

REGULATION OF CORK-FINISHED WINE TASTING

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John W. Hickman

AN ACT RELATING TO ALCOHOLIC BEVERAGES; MODIFYING DEFINITIONS; CREATING A PILOT PROGRAM TO REGULATE THE TASTING OF CORK-FINISHED WINE BY RETAIL LICENSEES UNDER CERTAIN CIRCUMSTANCES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

32A-1-105, as last amended by Chapters 77 and 88, Laws of Utah 1994

32A-8-505, as enacted by Chapter 20, Laws of Utah 1993

32A-12-213, as last amended by Chapter 30, Laws of Utah 1992

32A-12-501, as last amended by Chapter 20, Laws of Utah 1995

32A-12-603, as last amended by Chapter 88, Laws of Utah 1994

76-10-1506, as last amended by Chapter 132, Laws of Utah 1991

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **32A-1-105** is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount

prescribed in this subsection.

(b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within this definition.

(4) "Beer" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products. Beer includes products referred to as malt liquor, malted beverages, or malt coolers.

(5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the commission, by a local authority, or both.

(b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises.

(ii) "On-premise beer retailer" includes taverns.

(c) (i) "Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

(ii) "Tavern" includes a beer bar, parlor, lounge, cabaret, and night club where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in the establishment.

(6) "Billboard" means any light device, painting, drawing, poster, sign, signboard, scoreboard, or other similar public display used to advertise, but does not include:

(a) displays on beer delivery vehicles if the displays do not overtly promote the consumption of alcoholic beverages;

(b) displays in taverns and private clubs, if the displays are not visible to persons off-premises;

(c) point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if the displays are not visible to persons off-premises;

(d) private business signs on the premises of any business engaged primarily in the distribution of beer;

(e) newspapers, magazines, circulars, programs, or other similar printed materials, if the materials are not directed primarily to minors;

(f) menu boards in retail establishments that sell beer for on-premise consumption if the menu boards also contain food items;

(g) handles on alcoholic beverage dispensing equipment that identify brands of products being dispensed; and

(h) displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority to inform attendees of the location where alcoholic beverages are being dispensed.

(7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted beverages.

(8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose, under a single contract, and at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.

(9) "Church" means a building;

(a) set apart primarily for the purpose of worship;

(b) in which religious services are held [~~and~~];

(c) with which clergy is associated [~~and~~];

(d) the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose[~~;~~]; and

(e) which is tax exempt under the laws of this state.

(10) "Club" and "private club" means any nonprofit corporation operating as a social club,

recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

(11) "Commission" means the Alcoholic Beverage Control Commission.

(12) "Cork-finished wine" means a container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

(13) "Council" means the Citizen's Council on Alcoholic Beverage Control.

(14) "Department" means the Department of Alcoholic Beverage Control.

(15) "Distressed merchandise" means any alcoholic beverage in the possession of the department that is saleable, but for some reason is unappealing to the public.

(16) "General food store" means any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premise consumption.

(17) "Governing body" means the board of not fewer than five shareholders or voting members of a private club who have been elected and authorized to control or conduct the business and affairs of that club.

(18) "Guest" means a person accompanied by an active member or visitor of a club who enjoys only those privileges derived from the host for the duration of the visit to the club.

(19) "Heavy beer" means all products that contain more than 4% alcohol by volume obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered "liquor" for the purposes of this title.

(20) "Identification card" means the card issued by the commissioner of the Department of Public Safety under Title 53, Chapter 3, Part 8, Identification Card Act.

(21) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

(22) "Licensee" means any person issued a license by the commission to sell, manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

(23) "Limousine" means any motor vehicle licensed by the state or a local authority, other than a bus or taxicab[.];

(a) in which the driver and passengers are separated by a partition, glass, or other barrier;

and

(b) that is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

(24) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

(25) "Local authority" means:

(a) the county legislative body of the county if the premises are located in an unincorporated area of a county[-]; or

(b) the governing body of the city or town if the premises are located in an incorporated city or town.

(26) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(27) "Member" means a person who, after paying regular dues, has full privileges of a club under this title.

(28) "Minor" means any person under the age of 21 years.

(29) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

(30) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

(31) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

(32) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises that the

package agent shall provide and maintain.

(33) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

(34) "Person" means any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

(35) "Policy" means a statement of principles established by the commission to guide the administration of this title and the management of the affairs of the department.

(36) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

(37) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

(38) (a) "Privately-hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests.

(b) "Privately-hosted event" and "private social function" does not include events or functions to which the general public is invited, whether for an admission fee or not.

(39) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for:

- (i) public education[.];
- (ii) transacting public business[.]; or
- (iii) regularly conducting government activities.

(b) "Public building" does not mean or refer to any building owned by the state or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

(40) "Representative" means an individual who is compensated by salary, commission, or

any other means for representing and selling the alcoholic beverage products of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

(41) "Residence" means the person's principal place of abode within Utah.

(42) "Restaurant" means any business establishment:

(a) where a variety of foods is prepared and complete meals are served to the general public;

(b) located on a premises having adequate culinary fixtures for food preparation and dining accommodations; and

(c) that is engaged primarily in serving meals to the general public.

(43) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

(44) (a) "Rule" means a general statement adopted by the commission to guide the activities of those regulated or employed by the department, to implement or interpret this title, or to describe the organization, procedure, or practice requirements of the department in order to carry out the intent of the law and ensure its uniform application. This definition includes any amendment or repeal of a prior rule.

(b) "Rule" does not include a rule concerning only the internal management of the department that does not affect private rights or procedures available to the public, including intradepartmental memoranda.

(45) (a) "Sample" includes:

(i) department samples[.];

(ii) industry representative samples[.]; and

(iii) department trade show samples.

(b) "Department sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling.

(c) "Department trade show sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for use in a trade show conducted by the department.

(d) "Industry representative sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling by local industry

representatives on the premises of the department to educate themselves of the quality and characteristics of the product.

(e) "Retail licensee wine tasting" means cork-finished wine checked out under the procedures provided in Section 32A-12-603:

(i) to a local industry representative holding a license described in Section 32A-8-501;

(ii) to conduct the tasting of cork-finished wines to a retail licensee licensed to sell wine at retail for consumption on its premises; and

(iii) for the purpose of disseminating information and educating the retail licensees described in Subsection (45)(e)(ii) as to the quality and characteristics of the cork-finished wines.

(46) (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include nursery schools, infant day care centers, or trade or technical schools.

(47) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules made by the commission.

(48) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer and heavy beer per year.

(49) (a) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state.

(b) "State label" includes the department identification mark and inventory control number.

(50) (a) "State store" means a facility for the sale of package liquor located on premises owned or leased by the state and operated by state employees.

(b) "State store" does not apply to any licensee, permittee, or to package agencies.

(51) "Supplier" means any person selling alcoholic beverages to the department.

(52) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(53) "Unsaleable liquor merchandise" means merchandise that is unsaleable because it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically determined to be impure, or that contains sediment, or any foreign substance, or is otherwise considered by the department as unfit for sale.

(54) "Visitor" means a person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

(55) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

(56) "Wholesaler" means any person engaged in the importation for sale, or in the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling beer manufactured by that brewer.

(57) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added.

(b) "Wine" is considered "liquor" for purposes of this title.

Section 2. Section **32A-8-505** is amended to read:

32A-8-505. Operational restrictions.

(1) (a) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state, shall abide by the conditions and requirements set forth in this section.

(b) If any person listed in Subsection (1)(a) knowingly violates or fails to comply with the conditions and requirements set forth in this section, such violation or failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or agents of the licensee, and the commission may order the removal of the manufacturer's, supplier's, or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested,

commanded, encouraged, or intentionally aided another to engage in the violation.

(2) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state:

(a) may assist the department in ordering, shipping, and delivering merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, and educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit to the department price lists and samples of their products, but only to the extent authorized by Chapter 12;

(b) may not sell any liquor, wine, or heavy beer within the state except to the department and military installations;

(c) may not ship or transport, or cause to be shipped or transported, into this state or from one place to another within this state any liquor, wine, or heavy beer~~[, or]~~;

~~(d) may not sell or furnish, except as provided in Section 32A-12-603 for retail licensee wine tasting,~~ any liquor, wine, or heavy beer to any person within this state other than to the department and military installations;

~~[(d)] (e)~~ except as otherwise provided, may not advertise products it represents in violation of this title or any other federal or state law;

~~[(e)] (f)~~ shall comply with all trade practices provided in Chapter 12; and

~~[(f)] (g)~~ may only provide samples of their products for tasting and sampling purposes;

~~(i) as provided in Section 32A-12-603;~~

~~(ii) by the department; or~~

~~(iii) by retail licensees or permittees at a department trade show.~~

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of all manufacturers, suppliers, and importers the licensee represents.

(b) The licensee shall notify the department in writing of any changes to the accounts listed within 14 days from the date the licensee either acquired or lost the account of a particular manufacturer, supplier, or importer.

(4) A local industry representative licensee shall maintain accounting and other records and documents as the department may require for at least three years.

(5) Any local industry representative licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the industry representative's license and possible criminal prosecution under Chapter 12.

(6) A local industry representative licensee may, for the purpose of becoming educated as to the quality and characteristics of a liquor, wine, or heavy beer product which the licensee represents, [may] taste and analyze industry representative samples under the following conditions:

(a) The licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) Each sample of liquor may not exceed 1 liter.

(ii) Each sample of wine or heavy beer may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters.

(c) Each industry representative sample may only be of a product not presently listed on the department's sales list.

(d) Industry representative samples shall be shipped prepaid by the manufacturer, supplier, or importer by common carrier and not via United States mail directly to the department's central administrative warehouse office. These samples may not be shipped to any other location within the state.

(e) Industry representative samples shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"[-]; and

(ii) clearly stating:

(A) the FOB case price of the product[;]; and

(B) the name of the local industry representative for who it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to each bottle or container a label clearly identifying the product as an "industry representative sample".

(h) The department shall:

(i) account for and record each industry representative sample received[;];

(ii) account for [its] the sample's disposition[;]; and

(iii) maintain a record of the sample and its disposition for a two-year period.

(i) Industry representative samples may not leave the premises of the department's central administrative warehouse office.

(j) Licensed industry representatives and their employees and agents may, at regularly scheduled days and times established by the department, taste and analyze industry representative samples on the premises of the department's central administrative warehouse office.

(k) Any unused contents of an opened product remaining after the product has been sampled shall be destroyed by the department under controlled and audited conditions established by the department.

(l) Industry representative samples that are not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) contents destroyed under controlled and audited conditions established by the department;

or

(ii) added to the inventory of the department for sale to the public.

(7) A local industry representative licensee may conduct retail licensee wine tasting as provided in Section 32A-12-603.

~~[(7)]~~ (8) A local representative licensee may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not. A local industry representative license has no monetary value for the purpose of any type of disposition.

Section 3. Section **32A-12-213** is amended to read:

32A-12-213. Unlawful bringing onto premises for consumption.

(1) [~~Beginning January 1, 1991, a~~] A person may not bring onto the premises of any licensed or unlicensed restaurant, airport lounge, licensed or unlicensed private club, on-premise beer retailer licensee, or any establishment open to the general public any alcoholic beverage for on-premises consumption, except:

(a) a person may bring cork-finished wines onto the premises of any restaurant liquor licensee or private club liquor licensee and consume the wine pursuant to the restrictions contained in Subsection 32A-4-106(17) or 32A-5-107(24)(m), as the case may be;

(b) a passenger of a limousine may bring onto, have, and consume any alcoholic beverage on the limousine if:

(i) the travel of the limousine begins and ends at:

(A) the residence of the passenger~~[-at]~~;

(B) the hotel of the passenger, if the passenger is a registered guest of the hotel~~[-]~~; or [at]

(C) the temporary domicile of the passenger; and

(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department;

(c) a passenger of a chartered bus may bring onto, have, and consume any alcoholic beverage on the chartered bus:

(i) (A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or

~~[(ii)]~~ (B) if the travel of the chartered bus begins and ends at:

(I) the residence of the ~~[passengers, at]~~ passenger;

(II) the hotel of the passenger, if the passenger is a registered guest of the hotel~~[-]~~; or [at]

(III) the temporary domicile of the passenger; and

~~[(iii)]~~ (ii) the chartered bus has a nondrinking designee other than the driver traveling on the chartered bus to monitor consumption; and

(d) a person may bring onto any premises, have, and consume any alcoholic beverage at a

privately-hosted event that is not open to the general public.

(2) Except as provided in Subsection (1)(c)(i)(A), the consumption of alcoholic beverages in limousines and chartered buses is not allowed if the limousine or chartered bus drops off passengers at locations from which they depart in private vehicles.

(3) A licensed or unlicensed private club, licensed or unlicensed restaurant, airport lounge, or on-premise beer retailer licensee, or its officers, managers, employees, or agents may not allow a person to bring onto its premises any alcoholic beverage for on-premises consumption or allow consumption of any such alcoholic beverage in violation of this section, except as authorized in Subsection (1).

(4) This section does not apply to a retail licensee wine tasting, as defined in Section 32A-1-105, and as provided in Subsection 32A-12-603(20).

Section 4. Section **32A-12-501** is amended to read:

32A-12-501. Disposition of liquor items shipped to the department.

(1) All liquor items received by the department from suppliers, other than as samples or as items not specifically listed on department purchase orders, shall be handled in accordance with and subject to Subsection 32A-12-603(3)(†)(j).

(2) Funds of the department may not be used to pay freight or charges on samples or any liquor items shipped to the department by suppliers and not listed on its purchase orders.

Section 5. Section **32A-12-603** is amended to read:

32A-12-603. Tied house -- Prohibition.

(1) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce, through any of the following means, any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons:

(i) by acquiring or holding any interest in any retailer's license, except where the license is held by a retailer that is completely owned by the industry member; or

(ii) by acquiring any interest in real or personal property owned, occupied, or used by any retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (1)(a)(ii), "interest" does not include complete ownership of a retail business by an industry member but may include acquiring a mortgage on a retailer's real or personal property or paying for display space at a retail establishment.

(2) It is unlawful for any industry member, directly or indirectly or through an affiliate, to furnish, give, rent, lend, or sell any equipment, fixtures, signs, supplies, money, services, or other thing of value, as defined in federal law 27 C.F.R. Section 6.41 through 6.47, to the department, to any retailer, or to any third party retailer association or display company where the benefits resulting from the thing of value flow to the individual retailers, subject to the following exceptions:

(a) (i) Product displays such as wine racks, bins, barrels, casks, shelving and the like from which liquor, wine, and heavy beer are displayed may be provided to the department, package agencies, private clubs, airport lounges, public service permittees, and single event permittees to the extent allowed by federal law 27 C.F.R. Section 6.83, but may only be displayed so as not to be visible to persons off the premises.

(ii) Product displays from which beer is displayed may be provided to package agencies, licensed off-premise beer retailers, taverns, private clubs, airport lounges, public service permittees, and single event permittees to the extent allowed by federal law 27 C.F.R. Section 6.83, but may only be displayed so as not to be visible to persons off the premises.

(b) (i) Inside signs relating to liquor, wine, and heavy beer products may be provided to private clubs, airport lounges, public service permittees, and single event permittees that bear advertising matter such as posters, placards, designs, and mechanical devices, and point-of-sale advertising matter such as table tents and menu clip-ons if they have no secondary value, are of value to the retailer only as advertising, are displayed in a manner so as not to be visible off the retailer's premises, otherwise comply with the advertising provisions of this title, and the industry member does not directly or indirectly pay or credit the retailer for displaying the sign or pay any expense incidental to its operation.

(ii) Inside signs as described in Subsection (2)(b)(i) relating to beer products may be provided to off-premise beer retailers licensed by local authority, taverns, private clubs, airport lounges, public service permittees, and single event permittees if they are displayed in a manner so

as not to be visible off of the retailer's premises, otherwise comply with the advertising provisions of this title, and the industry member does not directly or indirectly pay or credit the retailer for displaying the sign or pay any expenses incidental to its operation.

(c) (i) Liquor, wine, and heavy beer retailer advertising specialties such as trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, and calendars may be provided to licensed private clubs, airport lounges, public service permittees, and single event permittees but only to the extent allowed by federal law 27 C.F.R. Section 6.85 if they bear advertising matter and are primarily valuable to the retailer as point of sale advertising.

(ii) Beer retailer advertising specialties as described in Subsection (2)(c)(i) may be provided to licensed taverns, private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member, if the price is collected within 30 days of the sale date, and if they bear advertising matter and are primarily valuable to the retailer as point of sale advertising.

(d) (i) Trade literature, recipes, brochures, wine lists, and wine menus relating to liquor, wine, and heavy beer products may be provided to licensed private clubs, restaurants with a state liquor license, airport lounges, special use permittees, and single event permittees.

(ii) Trade literature, recipes, and brochures relating to beer products may be provided to licensed on-premise beer retailers, off-premise beer retailers licensed by local authority, private clubs, restaurants with a state liquor license, airport lounges, special use permittees, and single event permittees.

(e) (i) Glassware that bears advertising matter relating to liquor, wine, and heavy beer, and identifying the industry member or the industry member's product may be provided to private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member and the price is collected within 30 days of the sale date.

(ii) Glassware that bears advertising matter relating to beer and identifying the industry member or the industry member's product may be provided to licensed on-premise beer retailers, private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member and the price is collected within 30 days of the sale

date.

(f) Beer and wine tapping accessories such as standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and coil cleaning services may be provided to private clubs, restaurants with a state liquor license, airport lounges, public service permittees, and single event permittees. Beer tapping accessories, coil cleaning services, and supplies also may be provided to licensed on-premise beer retailers. All wine tapping accessories referenced in this subsection shall be sold at a price not less than the cost to the industry member and the price shall be collected within 30 days of the sale date. All wine services and supplies referenced in this subsection shall be sold at reasonable market price for the locality and the price shall be collected within 30 days of the sale. All beer tapping accessories referenced in this subsection may be provided without charge.

(3) (a) Samples of liquor, wine, and heavy beer may be provided:

(i) under the conditions listed in Subsections (3)(b) through (r):

(A) to the department; and

(B) to licensed retailers [~~under the following conditions~~]; and

(ii) for retail licensee wine tasting of cork-finished wines in accordance with:

(A) this Subsection (3); and

(B) Subsection (20).

~~(a)~~ (b) An industry member may submit department samples to the department for product testing, analysis, and sampling, but only with the department's permission.

~~(b)~~ (c) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.

~~(c)~~ (d) (i) Each sample of liquor may not exceed 1 liter.

(ii) Each sample of wine and heavy beer may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters.

~~(d)~~ (e) (i) Department samples submitted to the department shall be shipped prepaid by the industry member by common carrier and not via United States mail directly to the department's

central administrative warehouse office.

~~(i)~~ (ii) Department samples may not be shipped to any other location within the state.

~~(e)~~ (f) Department samples submitted to the department shall be accompanied by a letter from the industry member:

~~(i)~~ (i) clearly identifying the product as a "department sample"[;]; and

~~(ii)~~ (ii) clearly stating the FOB case price of the product.

~~(f)~~ (g) (i) The department may transfer listed items from current stock for use as comparison control samples or to verify product spoilage as deemed appropriate.

~~(ii)~~ (ii) Each sample transferred under Subsection (3)(g)(i) shall be billed back, debited, to their respective industry members.

~~(g)~~ (h) The department shall:

~~(i)~~ (i) account for, label, and record all department samples received or transferred[;];

~~(ii)~~ (ii) account for [their] the department sample's disposition[;]; and

~~(iii)~~ (iii) maintain a record of the samples and their disposition for a two-year period.

~~(h)~~ (i) The department shall affix to each bottle or container a label clearly identifying the product as a "department sample".

~~(i)~~ (j) Each department sample delivered to the department or transferred from the department's current stock shall be disposed of at the discretion of the department in one of the following ways:

(i) tested and analyzed with the remaining contents destroyed under controlled and audited conditions established by the department;

(ii) entire contents destroyed under controlled and audited conditions established by the department; or

(iii) added to the inventory of the department for sale to the public.

~~(j)~~ (k) An industry member, for purposes of educating licensed retailers of the quality and characteristics of the industry member's liquor, wine, or heavy beer product may utilize department trade show samples for tasting and analysis purposes only.

~~(k)~~ (l) (i) Department trade show samples shall be shipped prepaid by the industry member

by common carrier and not via United States mail directly to the department's central administrative warehouse office.

(ii) These samples may not be shipped to any other location within the state.

~~(f)~~ (m) Department trade show samples shall be accompanied by a letter from the industry member:

(i) clearly identifying the product as a "department trade show sample"; and

(ii) stating:

(A) the name, time, and location of the trade show;

(B) the FOB case price of the product; and

(C) the name of the industry member who will be representing the product at the trade show.

~~(m)~~ (n) The department shall assess a reasonable handling, labeling, storage, and delivery fee for each department trade show sample received.

~~(n)~~ (o) The department shall affix to each bottle or container a label clearly identifying the product as a "department trade show sample".

~~(o)~~ (p) The department shall:

(i) account for and record each department trade show sample received;

(ii) account for [its] the department trade show sample's disposition; and

(iii) maintain a record of the samples and their disposition for a two-year period.

~~(p)~~ (q) The department shall:

(i) transport department trade show samples to the appropriate trade show designated in the letter described in Subsection (3)~~(f)~~(m); and ~~shall~~

(ii) deliver the sample to the industry member designated to represent the product at the trade show.

~~(q)~~ (r) Department trade show samples may not be removed from the premises of the trade show.

(4) The department shall take reasonable measures to ensure that only industry members, licensed retailers, trade show permittees, their employees and agents, and department personnel are in attendance, and to ensure that retailer trade show samples are not removed from the premises

except by the department.

(5) Industry members may charge a fee to trade show attendees for tasting samples of their product at a department trade show.

(6) At the conclusion of the trade show, the department shall take possession of all department trade show sample bottles and:

(a) destroy the unused portion of all opened sample bottles under controlled and audited conditions established by the department; and

(b) either destroy the contents of unopened sample bottles under controlled and audited conditions established by the department or return the bottles to the department and add them to the inventory of the department for sale to the public.

(7) Persons other than authorized department officials may not be in possession of department or department trade show samples except as otherwise provided.

(8) (a) Samples of beer may be provided by a beer industry member to a licensed on-premise beer retailer, off-premise beer retailer licensed by local authority, private club, restaurant with a liquor license, airport lounge, public service permittee, and single event permittee.

(b) For each on-premise beer retailer or liquor licensee or permittee, the industry member may give not more than two gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation an industry member may furnish the next largest size.

(c) For each off-premise beer retailer, the industry member may give not more than two liters of any brand of beer.

(9) Educational seminars may involve an industry member under the following conditions:

(a) An industry member may provide or participate in educational seminars involving the department and its employees, retailers, holders of educational or scientific special use permits, or other industry members regarding such topics as merchandising and product knowledge, and tours of alcoholic beverage manufacturing facilities. An industry member may not pay a department employee's, retailer's, or permittee's expenses or compensate them for attending these seminars and tours.

(b) An industry member may conduct tastings for the department, at the department's request, for licensed industry representatives, but only at the department's central administrative warehouse office, and for licensed retailers authorized to sell the type of products to be tasted, but only at department trade shows. Tastings may not be offered to the general public. The industry member may only use department, department trade show, or industry representative samples when conducting any tasting.

(10) An industry member may participate in retailer association activities, and may:

(a) display its products at a retailer convention or trade show, except that liquor, wine, and heavy beer products may only be displayed at department trade shows and products shall be processed, labeled, and delivered to the trade show by the department under the terms and conditions of this title;

(b) rent display booth space if the rental fee is not excessive and is the same as paid by all exhibitors;

(c) provide its own hospitality that is independent from association sponsored activities;

(d) purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as paid by all exhibitors; and

(e) make payments for advertisements in programs or brochures issued by retailer associations at a retailer convention or trade show if the total payments made by an industry member for all such advertisements do not exceed that allowed by federal law per year for any retailer association as provided in 27 C.F.R. Section 6.100.

(11) (a) An industry member may contribute to charitable, civic, religious, fraternal, educational, or community activities. These contributions may not be given to influence a retailer in the selection of the alcoholic beverage products which may be sold at these activities and events.

(b) If the industry member's contribution described in Subsection (11)(a) influences, directly or indirectly, the retailer in the selection of alcoholic beverage products, and a competitor's alcoholic beverage products are excluded in whole or in part from sale at the activity or event, the industry member and the retailer violate the provisions of this section.

(12) An industry member, who is also engaged in business as a bona fide vendor of other

merchandise, such as groceries or drugs, may sell that merchandise to a retailer if the merchandise:

- (a) [~~the merchandise~~] is sold at its fair market value;
- (b) [~~the merchandise~~] is not sold in combination with alcoholic beverages; and
- (c) [~~the merchandise~~] is itemized separately on the industry member's invoices and other records.

(13) Things of value covered in other subsections of this section may be furnished to retailers only as provided in those subsections.

(14) (a) A liquor, wine, and heavy beer industry member may assist the department in ordering, shipping, and delivering merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit to the department samples of their products and price lists. However, an industry member may not solicit either in person, by mail, or otherwise, any state store personnel for the purpose or with the intent of furthering the sale of a particular brand or brands of alcoholic beverage product as against another brand or brands. Any visitations to a state store or package agency by an industry member shall be confined to the customer areas of the store. Calls on the state warehouse by industry members are to be confined to the office area only unless otherwise approved.

(b) A beer industry member may assist licensed on-premise beer retailers, off-premise beer retailers licensed by local authority, private clubs, restaurants with liquor licenses, airport lounges, public service permittees, and single event permittees in ordering, shipping, and delivering beer merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, educational seminars, and may, for the purpose of acquiring new listings, solicit orders from them and submit to them samples of their beer products and price lists.

(c) A beer industry member may, at a licensed on-premise beer retailer, off-premise beer retailer licensed by local authority, private club, restaurant with liquor license, airport lounge, public service permittee and single event permittee premises or establishment, stock, rotate, and affix the price to beer products which they sell, provided products purchased from other industry members are not altered or disturbed.

(15) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to pay the department or any retailer licensed under this title by the commission or by local authority for any advertising, display, or distribution service as defined in federal law 27 C.F.R. Sections 6.51 through 6.56.

(b) An industry member may not, directly or indirectly, share the cost of an advertisement with a retailer.

(c) An industry member may give, furnish, loan, rent, or sell copy ready art, newspaper cuts, mats or engraved blocks to licensed beer retailers for use in beer retailer advertisements to the extent such advertisements are authorized by this title.

(16) It is unlawful for any industry member, directly or indirectly or through an affiliate, to guarantee any loan or the repayment of any financial obligation of a retailer including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

(17) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce beer purchases by extending to any beer retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge of the retailer through the payment of cash or its equivalent, from all indebtedness arising from the transaction, so long as that beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month, and beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) First party in-state checks which are honored on presentment and which are received under the terms prescribed in Subsection (17)(a) are considered cash payments.

(18) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to require the department to take and dispose of a certain quota of any alcoholic products or to require a beer retailer or wholesaler to take and dispose of a certain quota of any beer products.

(b) A requirement that the department purchase one product in order to purchase another or that a beer retailer or wholesaler purchase one beer product in order to purchase another is also prohibited.

(c) Subsection (18) does not preclude the selling, at a special combination price, two or more

kinds or brands of products so long as the department or beer retailer has the option of purchasing either product at the usual price and is not required to purchase any product he or she does not want.

(d) An industry member may package and distribute alcoholic beverages in combination with other nonalcoholic items or products.

(e) The combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department.

(19) It is unlawful for any industry member, directly or indirectly or through an affiliate, to provide financial, legal, administrative, or other assistance to a retailer or wholesaler to obtain a license or permit.

(20) Beginning July 1, 1998, and ending June 30, 2000, the department shall implement and operate a pilot program by which a local industry representative licensee may conduct retail licensee tastings of cork-finished wines under the following conditions.

(a) To conduct retail licensee wine tasting, a local industry representative licensee may check out bottles of cork-finished wine in accordance with this Subsection (20) at the department's club and restaurant store and at any other department store designated by the commission.

(b) A local industry representative licensee:

(i) shall pay:

(A) the prevailing retail purchase price for each bottle of cork-finished wine checked out for the purpose of conducting retail licensee wine tasting; and

(B) any fee charged under Subsection (20)(f);

(ii) may check out bottles of cork-finished wine for the purpose of conducting retail licensee wine tasting:

(A) in a reasonable number as determined by the commission;

(B) during regular business hours; and

(C) on regular store business days, except for the day preceding a recognized state or federal holiday;

(iii) shall show proper identification at the time of check out;

(iv) shall check out each bottle of cork-finished wine to be used for the purpose of

conducting retail licensee tasting on a form designated by the department;

(v) shall return a bottle checked out for use in the retail licensee wine tasting program, whether opened or unopened:

(A) to the department's central administrative warehouse office;

(B) within seven days from the time of check out;

(C) at the same time that any bottle checked out with the bottle is returned and not in a piece-meal manner.

(c) (i) At time of check out, the department's employee shall:

(A) affix a bright-colored label on each bottle checked out, clearly identifying it for exclusive use in the retail licensee wine tasting program, as provided by this Subsection (20);

(B) maintain a record of each bottle of cork-finished wine checked out under this Subsection (20); and

(C) require the local industry representative licensee to sign a statement that the bottles of cork-finished wine will be used only in connection with the retail licensee wine tasting program.

(ii) At time of check in, the department's employee shall make a record of each bottle returned.

(d) A bottle of cork-finished wine checked out in connection with the retail licensee wine tasting program shall come from products listed by the department or special ordered in accordance with department procedures that are:

(i) located on the shelf of a department store identified in Subsection (20)(a); or

(ii) if arrangements are made with the department, located at its central administrative warehouse and transferred to one of the store locations authorized in Subsection (20)(a).

(e) Each bottle of cork-finished wine checked out by a local industry representative licensee and returned to the department shall be disposed of in one of the ways provided in Subsection (3)(j) or Subsection (6), at the department's discretion.

(f) (i) The department may charge a reasonable per bottle administrative fee to defray the department's actual, ordinary, and necessary costs directly incurred in administering the retail licensee wine tasting program.

(ii) All money received by the department under Subsection (20)(f)(i) shall be deposited in the General Fund as a dedicated credit of the department and may be expended by the department only for the purposes described under Subsection (20)(f)(i).

(g) A retail licensee wine tasting:

(i) shall be conducted at the department's administrative complex in accordance with rules made by the commission concerning the persons who may attend and participate in the tasting;

(ii) may not be conducted in the view of:

(A) minors; or

(B) the general public; and

(iii) shall only be conducted by a local industry representative licensee from the original bottles of cork-finished wine checked out from the department.

(h) The local industry representative licensee may not leave the wine remaining in a bottle with a retail licensee following the conclusion of the tasting.

(i) The commission shall have the authority to promulgate rules to implement the retail licensee wine tasting pilot program.

(j) In addition to any other penalties provided in this title, a licensee violating the provisions of this Subsection (20) may be subject to suspension or revocation of their license as provided in Section 32A-8-505 and any rules made by the commission.

(k) Before November 1, 1999, the commission shall prepare and present a report and recommendation concerning the retail licensee wine tasting pilot program to an appropriate interim committee of the Legislature, as designated by the Legislative Management Committee.

Section 6. Section **76-10-1506** is amended to read:

76-10-1506. Threatening breach of peace -- Disorderly conduct -- Foul language -- Refusing requests -- Use of controlled substance, liquor, or tobacco -- Ejection of passenger.

(1) A person is guilty of a class C misdemeanor, if he:

(a) threatens a breach of the peace, is disorderly, or uses obscene, profane, or vulgar language on a bus;

(b) is in or upon any bus while unlawfully under the influence of a controlled substance as

defined in Section 58-37-2;

(c) fails to obey a reasonable request or order of a bus driver, bus company representative, a nondrinking designee other than the driver as provided in Subsection 32A-12-213(1)(c)(iii)(ii), or other person in charge or control of a bus or terminal;

(d) ingests any controlled substance, unless prescribed by a physician or medical facility, in or upon any bus, or drinks intoxicating liquor in or upon any bus, except a chartered bus as defined and provided in Sections 32A-1-105 and 41-6-44.20; or

(e) smokes tobacco or other products in or upon any bus, except a chartered bus.

(2) If any person violates Subsection (1), the driver of the bus or person in charge thereof may stop at the place where the offense is committed or at the next regular or convenient stopping place and remove such person, using only such force as may be necessary to accomplish the removal, and the driver or person in charge may request the assistance of passengers to assist in the removal. The driver or person in charge may cause the person so removed to be detained and delivered to the proper authorities.

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.