

1 **ALCOHOLIC BEVERAGE CONTROL ACT AMENDMENTS**

2 2011 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John L. Valentine**

5 House Sponsor: Gregory H. Hughes

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies definitions and removes references to certificates related to prohibited
14 interests, relationships, and actions;
- 15 ▶ modifies the type of licenses that if held by a manufacturing facility that also holds a
16 package agency allows the manufacturing facility to sell an alcoholic product on
17 additional days;
- 18 ▶ modifies the commission's power to issue club license when there is a change of
19 ownership of a business establishment that meets certain criteria;
- 20 ▶ addresses the transfer of a grandfathered facility licensed as an on-premise banquet
21 catering license;
- 22 ▶ modifies bond amount for on-premise beer retailers;
- 23 ▶ modifies the definition of recreational amenity;
- 24 ▶ addresses requirements related to on-premise beer retailers, recreational amenities,
25 and the sale of food;
- 26 ▶ removes an unnecessary cross reference related to notifying the department of
27 closures and transfers of licenses;



- 28 ▶ modifies dates related to grandfathering and beer only restaurants; and
- 29 ▶ makes technical and conforming amendments.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an effective date.

34 This bill provides for retrospective operation.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **32B-1-102**, as last amended by Laws of Utah 2011, Chapters 307 and 334

38 **32B-2-209**, as enacted by Laws of Utah 2011, Chapter 334

39 **32B-2-605**, as last amended by Laws of Utah 2011, Chapters 307 and 334

40 **32B-6-403**, as last amended by Laws of Utah 2011, Chapter 334

41 **32B-6-404**, as last amended by Laws of Utah 2011, Chapter 334

42 **32B-6-603 (Superseded 11/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

43 **32B-6-702**, as last amended by Laws of Utah 2011, Chapter 334

44 **32B-6-703**, as last amended by Laws of Utah 2011, Chapter 334

45 **32B-6-705**, as last amended by Laws of Utah 2011, Chapter 334

46 **32B-6-706**, as last amended by Laws of Utah 2011, Chapters 307 and 334

47 **32B-6-902 (Effective 03/01/12)**, as enacted by Laws of Utah 2011, Chapter 334



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

50 Section 1. Section **32B-1-102** is amended to read:

51 **32B-1-102. Definitions.**

52 As used in this title:

53 (1) "Airport lounge" means a business location:

54 (a) at which an alcoholic product is sold at retail for consumption on the premises; and

55 (b) that is located at an international airport with a United States Customs office on the
56 premises of the international airport.

57 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,
58 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

- 59 (3) "Alcoholic beverage" means the following:
- 60 (a) beer; or
- 61 (b) liquor.
- 62 (4) (a) "Alcoholic product" means a product that:
- 63 (i) contains at least .5% of alcohol by volume; and
- 64 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
- 65 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
- 66 in an amount equal to or greater than .5% of alcohol by volume.
- 67 (b) "Alcoholic product" includes an alcoholic beverage.
- 68 (c) "Alcoholic product" does not include any of the following common items that
- 69 otherwise come within the definition of an alcoholic product:
- 70 (i) except as provided in Subsection (4)(d), an extract;
- 71 (ii) vinegar;
- 72 (iii) cider;
- 73 (iv) essence;
- 74 (v) tincture;
- 75 (vi) food preparation; or
- 76 (vii) an over-the-counter medicine.
- 77 (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation
- 78 when it is used as a flavoring in the manufacturing of an alcoholic product.
- 79 (5) "Alcohol training and education seminar" means a seminar that is:
- 80 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
- 81 (b) described in Section 62A-15-401.
- 82 (6) "Banquet" means an event:
- 83 (a) that is held at one or more designated locations approved by the commission in or
- 84 on the premises of a:
- 85 (i) hotel;
- 86 (ii) resort facility;
- 87 (iii) sports center; or
- 88 (iv) convention center;
- 89 (b) for which there is a contract:

90 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
91 and

92 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
93 provide an alcoholic product at the event; and

94 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.

95 (7) (a) "Bar" means a surface or structure:

96 (i) at which an alcoholic product is:

97 (A) stored; or

98 (B) dispensed; or

99 (ii) from which an alcoholic product is served.

100 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any
101 place of the surface or structure an alcoholic product is:

102 (i) stored; or

103 (ii) dispensed.

104 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:

105 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
106 volume or 3.2% by weight; and

107 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

108 (b) "Beer" may or may not contain hops or other vegetable products.

109 (c) "Beer" includes a product that:

110 (i) contains alcohol in the percentages described in Subsection (8)(a); and

111 (ii) is referred to as:

112 (A) beer;

113 (B) ale;

114 (C) porter;

115 (D) stout;

116 (E) lager; or

117 (F) a malt or malted beverage.

118 (d) "Beer" does not include a flavored malt beverage.

119 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,
120 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

- 121 (10) "Beer retailer" means a business:
- 122 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,
- 123 whether for consumption on or off the business premises; and
- 124 (b) to whom a license is issued:
- 125 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
- 126 Beer Retailer Local Authority; or
- 127 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
- 128 and Chapter 6, Part 7, On-premise Beer Retailer License.
- 129 (11) "Beer wholesaling license" means a license:
- 130 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
- 131 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
- 132 retail licensees or off-premise beer retailers.
- 133 (12) "Billboard" means a public display used to advertise, including:
- 134 (a) a light device;
- 135 (b) a painting;
- 136 (c) a drawing;
- 137 (d) a poster;
- 138 (e) a sign;
- 139 (f) a signboard; or
- 140 (g) a scoreboard.
- 141 (13) "Brewer" means a person engaged in manufacturing:
- 142 (a) beer;
- 143 (b) heavy beer; or
- 144 (c) a flavored malt beverage.
- 145 (14) "Brewery manufacturing license" means a license issued in accordance with
- 146 Chapter 11, Part 5, Brewery Manufacturing License.
- 147 (15) "Certificate of approval" means a certificate of approval obtained from the
- 148 department under Section 32B-11-201.
- 149 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
- 150 a bus company to a group of persons pursuant to a common purpose:
- 151 (a) under a single contract;

152 (b) at a fixed charge in accordance with the bus company's tariff; and
153 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
154 motor vehicle, and a driver to travel together to one or more specified destinations.

155 (17) "Church" means a building:

- 156 (a) set apart for worship;
- 157 (b) in which religious services are held;
- 158 (c) with which clergy is associated; and
- 159 (d) that is tax exempt under the laws of this state.

160 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail
161 License Act, and Chapter 6, Part 4, Club License.

162 (b) "Club license" includes:

- 163 (i) a dining club license;
- 164 (ii) an equity club license;
- 165 (iii) a fraternal club license; or
- 166 (iv) a social club license.

167 (19) "Commission" means the Alcoholic Beverage Control Commission created in
168 Section 32B-2-201.

169 (20) "Commissioner" means a member of the commission.

170 (21) "Community location" means:

- 171 (a) a public or private school;
- 172 (b) a church;
- 173 (c) a public library;
- 174 (d) a public playground; or
- 175 (e) a public park.

176 (22) "Community location governing authority" means:

- 177 (a) the governing body of the community location; or
- 178 (b) if the commission does not know who is the governing body of a community
179 location, a person who appears to the commission to have been given on behalf of the
180 community location the authority to prohibit an activity at the community location.

181 (23) "Container" means a receptacle that contains an alcoholic product, including:

- 182 (a) a bottle;

- 183 (b) a vessel; or
- 184 (c) a similar item.
- 185 (24) "Convention center" means a facility that is:
- 186 (a) in total at least 30,000 square feet; and
- 187 (b) otherwise defined as a "convention center" by the commission by rule.
- 188 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a
- 189 dining area of a licensed premises where seating is provided to a patron for service of food.
- 190 (b) "Counter" does not include a surface or structure if on or at any point of the surface
- 191 or structure an alcoholic product is:
- 192 (i) stored; or
- 193 (ii) dispensed.
- 194 (26) "Department" means the Department of Alcoholic Beverage Control created in
- 195 Section 32B-2-203.
- 196 (27) "Department compliance officer" means an individual who is:
- 197 (a) an auditor or inspector; and
- 198 (b) employed by the department.
- 199 (28) "Department sample" means liquor that is placed in the possession of the
- 200 department for testing, analysis, and sampling.
- 201 (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail
- 202 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
- 203 dining club license.
- 204 (30) "Director," unless the context requires otherwise, means the director of the
- 205 department.
- 206 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
- 207 title:
- 208 (a) against a person subject to administrative action; and
- 209 (b) that is brought on the basis of a violation of this title.
- 210 (32) (a) Subject to Subsection (32)(b), "dispense" means:
- 211 (i) drawing of an alcoholic product:
- 212 (A) from an area where it is stored; or
- 213 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),

214 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

215 (ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of
216 the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the
217 retail licensee.

218 (b) The definition of "dispense" in this Subsection (32) applies only to:

219 (i) a full-service restaurant license;

220 (ii) a limited-service restaurant license;

221 (iii) a reception center license; and

222 (iv) a beer-only restaurant license.

223 (33) "Distillery manufacturing license" means a license issued in accordance with
224 Chapter 11, Part 4, Distillery Manufacturing License.

225 (34) "Distressed merchandise" means an alcoholic product in the possession of the
226 department that is saleable, but for some reason is unappealing to the public.

227 (35) "Educational facility" includes:

228 (a) a nursery school;

229 (b) an infant day care center; and

230 (c) a trade and technical school.

231 (36) "Equity club license" means a license issued in accordance with Chapter 5, Retail
232 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an
233 equity club license.

234 (37) "Event permit" means:

235 (a) a single event permit; or

236 (b) a temporary beer event permit.

237 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being
238 considered in determining the total number of a retail license that the commission may issue at
239 any time.

240 (39) (a) "Flavored malt beverage" means a beverage:

241 (i) that contains at least .5% alcohol by volume;

242 (ii) that is treated by processing, filtration, or another method of manufacture that is not
243 generally recognized as a traditional process in the production of a beer as described in 27

244 C.F.R. Sec. 25.55;

245 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop
246 extract; and

247 (iv) (A) for which the producer is required to file a formula for approval with the
248 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

249 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

250 (b) "Flavored malt beverage" is considered liquor for purposes of this title.

251 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,
252 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
253 as a fraternal club license.

254 (41) "Full-service restaurant license" means a license issued in accordance with
255 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

256 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
257 an alcoholic product, by sale or otherwise.

258 (b) "Furnish" includes to:

259 (i) serve;

260 (ii) deliver; or

261 (iii) otherwise make available.

262 (43) "Guest" means an individual who meets the requirements of Subsection
263 32B-6-407(9).

264 (44) "Health care practitioner" means:

265 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

266 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

267 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

268 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
269 Act;

270 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
271 Nurse Practice Act;

272 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
273 Practice Act;

274 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
275 Therapy Practice Act;

276 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

277 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health

278 Professional Practice Act;

279 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

280 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical

281 Practice Act;

282 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental

283 Hygienist Practice Act; and

284 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

285 (45) (a) "Heavy beer" means a product that:

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

287 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

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

289 (46) "Hotel" is as defined by the commission by rule.

290 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,

291 Part 8, Identification Card Act.

292 (48) "Industry representative" means an individual who is compensated by salary,

293 commission, or other means for representing and selling an alcoholic product of a

294 manufacturer, supplier, or importer of liquor.

295 (49) "Industry representative sample" means liquor that is placed in the possession of

296 the department for testing, analysis, and sampling by a local industry representative on the

297 premises of the department to educate the local industry representative of the quality and

298 characteristics of the product.

299 (50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing

300 of an alcoholic product is prohibited by:

301 (a) law; or

302 (b) court order.

303 (51) "Intoxicated" means that a person:

304 (a) is significantly impaired as to the person's mental or physical functions as a result of

305 the use of:

306 (i) an alcoholic product;

307 (ii) a controlled substance;
308 (iii) a substance having the property of releasing toxic vapors; or
309 (iv) a combination of Subsections (51)(a)(i) through (iii); and
310 (b) exhibits plain and easily observed outward manifestations of behavior or physical
311 signs produced by the over consumption of an alcoholic product.

312 (52) "Investigator" means an individual who is:

- 313 (a) a department compliance officer; or
- 314 (b) a nondepartment enforcement officer.

315 (53) "Invitee" is as defined in Section 32B-8-102.

316 (54) "License" means:

- 317 (a) a retail license;
- 318 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
319 Licenses Act;

320 (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;

321 or

322 (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

323 (55) "Licensee" means a person who holds a license.

324 (56) "Limited-service restaurant license" means a license issued in accordance with
325 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

326 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other
327 than a bus or taxicab:

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

330 (b) that is provided by a business entity to one or more individuals at a fixed charge in
331 accordance with the business entity's tariff; and

332 (c) to give the one or more individuals the exclusive use of the limousine and a driver
333 to travel to one or more specified destinations.

334 (58) (a) (i) "Liquor" means a liquid that:

335 (A) is:

336 (I) alcohol;

337 (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;

- 338 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
- 339 (IV) other drink or drinkable liquid; and
- 340 (B) (I) contains at least .5% alcohol by volume; and
- 341 (II) is suitable to use for beverage purposes.
- 342 (ii) "Liquor" includes:
- 343 (A) heavy beer;
- 344 (B) wine; and
- 345 (C) a flavored malt beverage.
- 346 (b) "Liquor" does not include beer.
- 347 (59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.
- 348 (60) "Liquor warehousing license" means a license that is issued:
- 349 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- 350 (b) to a person, other than a licensed manufacturer, who engages in the importation for
- 351 storage, sale, or distribution of liquor regardless of amount.
- 352 (61) "Local authority" means:
- 353 (a) for premises that are located in an unincorporated area of a county, the governing
- 354 body of a county; or
- 355 (b) for premises that are located in an incorporated city or a town, the governing body
- 356 of the city or town.
- 357 (62) "Lounge or bar area" is as defined by rule made by the commission.
- 358 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
- 359 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 360 (64) "Member" means an individual who, after paying regular dues, has full privileges
- 361 in an equity club licensee or fraternal club licensee.
- 362 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
- 363 or homeport facility for a ship:
- 364 (i) (A) under the control of the United States Department of Defense; or
- 365 (B) of the National Guard;
- 366 (ii) that is located within the state; and
- 367 (iii) including a leased facility.
- 368 (b) "Military installation" does not include a facility used primarily for:

- 369 (i) civil works;
- 370 (ii) a rivers and harbors project; or
- 371 (iii) a flood control project.
- 372 (66) "Minor" means an individual under the age of 21 years.
- 373 (67) "Nondepartment enforcement agency" means an agency that:
- 374 (a) (i) is a state agency other than the department; or
- 375 (ii) is an agency of a county, city, or town; and
- 376 (b) has a responsibility to enforce one or more provisions of this title.
- 377 (68) "Nondepartment enforcement officer" means an individual who is:
- 378 (a) a peace officer, examiner, or investigator; and
- 379 (b) employed by a nondepartment enforcement agency.
- 380 (69) (a) "Off-premise beer retailer" means a beer retailer who is:
- 381 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local
- 382 Authority; and
- 383 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
- 384 premises.
- 385 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 386 (70) "On-premise banquet license" means a license issued in accordance with Chapter
- 387 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.
- 388 (71) "On-premise beer retailer" means a beer retailer who is:
- 389 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
- 390 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer
- 391 Retailer License; and
- 392 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
- 393 premises:
- 394 (i) regardless of whether the beer retailer sells beer for consumption off the licensed
- 395 premises; and
- 396 (ii) on and after March 1, 2012, operating:
- 397 (A) as a tavern; or
- 398 (B) in a manner that meets the [~~recreational amenity~~] requirements of Subsection
- 399 32B-6-703(2)(e)(i).

- 400 (72) "Opaque" means impenetrable to sight.
- 401 (73) "Package agency" means a retail liquor location operated:
 - 402 (a) under an agreement with the department; and
 - 403 (b) by a person:
 - 404 (i) other than the state; and
 - 405 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
 - 406 Agency, to sell packaged liquor for consumption off the premises of the package agency.
- 407 (74) "Package agent" means a person who holds a package agency.
- 408 (75) "Patron" means an individual to whom food, beverages, or services are sold,
 - 409 offered for sale, or furnished, or who consumes an alcoholic product including:
 - 410 (a) a customer;
 - 411 (b) a member;
 - 412 (c) a guest;
 - 413 (d) an attendee of a banquet or event;
 - 414 (e) an individual who receives room service;
 - 415 (f) a resident of a resort;
 - 416 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;
 - 417 or
 - 418 (h) an invitee.
- 419 (76) "Permittee" means a person issued a permit under:
 - 420 (a) Chapter 9, Event Permit Act; or
 - 421 (b) Chapter 10, Special Use Permit Act.
- 422 (77) "Person subject to administrative action" means:
 - 423 (a) a licensee;
 - 424 (b) a permittee;
 - 425 (c) a manufacturer;
 - 426 (d) a supplier;
 - 427 (e) an importer;
 - 428 (f) one of the following holding a certificate of approval:
 - 429 (i) an out-of-state brewer;
 - 430 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

431 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

432 (g) staff of:

433 (i) a person listed in Subsections (77)(a) through (f); or

434 (ii) a package agent.

435 (78) "Premises" means a building, enclosure, or room used in connection with the
436 storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product,
437 unless otherwise defined in this title or rules made by the commission.

438 (79) "Prescription" means an order issued by a health care practitioner when:

439 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
440 to prescribe a controlled substance, other drug, or device for medicinal purposes;

441 (b) the order is made in the course of that health care practitioner's professional
442 practice; and

443 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

444 (80) (a) "Private event" means a specific social, business, or recreational event:

445 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
446 group; and

447 (ii) that is limited in attendance to people who are specifically designated and their
448 guests.

449 (b) "Private event" does not include an event to which the general public is invited,
450 whether for an admission fee or not.

451 (81) (a) "Proof of age" means:

452 (i) an identification card;

453 (ii) an identification that:

454 (A) is substantially similar to an identification card;

455 (B) is issued in accordance with the laws of a state other than Utah in which the
456 identification is issued;

457 (C) includes date of birth; and

458 (D) has a picture affixed;

459 (iii) a valid driver license certificate that:

460 (A) includes date of birth;

461 (B) has a picture affixed; and

- 462 (C) is issued:
- 463 (I) under Title 53, Chapter 3, Uniform Driver License Act; or
- 464 (II) in accordance with the laws of the state in which it is issued;
- 465 (iv) a military identification card that:
- 466 (A) includes date of birth; and
- 467 (B) has a picture affixed; or
- 468 (v) a valid passport.
- 469 (b) "Proof of age" does not include a driving privilege card issued in accordance with

470 Section 53-3-207.

- 471 (82) (a) "Public building" means a building or permanent structure that is:
- 472 (i) owned or leased by:
- 473 (A) the state; or
- 474 (B) a local government entity; and
- 475 (ii) used for:
- 476 (A) public education;
- 477 (B) transacting public business; or
- 478 (C) regularly conducting government activities.
- 479 (b) "Public building" does not include a building owned by the state or a local
- 480 government entity when the building is used by a person, in whole or in part, for a proprietary
- 481 function.

482 (83) "Public conveyance" means a conveyance to which the public or a portion of the

483 public has access to and a right to use for transportation, including an airline, railroad, bus,

484 boat, or other public conveyance.

- 485 (84) "Reception center" means a business that:
- 486 (a) operates facilities that are at least 5,000 square feet; and
- 487 (b) has as its primary purpose the leasing of the facilities described in Subsection
- 488 (84)(a) to a third party for the third party's event.

489 (85) "Reception center license" means a license issued in accordance with Chapter 5,

490 Retail License Act, and Chapter 6, Part 8, Reception Center License.

- 491 (86) (a) "Record" means information that is:
- 492 (i) inscribed on a tangible medium; or

- 493 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.
- 494 (b) "Record" includes:
- 495 (i) a book;
- 496 (ii) a book of account;
- 497 (iii) a paper;
- 498 (iv) a contract;
- 499 (v) an agreement;
- 500 (vi) a document; or
- 501 (vii) a recording in any medium.
- 502 (87) "Residence" means a person's principal place of abode within Utah.
- 503 (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.
- 504 (89) "Resort" is as defined in Section 32B-8-102.
- 505 (90) "Resort facility" is as defined by the commission by rule.
- 506 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail
- 507 License Act, and Chapter 8, Resort License Act.
- 508 (92) "Restaurant" means a business location:
- 509 (a) at which a variety of foods are prepared;
- 510 (b) at which complete meals are served to the general public; and
- 511 (c) that is engaged primarily in serving meals to the general public.
- 512 (93) "Retail license" means one of the following licenses issued under this title:
- 513 (a) a full-service restaurant license;
- 514 (b) a limited-service restaurant license;
- 515 (c) a club license;
- 516 (d) an airport lounge license;
- 517 (e) an on-premise banquet license;
- 518 (f) an on-premise beer license;
- 519 (g) a reception center license; or
- 520 (h) a beer-only restaurant license.
- 521 (94) "Room service" means furnishing an alcoholic product to a person in a guest room
- 522 of a:
- 523 (a) hotel; or

- 524 (b) resort facility.
- 525 (95) "Serve" means to place an alcoholic product before an individual.
- 526 (96) (a) "School" means a building used primarily for the general education of minors.
- 527 (b) "School" does not include an educational facility.
- 528 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for
- 529 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,
- 530 delivered for value, or by a means or under a pretext is promised or obtained, whether done by
- 531 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules
- 532 made by the commission.
- 533 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity
- 534 appears at or performs:
 - 535 (a) for the entertainment of one or more patrons;
 - 536 (b) on the premises of:
 - 537 (i) a social club licensee; or
 - 538 (ii) a tavern;
 - 539 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
 - 540 (d) on a contractual or voluntary basis; and
 - 541 (e) whether or not the person is designated as:
 - 542 (i) an employee;
 - 543 (ii) an independent contractor;
 - 544 (iii) an agent of the licensee; or
 - 545 (iv) a different type of classification.
- 546 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,
- 547 Single Event Permit.
- 548 (100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
- 549 beer, heavy beer, and flavored malt beverages per year.
- 550 (101) "Social club license" means a license issued in accordance with Chapter 5, Retail
- 551 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
- 552 social club license.
- 553 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
- 554 Special Use Permit Act.

- 555 (103) (a) "Spirituous liquor" means liquor that is distilled.
- 556 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
557 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.
- 558 (104) "Sports center" is as defined by the commission by rule.
- 559 (105) (a) "Staff" means an individual who engages in activity governed by this title:
- 560 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
561 holder;
- 562 (ii) at the request of the business, including a package agent, licensee, permittee, or
563 certificate holder; or
- 564 (iii) under the authority of the business, including a package agent, licensee, permittee,
565 or certificate holder.
- 566 (b) "Staff" includes:
- 567 (i) an officer;
- 568 (ii) a director;
- 569 (iii) an employee;
- 570 (iv) personnel management;
- 571 (v) an agent of the licensee, including a managing agent;
- 572 (vi) an operator; or
- 573 (vii) a representative.
- 574 (106) "State of nudity" means:
- 575 (a) the appearance of:
- 576 (i) the nipple or areola of a female human breast;
- 577 (ii) a human genital;
- 578 (iii) a human pubic area; or
- 579 (iv) a human anus; or
- 580 (b) a state of dress that fails to opaquely cover:
- 581 (i) the nipple or areola of a female human breast;
- 582 (ii) a human genital;
- 583 (iii) a human pubic area; or
- 584 (iv) a human anus.
- 585 (107) "State of seminudity" means a state of dress in which opaque clothing covers no

586 more than:

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

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

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

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

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

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

594 (108) (a) "State store" means a facility for the sale of packaged liquor:

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

596 (ii) operated by a state employee.

597 (b) "State store" does not include:

598 (i) a package agency;

599 (ii) a licensee; or

600 (iii) a permittee.

601 (109) (a) "Storage area" means an area on licensed premises where the licensee stores
602 an alcoholic product.

603 (b) "Store" means to place or maintain in a location an alcoholic product from which a
604 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
605 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
606 32B-6-905(12)(b)(ii).

607 (110) "Sublicense" is as defined in Section 32B-8-102.

608 (111) "Supplier" means a person who sells an alcoholic product to the department.

609 (112) "Tavern" means an on-premise beer retailer who is:

610 (a) issued a license by the commission in accordance with Chapter 5, Retail License
611 Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

612 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,
613 On-premise Beer Retailer License.

614 (113) "Temporary beer event permit" means a permit issued in accordance with
615 Chapter 9, Part 4, Temporary Beer Event Permit.

616 (114) "Temporary domicile" means the principal place of abode within Utah of a

617 person who does not have a present intention to continue residency within Utah permanently or
618 indefinitely.

619 (115) "Translucent" means a substance that allows light to pass through, but does not
620 allow an object or person to be seen through the substance.

621 (116) "Unsaleable liquor merchandise" means a container that:

622 (a) is unsaleable because the container is:

623 (i) unlabeled;

624 (ii) leaky;

625 (iii) damaged;

626 (iv) difficult to open; or

627 (v) partly filled;

628 (b) (i) has faded labels or defective caps or corks;

629 (ii) has contents that are:

630 (A) cloudy;

631 (B) spoiled; or

632 (C) chemically determined to be impure; or

633 (iii) contains:

634 (A) sediment; or

635 (B) a foreign substance; or

636 (c) is otherwise considered by the department as unfit for sale.

637 (117) (a) "Wine" means an alcoholic product obtained by the fermentation of the
638 natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not
639 another ingredient is added.

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

642 (118) "Winery manufacturing license" means a license issued in accordance with
643 Chapter 11, Part 3, Winery Manufacturing License.

644 Section 2. Section **32B-2-209** is amended to read:

645 **32B-2-209. Prohibited interests, relationships, and actions.**

646 (1) As used in this section:

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

- 648 (i) designated as a deputy or assistant director;
- 649 (ii) a chief administrative officer of a division within the department;
- 650 (iii) a department compliance officer; or
- 651 (iv) an employee directly performing licensing or compliance functions of the
- 652 department.

- 653 (b) "Immediate family" means an individual's:
 - 654 (i) spouse; or
 - 655 (ii) child who is younger than 18 years of age.
- 656 (c) "Permit" does not include:
 - 657 (i) an industrial or manufacturing use permit;
 - 658 (ii) a scientific or educational use permit; or
 - 659 (iii) a religious wine use permit.
- 660 (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and
- 661 Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable
- 662 department employee may not:
 - 663 (a) have a pecuniary interest, whether as the holder of stock or other securities other
 - 664 than a mutual fund, in a person who applies for or holds a package agency, license, or permit[;
 - 665 ~~or certificate~~] under this title;
 - 666 (b) otherwise have a conflict of interest with a person who applies for or holds a
 - 667 package agency, license, or permit[; ~~or certificate~~] under this title;
 - 668 (c) have an office, position, or relationship, or be engaged in a business or avocation
 - 669 that interferes or is incompatible with the effective and objective fulfillment of the duties of
 - 670 office or employment;
 - 671 (d) have a direct business relationship with a person subject to administrative action
 - 672 under this title;
 - 673 (e) accept a gift, gratuity, emolument, or employment from:
 - 674 (i) a person who applies for or holds a package agency, license, or permit[; ~~or~~
 - 675 ~~certificate~~] under this title; or
 - 676 (ii) an officer, agent, or employee of a person who applies for or holds a package
 - 677 agency, license, or permit[; ~~or certificate~~] under this title, except that a commissioner, the
 - 678 director, or an applicable department employee may accept a gift from an officer, agent, or

679 employee if the gift is equal to or less than \$50; or

680 (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
681 any person to any office or employment with a person who applies for or holds a package
682 agency, license, or permit[,~~or certificate~~] under this title.

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

685 (a) have a pecuniary interest, whether as the holder of stock or other securities other
686 than a mutual fund, in a person who applies for or holds a package agency, license, or permit[;
687 ~~or certificate~~] under this title;

688 (b) otherwise have a conflict of interest with a person who applies for or holds a
689 package agency, license, or permit[,~~or certificate~~] under this title;

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

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

695 (i) a person who applies for or holds a package agency, license, or permit[,~~or~~
696 ~~certificate~~] under this title; or

697 (ii) an officer, agent, or employee of a person who applies for or holds a package
698 agency, license, or permit[,~~or certificate~~] under this title, except that an immediate family
699 member may accept a gift from an officer, agent, or employee if the gift is equal to or less than
700 \$50; or

701 (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
702 any person to any office or employment with a person who applies for or holds a package
703 agency, license, or permit[,~~or certificate~~] under this title.

704 (4) An officer, agent, attorney, or employee of a person who applies for or holds a
705 package agency, license, or permit[,~~or certificate~~] under this title may not directly or indirectly
706 solicit, request, or recommend to the governor, any state senator, the commission, or the
707 department the appointment of any person:

708 (a) as a commissioner;

709 (b) as director of the department; or

710 (c) to a department staff position.

711 (5) (a) A commissioner shall disclose during a meeting of the commission a potential
712 violation of this section, including the existence and nature of a professional, financial,
713 business, or personal interest with a person who holds, or an applicant for, a package agency,
714 license, or permit~~[, or certificate]~~ issued under this title that may result in a violation of this
715 section.

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

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

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

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

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

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

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

728 Section 3. Section **32B-2-605** is amended to read:

729 **32B-2-605. Operational requirements for package agency.**

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

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

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

737 (ii) An action against a package agent is governed solely by its package agency
738 agreement and may include suspension or revocation of the package agency.

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

741 (2) (a) A package agency shall be operated by an individual who is either:
742 (i) the package agent; or
743 (ii) an individual designated by the package agent.
744 (b) An individual who is a designee under this Subsection (2) shall be:
745 (i) an employee of the package agent; and
746 (ii) responsible for the operation of the package agency.
747 (c) The conduct of the designee is attributable to the package agent.
748 (d) A package agent shall submit the name of the person operating the package agency
749 to the department for the department's approval.
750 (e) A package agent shall state the name and title of a designee on the application for a
751 package agency.
752 (f) A package agent shall:
753 (i) inform the department of a proposed change in the individual designated to operate
754 a package agency; and
755 (ii) receive prior approval from the department before implementing the change
756 described in this Subsection (2)(f).
757 (g) Failure to comply with the requirements of this Subsection (2) may result in the
758 immediate termination of a package agency agreement.
759 (3) (a) A package agent shall display in a prominent place in the package agency the
760 record issued by the commission that designates the package agency.
761 (b) A package agent that displays or stores liquor at a location visible to the public
762 shall display in a prominent place in the package agency a sign in large letters that consists of
763 text in the following order:
764 (i) a header that reads: "WARNING";
765 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
766 can cause birth defects and permanent brain damage for the child.";
767 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
768 [insert most current toll-free number] with questions or for more information.";
769 (iv) a header that reads: "WARNING"; and
770 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
771 serious crime that is prosecuted aggressively in Utah."

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

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

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

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

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

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

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

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

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

791 (a) a minor;

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

793 (c) a known interdicted person; or

794 (d) a known habitual drunkard.

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

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

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

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

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

801 (10) (a) A package agency may not close or cease operation for a period longer than 72
802 hours, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

832 (A) on Sunday; or

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

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

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

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

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

843 (A) a full-service restaurant license;

844 (B) a limited-service restaurant license; [~~or~~]

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

846 (D) dining club license;

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

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

850 (v) the manufacturing facility:

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

852 (B) operates the restaurant or dining club;

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

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

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

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

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

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

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

867 (b) A package agent or staff of a package agency that has reason to believe that a

868 person who is on the premises of a package agency is under the age of 21 and is not

869 accompanied by a person described in Subsection (14)(a) may:

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

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

872 (iii) ask the suspected minor or the person who accompanies the suspected minor for

873 proof of parental, guardianship, or spousal relationship.

874 (c) A package agent or staff of a package agency shall refuse to sell liquor to the

875 suspected minor and to the person who accompanies the suspected minor into the package

876 agency if the minor or person fails to provide any information specified in Subsection (14)(b).

877 (d) A package agent or staff of a package agency shall require the suspected minor and

878 the person who accompanies the suspected minor into the package agency to immediately leave

879 the premises of the package agency if the minor or person fails to provide information specified

880 in Subsection (14)(b).

881 (15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed

882 container.

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

884 (c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or

885 furnish liquor in other than a sealed container:

886 (i) if the package agency is the type of package agency that authorizes the package

887 agency to sell, offer for sale, or furnish the liquor as part of room service;

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

889 (iii) subject to:

890 (A) staff of the package agency providing the liquor in person only to an adult guest in

891 the guest room;

892 (B) staff of the package agency not leaving the liquor outside a guest room for retrieval

893 by a guest; and

894 (C) the same limits on the portions in which an alcoholic product may be sold by a

895 retail licensee under Section 32B-5-304.

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

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

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

- 902 (a) physical facilities;
- 903 (b) conditions of operation;
- 904 (c) hours of operation;
- 905 (d) inventory levels;
- 906 (e) payment schedules;
- 907 (f) methods of payment;
- 908 (g) premises security; and
- 909 (h) any other matter considered appropriate by the commission.

910 Section 4. Section **32B-6-403** is amended to read:

911 **32B-6-403. Commission's power to issue club license.**

912 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
913 an alcoholic product on its premises as a club licensee, the person shall first obtain a club
914 license from the commission in accordance with this part.

915 (2) The commission may issue a club license to establish club licensed premises at
916 places and in numbers the commission considers proper for the storage, sale, offer for sale,
917 furnishing, and consumption of an alcoholic product on premises operated by a club licensee.

918 (3) Subject to Section 32B-1-201:

919 (a) The commission may not issue a total number of club licenses that at any time
920 exceeds the number determined by dividing the population of the state by 7,850.

921 (b) The commission may issue a seasonal club license in accordance with Section
922 32B-5-206 to:

- 923 (i) a dining club licensee; or
- 924 (ii) a social club licensee.

925 (c) (i) If the location, design, and construction of a hotel may require more than one
926 dining club license or social club license location within the hotel to serve the public

927 convenience, the commission may authorize as many as three club license locations within the
928 hotel under one club license if:

929 (A) the hotel has a minimum of 150 guest rooms; and

930 (B) all locations under the club license are:

931 (I) within the same hotel; and

932 (II) on premises that are managed or operated, and owned or leased, by the club
933 licensee.

934 (ii) A facility other than a hotel shall have a separate club license for each club license
935 location where an alcoholic product is sold, offered for sale, or furnished.

936 (d) When a business establishment undergoes a change of ownership, the commission
937 may issue a club license to the new owner of the business establishment notwithstanding that
938 there is no club license available under Subsection (3)(a) if:

939 (i) the primary business activity at the business establishment before and after the
940 change of ownership is not the sale, offer for sale, or furnishing of an alcoholic product;

941 (ii) before the change of ownership there are two or more licensed premises on the
942 business establishment that operate under a retail license, with at least one of the retail licenses
943 being a club license;

944 (iii) subject to Subsection (3)(e), the licensed premises of the club license issued under
945 this Subsection (3)(d) is at the same location where the club license licensed premises was
946 located before the change of ownership; and

947 (iv) the person who is the new owner of the business establishment qualifies for the
948 club license, except for there being no club license available under Subsection (3)(a).

949 (e) If a club licensee of a club license issued under Subsection (3)(d) requests a change
950 of location, the club licensee may retain the club license after the change of location only if on
951 the day on which the club licensee seeks a change of location a club license is available under
952 Subsection (3)(a).

953 Section 5. Section **32B-6-404** is amended to read:

954 **32B-6-404. Types of club license.**

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

957 (a) whether incorporated or unincorporated:

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

960 (ii) have members;

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

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

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

966 (i) a golf course; or

967 (ii) a tennis facility;

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

969 (i) full voting rights; and

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

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

973 (i) full voting rights; and

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

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

977 (a) whether incorporated or unincorporated:

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

980 (ii) have members;

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

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

984 (b) have no capital stock;

985 (c) exist solely for:

986 (i) the benefit of its members and their beneficiaries; and

987 (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
988 patriotic, or religious purpose for the benefit of its members or the public, carried on through

- 989 voluntary activity of its members in their local lodges;
- 990 (d) have a representative form of government;
- 991 (e) have a lodge system in which:
- 992 (i) there is a supreme governing body;
- 993 (ii) subordinate to the supreme governing body are local lodges, however designated,
- 994 into which individuals are admitted as members in accordance with the laws of the fraternal;
- 995 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
- 996 least monthly; and
- 997 (iv) the local lodges regularly engage in one or more programs involving member
- 998 participation to implement the purposes of Subsection (2)(c); and
- 999 (f) own or lease a building or space in a building used for lodge activities.
- 1000 (3) To obtain a dining club license, in addition to meeting the other requirements of
- 1001 this part, a person shall:
- 1002 (a) maintain at least the following percentages of its total club business from the sale of
- 1003 food, not including mix for alcoholic products, or service charges:
- 1004 (i) for a dining club license that is issued an original license on or after July 1, 2011,
- 1005 60%; and
- 1006 (ii) for a dining club license that is issued on or before June 30, 2011:
- 1007 (A) 50% on or before June 30, 2012; and
- 1008 (B) 60% on and after July 1, 2012; and
- 1009 (b) obtain a determination by the commission that the person will operate as a dining
- 1010 club licensee, as part of which the commission may consider:
- 1011 (i) the square footage and seating capacity of the premises;
- 1012 (ii) what portion of the square footage and seating capacity will be used for a dining
- 1013 area in comparison to the portion that will be used as a lounge or bar area;
- 1014 (iii) whether full meals including appetizers, main courses, and desserts are served;
- 1015 (iv) whether the person will maintain adequate on-premise culinary facilities to prepare
- 1016 full meals, except a person who is located on the premise of a hotel or resort facility may use
- 1017 the culinary facilities of the hotel or resort facility;
- 1018 (v) whether the entertainment provided at the club is suitable for minors; and
- 1019 (vi) the club management's ability to manage and operate a dining club license

1020 including:

1021 (A) management experience;

1022 (B) past dining club licensee or restaurant management experience; and

1023 (C) the type of management scheme used by the dining club license.

1024 (4) To obtain a social club license, a person is required to meet the requirements of this
1025 part except those listed in Subsection (1), (2), or (3).

1026 (5) (a) At the time that the commission issues a club license, the commission shall
1027 designate the type of club license for which the person qualifies.

1028 (b) If requested by a club licensee, the commission may approve a change in the type of
1029 club license in accordance with rules made by the commission.

1030 (6) To the extent not prohibited by law, this part does not prevent a dining club
1031 licensee or social club licensee from restricting access to the club's licensed premises on the
1032 basis of an individual:

1033 (a) paying a fee; or

1034 (b) agreeing to being on a list of individuals who have access to the club's licensed
1035 premises.

1036 Section 6. Section **32B-6-603 (Superseded 11/01/11)** is amended to read:

1037 **32B-6-603 (Superseded 11/01/11). Commission's power to issue on-premise**
1038 **banquet license -- Contracts as host.**

1039 (1) (a) Before a person may store, sell, offer for sale, furnish, or allow the consumption
1040 of an alcoholic product in connection with the person's banquet and room service activities at
1041 one of the following, the person shall first obtain an on-premise banquet license in accordance
1042 with this part:

1043 (i) a hotel;

1044 (ii) a resort facility;

1045 (iii) a sports center; or

1046 (iv) a convention center.

1047 (b) This part does not prohibit an alcoholic product on the premises of a person listed
1048 in Subsection (1)(a) to the extent otherwise permitted by this title.

1049 (c) This section does not prohibit a person who applies for an on-premise banquet
1050 license to also apply for a package agency if otherwise qualified.

1051 (2) The commission may issue an on-premise banquet license to establish on-premise
1052 banquet licensees in the numbers the commission considers proper for the storage, sale, offer
1053 for sale, furnishing, and consumption of an alcoholic product at a banquet or as part of room
1054 service activities operated by an on-premise banquet licensee.

1055 (3) Subject to Section 32B-1-201, the commission may not issue a total number of
1056 on-premise banquet licenses that at any time exceed the number determined by dividing the
1057 population of the state by 30,000.

1058 (4) (a) As used in this Subsection (4), "grandfathered facility" means a facility:

1059 (i) for which the commission issued an on-premise banquet license that is in effect on
1060 May 11, 2009, on the basis that the facility is a convention center; and

1061 (ii) that no longer qualifies as a convention center as defined in Section 32B-1-102
1062 solely because it is in total less than 30,000 square feet.

1063 (b) Notwithstanding the definition of "convention center" in Section 32B-1-102, an
1064 on-premise banquet license applicable to a grandfathered facility may be renewed until October
1065 31, 2011, if the on-premise banquet licensee is qualified for an on-premise banquet license
1066 except for the requirement that the facility be in total at least 30,000 square feet.

1067 (c) Notwithstanding any other provision of this title, if a grandfathered facility is sold
1068 or otherwise transferred to a new owner, the commission shall allow the new owner to operate
1069 until October 31, 2011, under the on-premise banquet catering license issued to the
1070 grandfathered facility, if the new owner qualifies as an on-premise banquet licensee except for
1071 the requirement that the facility be in total at least 30,000 square feet.

1072 (5) Pursuant to a contract between the host of a banquet and an on-premise banquet
1073 licensee:

1074 (a) the host of the banquet may request an on-premise banquet licensee to provide an
1075 alcoholic product served at the banquet; and

1076 (b) an on-premise banquet licensee may provide an alcoholic product served at the
1077 banquet.

1078 (6) At a banquet, an on-premise banquet licensee may furnish an alcoholic product:

1079 (a) without charge to a patron at a banquet, except that the host of the banquet shall pay
1080 for an alcoholic product furnished at the banquet; or

1081 (b) with a charge to a patron at the banquet.

1082 Section 7. Section **32B-6-702** is amended to read:

1083 **32B-6-702. Definitions.**

1084 As used in this part, "recreational amenity" is defined by the commission by rule made
1085 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made
1086 under this section shall define "recreational amenity" to be one or more of the following or an
1087 activity substantially similar to one of the following:

- 1088 (1) a billiard parlor;
- 1089 (2) a pool parlor;
- 1090 (3) a bowling facility;
- 1091 (4) a golf course;
- 1092 (5) miniature golf;
- 1093 (6) a golf driving range;
- 1094 (7) a tennis club;
- 1095 (8) a sports facility that hosts professional sporting events and has a seating capacity
1096 equal to or greater than 6,500;
- 1097 (9) a concert venue that has a seating capacity equal to or greater than 6,500;
- 1098 (10) one of the following if owned by a government agency:
 - 1099 (a) a convention center;
 - 1100 (b) a fair facility;
 - 1101 (c) an equestrian park;
 - 1102 (d) a theater; or
 - 1103 (e) a concert venue;
- 1104 (11) an amusement park:
 - 1105 (a) with one or more permanent amusement rides; and
 - 1106 (b) located on at least 50 acres;
- 1107 (12) a ski resort; ~~[or]~~
- 1108 (13) a venue for live entertainment if the venue:
 - 1109 (a) is not regularly open for more than five hours on any day;
 - 1110 (b) is operated so that food is available whenever beer is sold, offered for sale, or
1111 furnished at the venue; and
 - 1112 (c) is operated so that no more than 15% of its total annual receipts are from the sale of

1113 beer[-]; or

1114 (14) concessions operated within the boundary of a park administered by the:

1115 (a) Division of Parks and Recreation; or

1116 (b) National Parks Service.

1117 Section 8. Section **32B-6-703** is amended to read:

1118 **32B-6-703. Commission's power to issue on-premise beer retailer license.**

1119 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
1120 beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise
1121 beer retailer license from the commission in accordance with this part.

1122 (2) (a) The commission may issue an on-premise beer retailer license to establish
1123 on-premise beer retailer licensed premises at places and in numbers as the commission
1124 considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on
1125 premises operated as an on-premise beer retailer.

1126 (b) At the time that the commission issues an on-premise beer retailer license, the
1127 commission shall designate whether the on-premise beer retailer is a tavern.

1128 (c) The commission may change its designation of whether an on-premise beer retailer
1129 is a tavern in accordance with rules made by the commission.

1130 (d) (i) In determining whether an on-premise beer retailer is a tavern, the commission
1131 shall determine whether the on-premise beer retailer will engage primarily in the retail sale of
1132 beer for consumption on the establishment's premises.

1133 (ii) In making a determination under this Subsection (2)(d), the commission shall
1134 consider:

1135 (A) whether the on-premise beer retailer will operate as one of the following:

1136 (I) a beer bar;

1137 (II) a parlor;

1138 (III) a lounge;

1139 (IV) a cabaret; or

1140 (V) a nightclub;

1141 (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

1142 (I) whether the on-premise beer retailer will sell food in the establishment; and

1143 (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer

1144 will exceed the revenue of the sale of food;

1145 (C) whether full meals including appetizers, main courses, and desserts will be served;

1146 (D) the square footage and seating capacity of the premises;

1147 (E) what portion of the square footage and seating capacity will be used for a dining

1148 area in comparison to the portion that will be used as a lounge or bar area;

1149 (F) whether the person will maintain adequate on-premise culinary facilities to prepare

1150 full meals, except a person that is located on the premises of a hotel or resort facility may use

1151 the culinary facilities of the hotel or resort facility;

1152 (G) whether the entertainment provided on the premises of the beer retailer will be

1153 suitable for minors; and

1154 (H) the beer retailer management's ability to manage and operate an on-premise beer

1155 retailer license including:

1156 (I) management experience;

1157 (II) past beer retailer management experience; and

1158 (III) the type of management scheme that will be used by the beer retailer.

1159 (e) On or after March 1, 2012:

1160 (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

1161 (A) maintain at least 70% of [its] the person's total gross revenues from business

1162 directly related to a recreational amenity on or directly adjoining the licensed premises of the

1163 beer retailer[-]; or

1164 (B) have a recreational amenity on or directly adjoining the licensed premises of the

1165 beer retailer and maintain at least 70% of the person's total gross revenues from the sale of

1166 food.

1167 (ii) The commission may not license a person as an on-premise beer retailer if the

1168 person does not:

1169 (A) meet the requirements of Subsection (2)(e)(i); or

1170 (B) operate as a tavern.

1171 (iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July

1172 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1,

1173 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an

1174 on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

1175 (B) If an on-premise beer retailer fails to notify the department as required by
1176 Subsection (2)(e)[(†)](iii)(A), the on-premise beer retailer's license expires as of February 29,
1177 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise
1178 beer retailer is required to apply as a new licensee.

1179 (3) Subject to Section 32B-1-201:

1180 (a) The commission may not issue a total number of on-premise beer retailer licenses
1181 that are taverns that at any time exceeds the number determined by dividing the population of
1182 the state by 54,147.

1183 (b) The commission may issue a seasonal on-premise beer retailer license for a tavern
1184 in accordance with Section 32B-5-206.

1185 (4) (a) Unless otherwise provided in Subsection (4)(b):

1186 (i) only one on-premise beer retailer license is required for each building or resort
1187 facility owned or leased by the same person; and

1188 (ii) a separate license is not required for each retail beer dispensing location in the
1189 same building or on the same resort premises owned or operated by the same person.

1190 (b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the
1191 building or resort facility operates in the same manner.

1192 (ii) If each retail beer dispensing location does not operate in the same manner:

1193 (A) one on-premise beer retailer license designated as a tavern is required for the
1194 locations in the same building or on the same resort premises that operate as a tavern; and

1195 (B) one on-premise beer retailer license is required for the locations in the same
1196 building or on the same resort premises that do not operate as a tavern.

1197 Section 9. Section **32B-6-705** is amended to read:

1198 **32B-6-705. Specific licensing requirements for on-premise beer retailer license.**

1199 (1) To obtain an on-premise beer retailer license a person shall comply with Chapter 5,
1200 Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to carry
1201 dramshop insurance coverage in accordance with Section 32B-5-201 only if the on-premise
1202 beer retailer sells more than \$5,000 of beer annually.

1203 (2) (a) An on-premise beer retailer license expires on the last day of February each
1204 year.

1205 (b) To renew a person's on-premise beer retailer license, a person shall comply with the

1206 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January
1207 31.

1208 (3) (a) The nonrefundable application fee for an on-premise beer retailer license is
1209 \$300.

1210 (b) (i) The initial license fee for an on-premise beer retailer license that is not a tavern
1211 is \$300.

1212 (ii) The initial license fee for an on-premise beer retailer license that is a tavern is
1213 \$1,500.

1214 (c) (i) The renewal fee for an on-premise beer retailer license that is not a tavern is
1215 \$350.

1216 (ii) The renewal fee for an on-premise beer retailer license that is a tavern is \$1,250.

1217 (4) The bond amount required for an on-premise beer retailer license is the penal sum
1218 of [~~\$2,000~~] \$5,000.

1219 (5) Notwithstanding the other provisions of this part, if an applicant is a state agency or
1220 political subdivision of the state it is not required to:

1221 (a) pay an application fee, initial license fee, or renewal fee;

1222 (b) obtain the written consent of the local authority;

1223 (c) submit a copy of the applicant's current business license; or

1224 (d) post a bond as specified by Section 32B-5-204.

1225 Section 10. Section **32B-6-706** is amended to read:

1226 **32B-6-706. Specific operational requirements for on-premise beer retailer license.**

1227 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
1228 Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply
1229 with this section.

1230 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1231 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

1232 (i) an on-premise beer retailer;

1233 (ii) individual staff of an on-premise beer retailer; or

1234 (iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

1235 (2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make
1236 and maintain the records the department requires.

1237 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1238 accordance with this Subsection (2).

1239 (3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or
1240 sell liquor on its licensed premises.

1241 (4) Beer sold in a sealed container by an on-premise beer retailer may be removed from
1242 the on-premise beer retailer premises in the sealed container.

1243 [~~(5) Only an on-premise beer retailer that operates as a tavern is subject to Section~~
1244 ~~32B-5-309.~~]

1245 [~~(6)~~ (5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at
1246 its licensed premises during a period that:

1247 (i) begins at 1 a.m.; and

1248 (ii) ends at 9:59 a.m.

1249 (b) (i) Notwithstanding Subsection [~~(6)~~ (5)(a), a tavern shall remain open for one hour
1250 after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern
1251 may finish consuming a single serving of beer not exceeding 26 ounces.

1252 (ii) A tavern is not required to remain open:

1253 (A) after all patrons have vacated the premises; or

1254 (B) during an emergency.

1255 [~~(7)~~ (6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a
1256 tavern.

1257 [~~(8)~~ (7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the
1258 purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases
1259 from:

1260 (A) a beer wholesaler licensee; or

1261 (B) a small brewer that manufactures the beer.

1262 (ii) Violation of Subsection [~~(8)~~ (7)(a)(i) is a class A misdemeanor.

1263 (b) (i) If an on-premise beer retailer purchases beer under this Subsection [~~(8)~~ (7) from
1264 a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer
1265 wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area
1266 in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by
1267 the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

1268 (ii) Violation of Subsection [~~(8)~~] (7)(b)(i) is a class B misdemeanor.

1269 [~~(9)~~] (8) A tavern shall comply with Section 32B-1-407.

1270 Section 11. Section **32B-6-902 (Effective 03/01/12)** is amended to read:

1271 **32B-6-902 (Effective 03/01/12). Definitions.**

1272 (1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a
1273 licensed premises of a beer-only restaurant licensee that:

1274 (i) as of January 1, 2011:

1275 (A) is operational; and

1276 (B) has facilities for the dispensing or storage of an alcoholic product that do not meet
1277 the requirements of Subsection 32B-6-905(12)(a)(ii);

1278 (ii) is not operational as of January 1, 2011, if a person applying for the beer-only
1279 restaurant license:

1280 (A) has as of January 1, 2011, a building permit to construct the restaurant;

1281 (B) is as of January 1, 2011, actively engaged in the construction of the restaurant, as
1282 defined by rule made by the commission;

1283 (C) is issued the beer-only restaurant license by no later than [~~December 31, 2011~~]
1284 May 1, 2012; and

1285 (D) once constructed, will have a bar structure that does not meet the requirements of
1286 Subsection 32B-6-905(12)(a)(ii); or

1287 (iii) is a bar structure grandfathered under Section 32B-6-409.

1288 (b) "Grandfathered bar structure" does not include a grandfathered bar structure
1289 described in Subsection (1)(a) on or after the day on which a restaurant remodels the
1290 grandfathered bar structure, as defined by rule made by the commission.

1291 (2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered
1292 bar structure notwithstanding whether a restaurant undergoes a change of ownership.

1293 Section 12. **Effective date -- Retrospective operation.**

1294 (1) If approved by two-thirds of all the members elected to each house, this bill takes
1295 effect upon approval by the governor, or the day following the constitutional time limit of Utah
1296 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1297 the date of veto override, except that the amendments to Section 32B-6-902 (Effective
1298 03/01/12) in this bill take effect on March 1, 2012.

1299 (2) The amendments in this bill have retrospective operation to July 1, 2011, except for
1300 the amendments to Section 32B-6-902 (Effective 03/01/12).

Legislative Review Note
as of 7-6-11 3:22 PM

Office of Legislative Research and General Counsel