, main courses, and desserts are served;

576 (iv) whether the person will maintain adequate on-premise culinary facilities to

577 prepare full meals, except a person who is located on the premise of a hotel or resort facility

578 may use the culinary facilities of the hotel or resort facility;

579 (v) whether the entertainment provided at the club is suitable for minors; and

580 (vi) the club management's ability to manage and operate a dining club license

581 including:

582 (A) management experience;

583 (B) past dining club licensee or restaurant management experience; and

584 (C) the type of management scheme used by the dining club license.

585 (4) To obtain a social club license, a person is required to meet the requirements of

586 this part except those listed in Subsection (1), (2), or (3).

587 (5) (a) At the time that the commission issues a club license, the commission shall

588 designate the type of club license for which the person qualifies.

589 (b) If requested by a club licensee, the commission may approve a change in the type

590 of club license in accordance with rules made by the commission.

591 (6) To the extent not prohibited by law, this part does not prevent a dining club

592 licensee or social club licensee from restricting access to the club's licensed premises on the

593 basis of an individual:

594 (a) paying a fee; or

595 (b) agreeing to being on a list of individuals who have access to the club's licensed

596 premises.

597

598 **32B-6-705 (Effective 07/01/11). Specific licensing requirements for on-premise**

599 **beer retailer license.**

600 (1) To obtain an on-premise beer retailer license a person shall comply with Chapter

601 5, Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to

602 carry dramshop insurance coverage in accordance with Section 32B-5-201 only if the

603 on-premise beer retailer sells more than \$5,000 of beer annually.

604 (2) (a) An on-premise beer retailer license expires on the last day of February each

605 year.

606 (b) To renew a person's on-premise beer retailer license, a person shall comply with

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607 the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than
608 January 31.

609 (3) (a) The nonrefundable application fee for an on-premise beer retailer license is
610 \$300.

611 (b) (i) The initial license fee for an on-premise beer retailer license that is not a
612 tavern is \$300.

613 (ii) The initial license fee for an on-premise beer retailer license that is a tavern is
614 \$1,500.

615 (c) (i) The renewal fee for an on-premise beer retailer license that is not a tavern is
616 \$350.

617 (ii) The renewal fee for an on-premise beer retailer license that is a tavern is \$1,250.

618 (4) The bond amount required for an on-premise beer retailer license is the penal
619 sum of ~~[\$2,000]~~ \$5,000.

620 (5) Notwithstanding the other provisions of this part, if an applicant is a state agency
621 or political subdivision of the state it is not required to:

622 (a) pay an application fee, initial license fee, or renewal fee;

623 (b) obtain the written consent of the local authority;

624 (c) submit a copy of the applicant's current business license; or

625 (d) post a bond as specified by Section 32B-5-204.

626

627 **32B-6-706 (Effective 07/01/11). Specific operational requirements for** 628 **on-premise beer retailer license.**

629 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
630 Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall
631 comply with this section.

632 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
633 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

634 (i) an on-premise beer retailer;

635 (ii) individual staff of an on-premise beer retailer; or

636 (iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

637 (2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make
638 and maintain the records the department requires.

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639 (b) Section 32B-1-205 applies to a record required to be made or maintained in
640 accordance with this Subsection (2).

641 (3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or
642 sell liquor on its licensed premises.

643 (4) Beer sold in a sealed container by an on-premise beer retailer may be removed
644 from the on-premise beer retailer premises in the sealed container.

645 ~~[(5) Only an on-premise beer retailer that operates as a tavern is subject to Section~~
646 ~~32B-5-309.]~~

647 ~~[(6)]~~ (5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at
648 its licensed premises during a period that:

649 (i) begins at 1 a.m.; and

650 (ii) ends at 9:59 a.m.

651 (b) (i) Notwithstanding Subsection ~~[(6)]~~ (5)(a), a tavern shall remain open for one
652 hour after the tavern ceases the sale and furnishing of beer during which time a patron of the
653 tavern may finish consuming a single serving of beer not exceeding 26 ounces.

654 (ii) A tavern is not required to remain open:

655 (A) after all patrons have vacated the premises; or

656 (B) during an emergency.

657 ~~[(7)]~~ (6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of
658 a tavern.

659 ~~[(8)]~~ (7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for
660 the purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully
661 purchases from:

662 (A) a beer wholesaler licensee; or

663 (B) a small brewer that manufactures the beer.

664 (ii) Violation of Subsection ~~[(8)]~~ (7)(a) is a class A misdemeanor.

665 (b) (i) If an on-premise beer retailer purchases beer under this Subsection ~~[(8)]~~ (7)
666 from a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a
667 beer wholesaler licensee who is designated by the manufacturer to sell beer in the
668 geographical area in which the off-premise beer retailer is located, unless an alternate
669 wholesaler is authorized by the department to sell to the off-premise beer retailer as provided
670 in Section 32B-13-301.

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671 (ii) Violation of Subsection ~~[(8)]~~ (7)(b)(i) is a class B misdemeanor.

672 (9) A tavern shall comply with Section 32B-1-407.

673

674 **32B-6-902 (Effective 03/01/12). Definitions.**

675 (1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a
676 licensed premises of a beer-only restaurant licensee that:

677 (i) as of January 1, 2011:

678 (A) is operational; and

679 (B) has facilities for the dispensing or storage of an alcoholic product that do not meet
680 the requirements of Subsection 32B-6-905(12)(a)(ii);

681 (ii) is not operational as of January 1, 2011, if a person applying for the beer-only
682 restaurant license:

683 (A) has as of January 1, 2011, a building permit to construct the restaurant;

684 (B) is as of January 1, 2011, actively engaged in the construction of the restaurant, as
685 defined by rule made by the commission;

686 (C) is issued the beer-only license by no later than ~~[December 31, 2011]~~ March 1,
687 2012; and

688 (D) once constructed, will have a bar structure that does not meet the requirements of
689 Subsection 32B-6-905(12)(a)(ii); or

690 (iii) is a bar structure grandfathered under Section 32B-6-409.

691 (b) "Grandfathered bar structure" does not include a grandfathered bar structure
692 described in Subsection (1)(a) on or after the day on which a restaurant remodels the
693 grandfathered bar structure, as defined by rule made by the commission.

694 (2) Subject to Subsection (1)(b), a grandfathered bar structure remains a
695 grandfathered bar structure notwithstanding whether a restaurant undergoes a change of
696 ownership.

697

698 **32B-6-905 (Effective 03/01/12). Specific operational requirements for a** 699 **beer-only restaurant license.**

700 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
701 Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee
702 shall comply with this section.

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703 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
704 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

705 (i) a beer-only restaurant licensee;

706 (ii) individual staff of a beer-only restaurant licensee; or

707 (iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

708 (2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for
709 sale, furnish, or allow consumption of liquor.

710 (b) Liquor may not be on the premises of a beer-only restaurant licensee except for
711 use:

712 (i) as a flavoring on a dessert; and

713 (ii) in the preparation of a flaming food dish, drink, or dessert.

714 (3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee
715 shall store beer in a storage area described in Subsection (12)(a).

716 (4) (a) An individual who serves beer in a beer-only restaurant licensee's premises
717 shall make a written beverage tab for each table or group that orders or consumes an
718 alcoholic product on the premises.

719 (b) A beverage tab required by this Subsection (4) shall list the type and amount of
720 beer ordered or consumed.

721 (5) A person's willingness to serve beer may not be made a condition of employment
722 as a server with a beer-only restaurant licensee.

723 (6) ~~[A beer-only restaurant licensee may sell, offer for sale, or furnish beer during the~~
724 ~~hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer,~~
725 ~~except that a]~~ A beer-only restaurant licensee may not sell, offer for sale, or furnish beer

726 ~~[before 11:30 a.m. on any day.]~~ at the licensed premises on any day during the period that:

727 (a) begins at midnight; and

728 (b) ends at 11:29 a.m.

729 (7) A beer-only restaurant licensee shall maintain at least 70% of its total restaurant
730 business from the sale of food, which does not include a service charge.

731 (8) (a) A beer-only restaurant may not sell, offer for sale, or furnish beer except in
732 connection with an order for food prepared, sold, and furnished at the licensed premises.

733 (b) A beer-only restaurant shall maintain on the licensed premises adequate culinary
734 facilities for food preparation and dining accommodations.

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735 (9) A patron may not have more than two beers at a time before the patron.

736 (10) A patron may consume a beer only:

737 (a) at:

738 (i) the patron's table;

739 (ii) a grandfathered bar structure; or

740 (iii) a counter; and

741 (b) where food is served.

742 (11) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish a beer
743 to a patron, and a patron may not consume an alcoholic product at a bar structure.

744 (b) Notwithstanding Subsection (11)(a), at a grandfathered bar structure, a patron
745 who is 21 years of age or older may:

746 (i) sit;

747 (ii) be furnished a beer; and

748 (iii) consume a beer.

749 (c) Except as provided in Subsection (11)(d), at a grandfathered bar structure, a
750 beer-only restaurant licensee may not permit a minor to, and a minor may not:

751 (i) sit; or

752 (ii) consume food or beverages.

753 (d) (i) A minor may be at a grandfathered bar structure if the minor is employed by a
754 beer-only restaurant licensee:

755 (A) as provided in Subsection 32B-5-308(2); or

756 (B) to perform maintenance and cleaning services during an hour when the beer-only
757 restaurant licensee is not open for business.

758 (ii) A minor may momentarily pass by a grandfathered bar structure without remaining
759 or sitting at the bar structure en route to an area of a beer-only restaurant licensee's
760 premises in which the minor is permitted to be.

761 (12) A beer-only restaurant licensee may dispense a beer only if:

762 (a) the beer is dispensed from an area that is:

763 (i) a grandfathered bar structure; or

764 (ii) separated from an area for the consumption of food by a patron by a solid,

765 translucent, permanent structural barrier such that the facilities for the storage or dispensing

766 of an alcoholic product are not readily visible to a patron, not accessible by a patron, and

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767 apart from an area used for dining, for staging, or as a lobby or waiting area;

768 (b) the beer-only restaurant licensee uses a beer that is:

769 (i) stored in an area described in Subsection (12)(a); or

770 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:

771 (A) immediately before the beer is dispensed it is in an unopened container;

772 (B) the unopened container is taken to an area described in Subsection (12)(a) before

773 it is opened; and

774 (C) once opened, the container is stored in an area described in Subsection (12)(a);

775 and

776 (c) any instrument or equipment used to dispense the beer is located in an area

777 described in Subsection (12)(a).

778