

Representative Jack R. Draxler proposes the following substitute bill:

ALCOHOLIC BEVERAGE CONTROL RELATED AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and beer tax provisions to increase charges imposed on the sale of alcoholic products in the state and target the increase in revenue on enforcement related purposes.

Highlighted Provisions:

This bill:

- ▶ increases the markup on certain alcoholic products in the state;
- ▶ provides for the distribution of a certain percentage of the markup;
- ▶ addresses the Alcoholic Beverage Control Act Enforcement Fund;
- ▶ increases the beer tax rate;
- ▶ provides for the deposit of a certain percentage of the beer tax increase; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

This bill appropriates in fiscal 2014:

- ▶ to Attorney General - Administration as an ongoing appropriation:
 - from the Markup Holding Fund, \$62,000 to pay for costs associated with enforcement of Title 32B.

Other Special Clauses:



26 This bill takes effect on July 1, 2013.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **32B-2-301**, as last amended by Laws of Utah 2012, Chapter 357

30 **32B-2-304**, as last amended by Laws of Utah 2012, Chapter 357

31 **32B-2-305**, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1

32 **59-15-101**, as last amended by Laws of Utah 2010, Chapter 276

33 **59-15-109**, as last amended by Laws of Utah 2011, Chapter 281



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

36 Section 1. Section **32B-2-301** is amended to read:

37 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

38 (1) The following are property of the state:

39 (a) the money received in the administration of this title, except as otherwise provided;

40 and

41 (b) property acquired, administered, possessed, or received by the department.

42 (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

43 (b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the
44 administration of this title shall be transferred to the Liquor Control Fund.

45 (3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

46 (b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit
47 revenue remitted to the State Tax Commission from the markup imposed under Section
48 32B-2-304 into the Markup Holding Fund.

49 (c) Money deposited into the Markup Holding Fund may be expended:

50 (i) to the extent appropriated by the Legislature; and

51 (ii) to fund the deposits required by Subsection 32B-2-304(4), Subsection
52 32B-2-304(7), and Subsection 32B-2-305(4).

53 (4) The state treasurer shall by warrant draw from the Liquor Control Fund and, to the
54 extent appropriated by the Legislature, from the Markup Holding Fund, the expenses, debts,
55 and liabilities incurred by the department in connection with the administration of this title or
56 any other expense necessary for the administration of this title, including:

- 57 (a) salaries;
- 58 (b) premiums, if any, on a bond for which the department pays premiums; and
- 59 (c) an expenditure incurred in establishing, operating, or maintaining a state store or
- 60 package agency.

61 (5) The department shall transfer annually from the Liquor Control Fund and the State
62 Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a
63 sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer
64 of money under this Subsection (5). The transfers shall be calculated by no later than
65 September 1 and made by no later than September 30 after a fiscal year.

66 (6) (a) By the end of each day, the department shall:

- 67 (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
- 68 (ii) report the deposit to the state treasurer.

69 (b) A commissioner or department employee is not personally liable for a loss caused
70 by the default or failure of a qualified depository.

71 (c) Money deposited in a qualified depository is entitled to the same priority of
72 payment as other public funds of the state.

73 (7) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant
74 drawn against the Liquor Control Fund by the state treasurer, the cash resources of the General
75 Fund may be used to the extent necessary. At no time may the fund equity of the Liquor
76 Control Fund fall below zero.

77 Section 2. Section **32B-2-304** is amended to read:

78 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

79 (1) For purposes of this section:

80 (a) (i) "Landed case cost" means:

- 81 (A) the cost of the product; and
- 82 (B) inbound shipping costs incurred by the department.

83 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
84 of the department to a state store.

85 (b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

86 (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who
87 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt

88 beverage.

89 (2) Except as provided in Subsection (3):

90 (a) spirituous liquor sold by the department within the state shall be marked up in an
91 amount not less than [~~86%~~] 90% above the landed case cost to the department;

92 (b) wine sold by the department within the state shall be marked up in an amount not
93 less than [~~86%~~] 90% above the landed case cost to the department;

94 (c) heavy beer sold by the department within the state shall be marked up in an amount
95 not less than 64.5% above the landed case cost to the department; and

96 (d) a flavored malt beverage sold by the department within the state shall be marked up
97 in an amount not less than [~~86%~~] 90% above the landed case cost to the department.

98 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked
99 up in an amount not less than 15% above the landed case cost to the department.

100 (b) Except for spirituous liquor sold by the department to a military installation in
101 Utah, spirituous liquor that is sold by the department within the state shall be marked up [~~47%~~]
102 50% above the landed case cost to the department if:

103 (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000
104 proof gallons of spirituous liquor in a calendar year; and

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

106 (c) Except for wine sold by the department to a military installation in Utah, wine that
107 is sold by the department within the state shall be marked up [~~47%~~] 50% above the landed case
108 cost to the department if:

109 (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of
110 wine in a calendar year; and

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

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

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

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

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

119 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
120 with the state treasurer to be credited to the Uniform School Fund and used to support the
121 school lunch program administered by the State Board of Education under Section
122 53A-19-201.

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

125 (6) (a) The department shall collect the markup and remit the markup collected by the
126 department under this section:

127 (i) to the State Tax Commission monthly on or before the last day of the month
128 immediately following the last day of the previous month; and

129 (ii) using a form prescribed by the State Tax Commission.

130 (b) For liquor provided to a package agency on consignment, the department shall
131 remit the markup to the State Tax Commission for the month during which the liquor is
132 provided to the package agency regardless of when the package agency pays the department for
133 the liquor provided to the package agency.

134 (c) The State Tax Commission shall deposit revenues remitted to it under Subsection
135 (6)(a) into the Markup Holding Fund created in Section 32B-2-301.

136 (d) The assessment, collection, and refund of a markup under this section shall be in
137 accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

138 (e) The department if it fails to comply with this Subsection (6), is subject to penalties
139 as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

140 (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter
141 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

142 (7) Beginning with fiscal year 2013-14, each fiscal year, 3.17% of the markup under
143 this section shall be distributed as follows:

144 (a) \$62,000 shall be distributed to the Office of the Attorney General to be used to pay
145 costs associated with the enforcement of this title; and

146 (b) the amount collected in excess of the amount distributed under Subsection (7)(a)
147 shall be deposited into the Alcoholic Beverage Control Act Enforcement Fund created in
148 Section 32B-2-305.

149 Section 3. Section **32B-2-305** is amended to read:

150 **32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.**

151 (1) As used in this section:

152 (a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.

153 (b) "Enforcement ratio" is as defined in Section 32B-1-201.

154 (c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in
155 this section.

156 (2) There is created a restricted special revenue fund known as the "Alcoholic
157 Beverage Control Act Enforcement Fund."

158 (3) (a) The fund consists of:

159 (i) deposits made under Subsection (4); [~~and~~]

160 (ii) deposits made under Subsections 32B-2-304(7)(b) and 59-15-109(1)(b); and

161 [~~(ii)~~] (iii) interest earned on the fund.

162 (b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

163 (4) After the deposit made under Section 32B-2-304 for the school lunch program, the
164 department shall deposit 1% of the total gross revenue from the sale of liquor with the state
165 treasurer to be credited to the fund to be used by the Department of Public Safety as provided
166 in Subsection (5).

167 (5) (a) The Department of Public Safety shall expend money from the fund to
168 supplement appropriations by the Legislature so that the Department of Public Safety maintains
169 a sufficient number of alcohol-related law enforcement officers such that beginning on July 1,
170 2012, each year the enforcement ratio as of July 1 is equal to or less than the number specified
171 in Section 32B-1-201.

172 (b) Beginning July 1, 2012, four alcohol-related law enforcement officers shall have as
173 a primary focus the enforcement of this title in relationship to restaurants.

174 Section 4. Section **59-15-101** is amended to read:

175 **59-15-101. Tax basis -- Rate.**

176 (1) (a) A tax is imposed at the rate specified in Subsection (1)(b) on all beer, as defined
177 in Section 32B-1-102, that is imported or manufactured for sale, use, or distribution in this
178 state.

179 (b) The tax described in Subsection (1)(a) shall be imposed at a rate of:

180 [~~(i) \$11 per 31-gallon barrel for beer imported or manufactured;~~]

181 ~~[(A) before July 1, 2003; and]~~
 182 ~~[(B) for sale, use, or distribution in this state; and]~~
 183 ~~[(ii) \$12.80 per 31-gallon barrel for beer imported or manufactured:]~~
 184 ~~[(A) on or after July 1, 2003; and]~~
 185 ~~[(B) for sale, use, or distribution in this state:]~~
 186 (i) \$13.40 per 31-gallon barrel for beer that contains not more than 4% of alcohol by
 187 volume or 3.2% by weight:

188 (A) on or after July 1, 2013; and
 189 (B) for sale, use, or distribution in this state; and
 190 (ii) \$12.80 per 31-gallon barrel for beer that contains more than 4% alcohol by volume:

191 (A) on or after July 1, 2013; and
 192 (B) for sale, use, or distribution in this state.
 193 (c) The tax imposed under this Subsection (1):
 194 (i) shall be imposed at a proportionate rate for:
 195 (A) any quantity of beer other than a 31-gallon barrel; or
 196 (B) the fractional parts of a 31-gallon barrel; and
 197 (ii) may not be imposed more than once on the same beer.

198 (2) A tax may not be imposed on beer:
 199 (a) sold to the United States and its agencies; or
 200 (b) (i) manufactured or imported for sale, use, or distribution outside the state; and
 201 (ii) exported from the state.

202 Section 5. Section **59-15-109** is amended to read:

203 **59-15-109. Tax money to be paid to state treasurer.**

204 (1) Taxes collected under this chapter shall be paid by the commission to the state
 205 treasurer daily for deposit as follows:

206 (a) beginning with fiscal year 2013-14, each fiscal year, 3.17% of the revenue collected
 207 under Subsection 59-15-101(1)(b)(i) shall be deposited into the Alcoholic Beverage Control
 208 Act Enforcement Fund created in Section 32B-2-305;

209 ~~[(a)]~~ (b) after making the deposit described in Subsection (1)(a), the greater of the
 210 following shall be deposited into the Alcoholic Beverage Enforcement and Treatment
 211 Restricted Account created in Section 32B-2-403:

212 (i) an amount calculated by:
 213 (A) determining an amount equal to 40% of the revenue collected for the fiscal year
 214 two years preceding the fiscal year for which the deposit is made; and
 215 (B) subtracting \$30,000 from the amount determined under Subsection (1)(a)(i)(A); or
 216 (ii) \$4,350,000; and
 217 ~~[(b)] (c)~~ the revenue collected in excess of the amount deposited in accordance with
 218 ~~[Subsection]~~ Subsections (1)(a) and (b) shall be deposited into the General Fund.

219 (2) (a) The commission shall notify the entities described in Subsection (2)(b) not later
 220 than the September 1 preceding the fiscal year of the deposit of:
 221 (i) the amount of the proceeds of the beer excise tax collected in accordance with this
 222 section for the fiscal year two years preceding the fiscal year of deposit; and
 223 (ii) an amount equal to 40% of the amount listed in Subsection (2)(a)(i).
 224 (b) The notification required by Subsection (2)(a) shall be sent to:
 225 (i) the Governor's Office of Planning and Budget; and
 226 (ii) the Legislative Fiscal Analyst.

227 Section 6. **Appropriation.**

228 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
 229 the fiscal year beginning July 1, 2013, and ending June 30, 2014, the following sums of money
 230 are appropriated from resources not otherwise appropriated, or reduced from amounts
 231 previously appropriated out of the funds or accounts indicated. These sums of money are in
 232 addition to any amounts previously appropriated for fiscal year 2014:

233 To Attorney General - Administration
 234 From Markup Holding Restricted Account \$62,000

235 Schedule of Programs:
 236 Administration \$62,000

237 The Legislature intends that the money be used for the purposes outlined in Subsection
 238 32B-2-304(7)(a).

239 Section 7. **Effective date.**

240 This bill takes effect on July 1, 2013.