

- 28 ▶ addresses audits;
- 29 ▶ provides for internal audits division;
- 30 ▶ modifies provisions related to markup for small manufacturers;
- 31 ▶ addresses requirements for package agency agreements;
- 32 ▶ requires a hearing by a hearing examiner of a department recommendation to not
- 33 renew a license or to revoke a license;
- 34 ▶ modifies operational requirements for a reception center;
- 35 ▶ addresses provisions related to the transfer of retail licenses;
- 36 ▶ authorizes the director to issue or deny issuance of certain permits with the approval
- 37 of the Compliance, Licensing, and Enforcement Subcommittee, and subject to
- 38 revocation or issuance by the Commission;
- 39 ▶ addresses notification of an event to law enforcement;
- 40 ▶ requires the director to issue monthly reports to the commission of the director's
- 41 activities relative to permits;
- 42 ▶ allows certain permittees to change the location of where to store, sell, offer for
- 43 sale, furnish, or allow consumption with the approval of the director and the
- 44 Compliance, Licensing, and Enforcement Subcommittee;
- 45 ▶ addresses purposes of which the commission may hold a closed meeting;
- 46 ▶ provides that certain records related to the department or commission are protected
- 47 records; and
- 48 ▶ makes technical and conforming amendments.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill takes effect on July 1, 2012.

52a **§→ This bill coordinates with H.B. 354, Alcoholic Beverage Amendments, to merge substantive**

52b **amendments.**

52c **This bill coordinates with H.B. 142, Alcohol Amendments, to merge substantive**

52d **amendments. ←§**

53 **Utah Code Sections Affected:**

54 AMENDS:

- 55 **32B-1-102**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 56 **32B-2-201**, as last amended by Laws of Utah 2011, Chapters 308 and 334
- 57 **32B-2-202**, as last amended by Laws of Utah 2011, Chapter 334
- 58 **32B-2-205**, as last amended by Laws of Utah 2011, Chapter 334

- 59 **32B-2-206**, as last amended by Laws of Utah 2011, Chapter 336
- 60 **32B-2-207**, as enacted by Laws of Utah 2010, Chapter 276
- 61 **32B-2-209**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 62 **32B-2-302**, as enacted by Laws of Utah 2010, Chapter 276
- 63 **32B-2-304**, as enacted by Laws of Utah 2010, Chapter 276
- 64 **32B-2-605**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 65 **32B-3-204**, as enacted by Laws of Utah 2010, Chapter 276
- 66 **32B-6-805**, as enacted by Laws of Utah 2011, Chapter 334
- 67 **32B-8a-302 (Effective 07/01/12)**, as enacted by Laws of Utah 2011, Chapter 334
- 68 **32B-8a-303 (Effective 07/01/12)**, as enacted by Laws of Utah 2011, Chapter 334
- 69 **32B-9-201**, as enacted by Laws of Utah 2010, Chapter 276
- 70 **32B-9-202**, as enacted by Laws of Utah 2010, Chapter 276
- 71 **32B-9-204**, as last amended by Laws of Utah 2011, Chapters 307 and 334
- 72 **32B-9-303**, as enacted by Laws of Utah 2010, Chapter 276
- 73 **32B-9-403**, as enacted by Laws of Utah 2010, Chapter 276
- 74 **32B-9-404**, as enacted by Laws of Utah 2010, Chapter 276
- 75 **52-4-205**, as last amended by Laws of Utah 2011, Chapters 46 and 334
- 76 **63G-2-305**, as last amended by Laws of Utah 2011, Chapters 18, 46, 55, 80, 151, and

77 161

78 **63I-5-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

79 ENACTS:

- 80 **32B-2-201.5**, Utah Code Annotated 1953
- 81 **32B-2-302.5**, Utah Code Annotated 1953
- 82 **32B-2-210**, Utah Code Annotated 1953

82a **§→ Utah Code Sections Affected by Coordination Clause:**

82b **32B-2-210, Utah Code Annotated 1953**

82c **59-15a-102, Utah Code Annotated 1953**

82d **59-15a-103, Utah Code Annotated 1953 ←§**



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

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

86 **32B-1-102. Definitions.**

87 As used in this title:

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

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

555 (94) "Room service" means furnishing an alcoholic product to a person in a guest room
556 of a:

- 557 (a) hotel; or
- 558 (b) resort facility.

559 (95) "Serve" means to place an alcoholic product before an individual.

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

561 (b) "School" does not include an educational facility.

562 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for
563 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,
564 delivered for value, or by a means or under a pretext is promised or obtained, whether done by
565 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules
566 made by the commission.

567 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity
568 appears at or performs:

- 569 (a) for the entertainment of one or more patrons;
- 570 (b) on the premises of:
 - 571 (i) a social club licensee; or
 - 572 (ii) a tavern;
- 573 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- 574 (d) on a contractual or voluntary basis; and
- 575 (e) whether or not the person is designated as:
 - 576 (i) an employee;
 - 577 (ii) an independent contractor;
 - 578 (iii) an agent of the licensee; or
 - 579 (iv) a different type of classification.

580 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,
581 Single Event Permit.

582 (100) "Small brewer" means a brewer who manufactures less than ~~80,000~~ [f] **60,000** [f]
582a [~~80,000~~] ~~←~~ \$
583 barrels of beer, heavy beer, and flavored malt beverages per year.

584 (101) "Social club license" means a license issued in accordance with Chapter 5, Retail
585 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a

958 (1) "Upper management" means the director, a deputy director, or other ~~§~~ **[exempt]**
 958a **schedule AD, AR, or AS** ~~←§~~
 959 employee of the department, ~~§~~ **as defined in Section 67-19-15,** ~~←§~~ except for the director of
 959a internal audits and auditors hired by the
 960 director of internal audits under Section 32B-2-302.5.

961 ~~[(1)]~~ (2) (a) Subject to this title, including the requirements of Chapter 1, Part 3,
 962 Qualifications and Background, the director may prescribe the qualifications of a department
 963 employee.

964 (b) The director may hire an employee who is upper management only with the
 965 approval of four commissioners voting in an open meeting.

966 (c) Except as provided in Section 32B-1-303, the executive director may dismiss an
 967 employee who is upper management after consultation with the chair of the commission.

968 ~~[(2)]~~ (3) (a) A person who seeks employment with the department shall file with the
 969 department an application under oath or affirmation in a form prescribed by the commission.

970 (b) Upon receiving an application, the department shall determine whether the
 971 individual is:

- 972 (i) of good moral character; and
- 973 (ii) qualified for the position sought.

974 (c) The department shall select an individual for employment or advancement with the
 975 department in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

976 ~~[(3)]~~ (4) The following are not considered a department employee:

- 977 (a) a package agent;
- 978 (b) a licensee;
- 979 (c) a staff member of a package agent; or
- 980 (d) staff of a licensee.

981 ~~[(4)]~~ (5) The department may not employ a minor to:

- 982 (a) work in:
 - 983 (i) a state store; or
 - 984 (ii) a department warehouse; or
- 985 (b) engage in an activity involving the handling of an alcoholic product.

986 Section 8. Section **32B-2-209** is amended to read:

987 **32B-2-209. Prohibited interests, relationships, and actions.**

988 (1) As used in this section:

1113 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 1114 63A-3-107.

1115 Section 10. Section **32B-2-302** is amended to read:

1116 **32B-2-302. Exempt from Division of Finance -- Application of procurement --**
 1117 **External audits.**

1118 (1) (a) The laws that govern the Division of Finance are not applicable to the
 1119 department in the purchase and sale of an alcoholic product.

1120 ~~[(2)(a) The state auditor, or a person appointed by the state auditor, shall annually~~
 1121 ~~audit the department's accounts.]~~

1122 ~~[(b) If an audit is conducted by a person appointed by the state auditor, the person shall~~
 1123 ~~make the audit report to the state auditor.]~~

1124 ~~[(c) The state auditor shall submit a copy of an audit report to the Legislature by no~~
 1125 ~~later than the January 1 following the close of the fiscal year for which the audit report is~~
 1126 ~~made.]~~

1127 (b) The department is exempt from Title 63G, Chapter 6, Utah Procurement Code, for
 1128 the purchase of an alcoholic product. The department is subject to Title 63G, Chapter 6, Utah
 1129 Procurement Code, for any purchase other than for an alcoholic product.

1130 (2) The commission shall annually:

1131 (a) select a private person to perform a financial audit of the department's accounts,
 1132 subject to the state auditor approving the private person selected to perform the financial audit;

1133 (b) notify the governor of the private person selected to perform the financial audit; and

1134 (c) determine the scope and focus of the financial audit in an open meeting of the
 1135 commission before the audit commences.

1136 (3) (a) Biannually, beginning for fiscal year 2013-14, the state auditor shall conduct an
 1137 audit of the department's:

1138 (i) management operations, best practices, and efficiency; and

1139 (ii) ethics and statutory compliance.

1140 (b) In addition to complying with Subsection (3)(a), the state auditor may engage in an
 1141 activity related to the department or commission allowed under ~~§~~→ **Utah Constitution, Article**
 1141a **VII, Section 15, or** ←~~§~~ Title 67, Chapter 3, Auditor.

1142 (4) The commission shall forward an audit report issued under Subsection (2) or (3) to
 1143 the following by no later than 30 days after the day on which the audit report is made:

1175 (ii) the legislative auditor general; and
 1176 (iii) the Legislative Management Committee.
 1177 (e) Within 120 calendar days of an internal audit being completed, the commission
 1178 shall prepare a report to the governor describing steps taken to implement the recommendations
 1179 of the audit or a detailed explanation of why recommendations have not been implemented.
 1180 The chair of the commission shall forward the report to:

1181 (i) the legislative auditor general; and
 1182 (ii) the Legislative Management Committee.
 1183 (f) The chair of the commission shall make such other reports as the governor requests.
 1184 Section 12. Section **32B-2-304** is amended to read:

1185 **32B-2-304. Liquor prices -- School lunch program.**

1186 (1) For purposes of this section:
 1187 (a) (i) "Landed case cost" means:
 1188 (A) the cost of the product; and
 1189 (B) inbound shipping costs incurred by the department.
 1190 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
 1191 of the department to a state store.
 1192 (b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

1193 **§→ [f] (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer**
 1193a **who**
 1194 **manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored**
 1194a **malt**

1195 **beverage. [f] ←§**

1196 (2) Except as provided in Subsection (3):
 1197 (a) spirituous liquor sold by the department within the state shall be marked up in an
 1198 amount not less than 86% above the landed case cost to the department;
 1199 (b) wine sold by the department within the state shall be marked up in an amount not
 1200 less than 86% above the landed case cost to the department;
 1201 (c) heavy beer sold by the department within the state shall be marked up in an amount
 1202 not less than 64.5% above the landed case cost to the department; and
 1203 (d) a flavored malt beverage sold by the department within the state shall be marked up
 1204 in an amount not less than 86% above the landed case cost to the department.
 1205 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked

1206 up in an amount not less than 15% above the landed case cost to the department.

1207 (b) Except for spirituous liquor sold by the department to a military installation in
1208 Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%
1209 above the landed case cost to the department if:

1210 (i) the spirituous liquor is manufactured by a manufacturer producing less than
1211 ~~60,000~~ **\$→ [f] 30,000 [f] ←\$** proof gallons of spirituous liquor in a calendar year; and

1212 (ii) the manufacturer applies to the department for a reduced markup.

1213 (c) Except for wine sold by the department to a military installation in Utah, wine that
1214 is sold by the department within the state shall be marked up 47% above the landed case cost to
1215 the department if:

1216 (i) the wine is manufactured by a manufacturer producing less than ~~40,000~~ **\$→ [f] 20,000 [f]**
1216a **←\$**

1217 gallons of wine in a calendar year; and

1218 (ii) the manufacturer applies to the department for a reduced markup.

1219 (d) Except for heavy beer sold by the department to a military installation in Utah,
1220 heavy beer that is sold by the department within the state shall be marked up 30% above the
1221 landed case cost to the department if:

1222 (i) a small brewer manufactures the heavy beer; and

1223 (ii) the small brewer applies to the department for a reduced markup.

1224 (e) The department shall verify an amount described in Subsection (3)(b) or (c)
1225 pursuant to a federal or other verifiable production report.

1226 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
1227 with the state treasurer to be credited to the Uniform School Fund and used to support the
1228 school lunch program administered by the State Board of Education under Section
1229 53A-19-201.

1230 (5) This section does not prohibit the department from selling discontinued items at a
1231 discount.

1232 Section 13. Section **32B-2-605** is amended to read:

1233 **32B-2-605. Operational requirements for package agency.**

1234 (1) (a) A person may not operate a package agency until a package agency agreement is
1235 entered into by the package agent and the department.

1236 (b) A package agency agreement shall state the conditions of operation by which the

2105 ~~[(vi) whether the location of the applicant has been previously licensed or is a new~~
 2106 ~~location;]~~

2107 ~~[(vii) whether the application involves a change of ownership of an existing location;]~~

2108 ~~[(viii) whether the applicant holds other alcohol licenses at any location;]~~

2109 ~~[(ix) whether the applicant has a violation history or a pending violation;]~~

2110 ~~[(x) projected alcohol sales for the applicant as it relates to the extent to which the~~
 2111 ~~retail license will be used;]~~

2112 ~~[(xi) whether the applicant is a small or entrepreneurial business that would benefit the~~
 2113 ~~community in which it would be located;]~~

2114 ~~[(xii) the nature of entertainment the applicant proposes; or]~~

2115 ~~[(xiii) public input in support or opposition to granting the retail license;]~~

2116 (i) commercial information or financial information obtained from a person if
 2117 disclosure of the information could reasonably be expected to result in unfair competitive
 2118 injury to the person submitting the information or would impair the ability of the Alcoholic
 2119 Beverage Control Commission from obtaining necessary information in the future; ~~§~~ → **and**

2120 ~~[(ii) ethics investigations of the Department of Alcoholic Beverage Control or the~~
 2121 ~~Alcoholic Beverage Control Commission until a public recommendation or public sanction is~~
 2122 ~~issued; and~~

2123 ~~——~~ ~~[(iii)] (ii) ←~~ ~~§~~ an audit report and the Alcoholic Beverage Control Commission's response to
 2123a the

2124 audit report until the audit report is made available under Subsection 32B-2-302(4) or
 2125 32B-2-302.5(5)(d);

2126 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
 2127 board of directors, discussing fiduciary or commercial information as defined in Section
 2128 53B-12-102; or

2129 (m) a purpose for which a meeting is required to be closed under Subsection (2).

2130 (2) The following meetings shall be closed:

2131 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
 2132 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
 2133 described in Subsections 62A-16-301(2) and (4); and

2134 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

2135 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the