

**ALCOHOLIC BEVERAGE CONTROL
VIOLATIONS AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: _____

7	Cosponsors:	Kevin S. Garn	Michael E. Noel
8	Jim Bird	Richard A. Greenwood	Patrick Painter
9	Jackie Biskupski	Christopher N. Herrod	Stephen E. Sandstrom
10	Rebecca Chavez-Houck	Gregory H. Hughes	Jennifer M. Seelig
11	Julie Fisher	Christine A. Johnson	Kenneth W. Sumsion
12	Craig A. Frank	Rebecca D. Lockhart	Carl Wimmer
13	Gage Froerer	Michael T. Morley	Bradley A. Winn

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to impose certain notification requirements.

Highlighted Provisions:

This bill:

▶ requires the Department of Alcoholic Beverage Control to notify a person of a reported violation within a specified time period in order for a disciplinary proceeding to be initiated or maintained on the basis of the alleged violation; and

▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



30 AMENDS:

31 **32A-1-105**, as last amended by Laws of Utah 2007, Chapter 284

32 **32A-1-119**, as last amended by Laws of Utah 2007, Chapter 284

33 **32A-1-120**, as last amended by Laws of Utah 2007, Chapter 284

34 **76-5-113**, as last amended by Laws of Utah 2004, Chapter 280

35 ENACTS:

36 **32A-1-119.5**, Utah Code Annotated 1953



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

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

40 **32A-1-105. Definitions.**

41 As used in this title:

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

45 (2) "Alcoholic [~~beverages~~] beverage" means "beer" and "liquor" as the terms are
46 defined in this section.

47 (3) (a) "Alcoholic [~~products~~] product" means [~~all products~~] a product that:

48 (i) [~~contain~~] contains:

49 (A) at least 63/100 of 1% of alcohol by volume; or

50 (B) at least 1/2 of 1% by weight; and

51 (ii) [~~are~~] is obtained by fermentation, infusion, decoction, brewing, distillation, or [~~any~~]
52 other process that uses [~~any~~] liquid or combinations of liquids, whether drinkable or not, to
53 create alcohol in an amount greater than the amount prescribed in Subsection (3)(a)(i).

54 (b) "Alcoholic [~~products~~] product" does not include any of the following common
55 items that otherwise come within the definition of an alcoholic [~~products~~] product:

56 (i) [~~extracts~~] extract;

57 (ii) [~~vinegars~~] vinegar;

58 (iii) [~~ciders~~] cider;

59 (iv) [~~essences~~] essence;

60 (v) [~~tinctures~~] tincture;

- 61 (vi) food [~~preparations~~] preparation; or
- 62 (vii) over-the-counter [~~drugs and medicines~~] drug or medicine.
- 63 (4) "Bar" means a counter or similar structure:
- 64 (a) at which an alcoholic [~~beverages are~~] beverage is:
- 65 (i) stored; or
- 66 (ii) dispensed; or
- 67 (b) from which an alcoholic [~~beverages are~~] beverage is served.
- 68 (5) (a) "Beer" means [~~any~~] a product that:
- 69 (i) contains 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but
- 70 not more than 4% of alcohol by volume or 3.2% by weight; and
- 71 (ii) is obtained by fermentation, infusion, or decoction of [~~any~~] malted grain.
- 72 (b) Beer may or may not contain hops or other vegetable products.
- 73 (c) Beer includes a product that:
- 74 (i) contains alcohol in the percentages described in Subsection (5)(a); and
- 75 (ii) is referred to as:
- 76 (A) malt liquor;
- 77 (B) a malted [~~beverages~~] beverage; or
- 78 (C) a malt [~~coolers~~] cooler.
- 79 (6) (a) "Beer retailer" means a business that is:
- 80 (i) engaged, primarily or incidentally, in the retail sale of beer to [~~patrons~~] a patron,
- 81 whether for consumption on or off the business premises; and
- 82 (ii) licensed to sell beer by:
- 83 (A) the commission;
- 84 (B) a local authority; or
- 85 (C) both the commission and a local authority.
- 86 (b) (i) "Off-premise beer retailer" means a business that is engaged in the retail sale of
- 87 beer to [~~patrons~~] a patron for consumption off the beer retailer's premises.
- 88 (ii) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 89 (c) "On-premise beer retailer" means a business that is engaged in the sale of beer to
- 90 [~~patrons~~] a patron for consumption on the beer retailer's premises, regardless of whether the
- 91 business sells beer for consumption off the beer retailer's premises.

- 92 (7) "Billboard" means ~~[any]~~ a public display used to advertise including:
- 93 (a) a light device;
- 94 (b) a painting;
- 95 (c) a drawing;
- 96 (d) a poster;
- 97 (e) a sign;
- 98 (f) a signboard; or
- 99 (g) a scoreboard.
- 100 (8) "Brewer" means ~~[any]~~ a person engaged in manufacturing beer.
- 101 (9) "Cash bar" means the service of an alcoholic ~~[beverages]~~ beverage:
- 102 (a) at:
- 103 (i) a banquet; or
- 104 (ii) a temporary event for which a permit is issued under this title; and
- 105 (b) if an attendee at the banquet or temporary event is charged for the alcoholic
- 106 beverage.
- 107 (10) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
- 108 a bus company to a group of persons pursuant to a common purpose:
- 109 (a) under a single contract;
- 110 (b) at a fixed charge in accordance with the bus company's tariff; and
- 111 (c) for the purpose of giving the group of persons the exclusive use of the bus and a
- 112 driver to travel together to ~~[a]~~ one or more specified ~~[destination or]~~ destinations.
- 113 (11) "Church" means a building:
- 114 (a) set apart for the purpose of worship;
- 115 (b) in which religious services are held;
- 116 (c) with which clergy is associated; and
- 117 (d) which is tax exempt under the laws of this state.
- 118 (12) "Club" and "private club" means any of the following organized primarily for the
- 119 benefit of its members:
- 120 (a) a social club;
- 121 (b) a recreational association;
- 122 (c) a fraternal association;

123 (d) an athletic association; or

124 (e) a kindred association.

125 (13) "Commission" means the Alcoholic Beverage Control Commission.

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

127 (15) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
128 title:

129 (a) against:

130 (i) a permittee;

131 (ii) a licensee;

132 (iii) a manufacturer;

133 (iv) a supplier;

134 (v) an importer;

135 (vi) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;

136 or

137 (vii) an officer, employee, or agent of:

138 (A) a person listed in Subsections (15)(a)(i) through (vi); or

139 (B) a package agent; and

140 (b) that is brought on the basis of a violation of this title.

141 ~~[(15)]~~ (16) "Distressed merchandise" means ~~[any]~~ an alcoholic beverage in the
142 possession of the department that is saleable, but for some reason is unappealing to the public.

143 ~~[(16)]~~ (17) "Guest" means a person accompanied by an active member or visitor of a
144 club who enjoys only those privileges derived from the host for the duration of the visit to the
145 club.

146 ~~[(17)]~~ (18) (a) "Heavy beer" means ~~[any]~~ a product that:

147 (i) contains more than 4% alcohol by volume; and

148 (ii) is obtained by fermentation, infusion, or decoction of ~~[any]~~ a malted grain.

149 (b) "Heavy beer" is considered "liquor" for the purposes of this title.

150 ~~[(18)]~~ (19) "Hosted bar" means the service of an alcoholic ~~[beverages]~~ beverage:

151 (a) without charge; and

152 (b) at a:

153 (i) banquet; or

154 (ii) privately hosted event.

155 [~~(19)~~] (20) "Identification card" means ~~the~~ an identification card issued under Title
156 53, Chapter 3, Part 8, Identification Card Act.

157 [~~(20)~~] (21) "Interdicted person" means a person to whom the sale, gift, or provision of
158 an alcoholic beverage is prohibited by:

159 (a) law; or

160 (b) court order.

161 [~~(21)~~] (22) "Intoxicated" means that to a degree that is unlawful under Section
162 76-9-701 a person is under the influence of:

163 (a) an alcoholic beverage;

164 (b) a controlled substance;

165 (c) a substance having the property of releasing toxic vapors; or

166 (d) a combination of Subsections [~~(21)~~] (22)(a) through (c).

167 [~~(22)~~] (23) "Licensee" means ~~any~~ a person issued a license by the commission to sell,
168 manufacture, store, or allow consumption of an alcoholic ~~beverages~~ beverage on premises
169 owned or controlled by the person.

170 [~~(23)~~] (24) "Limousine" means ~~any~~ a motor vehicle licensed by the state or a local
171 authority, other than a bus or taxicab:

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

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

178 [~~(24)~~] (25) (a) "Liquor" means alcohol, or ~~any~~ an alcoholic, spirituous, vinous,
179 fermented, malt, or other liquid, or combination of liquids, a part of which is spirituous,
180 vinous, or fermented, ~~and all other drinks~~ or other drink, or drinkable ~~liquids~~ liquid that
181 ~~contain~~ contains more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage
182 purposes.

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

185 [~~(25)~~] (26) "Local authority" means:

186 (a) the governing body of the county if the premises are located in an unincorporated
187 area of a county; or

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

190 [~~(26)~~] (27) "Manufacture" means to distill, brew, rectify, mix, compound, process,
191 ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to
192 others.

193 [~~(27)~~] (28) "Member" means a person who, after paying regular dues, has full
194 privileges of a club under this title.

195 [~~(28)~~] (29) (a) "Military installation" means a base, air field, camp, post, station, yard,
196 center, or homeport facility for [~~any~~] a ship:

197 (i) (A) under the control of the United States Department of Defense; or

198 (B) of the National Guard;

199 (ii) that is located within the state; and

200 (iii) including [~~any~~] a leased facility.

201 (b) "Military installation" does not include [~~any~~] a facility used primarily for:

202 (i) civil works;

203 (ii) a rivers and harbors [~~projects~~] project; or

204 (iii) a flood control [~~projects~~] project.

205 [~~(29)~~] (30) "Minor" means [~~any person~~] an individual under the age of 21 years.

206 [~~(30)~~] (31) "Nude," "nudity," or "state of nudity" means:

207 (a) the appearance of:

208 (i) the nipple or areola of a female human breast;

209 (ii) a human genital;

210 (iii) a human pubic area; or

211 (iv) a human anus; or

212 (b) a state of dress that fails to opaquely cover:

213 (i) the nipple or areola of a female human breast;

214 (ii) a human genital;

215 (iii) a human pubic area; or

216 (iv) a human anus.

217 [~~31~~] (32) "Outlet" means a location other than a state store or package agency where
218 an alcoholic beverage is sold pursuant to a license issued by the commission.

219 [~~32~~] (33) "Package" means any of the following containing liquor:

220 (a) a container;

221 (b) a bottle;

222 (c) a vessel; or

223 (d) other receptacle.

224 [~~33~~] (34) "Package agency" means a retail liquor location operated:

225 (a) under a contractual agreement with the department[;]; and

226 (b) by a person:

227 (i) other than the state[;]; and

228 (ii) who is authorized by the commission to sell package liquor for consumption off the
229 premises of the package agency.

230 [~~34~~] (35) "Package agent" means [~~any~~] a person permitted by the commission to
231 operate a package agency pursuant to a contractual agreement with the department to sell liquor
232 from premises that the package agent shall provide and maintain.

233 [~~35~~] (36) "Permittee" means [~~any~~] a person issued a permit by the commission to
234 perform [~~acts~~] an act or exercise [~~privileges~~] a privilege as specifically granted in the permit.

235 [~~36~~] (37) "Person" means [~~any~~] an individual, partnership, firm, corporation, limited
236 liability company, association, business trust, or other form of business enterprise, including a
237 receiver or trustee, and the plural as well as the singular number, unless the intent to give a
238 more limited meaning is disclosed by the context.

239 [~~37~~] (38) "Premises" means [~~any~~] a building, enclosure, room, or equipment used in
240 connection with the sale, storage, service, manufacture, distribution, or consumption of an
241 alcoholic [~~products~~] product, unless otherwise defined in this title or in the rules adopted by the
242 commission.

243 [~~38~~] (39) "Prescription" means a writing in legal form, signed by a physician or
244 dentist and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

245 [~~39~~] (40) (a) "Privately hosted event" or "private social function" means a specific
246 social, business, or recreational event;

247 (i) for which an entire room, area, or hall [~~has been~~] is leased or rented[;] in advance by
 248 an identified group[;]; and [~~the event or function~~]

249 (ii) that is limited in attendance to people who [~~have been~~] are specifically designated
 250 and their guests.

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

253 [~~(40)~~] (41) "Proof of age" means:

254 (a) an identification card;

255 (b) an identification that:

256 (i) is substantially similar to an identification card;

257 (ii) is issued in accordance with the laws of a state other than Utah in which the
 258 identification is issued;

259 (iii) includes date of birth; and

260 (iv) has a picture affixed;

261 (c) a valid driver license certificate that:

262 (i) includes date of birth;

263 (ii) has a picture affixed; and

264 (iii) is issued:

265 (A) under Title 53, Chapter 3, Uniform Driver License Act; or

266 (B) in accordance with the laws of the state in which it is issued;

267 (d) a military identification card that:

268 (i) includes date of birth; and

269 (ii) has a picture affixed; or

270 (e) a valid passport.

271 [~~(41)~~] (42) (a) "Public building" means [~~any~~] a building or permanent structure owned
 272 or leased by the state, a county, or local government entity that is used for:

273 (i) public education;

274 (ii) transacting public business; or

275 (iii) regularly conducting government activities.

276 (b) "Public building" does not mean or refer to [~~any~~] a building owned by the state or a
 277 county or local government entity when the building is used by [~~anyone~~] a person, in whole or

278 in part, for a proprietary [~~functions~~] function.

279 [~~(42)~~] (43) "Representative" means an individual who is compensated by salary,
280 commission, or [~~any~~] other means for representing and selling [~~the~~] an alcoholic beverage
281 [~~products~~] product of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

282 [~~(43)~~] (44) "Residence" means [~~the~~] a person's principal place of abode within Utah.

283 [~~(44)~~] (45) "Restaurant" means [~~any~~] a business establishment:

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

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

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

289 [~~(45)~~] (46) "Retailer" means [~~any~~] a person engaged in the sale or distribution of an
290 alcoholic [~~beverages~~] beverage to [~~the~~] a consumer.

291 [~~(46)~~] (47) (a) "Sample" includes:

292 (i) a department sample; and

293 (ii) an industry representative sample.

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

296 (c) "Industry representative sample" means liquor, wine, and heavy beer that [~~has been~~]
297 is placed in the possession of the department for testing, analysis, and sampling by a local
298 industry [~~representatives~~] representative on the premises of the department to educate the local
299 industry [~~representatives~~] representative of the quality and characteristics of the product.

300 [~~(47)~~] (48) (a) "School" means [~~any~~] a building used primarily for the general
301 education of minors.

302 (b) "School" does not include:

303 (i) a nursery school;

304 (ii) an infant day care center; or

305 (iii) a trade or technical school.

306 [~~(48)~~] (49) "Sell," "sale," and "to sell" means [~~any~~] a transaction, exchange, or barter
307 whereby, for [~~any~~] consideration, an alcoholic beverage is either directly or indirectly
308 transferred, solicited, ordered, delivered for value, or by [~~any~~] a means or under [~~any~~] a pretext

309 is promised or obtained, whether done by a person as a principal, proprietor, or as an agent,
 310 servant, or employee, unless otherwise defined in this title or the rules made by the
 311 commission.

312 ~~[(49)]~~ (50) "Seminude," "seminudity," or "state of seminudity" means a state of dress in
 313 which opaque clothing covers no more than:

314 (a) the nipple and areola of the female human breast in a shape and color other than the
 315 natural shape and color of the nipple and areola; and

316 (b) the human genitals, pubic area, and anus:

317 (i) with no less than the following at its widest point:

318 (A) four inches coverage width in the front of the human body; and

319 (B) five inches coverage width in the back of the human body; and

320 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

321 ~~[(50)]~~ (51) "Sexually oriented entertainer" means a person who while in a state of
 322 seminudity appears at or performs:

323 (a) for the entertainment of one or more patrons;

324 (b) on the premises of:

325 (i) a class D private club as defined in Subsection 32A-5-101(3); or

326 (ii) a tavern;

327 (c) on behalf of or at the request of the licensee described in Subsection ~~[(50)]~~ (51)(b);

328 (d) on a contractual or voluntary basis; and

329 (e) whether or not the person is designated:

330 (i) an employee of the licensee described in Subsection ~~[(50)]~~ (51)(b);

331 (ii) an independent contractor of the licensee described in Subsection ~~[(50)]~~ (51)(b);

332 (iii) an agent of the licensee described in Subsection ~~[(50)]~~ (51)(b); or

333 (iv) otherwise of the licensee described in Subsection ~~[(50)]~~ (51)(b).

334 ~~[(51)]~~ (52) "Small brewer" means a brewer who manufactures less than 60,000 barrels
 335 of beer and heavy beer per year.

336 ~~[(52)]~~ (53) (a) "Spirituous liquor" means liquor that is distilled.

337 (b) "Spirituous liquor" includes an alcohol product defined as a "distilled spirit" by 27
 338 U.S.C. 211 and 27 C.F.R. Sections 5.11 through 5.23.

339 ~~[(53)]~~ (54) (a) "State label" means the official label designated by the commission

340 affixed to ~~[a]~~ a liquor ~~[containers]~~ container sold in the state.

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

343 ~~[(54)]~~ (55) (a) "State store" means a facility for the sale of package liquor:

344 (i) located on premises owned or leased by the state; and

345 (ii) operated by a state ~~[employees]~~ employee.

346 (b) "State store" does not apply to ~~[any]~~ a:

347 (i) licensee;

348 (ii) permittee; or

349 (iii) package agency.

350 ~~[(55)]~~ (56) "Supplier" means ~~[any]~~ a person selling an alcoholic ~~[beverages]~~ beverage
351 to the department.

352 ~~[(56)]~~ (57) (a) "Tavern" means ~~[any]~~ a business establishment that is:

353 (i) engaged primarily in the retail sale of beer to a public ~~[patrons]~~ patron for
354 consumption on the establishment's premises; and

355 (ii) licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

356 (b) "Tavern" includes the following if the revenue from the sale of beer exceeds the
357 revenue of the sale of food, although food need not be sold in the establishment:

358 (i) a beer bar;

359 (ii) a parlor;

360 (iii) a lounge;

361 (iv) a cabaret; or

362 (v) a nightclub.

363 ~~[(57)]~~ (58) "Temporary domicile" means the principal place of abode within Utah of a
364 person who does not have a present intention to continue residency within Utah permanently or
365 indefinitely.

366 ~~[(58)]~~ (59) "Unsaleable liquor merchandise" means merchandise that:

367 (a) is unsaleable because the merchandise is:

368 (i) unlabeled;

369 (ii) leaky;

370 (iii) damaged;

- 371 (iv) difficult to open; or
- 372 (v) partly filled;
- 373 (b) is in a container:
 - 374 (i) having faded labels or defective caps or corks;
 - 375 (ii) in which the contents are:
 - 376 (A) cloudy;
 - 377 (B) spoiled; or
 - 378 (C) chemically determined to be impure; or
 - 379 (iii) that contains:
 - 380 (A) sediment; or
 - 381 (B) ~~[any]~~ a foreign substance; or
- 382 (c) is otherwise considered by the department as unfit for sale.

383 ~~[(59)]~~ (60) "Visitor" means an individual that in accordance with Section 32A-5-107
 384 holds limited privileges in a private club by virtue of a visitor card.

385 ~~[(60)]~~ (61) "Warehouser" means ~~[any]~~ a person, other than a licensed manufacturer,
 386 engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

387 ~~[(61)]~~ (62) "Wholesaler" means ~~[any]~~ a person engaged in the importation for sale, or
 388 in the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer
 389 selling beer manufactured by that brewer.

390 ~~[(62)]~~ (63) (a) "Wine" means ~~[any]~~ an alcoholic beverage obtained by the fermentation
 391 of the natural sugar content of fruits, plants, honey, or milk, or ~~[any]~~ other like substance,
 392 whether or not ~~[other ingredients are]~~ another ingredient is added.

393 (b) "Wine" is considered "liquor" for purposes of this title, except as otherwise
 394 provided in this title.

395 Section 2. Section **32A-1-119** is amended to read:

396 **32A-1-119. Disciplinary proceedings -- Procedure.**

397 ~~[(1) (a) As used in this section and Section 32A-1-120, "disciplinary proceeding"~~
 398 ~~means an adjudicative proceeding permitted under this title:]~~

399 ~~[(i) against:]~~

400 ~~[(A) a permittee;]~~

401 ~~[(B) a licensee;]~~

402 [~~(C)~~ a manufacturer;]
 403 [~~(D)~~ a supplier;]
 404 [~~(E)~~ an importer;]
 405 [~~(F)~~ an out-of-state brewer holding a certificate of approval under Section 32A-8-101;

or]

407 [~~(G)~~ an officer, employee, or agent of;]
 408 [~~(H)~~ a person listed in Subsections (1)(a)(i)(A) through (F); or]
 409 [~~(I)~~ a package agent; and]
 410 [~~(ii)~~ that is brought on the basis of a violation of this title;]

411 [~~(b)~~] (1) As used in Subsection (4), "final adjudication" means an adjudication for
 412 which a final unappealable judgment or order [~~has been~~] is issued.

413 (2) (a) [~~The~~] Subject to Section 32A-1-119.5, the following may conduct an
 414 adjudicative [proceedings] proceeding to inquire into [~~any~~] a matter necessary and proper for
 415 the administration of this title and rules adopted under this title:

- 416 (i) the commission;
- 417 (ii) a hearing examiner appointed by the commission for the purposes provided in
 418 Subsection 32A-1-107(3);
- 419 (iii) the director; and
- 420 (iv) the department.

421 (b) Except as provided in this section or Section 32A-3-106, the following shall
 422 comply with the procedures and requirements of Title 63, Chapter 46b, Administrative
 423 Procedures Act, in an adjudicative [~~proceedings~~] proceeding:

- 424 (i) the commission;
- 425 (ii) a hearing examiner appointed by the commission;
- 426 (iii) the director; and
- 427 (iv) the department.

428 (c) Except where otherwise provided by law, [~~an~~] an adjudicative [~~proceedings~~]
 429 proceeding before the commission or [~~its appointed~~] a hearing examiner appointed by the
 430 commission shall be:

- 431 (i) video or audio recorded; and
- 432 (ii) subject to Subsection (5)(e), conducted in accordance with Title 52, Chapter 4,

433 Open and Public Meetings Act.

434 (d) ~~[AH]~~ A person listed in Subsection (2)(a) shall conduct an adjudicative
435 ~~[proceedings]~~ proceeding concerning departmental personnel ~~[shall be conducted]~~ in
436 accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

437 (e) ~~[All hearings that are]~~ A hearing that is informational, fact gathering, and
438 nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures
439 ~~[promulgated]~~ made by the commission, director, or department.

440 (3) (a) ~~[A]~~ Subject to Section 32A-1-119.5, a disciplinary proceeding shall be
441 conducted under the authority of the commission, which is responsible for rendering a final
442 decision and order on ~~[any]~~ a disciplinary matter.

443 (b) (i) Nothing in this section precludes the commission from appointing a necessary
444 ~~[officers]~~ officer, including a hearing ~~[examiners]~~ examiner, from within or without the
445 department, to administer the disciplinary proceeding process.

446 (ii) A hearing examiner appointed by the commission:

447 (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and

448 (B) shall submit to the commission a report including:

449 (I) findings of fact determined on the basis of a preponderance of the evidence
450 presented at the hearing;

451 (II) conclusions of law; and

452 (III) recommendations.

453 (c) Nothing in this section precludes the commission, after the commission ~~[has~~
454 ~~rendered]~~ renders its final decision and order, from having the director prepare, issue, and
455 cause to be served on the parties the final written order on behalf of the commission.

456 (4) Subject to Section 32A-1-119.5:

457 ~~[(4)]~~ (a) The department may initiate a disciplinary proceeding described in Subsection
458 (4)(b) ~~[when]~~ if the department receives:

459 (i) a report from ~~[any]~~ a government agency, peace officer, examiner, or investigator
460 alleging that ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G) has]~~ Subsections
461 32A-1-105(15)(a)(i) through (vii) violated this title or the rules of the commission;

462 (ii) a final adjudication of criminal liability against ~~[any]~~ a person listed in
463 ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections 32A-1-105(15)(a)(i) through (vii) based on

464 an alleged violation of this title; or

465 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
466 Liability, against ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections
467 32A-1-105(15)(a)(i) through (vii) based on an alleged violation of this title.

468 (b) The department may initiate a disciplinary proceeding if the department receives an
469 item listed in Subsection (4)(a) to determine:

470 (i) whether ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections
471 32A-1-105(15)(a)(i) through (vii) violated this title or rules of the commission; and

472 (ii) if a violation is found, the appropriate sanction to be imposed.

473 (5) (a) Unless waived by the respondent, a disciplinary proceeding shall be held:

474 (i) if required by law;

475 (ii) before revoking or suspending ~~[any]~~ a permit, license, or certificate of approval
476 issued under this title; or

477 (iii) before imposing a fine against ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A)~~
478 ~~through (G)]~~ Subsections 32A-1-105(15)(a)(i) through (vii).

479 (b) Inexcusable failure of a respondent to appear at a scheduled disciplinary proceeding
480 hearing after receiving proper notice is an admission of the charged violation.

481 (c) The validity of a disciplinary proceeding is not affected by the failure of ~~[any]~~ a
482 person to attend or remain in attendance.

483 (d) ~~[All disciplinary proceeding hearings shall be presided over by the]~~ The
484 commission or an appointed hearing examiner shall preside over a disciplinary proceeding
485 hearing.

486 (e) A disciplinary proceeding hearing may be closed only after the commission or
487 hearing examiner makes a written finding that the public interest in an open hearing is clearly
488 outweighed by factors enumerated in the closure order.

489 (f) (i) The commission or its hearing examiner as part of a disciplinary proceeding
490 hearing may:

491 (A) administer oaths or affirmations;

492 (B) take evidence;

493 (C) take ~~[depositions]~~ a deposition within or without this state; and

494 (D) require by subpoena from ~~[any]~~ a place within this state:

495 (I) the testimony of [~~any~~] a person at a hearing; and

496 (II) the production of [~~any books, records, papers, contracts, agreements, documents~~] a
497 book, record, paper, contract, agreement, document, or other evidence considered relevant to
498 the inquiry.

499 (ii) A person subpoenaed in accordance with this Subsection (5)(f) shall testify and
500 produce [~~any books, papers, documents~~] a book, paper, document, or tangible [~~things~~] thing as
501 required in the subpoena.

502 (iii) [~~Any~~] A witness subpoenaed or called to testify or produce evidence who claims a
503 privilege against self-incrimination may not be compelled to testify, but the commission or the
504 hearing examiner shall file a written report with the county attorney or district attorney in the
505 jurisdiction where the privilege [~~was~~] is claimed or where the witness resides setting forth the
506 circumstance of the claimed privilege.

507 (iv) (A) A person is not excused from obeying a subpoena without just cause.

508 (B) [~~Any~~] A district court within the judicial district in which a person alleged to be
509 guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon
510 application by the party issuing the subpoena, may issue an order requiring the person to:

511 (I) appear before the issuing party; and

512 (II) (Aa) produce documentary evidence if so ordered; or

513 (Bb) give evidence regarding the matter in question.

514 (C) Failure to obey an order of the court may be punished by the court as contempt.

515 (g) (i) In [~~an~~] a disciplinary proceeding [~~hearings~~] hearing heard by a hearing
516 examiner, the hearing examiner shall prepare a report required by Subsection (3)(b)(ii) to the
517 commission.

518 (ii) The report required by Subsection (3)(b)(ii) and this Subsection (5)(g) may not
519 recommend a penalty more severe than that initially sought by the department in the notice of
520 agency action.

521 (iii) A copy of the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
522 shall be served upon the respective parties.

523 (iv) The respondent and the department shall be given reasonable opportunity to file
524 [~~any~~] a written [~~objections~~] objection to the report required by Subsection (3)(b)(ii) and this
525 Subsection (5)(g) before final commission action.

526 (h) In ~~[all cases]~~ a case heard by the commission, it shall issue its final decision and
527 order in accordance with Subsection (3).

528 (6) (a) The commission shall:

529 (i) render a final decision and order on ~~[any]~~ a disciplinary action; and

530 (ii) cause its final order to be prepared in writing, issued, and served on all parties.

531 (b) ~~[Any]~~ An order of the commission is considered final on the date the order
532 becomes effective.

533 (c) If the commission is satisfied that a person listed in ~~[Subsections (1)(a)(i)(A)~~
534 ~~through (G) has committed a violation of]~~ Subsections 32A-1-105(15)(a)(i) through (vii)
535 violated this title or the commission's rules, in accordance with Title 63, Chapter 46b,
536 Administrative Procedures Act, the commission may:

537 (i) suspend or revoke the permit, license, or certificate of approval;

538 (ii) impose a fine against a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~
539 Subsections 32A-1-105(15)(a)(i) through (vii);

540 (iii) assess the administrative costs of ~~[any]~~ a disciplinary proceeding to the permittee,
541 the licensee, or certificate holder; or

542 (iv) ~~[any]~~ take a combination of actions described in Subsections (6)(c)(i) through (iii).

543 (d) A fine imposed in accordance with this Subsection (6) is subject to Subsections
544 32A-1-107(1)(p) and (4).

545 (e) (i) If a permit or license is suspended under this Subsection (6), the permittee or
546 licensee shall prominently post a sign provided by the department ~~[shall be prominently~~
547 ~~posted]~~:

548 (A) during the suspension; and

549 ~~[(B) by the permittee or licensee; and]~~

550 ~~[(C)]~~ (B) at the entrance of the premises of the permittee or licensee.

551 (ii) The sign required by this Subsection (6)(e) shall:

552 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the
553 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be
554 sold, served, furnished, or consumed on these premises during the period of suspension."; and

555 (B) include the dates of the suspension period.

556 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required

557 to be posted under this Subsection (6)(e) during the suspension period.

558 (f) If a permit or license is revoked, the commission may order the revocation of [~~any~~]
559 a compliance bond posted by the permittee or licensee.

560 (g) [~~Any~~] A permittee or licensee whose permit or license is revoked may not reapply
561 for a permit or license under this title for three years from the date on which the permit or
562 license is revoked.

563 (h) [~~All costs assessed by the~~] The commission shall [~~be transferred~~] transfer all costs
564 assessed into the General Fund in accordance with Section 32A-1-113.

565 (7) Subject to Section 32A-1-119.5:

566 [~~(7)~~] (a) In addition to [~~any~~] an action taken against a permittee, licensee, or certificate
567 holder under this section, the department may initiate disciplinary action against an officer,
568 employee, or agent of a permittee, licensee, or certificate holder.

569 (b) If [~~any~~] an officer, employee, or agent is found to have violated this title, the
570 commission may prohibit the officer, employee, or agent from serving, selling, distributing,
571 manufacturing, wholesaling, warehousing, or handling an alcoholic [~~beverages~~] beverage in the
572 course of [~~employment~~] acting as an officer, employee, or agent with [~~any~~] a permittee,
573 licensee, or certificate holder under this title for a period determined by the commission.

574 (8) Subject to Section 32A-1-119.5:

575 [~~(8)~~] (a) The department may initiate a disciplinary proceeding for an alleged violation
576 of this title or the rules of the commission against:

577 (i) a manufacturer, supplier, or importer of an alcoholic [~~beverages~~] beverage; or

578 (ii) an officer, employee, agent, or representative of a person listed in Subsection
579 (8)(a)(i).

580 (b) (i) If the commission makes the finding described in Subsection (8)(b)(ii), the
581 commission may, in addition to other penalties prescribed by this title, order:

582 (A) the removal of the manufacturer's, supplier's, or importer's one or more products
583 from the department's sales list; and

584 (B) a suspension of the department's purchase of the one or more products described in
585 Subsection (8)(b)(i)(A) for a period determined by the commission.

586 (ii) The commission may take the action described in Subsection (8)(b)(i) if:

587 (A) [~~any~~] a manufacturer, supplier, or importer of liquor, wine, or heavy beer or its

588 officer, employee, agent, or representative violates ~~[any provision of]~~ this title; and

589 (B) the manufacturer, supplier, or importer:

590 (I) directly ~~[committed]~~ commits the violation; or

591 (II) ~~[solicited, requested, commanded, encouraged, or intentionally aided]~~

592 solicits, requests, commands, encourages, or intentionally aids another to engage in the
593 violation.

594 (9) Subject to Section 32A-1-119.5:

595 ~~[(9)]~~ (a) The department may initiate a disciplinary proceeding against a brewer
596 holding a certificate of approval under Section 32A-8-101 for an alleged violation of this title
597 or the rules of the commission.

598 (b) If the commission makes a finding that the brewer holding a certificate of approval
599 violates this title or rules of the commission, the commission may take ~~[any]~~ an action against
600 the brewer holding a certificate of approval that the commission could take against a licensee
601 including:

602 (i) suspension or revocation of the certificate of approval; and

603 (ii) imposition of a fine.

604 (10) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by
605 the commission or a hearing examiner appointed by the commission shall proceed formally in
606 accordance with Sections 63-46b-6 through 63-46b-11 in ~~[any]~~ a case where:

607 (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health,
608 and welfare;

609 (ii) the alleged violation involves:

610 (A) selling, serving, or otherwise furnishing an alcoholic ~~[products]~~ product to a minor;

611 (B) attire, conduct, or entertainment prohibited by Part 6, Attire, Conduct, and
612 Entertainment Act;

613 (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf
614 of the respondent;

615 (D) interfering or refusing to cooperate with:

616 (I) an authorized official of the department or the state in the discharge of the official's
617 duties in relation to the enforcement of this title; or

618 (II) a peace officer in the discharge of the peace officer's duties in relation to the

619 enforcement of this title;

620 (E) an unlawful trade practice under Sections 32A-12-601 through 32A-12-606;

621 (F) unlawful importation of an alcoholic [~~products~~] product; or

622 (G) unlawful supply of liquor by a liquor industry member, as defined in Subsection
623 32A-12-601(2), to [~~any~~] a person other than the department or a military installation, except to
624 the extent permitted by this title; or

625 (iii) the department determines to seek in a disciplinary proceeding hearing:

626 (A) an administrative fine exceeding \$3,000;

627 (B) a suspension of a license, permit, or certificate of approval of more than ten days;

628 or

629 (C) a revocation of a license, permit, or certificate of approval.

630 (b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah

631 Administrative Rulemaking Act, to provide a procedure to implement this Subsection (10).

632 Section 3. Section **32A-1-119.5** is enacted to read:

633 **32A-1-119.5. Timing of reporting violations.**

634 (1) As used in this section:

635 (a) "Department enforcement officer" means an individual who is:

636 (i) a peace officer, examiner, or investigator; and

637 (ii) employed by the department.

638 (b) "Nondepartment enforcement agency" means an agency that:

639 (i) (A) is a state agency other than the department; or

640 (B) is an agency of a county, city, or town; and

641 (ii) has a responsibility, as provided in another provision of this title, to enforce one or
642 more provisions of this title.

643 (c) "Nondepartment enforcement officer" means an individual who is:

644 (i) a peace officer, examiner, or investigator; and

645 (ii) employed by an agency described in Subsection (1)(b).

646 (2) A disciplinary proceeding may not be initiated or maintained by the commission or
647 department on the basis, in whole or in part, of a violation of this title unless the person against
648 whom the violation is alleged is notified by the department of the violation in accordance with
649 this section.

650 (3) (a) A nondepartment enforcement agency or nondepartment enforcement officer
651 may not report a violation of this title to the department more than two business days after the
652 day on which a nondepartment enforcement officer finds a violation of the title.

653 (b) If the commission or department wants the right to initiate or maintain a
654 disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged in a
655 report described in Subsection (3)(a), the department shall notify a person alleged by the report
656 to have violated this title:

657 (i) by no later than two business days of the day on which the department receives the
658 report described in Subsection (3)(a); and

659 (ii) that the commission or department may initiate or maintain a disciplinary
660 proceeding on the basis, in whole or in part, of the violation.

661 (4) If the commission or department wants the right to initiate or maintain a
662 disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged by
663 report of a department enforcement officer, the department shall notify a person alleged by the
664 report to have violated this title:

665 (a) by no later than two business days of the day on which the department enforcement
666 officer finds a violation of this title; and

667 (b) that the commission or department may initiate or maintain a disciplinary
668 proceeding on the basis, in whole or in part, of the violation.

669 Section 4. Section **32A-1-120** is amended to read:

670 **32A-1-120. Judicial review -- Enforcement.**

671 (1) In a disciplinary proceeding, [~~as defined in Section 32A-1-119;~~] a respondent found
672 in a final order of the commission to have violated this title or rules of the commission made
673 under this title may seek judicial review in a court of competent jurisdiction pursuant to the
674 judicial review provisions of Sections 63-46b-14 through 63-46b-18.

675 (2) Notwithstanding Subsection 63-46b-16(4)(g), an appellate court may not grant
676 relief on the basis that a finding of fact by the commission in a formal disciplinary proceeding
677 is not supported, if the commission's finding of fact is supported by any evidence of substance
678 in the record of the formal disciplinary proceeding when viewed in light of the whole record
679 before the court.

680 (3) In addition to [~~any other~~] another remedy provided by law, the commission may

681 seek enforcement of a commission order in a disciplinary proceeding by seeking civil
682 enforcement in a state district court in accordance with Section 63-46b-19.

683 Section 5. Section **76-5-113** is amended to read:

684 **76-5-113. Surreptitious administration of certain substances -- Definitions --**

685 **Penalties -- Defenses.**

686 (1) As used in this section:

687 (a) "Administer" means the introduction of a substance into the body by injection,
688 inhalation, ingestion, or by any other means.

689 (b) "Alcoholic beverage" has the same meaning as "alcoholic [~~beverages~~] beverage" in
690 Section 32A-1-105.

691 (c) "Bodily injury" has the same definition as in Section 76-1-601.

692 (d) "Controlled substance" has the same definition as in Section 58-37-2.

693 (e) "Deleterious substance" means a substance which, if administered, would likely
694 cause bodily injury.

695 (f) "Poisonous" means a substance which, if administered, would likely cause serious
696 bodily injury or death.

697 (g) "Prescription drug" has the same definition as in Section 58-17b-102.

698 (h) "Serious bodily injury" has the same definition as in Section 19-2-115.

699 (i) "Substance" means a controlled substance, poisonous substance, or deleterious
700 substance as defined in this Subsection (1).

701 (2) In addition to any other offense the actor's conduct may constitute, it is a criminal
702 offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to
703 cause another person to unknowingly consume or receive the administration of:

704 (a) any poisonous, deleterious, or controlled substance; or

705 (b) any alcoholic beverage.

706 (3) A violation of Subsection (2) is:

707 (a) a second degree felony if the substance is a poisonous substance, regardless of
708 whether the substance is a controlled substance or a prescription drug;

709 (b) a third degree felony if the substance is not within the scope of Subsection (3)(a),
710 and is a controlled substance or a prescription drug; and

711 (c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic

712 beverage.

713 (4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

714 (i) provided the appropriate administration of a prescription drug; and

715 (ii) acted on the reasonable belief that his conduct was in the best interest of the

716 well-being of the person to whom the prescription drug was administered.

717 (b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing

718 of his intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the

719 trial.

720 (ii) The notice shall specifically identify the factual basis for the defense and the names

721 and addresses of the witnesses the defendant proposes to examine to establish the defense.

722 (c) The prosecuting attorney shall file and serve the defendant with a notice containing

723 the names and addresses of the witnesses the prosecutor proposes to examine in order to

724 contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a).

725 This notice shall be filed or served not more than ten days after receipt of the defendant's notice

726 under Subsection (4)(b), or at another time as the court may direct.

727 (d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c)

728 entitles the opposing party to a continuance to allow for preparation.

729 (ii) If the court finds that a party's failure to comply is the result of bad faith, it may

730 impose appropriate sanctions.

731 (5) This section does not diminish the scope of authorized health care by a health care

732 provider as defined in Section 26-23a-1.

Legislative Review Note

as of 12-12-07 3:28 PM

Office of Legislative Research and General Counsel

H.B. 157 - Alcoholic Beverage Control Violations Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will require and appropriation from the Liquor Control Fund to the Department of Alcoholic Beverage Control for an additional staff person. Such an appropriation will reduce deposits to the General Fund.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$70,500)	(\$70,500)
Liquor Control Fund	\$0	\$70,500	\$75,000	\$0	\$0	\$0
Total	\$0	\$70,500	\$75,000	\$0	(\$70,500)	(\$70,500)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.