

LIQUOR PACKAGE AGENCY CONTRACTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

This act modifies the Alcoholic Beverage Code to provide for annual payment adjustments under certain package agency agreements and to make technical changes. The act appropriates \$129,200 from the Liquor Control Fund for fiscal year 2001-02 to provide a one time adjustment in the amounts paid certain package agencies.

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

AMENDS:

32A-3-101, 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-3-101** is amended to read:

32A-3-101. Commission's power to establish package agencies -- Limitations.

(1) (a) The commission may, when considered necessary, create package agencies by entering into contractual relationships with persons to sell liquor in sealed packages from premises other than those owned or leased by the state. [~~Authorization~~]

(b) The commission shall authorize a person to operate a package agency [~~is made~~] by [~~the issuance of~~] issuing a certificate from the commission that designates the person in charge of the agency as a "package agent" as defined under Section 32A-1-105.

(2) (a) Subject to this [~~subsection~~] Subsection (2), the total number of package agencies may not at any time aggregate more than that number determined by dividing the population of the state by 18,000. [~~Population~~]

(b) For purposes of Subsection (2)(a), population shall be determined by:

(i) the most recent United States decennial or special census; or [by]

(ii) any other population determination made by the United States or state governments.

[~~(a)~~] (c) The commission may establish seasonal package agencies established in areas and

28 for periods it considers necessary. A seasonal package agency may not be operated for a period
29 longer than nine consecutive months subject to the ~~[following]~~ restrictions~~[-]~~ stated in Subsections
30 (2)(c)(i) through (iii).

31 (i) ~~[Package agencies]~~ A package agency established for operation during a summer time
32 ~~[periods are]~~ period is known as a "Seasonal A" package ~~[agencies]~~ agency. The period of
33 operation for a "Seasonal A" agency may begin as early as February 1 and may continue until
34 October 31.

35 (ii) ~~[Package agencies]~~ A package agency established for operation during a winter time
36 ~~[periods are]~~ period is known as a "Seasonal B" package ~~[agencies]~~ agency. The period of
37 operation for a "Seasonal B" agency may begin as early as September 1 and may continue until
38 May 31.

39 (iii) In determining the number of package agencies that the commission may establish
40 under this section~~[-]~~;

41 (A) a seasonal package ~~[agencies are]~~ agency is counted as one half of one package
42 agency~~[-Each]~~;

43 (B) each "Seasonal A" agency shall be paired with a "Seasonal B" agency; and

44 (C) the total number of months that each combined pair may be established for operation
45 may not exceed 12 months for each calendar year.

46 ~~[(b)]~~ (d) (i) If the location, design, and construction of a hotel may require more than one
47 package agency sales location to serve the public convenience, the commission may authorize a
48 single package agent to sell liquor at as many as three locations within the hotel under one package
49 agency if;

50 (A) the hotel has a minimum of 150 guest rooms; and ~~[if]~~

51 (B) all locations under the agency are;

52 (I) within the same hotel facility; and

53 (II) on premises that are managed or operated and owned or leased by the package agent.

54 (ii) Facilities other than hotels may not have more than one sales location under a single
55 package agency.

56 (3) (a) ~~[A]~~ As measured by the method in Subsection (4), a package agency may not be
57 established within 600 feet of any;

58 (i) public or private school~~[-]~~;

59 (ii) church[;];

60 (iii) public library[;];

61 (iv) public playground[;]; or

62 (v) park[; ~~as measured by the method in Subsection (4)~~].

63 (b) A package agency may not be established within 200 feet of any public or private
64 school, church, public library, public playground, or park, measured in a straight line from the
65 nearest entrance of the proposed package agency to the nearest property boundary of the public or
66 private school, church, public library, public playground, or park.

67 (c) The restrictions contained in Subsections (3)(a) and (b) govern unless [~~one of the~~
68 ~~following exemptions~~] Subsection (3)(c)(i) or (ii) applies[;].

69 (i) [~~The~~] If the commission finds after full investigation that the premises are located
70 within a city of the third class or a town, and compliance with the distance requirements would
71 result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the
72 establishment of a package agency[; ~~In that event~~], the commission may[;] authorize a variance
73 from the distance requirement to relieve the difficulties or hardships:

74 (A) after giving full consideration to all of the attending circumstances[;];

75 (B) following a public hearing in:

76 (I) the city or town[;] concerned; and

77 (II) where practical, in the neighborhood concerned[; ~~authorize a variance from the~~
78 ~~distance requirements to relieve the difficulties or hardships~~]; and

79 (C) if the variance may be granted without:

80 (I) substantial detriment to the public good; and [~~without~~]

81 (II) substantially impairing the intent and purpose of this title.

82 (ii) With respect to the establishment of a package agency in any location, the commission
83 may[;] reduce the proximity requirements in relation to a church:

84 (A) after giving full consideration to all of the attending circumstances[;];

85 (B) following a public hearing in:

86 (I) the county[;] concerned; and

87 (II) where practical, in the neighborhood concerned[; ~~reduce the proximity requirements~~
88 ~~in relation to a church~~]; and

89 (C) if the local governing body of the church in question gives its written approval.

90 (4) With respect to any public or private school, church, public library, public playground,
91 or park, the 600 foot limitation is measured from the nearest entrance of the package agency by
92 following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular
93 travel along public thoroughfares, whichever is the closer, to the property boundary of the public
94 or private school, church, public library, public playground, school playground, or park.

95 (5) (a) Nothing in this section prevents the commission from considering the proximity
96 of any educational, religious, and recreational facility, or any other relevant factor in reaching a
97 decision on a proposed location.

98 (b) For purposes of ~~this~~ Subsection (5)(a), "educational facility" includes:

99 (i) ~~a~~ nursery ~~[schools,]~~ school;

100 (ii) ~~an~~ infant day care ~~[centers,]~~ center; and

101 (iii) ~~a~~ trade and technical ~~[schools]~~ school.

102 (6) (a) The package agent, under the direction of the department, shall be responsible for
103 implementing and enforcing this title and the rules adopted under this title to the extent they relate
104 to the conduct of the agency and its sale of liquor.

105 (b) A package agent may not be, or construed to be, a state employee nor be otherwise
106 entitled to any benefits of employment from the state ~~[of Utah]~~.

107 (c) A package agent, when selling liquor from a package agency, is considered an agent
108 of the state ~~[of Utah]~~ only to the extent specifically expressed in the package agency agreement.

109 (7) ~~The~~ (a) Except as provided in Subsection (7)(b), the commission may prescribe by
110 policy, directive, or rule, consistent with this title, general operational requirements of all package
111 agencies relating to ~~the~~:

112 (i) physical facilities~~;~~;

113 (ii) conditions of operation~~;~~;

114 (iii) hours of operation~~;~~;

115 (iv) inventory levels~~;~~;

116 (v) payment schedules~~;~~;

117 (vi) methods of payment~~;~~;

118 (vii) premises security~~;~~; and

119 (viii) any other matters considered appropriate by the commission.

120 (b) (i) On July 1 of each fiscal year and as appropriated by the Legislature, the commission

121 shall annually adjust in an amount calculated in accordance with Subsection (7)(b)(ii) the payment
122 schedule prescribed by the commission under Subsection (7)(a) for a package agency that under
123 a contract with the department:

124 (A) operates solely for the purpose of selling liquor; and

125 (B) does not operate in conjunction with a business other than selling liquor.

126 (ii) The adjustment required under Subsection (7)(b)(i) shall be the greater of:

127 (A) zero; or

128 (B) the actual total percent change in the Consumer Price Index, United States City
129 Average, prepared by the Bureau of Labor Statistics of the United States Department of Labor for
130 the calendar year immediately preceding the state's fiscal year.

131 **Section 2. Appropriation.**

132 There is appropriated for fiscal year 2001-02 \$129,200 from the Liquor Control Fund,
133 created in Section 32A-1-113, to fund an increase of 14% in the amount paid each level of a Type
134 3 liquor package agency, as defined by the Alcoholic Beverage Control Commission, under a
135 contract entered into in accordance with Title 32A, Chapter 3, Package Agencies.

Legislative Review Note
as of 11-16-00 11:06 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel