

**ALCOHOLIC BEVERAGE CONTROL ACT AND SMALL
MANUFACTURERS**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address small manufacturers.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "small brewer";
- ▶ modifies the amount of production of a manufacturer in order to qualify for a reduced markup;
- ▶ addresses the unlawful sale or furnishing of an alcoholic product;
- ▶ addresses the purchase and storage of an alcoholic product by a retail licensee;
- ▶ modifies the general operational requirements for off-premise beer retailers;
- ▶ modifies the general operational requirements for event permittees;
- ▶ removes the authorization for a small brewer to sell beer directly to a beer retailer or event permittee;
- ▶ removes the authority for a small brewer to sell directly to a retail licensee, off-premise beer retailer, or event permittee;
- ▶ eliminates requirements related to use of a warehousing facility by a small brewer;
- ▶ repeals the exemption for small brewers related to geographic territories of beer wholesaler licensees; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **32B-1-102**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

35 **32B-2-304**, as last amended by Laws of Utah 2012, Chapter 357

36 **32B-4-401**, as enacted by Laws of Utah 2010, Chapter 276

37 **32B-5-303**, as last amended by Laws of Utah 2011, Chapter 307

38 **32B-6-706**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

39 **32B-7-202**, as last amended by Laws of Utah 2011, Chapter 307

40 **32B-9-204**, as last amended by Laws of Utah 2012, Chapter 365

41 **32B-11-201**, as last amended by Laws of Utah 2011, Chapter 334

42 **32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334

43 **32B-13-201**, as last amended by Laws of Utah 2011, Chapter 334



44
45 *Be it enacted by the Legislature of the state of Utah:*

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

47 **32B-1-102. Definitions.**

48 As used in this title:

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

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

51 (b) that is located at an international airport with a United States Customs office on the

52 premises of the international airport.

53 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,

54 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

55 (3) "Alcoholic beverage" means the following:

56 (a) beer; or

57 (b) liquor.

58 (4) (a) "Alcoholic product" means a product that:

59 (i) contains at least .5% of alcohol by volume; and
60 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
61 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
62 in an amount equal to or greater than .5% of alcohol by volume.

63 (b) "Alcoholic product" includes an alcoholic beverage.

64 (c) "Alcoholic product" does not include any of the following common items that
65 otherwise come within the definition of an alcoholic product:

66 (i) except as provided in Subsection (4)(d), an extract;

67 (ii) vinegar;

68 (iii) cider;

69 (iv) essence;

70 (v) tincture;

71 (vi) food preparation; or

72 (vii) an over-the-counter medicine.

73 (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation
74 when it is used as a flavoring in the manufacturing of an alcoholic product.

75 (5) "Alcohol training and education seminar" means a seminar that is:

76 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

77 (b) described in Section 62A-15-401.

78 (6) "Banquet" means an event:

79 (a) that is held at one or more designated locations approved by the commission in or
80 on the premises of a:

81 (i) hotel;

82 (ii) resort facility;

83 (iii) sports center; or

84 (iv) convention center;

85 (b) for which there is a contract:

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

87 and

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

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

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

92 (i) at which an alcoholic product is:

93 (A) stored; or

94 (B) dispensed; or

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

96 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any

97 place of the surface or structure an alcoholic product is:

98 (i) stored; or

99 (ii) dispensed.

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

101 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by

102 volume or 3.2% by weight; and

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

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

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

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

107 (ii) is referred to as:

108 (A) beer;

109 (B) ale;

110 (C) porter;

111 (D) stout;

112 (E) lager; or

113 (F) a malt or malted beverage.

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

115 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,

116 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

117 (10) "Beer retailer" means a business:

118 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,

119 whether for consumption on or off the business premises; and

120 (b) to whom a license is issued:

121 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
122 Beer Retailer Local Authority; or

123 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
124 and Chapter 6, Part 7, On-premise Beer Retailer License.

125 (11) "Beer wholesaling license" means a license:

126 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

127 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
128 retail licensees or off-premise beer retailers.

129 (12) "Billboard" means a public display used to advertise, including:

130 (a) a light device;

131 (b) a painting;

132 (c) a drawing;

133 (d) a poster;

134 (e) a sign;

135 (f) a signboard; or

136 (g) a scoreboard.

137 (13) "Brewer" means a person engaged in manufacturing:

138 (a) beer;

139 (b) heavy beer; or

140 (c) a flavored malt beverage.

141 (14) "Brewery manufacturing license" means a license issued in accordance with
142 Chapter 11, Part 5, Brewery Manufacturing License.

143 (15) "Certificate of approval" means a certificate of approval obtained from the
144 department under Section 32B-11-201.

145 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
146 a bus company to a group of persons pursuant to a common purpose:

147 (a) under a single contract;

148 (b) at a fixed charge in accordance with the bus company's tariff; and

149 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
150 motor vehicle, and a driver to travel together to one or more specified destinations.

151 (17) "Church" means a building:

- 152 (a) set apart for worship;
- 153 (b) in which religious services are held;
- 154 (c) with which clergy is associated; and
- 155 (d) that is tax exempt under the laws of this state.
- 156 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail
- 157 License Act, and Chapter 6, Part 4, Club License.
- 158 (b) "Club license" includes:
- 159 (i) a dining club license;
- 160 (ii) an equity club license;
- 161 (iii) a fraternal club license; or
- 162 (iv) a social club license.
- 163 (19) "Commission" means the Alcoholic Beverage Control Commission created in
- 164 Section 32B-2-201.
- 165 (20) "Commissioner" means a member of the commission.
- 166 (21) "Community location" means:
- 167 (a) a public or private school;
- 168 (b) a church;
- 169 (c) a public library;
- 170 (d) a public playground; or
- 171 (e) a public park.
- 172 (22) "Community location governing authority" means:
- 173 (a) the governing body of the community location; or
- 174 (b) if the commission does not know who is the governing body of a community
- 175 location, a person who appears to the commission to have been given on behalf of the
- 176 community location the authority to prohibit an activity at the community location.
- 177 (23) "Container" means a receptacle that contains an alcoholic product, including:
- 178 (a) a bottle;
- 179 (b) a vessel; or
- 180 (c) a similar item.
- 181 (24) "Convention center" means a facility that is:
- 182 (a) in total at least 30,000 square feet; and

183 (b) otherwise defined as a "convention center" by the commission by rule.

184 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a
185 dining area of a licensed premises where seating is provided to a patron for service of food.

186 (b) "Counter" does not include a surface or structure if on or at any point of the surface
187 or structure an alcoholic product is:

188 (i) stored; or

189 (ii) dispensed.

190 (26) "Department" means the Department of Alcoholic Beverage Control created in
191 Section 32B-2-203.

192 (27) "Department compliance officer" means an individual who is:

193 (a) an auditor or inspector; and

194 (b) employed by the department.

195 (28) "Department sample" means liquor that is placed in the possession of the
196 department for testing, analysis, and sampling.

197 (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail
198 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
199 dining club license.

200 (30) "Director," unless the context requires otherwise, means the director of the
201 department.

202 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
203 title:

204 (a) against a person subject to administrative action; and

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

206 (32) (a) Subject to Subsection (32)(b), "dispense" means:

207 (i) drawing of an alcoholic product:

208 (A) from an area where it is stored; or

209 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),

210 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

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

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

215 (i) a full-service restaurant license;

216 (ii) a limited-service restaurant license;

217 (iii) a reception center license; and

218 (iv) a beer-only restaurant license.

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

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

223 (35) "Educational facility" includes:

224 (a) a nursery school;

225 (b) an infant day care center; and

226 (c) a trade and technical school.

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

230 (37) "Event permit" means:

231 (a) a single event permit; or

232 (b) a temporary beer event permit.

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

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

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

238 (ii) that is treated by processing, filtration, or another method of manufacture that is not
239 generally recognized as a traditional process in the production of a beer as described in 27
240 C.F.R. Sec. 25.55;

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

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

- 245 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
- 246 (b) "Flavored malt beverage" is considered liquor for purposes of this title.
- 247 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,
- 248 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
- 249 as a fraternal club license.
- 250 (41) "Full-service restaurant license" means a license issued in accordance with
- 251 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.
- 252 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
- 253 an alcoholic product, by sale or otherwise.
- 254 (b) "Furnish" includes to:
- 255 (i) serve;
- 256 (ii) deliver; or
- 257 (iii) otherwise make available.
- 258 (43) "Guest" means an individual who meets the requirements of Subsection
- 259 32B-6-407(9).
- 260 (44) "Health care practitioner" means:
- 261 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 262 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
- 263 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- 264 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
- 265 Act;
- 266 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
- 267 Nurse Practice Act;
- 268 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
- 269 Practice Act;
- 270 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
- 271 Therapy Practice Act;
- 272 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 273 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
- 274 Professional Practice Act;
- 275 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

276 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
277 Practice Act;

278 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
279 Hygienist Practice Act; and

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

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

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

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

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

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

286 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,
287 Part 8, Identification Card Act.

288 (48) "Industry representative" means an individual who is compensated by salary,
289 commission, or other means for representing and selling an alcoholic product of a
290 manufacturer, supplier, or importer of liquor.

291 (49) "Industry representative sample" means liquor that is placed in the possession of
292 the department for testing, analysis, and sampling by a local industry representative on the
293 premises of the department to educate the local industry representative of the quality and
294 characteristics of the product.

295 (50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing
296 of an alcoholic product is prohibited by:

297 (a) law; or

298 (b) court order.

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

300 (a) is significantly impaired as to the person's mental or physical functions as a result of
301 the use of:

302 (i) an alcoholic product;

303 (ii) a controlled substance;

304 (iii) a substance having the property of releasing toxic vapors; or

305 (iv) a combination of Subsections (51)(a)(i) through (iii); and

306 (b) exhibits plain and easily observed outward manifestations of behavior or physical

307 signs produced by the over consumption of an alcoholic product.

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

309 (a) a department compliance officer; or

310 (b) a nondepartment enforcement officer.

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

312 (54) "License" means:

313 (a) a retail license;

314 (b) a license issued in accordance with Chapter 11, Manufacturing and Related

315 Licenses Act;

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

317 or

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

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

320 (56) "Limited-service restaurant license" means a license issued in accordance with

321 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

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

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

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

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

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

331 (A) is:

332 (I) alcohol;

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

334 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or

335 (IV) other drink or drinkable liquid; and

336 (B) (I) contains at least .5% alcohol by volume; and

337 (II) is suitable to use for beverage purposes.

- 338 (ii) "Liquor" includes:
- 339 (A) heavy beer;
- 340 (B) wine; and
- 341 (C) a flavored malt beverage.
- 342 (b) "Liquor" does not include beer.
- 343 (59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.
- 344 (60) "Liquor warehousing license" means a license that is issued:
- 345 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- 346 (b) to a person, other than a licensed manufacturer, who engages in the importation for
- 347 storage, sale, or distribution of liquor regardless of amount.
- 348 (61) "Local authority" means:
- 349 (a) for premises that are located in an unincorporated area of a county, the governing
- 350 body of a county; or
- 351 (b) for premises that are located in an incorporated city or a town, the governing body
- 352 of the city or town.
- 353 (62) "Lounge or bar area" is as defined by rule made by the commission.
- 354 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
- 355 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 356 (64) "Member" means an individual who, after paying regular dues, has full privileges
- 357 in an equity club licensee or fraternal club licensee.
- 358 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
- 359 or homeport facility for a ship:
- 360 (i) (A) under the control of the United States Department of Defense; or
- 361 (B) of the National Guard;
- 362 (ii) that is located within the state; and
- 363 (iii) including a leased facility.
- 364 (b) "Military installation" does not include a facility used primarily for:
- 365 (i) civil works;
- 366 (ii) a rivers and harbors project; or
- 367 (iii) a flood control project.
- 368 (66) "Minor" means an individual under the age of 21 years.

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

400 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
401 Agency, to sell packaged liquor for consumption off the premises of the package agency.

402 (74) "Package agent" means a person who holds a package agency.

403 (75) "Patron" means an individual to whom food, beverages, or services are sold,
404 offered for sale, or furnished, or who consumes an alcoholic product including:

405 (a) a customer;

406 (b) a member;

407 (c) a guest;

408 (d) an attendee of a banquet or event;

409 (e) an individual who receives room service;

410 (f) a resident of a resort;

411 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;

412 or

413 (h) an invitee.

414 (76) "Permittee" means a person issued a permit under:

415 (a) Chapter 9, Event Permit Act; or

416 (b) Chapter 10, Special Use Permit Act.

417 (77) "Person subject to administrative action" means:

418 (a) a licensee;

419 (b) a permittee;

420 (c) a manufacturer;

421 (d) a supplier;

422 (e) an importer;

423 (f) one of the following holding a certificate of approval:

424 (i) an out-of-state brewer;

425 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

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

427 (g) staff of:

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

429 (ii) a package agent.

430 (78) "Premises" means a building, enclosure, or room used in connection with the

431 storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product,
432 unless otherwise defined in this title or rules made by the commission.

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

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

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

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

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

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

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

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

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

447 (i) an identification card;

448 (ii) an identification that:

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

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

452 (C) includes date of birth; and

453 (D) has a picture affixed;

454 (iii) a valid driver license certificate that:

455 (A) includes date of birth;

456 (B) has a picture affixed; and

457 (C) is issued:

458 (I) under Title 53, Chapter 3, Uniform Driver License Act; or

459 (II) in accordance with the laws of the state in which it is issued;

460 (iv) a military identification card that:

461 (A) includes date of birth; and

462 (B) has a picture affixed; or
463 (v) a valid passport.
464 (b) "Proof of age" does not include a driving privilege card issued in accordance with
465 Section 53-3-207.

466 (82) (a) "Public building" means a building or permanent structure that is:

467 (i) owned or leased by:

468 (A) the state; or

469 (B) a local government entity; and

470 (ii) used for:

471 (A) public education;

472 (B) transacting public business; or

473 (C) regularly conducting government activities.

474 (b) "Public building" does not include a building owned by the state or a local
475 government entity when the building is used by a person, in whole or in part, for a proprietary
476 function.

477 (83) "Public conveyance" means a conveyance to which the public or a portion of the
478 public has access to and a right to use for transportation, including an airline, railroad, bus,
479 boat, or other public conveyance.

480 (84) "Reception center" means a business that:

481 (a) operates facilities that are at least 5,000 square feet; and

482 (b) has as its primary purpose the leasing of the facilities described in Subsection
483 (84)(a) to a third party for the third party's event.

484 (85) "Reception center license" means a license issued in accordance with Chapter 5,
485 Retail License Act, and Chapter 6, Part 8, Reception Center License.

486 (86) (a) "Record" means information that is:

487 (i) inscribed on a tangible medium; or

488 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.

489 (b) "Record" includes:

490 (i) a book;

491 (ii) a book of account;

492 (iii) a paper;

- 493 (iv) a contract;
- 494 (v) an agreement;
- 495 (vi) a document; or
- 496 (vii) a recording in any medium.
- 497 (87) "Residence" means a person's principal place of abode within Utah.
- 498 (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.
- 499 (89) "Resort" is as defined in Section 32B-8-102.
- 500 (90) "Resort facility" is as defined by the commission by rule.
- 501 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail
- 502 License Act, and Chapter 8, Resort License Act.
- 503 (92) "Restaurant" means a business location:
- 504 (a) at which a variety of foods are prepared;
- 505 (b) at which complete meals are served to the general public; and
- 506 (c) that is engaged primarily in serving meals to the general public.
- 507 (93) "Retail license" means one of the following licenses issued under this title:
- 508 (a) a full-service restaurant license;
- 509 (b) a limited-service restaurant license;
- 510 (c) a club license;
- 511 (d) an airport lounge license;
- 512 (e) an on-premise banquet license;
- 513 (f) an on-premise beer license;
- 514 (g) a reception center license; or
- 515 (h) a beer-only restaurant license.
- 516 (94) "Room service" means furnishing an alcoholic product to a person in a guest room
- 517 of a:
- 518 (a) hotel; or
- 519 (b) resort facility.
- 520 (95) "Serve" means to place an alcoholic product before an individual.
- 521 (96) (a) "School" means a building used primarily for the general education of minors.
- 522 (b) "School" does not include an educational facility.
- 523 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for

524 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,
525 delivered for value, or by a means or under a pretext is promised or obtained, whether done by
526 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules
527 made by the commission.

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

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

531 (b) on the premises of:

532 (i) a social club licensee; or

533 (ii) a tavern;

534 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);

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

536 (e) whether or not the person is designated as:

537 (i) an employee;

538 (ii) an independent contractor;

539 (iii) an agent of the licensee; or

540 (iv) a different type of classification.

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

543 (100) "Small brewer" means a brewer who manufactures less than [~~60,000~~] ~~§~~ → [100,000]

543a 70,000 ← ~~§~~

544 barrels of beer, heavy beer, and flavored malt beverages per year.

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

548 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
549 Special Use Permit Act.

550 (103) (a) "Spirituous liquor" means liquor that is distilled.

551 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
552 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

553 (104) "Sports center" is as defined by the commission by rule.

554 (105) (a) "Staff" means an individual who engages in activity governed by this title:

555 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
556 holder;

557 (ii) at the request of the business, including a package agent, licensee, permittee, or
558 certificate holder; or

559 (iii) under the authority of the business, including a package agent, licensee, permittee,
560 or certificate holder.

561 (b) "Staff" includes:

562 (i) an officer;

563 (ii) a director;

564 (iii) an employee;

565 (iv) personnel management;

566 (v) an agent of the licensee, including a managing agent;

567 (vi) an operator; or

568 (vii) a representative.

569 (106) "State of nudity" means:

570 (a) the appearance of:

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

572 (ii) a human genital;

573 (iii) a human pubic area; or

574 (iv) a human anus; or

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

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.

580 (107) "State of seminudity" means a state of dress in which opaque clothing covers no
581 more than:

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

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

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

- 586 (A) four inches coverage width in the front of the human body; and
- 587 (B) five inches coverage width in the back of the human body; and
- 588 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

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

- 590 (i) located on premises owned or leased by the state; and
- 591 (ii) operated by a state employee.

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

- 593 (i) a package agency;
- 594 (ii) a licensee; or
- 595 (iii) a permittee.

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

598 (b) "Store" means to place or maintain in a location an alcoholic product from which a
599 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
600 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
601 32B-6-905(12)(b)(ii).

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

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

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

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

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

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

611 (114) "Temporary domicile" means the principal place of abode within Utah of a
612 person who does not have a present intention to continue residency within Utah permanently or
613 indefinitely.

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

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

617 (a) is unsaleable because the container is:

618 (i) unlabeled;

619 (ii) leaky;

620 (iii) damaged;

621 (iv) difficult to open; or

622 (v) partly filled;

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

624 (ii) has contents that are:

625 (A) cloudy;

626 (B) spoiled; or

627 (C) chemically determined to be impure; or

628 (iii) contains:

629 (A) sediment; or

630 (B) a foreign substance; or

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

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

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

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

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

640 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

641 (1) For purposes of this section:

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

643 (A) the cost of the product; and

644 (B) inbound shipping costs incurred by the department.

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

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

648 ~~[(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who~~
 649 ~~manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt~~
 650 ~~beverage.]~~

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

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

654 (b) wine sold by the department within the state shall be marked up in an amount not
 655 less than 86% above the landed case cost to the department;

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

658 (d) a flavored malt beverage sold by the department within the state shall be marked up
 659 in an amount not less than 86% above the landed case cost to the department.

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

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

665 (i) the spirituous liquor is manufactured by a manufacturer producing less than
 666 ~~[30,000]~~ ~~←\$~~ ~~[60,000]~~ 45,000 ~~←\$~~ proof gallons of spirituous liquor in a calendar year; and

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

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

671 (i) the wine is manufactured by a manufacturer producing less than ~~[20,000]~~ ~~←\$~~ [40,000]
 671a 30,000 ~~←\$~~
 672 gallons of wine in a calendar year; and

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

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

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

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

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

681 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
682 with the state treasurer to be credited to the Uniform School Fund and used to support the
683 school lunch program administered by the State Board of Education under Section
684 53A-19-201.

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

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

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

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

692 (b) For liquor provided to a package agency on consignment, the department shall
693 remit the markup to the State Tax Commission for the month during which the liquor is
694 provided to the package agency regardless of when the package agency pays the department for
695 the liquor provided to the package agency.

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

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

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

702 (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter
703 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

704 Section 3. Section **32B-4-401** is amended to read:

705 **32B-4-401. Unlawful sale or furnishing.**

706 (1) It is unlawful for a retail licensee, a permittee, or staff of a retail licensee or
707 permittee to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another,
708 an alcoholic product, except as otherwise provided by this title.

709 (2) It is unlawful for a person in the business of selling liquor, a manufacturer, a

710 supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to
711 sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state
712 location directly or indirectly into this state except to the extent authorized by this title to:

- 713 (a) the department;
- 714 (b) a military installation;
- 715 (c) a holder of a special use permit, to the extent authorized in the special use permit;

716 or

- 717 (d) a liquor warehouse licensee licensed to distribute and transport liquor to:
 - 718 (i) the department; or
 - 719 (ii) an out-of-state wholesaler or retailer.

720 (3) ~~(a)~~ It is unlawful for a person in the business of selling beer, a manufacturer, a
721 supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship,
722 transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly
723 or indirectly into this state except to the extent authorized by this title to:

- 724 ~~(i)~~ (a) a beer wholesaler licensee;
- 725 ~~(ii)~~ (b) a military installation; or
- 726 ~~(iii)~~ (c) a holder of a special use permit, to the extent authorized in the special use
727 permit.

728 ~~[(b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of~~
729 ~~approval from selling, shipping, or transporting beer to the extent authorized by Subsection~~
730 ~~32B-11-503(5) directly to:]~~

- 731 ~~[(i) a beer retailer; or]~~
- 732 ~~[(ii) an event permittee.]~~

733 (4) (a) It is unlawful for a manufacturer, supplier, or importer of liquor in this state, or
734 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,
735 shipped, or transported liquor directly or indirectly to a person in this state except to the extent
736 authorized by this title to:

- 737 (i) the department;
- 738 (ii) a military installation;
- 739 (iii) a holder of a special use permit, to the extent authorized in the special use permit;

740 or

741 (iv) a liquor warehouser licensee who is licensed to distribute and transport liquor to:

742 (A) the department; or

743 (B) an out-of-state wholesaler or retailer.

744 (b) Subsection (4)(a) does not preclude a winery manufacturing licensee located in this
745 state from selling wine to a person on its winery premises:

746 (i) to the extent authorized by Subsection 32B-11-303(4)(c); or

747 (ii) under a package agency issued by the commission on the winery premises.

748 (5) (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or

749 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,

750 shipped, or transported beer directly or indirectly to a person in this state except to the extent

751 authorized by this title to:

752 (i) a beer wholesaler licensee;

753 (ii) a military installation; or

754 (iii) a holder of a special use permit, to the extent authorized in the special use permit.

755 (b) Subsection (5)(a) does not preclude[:~~(i) a small brewer who is a brewery~~
756 ~~manufacturing licensee located in this state from selling, shipping, and transporting beer to the~~

757 ~~extent authorized by Subsection 32B-11-503(5) directly to one of the following in this state:~~

758 ~~(A) a beer retailer; or (B) an event permittee; or (ii)] a brewery manufacturing licensee from~~

759 selling beer to a person on its manufacturing premises under Subsection 32B-11-503(4)(c) or

760 (5).

761 (6) It is unlawful for a person other than a person described in Subsection (2) or (3) to

762 sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product from an

763 out-of-state location directly or indirectly into this state, except as otherwise provided by this

764 title.

765 (7) It is unlawful for a person in this state other than a person described in Subsection

766 (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic

767 product directly or indirectly to another person in this state, except as otherwise provided by

768 this title.

769 (8) (a) A violation of Subsection (1) is a class B misdemeanor, except when otherwise
770 provided by this title.

771 (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.

772 (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

773 Section 4. Section **32B-5-303** is amended to read:

774 **32B-5-303. Purchase and storage of an alcoholic product by a retail licensee.**

775 (1) (a) A retail licensee may not purchase liquor except from a state store or package
776 agency.

777 (b) A retail licensee may transport liquor purchased from a state store or package
778 agency from the place of purchase to the licensed premises.

779 (c) A retail licensee shall pay for liquor in accordance with rules established by the
780 commission.

781 (2) (a) (i) A retail licensee may not purchase, acquire, possess for the purpose of resale,
782 or sell beer except beer that the retail licensee purchases from~~[-(A)]~~ a beer wholesaler
783 licensee~~[-or (B) a small brewer that manufactures the beer]~~.

784 (ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

785 (b) (i) If a retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler
786 licensee, the retail licensee shall purchase beer only from a beer wholesaler licensee who is
787 designated by the manufacturer to sell beer in the geographical area in which the retail licensee
788 is located, unless an alternate wholesaler is authorized by the department to sell to the retail
789 licensee as provided in Section 32B-13-301.

790 (ii) Violation of Subsection (2)(b) is a class B misdemeanor.

791 (3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in
792 a place other than as designated in the retail licensee's application, unless the retail licensee
793 first applies for and receives approval from the department for a change of location within the
794 licensed premises.

795 (4) A liquor storage area shall remain locked at all times other than those hours and
796 days when liquor sales are authorized by law.

797 Section 5. Section **32B-6-706** is amended to read:

798 **32B-6-706. Specific operational requirements for on-premise beer retailer license.**

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

802 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action

803 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

804 (i) an on-premise beer retailer;

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

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

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

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

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

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

815 (5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its
816 licensed premises during a period that:

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

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

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

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

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

824 (B) during an emergency.

825 (6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a
826 tavern.

827 (7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the
828 purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases
829 from~~[-(A)]~~ a beer wholesaler licensee~~[-or (B) a small brewer that manufactures the beer]~~.

830 (ii) Violation of Subsection (7)(a)(i) is a class A misdemeanor.

831 (b) (i) If an on-premise beer retailer purchases beer under this Subsection (7) from a
832 beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer
833 wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area

834 in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by
835 the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

836 (ii) Violation of Subsection (7)(b)(i) is a class B misdemeanor.

837 (8) A tavern shall comply with Section 32B-1-407.

838 Section 6. Section **32B-7-202** is amended to read:

839 **32B-7-202. General operational requirements for off-premise beer retailer.**

840 (1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply
841 with this section.

842 (b) Failure to comply with this section may result in a suspension or revocation of a
843 local license.

844 (2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the
845 purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases
846 from~~[-(A)]~~ a beer wholesaler licensee~~[-or (B) a small brewer that manufactures the beer]~~.

847 (ii) A violation of Subsection (2)(a) is a class A misdemeanor.

848 (b) (i) If an off-premise beer retailer purchases beer under this Subsection (2) from a
849 beer wholesaler licensee, the off-premise beer retailer shall purchase beer only from a beer
850 wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area
851 in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by
852 the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

853 (ii) A violation of Subsection (2)(b) is a class B misdemeanor.

854 (3) An off-premise beer retailer may not possess, sell, offer for sale, or furnish beer in a
855 container larger than two liters.

856 (4) A minor may not sell beer on the licensed premises of an off-premise beer retailer
857 unless:

858 (a) the sale is done under the supervision of a person 21 years of age or older who is on
859 the licensed premises; and

860 (b) the minor is at least 16 years of age.

861 (5) (a) Subject to the other provisions of this Subsection (5), an off-premise beer
862 retailer shall:

863 (i) display beer sold by the off-premise beer retailer in an area that is visibly separate
864 and distinct from the area where nonalcoholic beverages are displayed; and

- 865 (ii) display a sign in the area described in Subsection (5)(a)(i) that:
866 (A) is prominent;
867 (B) is easily readable by a consumer;
868 (C) meets the requirements for format established by the commission by rule; and
869 (D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain
870 alcohol. Please read the label carefully."
- 871 (b) Notwithstanding Subsection (5)(a), a nonalcoholic beer may be displayed with beer
872 if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.
- 873 (c) The requirements of this Subsection (5) apply to beer notwithstanding that it is
874 labeled, packaged, or advertised as:
- 875 (i) a malt cooler; or
876 (ii) a beverage that may provide energy.
- 877 (d) The commission shall define by rule what constitutes an "area that is visibly
878 separate and distinct from the area where a nonalcoholic beverage is displayed."
- 879 (e) A violation of this Subsection (5) is an infraction.
- 880 (6) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or
881 who sells beer to a patron for consumption off the premises of the off-premise beer retailer
882 shall wear a unique identification badge:
- 883 (i) on the front of the staff's clothing;
884 (ii) visible above the waist;
885 (iii) bearing the staff's:
886 (A) first or last name;
887 (B) initials; or
888 (C) unique identification in letters or numbers; and
889 (iv) with the number or letters on the unique identification badge being sufficiently
890 large to be clearly visible and identifiable while engaging in or directly supervising the retail
891 sale of beer.
- 892 (b) An off-premise beer retailer shall make and maintain a record of each current staff's
893 unique identification badge assigned by the off-premise beer retailer that includes the staff's:
894 (i) full name;
895 (ii) address; and

896 (iii) (A) driver license number; or
897 (B) similar identification number.

898 (c) An off-premise beer retailer shall make available a record required to be made or
899 maintained under this Subsection (6) for immediate inspection by:

900 (i) a peace officer; or

901 (ii) a representative of the local authority that issues the off-premise beer retailer
902 license.

903 (d) A local authority may impose a fine of up to \$250 against an off-premise beer
904 retailer that does not comply or require its staff to comply with this Subsection (6).

905 Section 7. Section **32B-9-204** is amended to read:

906 **32B-9-204. General operational requirements for an event permit.**

907 (1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or
908 furnishing of an alcoholic product at an event for which an event permit is issued, shall comply
909 with this title and rules of the commission.

910 (b) Failure to comply as provided in Subsection (1)(a):

911 (i) may result in:

912 (A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
913 Enforcement Act, against:

914 (I) an event permittee;

915 (II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic
916 product at the event; or

917 (III) any combination of the persons listed in this Subsection (1)(b);

918 (B) immediate revocation of the event permit;

919 (C) forfeiture of a bond; or

920 (D) immediate seizure of an alcoholic product present at the event; and

921 (ii) if the event permit is revoked, disqualifies the event permittee from applying for an
922 event permit for a period of three years from the date of revocation of the event permit.

923 (c) An alcoholic product seized under this Subsection (1) shall be returned to the event
924 permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

925 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
926 the specific type of special use permit held by the special use permittee, the relevant part

927 governs.

928 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an
929 event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the
930 relevant part under this chapter for the type of event permit that is held by the event permittee.

931 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
932 event permit held by an event permittee refers to "event permittee," a person involved in the
933 storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the
934 event permit is issued is subject to the same requirement or prohibition.

935 (3) An event permittee shall display a copy of the event permit in a prominent place in
936 the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

937 (4) An event permittee may not on the premises of the event:

938 (a) engage in or allow any form of gambling, as defined and proscribed in Title 76,
939 Chapter 10, Part 11, Gambling;

940 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
941 Part 11, Gambling; or

942 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
943 the risking of something of value for a return or for an outcome when the return or outcome is
944 based upon an element of chance, excluding the playing of an amusement device that confers
945 only an immediate and unrecorded right of replay not exchangeable for value.

946 (5) An event permittee may not knowingly allow a person at an event to, in violation of
947 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
948 Paraphernalia Act:

949 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
950 58-37-2; or

951 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
952 Section 58-37a-3.

953 (6) An event permittee may not sell, offer for sale, or furnish beer except beer
954 purchases from:

955 (a) a beer wholesaler licensee; or

956 (b) a beer retailer[; ~~or (c) a small brewer~~].

957 (7) An event permittee may not store, sell, offer for sale, furnish, or allow the

958 consumption of an alcoholic product purchased for an event in a location other than that
959 described in the application and designated on the event permit unless the event permittee first
960 applies for and receives approval from the director, with the approval of the Compliance,
961 Licensing, and Enforcement Subcommittee, for a change of location.

962 (8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or
963 furnish beer for on-premise consumption:

964 (i) in an open original container; and

965 (ii) in a container on draft.

966 (b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to
967 Subsection (8)(a):

968 (i) in a size of container that exceeds two liters; or

969 (ii) to an individual patron in a size of container that exceeds one liter.

970 (9) (a) An event permittee may not sell or offer for sale an alcoholic product at less
971 than the cost of the alcoholic product to the event permittee.

972 (b) An event permittee may not sell an alcoholic product at a discount price on any date
973 or at any time.

974 (c) An event permittee may not sell or offer for sale an alcoholic product at a price that
975 encourages over consumption or intoxication.

976 (d) An event permittee may not sell or offer for sale an alcoholic product at a special or
977 reduced price for only certain hours of the day of an event.

978 (e) An event permittee may not sell, offer for sale, or furnish more than one alcoholic
979 product at the price of a single alcoholic product.

980 (f) An event permittee, or a person operating, selling, offering, or furnishing an
981 alcoholic product under an event permit, may not sell, offer for sale, or furnish an indefinite or
982 unlimited number of alcoholic products during a set period for a fixed price, unless:

983 (i) the alcoholic product is served to a patron at a seated event;

984 (ii) food is available whenever the alcoholic product is sold, offered for sale, or
985 furnished; and

986 (iii) no person advertises that at the event a person may be sold or furnished an
987 indefinite or unlimited number of alcoholic products during a set period for a fixed price.

988 (g) An event permittee may not engage in a public promotion involving or offering a

989 free alcoholic product to the general public.

990 (10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

991 (a) a minor;

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

993 (c) a known interdicted person; or

994 (d) a known habitual drunkard.

995 (11) (a) An alcoholic product is considered under the control of the event permittee
996 during an event.

997 (b) A patron at an event may not bring an alcoholic product onto the premises of the
998 event.

999 (12) An event permittee may not permit a patron to carry from the premises an open
1000 container that:

1001 (a) is used primarily for drinking purposes; and

1002 (b) contains an alcoholic product.

1003 (13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at
1004 an event is considered under the supervision and direction of the event permittee.

1005 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at
1006 an event may not, while on duty:

1007 (i) consume an alcoholic product; or

1008 (ii) be intoxicated.

1009 (14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an
1010 event.

1011 (15) The location specified in an event permit may not be changed without prior
1012 written approval of the commission.

1013 (16) An event permittee may not sell, transfer, assign, exchange, barter, give, or
1014 attempt in any way to dispose of the event permit to another person whether for monetary gain
1015 or not.

1016 (17) (a) An event permittee may not sell, offer for sale, furnish, or allow the
1017 consumption of an alcoholic product during a period that:

1018 (i) begins at 1 a.m.; and

1019 (ii) ends at 9:59 a.m.

1020 (b) This Subsection (17) does not preclude a local authority from being more restrictive
1021 with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic
1022 product at an event.

1023 (18) A patron may have no more than one alcoholic product of any kind at a time
1024 before the patron.

1025 (19) (a) An event permittee shall display, in a prominent place, a sign in large letters
1026 that consists of text in the following order:

1027 (i) a header that reads: "WARNING";

1028 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
1029 can cause birth defects and permanent brain damage for the child.";

1030 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
1031 [insert most current toll-free number] with questions or for more information.";

1032 (iv) a header that reads: "WARNING"; and

1033 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
1034 serious crime that is prosecuted aggressively in Utah."

1035 (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different
1036 font style than the text described in Subsections (19)(a)(iv) and (v).

1037 (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the
1038 same font size.

1039 (c) The Department of Health shall work with the commission and department to
1040 facilitate consistency in the format of a sign required under this section.

1041 Section 8. Section **32B-11-201** is amended to read:

1042 **32B-11-201. Commission's power to issue a manufacturing license -- Certificates**
1043 **of approval.**

1044 (1) (a) Except as provided in Section 32B-11-202, before a person may manufacture an
1045 alcoholic product in this state, the person shall obtain an alcoholic product manufacturing
1046 license issued by the commission in accordance with this part.

1047 (b) A separate license is required for each place of storage, sale, and manufacture of an
1048 alcoholic product.

1049 (c) A violation of this Subsection (1) is a class B misdemeanor.

1050 (2) The commission may issue an alcoholic product manufacturing license to a

1051 manufacturer whose business is located in this state for the storage, sale, and manufacture of an
1052 alcoholic product for each type of manufacturing license provided by this chapter.

1053 (3) The types of manufacturing licenses issued under this chapter are known as:

1054 (a) a winery manufacturing license;

1055 (b) a distillery manufacturing license; and

1056 (c) a brewery manufacturing license.

1057 (4) (a) A brewer located outside the state is not required to be licensed under this
1058 chapter.

1059 (b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from
1060 the department before selling or delivering:

1061 (i) beer to a beer wholesaler licensee in this state; or

1062 (ii) a flavored malt beverage to:

1063 (A) the department; or

1064 (B) a military installation[~~;~~ ~~or~~].

1065 [~~(iii) if a small brewer, beer to one of the following in the state:]~~

1066 [~~(A) a beer wholesaler licensee;~~]

1067 [~~(B) a beer retailer; or~~]

1068 [~~(C) an event permittee.]~~

1069 (c) To obtain a certificate of approval, a brewer shall submit to the department:

1070 (i) a written application in a form prescribed by the department;

1071 (ii) a nonrefundable \$75 application fee;

1072 (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of
1073 approval is not issued;

1074 (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau
1075 of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt
1076 beverage; and

1077 (v) any other information the commission or department may require.

1078 (d) (i) One of the following shall sign and verify a written application under this
1079 Subsection (4) by oath or affirmation:

1080 (A) a partner if the brewer is a partnership; or

1081 (B) an executive officer, manager, or person specifically authorized by a corporation or

1082 limited liability company to sign the application.

1083 (ii) A brewer filing an application shall attach to the application written evidence of the
1084 authority of the person described in Subsection (4)(d)(i) to sign the application.

1085 (e) (i) A certificate of approval under this Subsection (4) expires on December 31 of
1086 each year.

1087 (ii) A brewer desiring to renew its certificate of approval shall submit to the
1088 department by no later than November 30 of the year the certificate of approval expires:

1089 (A) a completed renewal application in the form prescribed by the department; and

1090 (B) a renewal fee of \$250.

1091 (iii) Failure to meet the renewal requirements results in an automatic forfeiture of the
1092 certificate of approval effective on the date the existing certificate of approval expires.

1093 (5) (a) An importer or supplier of beer, heavy beer, or flavored malt beverages who is
1094 not required to be licensed under this title shall obtain a certificate of approval from the
1095 department before selling or delivering:

1096 (i) beer to a beer wholesaler licensee in this state; or

1097 (ii) heavy beer or a flavored malt beverage to:

1098 (A) the department; or

1099 (B) a military installation.

1100 (b) To obtain a certificate of approval, an importer or supplier described in Subsection
1101 (5)(a) shall submit to the department:

1102 (i) a written application in a form prescribed by the department;

1103 (ii) a nonrefundable \$75 application fee;

1104 (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of
1105 approval is not issued;

1106 (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau
1107 of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt
1108 beverage; and

1109 (v) any other information the commission or department may require.

1110 (c) (i) One of the following shall sign and verify a written application under this
1111 Subsection (5) by oath or affirmation:

1112 (A) a partner if the importer or supplier is a partnership; or

1113 (B) an executive officer, manager, or person specifically authorized by a corporation or
1114 limited liability company to sign the application.

1115 (ii) An importer or supplier filing an application under this Subsection (5) shall attach
1116 to the application written evidence of the authority of the person described in Subsection
1117 (5)(c)(i) to sign the application.

1118 (d) (i) A certificate of approval under this Subsection (5) expires on December 31 of
1119 each year.

1120 (ii) An importer or supplier desiring to renew its certificate of approval shall submit to
1121 the department by no later than November 30 of the year the certificate of approval expires:

1122 (A) a completed renewal application in the form prescribed by the department; and

1123 (B) a renewal fee of \$250.

1124 (iii) Failure to meet the renewal requirements results in an automatic forfeiture of the
1125 certificate of approval effective on the date the existing certificate of approval expires.

1126 (6) (a) [~~Subject to Subsection (7), a~~] A brewer, importer, or supplier required to hold a
1127 certificate of approval under this section may not distribute beer in this state except as provided
1128 in Subsection 32B-11-503(4)(b) or (5) under a written agreement with a beer wholesaler
1129 licensee in this state.

1130 (b) An agreement described in Subsection (6)(a) shall:

1131 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
1132 persons entering into the agreement;

1133 (ii) designate the one or more brands that may be distributed in the sales territory; and

1134 (iii) set forth the exact geographical area of the sales territory.

1135 (c) A brewer, importer of beer, or supplier of beer may have more than one agreement
1136 described in this Subsection (6) if each brand of the brewer, importer, or supplier distributed in
1137 the state is covered by one exclusive sales territory.

1138 (d) A brewer, importer of beer, or supplier of beer may not enter into an agreement
1139 with more than one beer wholesaler licensee to distribute the same brand of beer in the same
1140 sales territory or any portion of the sales territory.

1141 [~~(7) A small brewer is not subject to the requirements of Subsection (6):]~~

1142 Section 9. Section **32B-11-503** is amended to read:

1143 **32B-11-503. Specific authority and operational requirements for brewery**

1144 **manufacturing license.**

1145 (1) A brewery manufacturing license allows a brewery manufacturing licensee to:

1146 (a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt
1147 beverages;

1148 (b) sell heavy beer and a flavored malt beverage to:

1149 (i) the department;

1150 (ii) a military installation; or

1151 (iii) an out-of-state customer;

1152 (c) sell beer to a beer wholesaler licensee; and1153 [~~(d) in the case of a small brewer, in accordance with Subsection (5), sell beer~~1154 ~~manufactured by the small brewer to:]~~1155 [~~(i) a retail licensee;]~~1156 [~~(ii) an off-premise beer retailer; or]~~1157 [~~(iii) an event permittee; and]~~1158 [~~(c)~~] (d) warehouse on its premises an alcoholic product that the brewery

1159 manufacturing licensee manufactures or purchases for manufacturing purposes.

1160 (2) A brewery manufacturing licensee may not sell the following to a person within the
1161 state except the department or a military installation:

1162 (a) heavy beer; or

1163 (b) a flavored malt beverage.

1164 (3) If considered necessary, the commission or department may require:

1165 (a) the alteration of the plant, equipment, or licensed premises;

1166 (b) the alteration or removal of any unsuitable alcoholic product-making equipment or
1167 material;

1168 (c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise

1169 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

1170 (d) that a record pertaining to the materials and ingredients used in the manufacture of
1171 an alcoholic product be available to the commission or department upon request.1172 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored
1173 malt beverage to be consumed on the licensed premises, except under the circumstances
1174 described in this Subsection (4).

1175 (a) A brewery manufacturing licensee may allow its off-duty staff to consume beer,
1176 heavy beer, or a flavored malt beverage on its premises without charge.

1177 (b) A brewery manufacturing licensee may allow a person who can lawfully purchase
1178 the following for wholesale or retail distribution to consume a bona fide sample of the brewery
1179 manufacturing licensee's product on the licensed premises:

1180 (i) beer;

1181 (ii) heavy beer; or

1182 (iii) a flavored malt beverage.

1183 (c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail
1184 facility allowing consumption on premises of beer in a bottle or on draft if food is also
1185 available.

1186 (ii) A retail facility located on the licensed premises of a brewery manufacturing
1187 licensee shall be operated or supervised by the brewery manufacturing licensee.

1188 (iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing
1189 licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer
1190 Local Authority.

1191 ~~[(5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility
1192 located in this state for the storage of beer to be sold to a person described in Subsection (1)(d)
1193 if the small brewer:]~~

1194 ~~[(i) (A) (I) is located in this state; and]~~

1195 ~~[(H) holds a brewery manufacturing license; or]~~

1196 ~~[(B) (I) is located outside this state; and]~~

1197 ~~[(H) holds a certificate of approval to sell beer in this state; and]~~

1198 ~~[(ii) sells beer manufactured by the small brewer directly to a person described in
1199 Subsection (1)(d).]~~

1200 ~~[(b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless
1201 the beer:]~~

1202 ~~[(i) is manufactured by the small brewer; and]~~

1203 ~~[(ii) is first placed in the small brewer's warehouse facility in this state.]~~

1204 ~~[(c) (i) A small brewer warehouse shall make and maintain complete beer importation,
1205 inventory, tax, distribution, sales records, and other records as the department and State Tax~~

1206 ~~Commission may require.]~~

1207 ~~[(ii) The records described in Subsection (5)(c)(i) are subject to inspection by:]~~

1208 ~~[(A) the department; and]~~

1209 ~~[(B) the State Tax Commission.]~~

1210 ~~[(iii) Section 32B-1-205 applies to a record required to be made or maintained in~~
1211 ~~accordance with this Subsection (5), except that the provision is considered to include an action~~
1212 ~~described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission,~~
1213 ~~or an official or employee of the State Tax Commission.]~~

1214 ~~[(6) Subject to Subsection (7):]~~

1215 (5) A brewery manufacturing licensee may sell, offer for sale, or furnish to a person
1216 beer manufactured by the brewery manufacturing licensee at its licensed premises for
1217 off-premise consumption under a package agency.

1218 (6) (a) A brewery manufacturing licensee may not sell beer in this state except as
1219 provided in Subsection (4)(c) or (5) or under a written agreement with a beer wholesaler
1220 licensee in this state.

1221 (b) An agreement described in Subsection (6)(a) shall:

1222 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
1223 persons entering into the agreement;

1224 (ii) designate the one or more brands that may be distributed in the sales territory; and

1225 (iii) set forth the exact geographical area of the sales territory.

1226 (c) A brewery manufacturing licensee may have more than one agreement described in
1227 this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one
1228 exclusive sales territory.

1229 (d) A brewery manufacturing licensee may not enter into an agreement with more than
1230 one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or
1231 any portion of the sales territory.

1232 ~~[(7) A small brewer is not subject to the requirements of Subsection (6).]~~

1233 Section 10. Section **32B-13-201** is amended to read:

1234 **32B-13-201. Commission's power to issue beer wholesaling license.**

1235 (1) (a) Before a person may purchase, store, sell, offer for sale, distribute, or import
1236 beer to a person who sells at retail or acts in any way as a beer wholesaler, the person shall first

- 1237 obtain a beer wholesaling license issued by the commission in accordance with this chapter.
- 1238 (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- 1239 (2) (a) The commission may issue a beer wholesaling license for the purchase, storage,
- 1240 sale, distribution, transportation, and import of beer.
- 1241 (b) A beer wholesaling license entitles the beer wholesaler licensee to:
- 1242 (i) purchase and import beer into the state;
- 1243 (ii) store beer in an approved warehouse; and
- 1244 (iii) sell and distribute beer directly to:
- 1245 (A) a beer retailer; or
- 1246 (B) an event permittee.
- 1247 [~~(3) Nothing in this section precludes a small brewer from selling beer the small~~
- 1248 ~~brewer manufactures directly to:~~
- 1249 [~~(a) a retail licensee;~~
- 1250 [~~(b) an off-premise beer retailer; or~~
- 1251 [~~(c) an event permittee.~~

Legislative Review Note
as of 2-26-13 11:32 AM

Office of Legislative Research and General Counsel