

HB0040S01 compared with HB0040

~~{deleted text}~~ shows text that was in HB0040 but was deleted in HB0040S01.

inserted text shows text that was not in HB0040 but was inserted into HB0040S01.

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Senator Allen M. Christensen proposes the following substitute bill:

BEER EXCISE TAX REVENUE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: ~~{~~ Allen M. Christensen

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and the Substance Abuse and Mental Health Act to address the use of beer excise tax revenues to prevent abuse of alcohol and other substances.

Highlighted Provisions:

This bill:

- ▶ expands the scope of the Alcoholic Beverage Enforcement and Treatment Restricted Account to become the Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account;
- ▶ modifies definition provisions;
- ▶ ~~{requires use of a specific level of revenues for}~~ encourages the most effective formula allocation in relationship to prevention;

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- ▶ addresses preparation of forms;
- ▶ grants rulemaking authority; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

32B-2-401, as enacted by Laws of Utah 2010, Chapter 276

32B-2-402, as last amended by Laws of Utah 2011, Chapter 307

32B-2-403, as enacted by Laws of Utah 2010, Chapter 276

32B-2-404, as last amended by Laws of Utah 2011, Chapter 307

62A-15-103, as last amended by Laws of Utah 2013, Chapters 17, 167, and 400

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

Section 1. Section **32B-2-401** is amended to read:

**Part 4. Alcoholic Beverage and Substance Abuse Enforcement and
Treatment Restricted Account Act**

32B-2-401. Title.

This part is known as the "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act."

Section 2. Section **32B-2-402** is amended to read:

32B-2-402. Definitions -- Calculations.

(1) As used in this part:

(a) "Account" means the Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account created in Section 32B-2-403.

(b) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(c) "Alcohol-related offense" means:

(i) a violation of:

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- (A) Section 41-6a-502; or
- (B) an ordinance that complies with the requirements of:
 - (I) Subsection 41-6a-510(1); or
 - (II) Section 76-5-207; or
- (ii) an offense involving the illegal:
 - (A) sale of an alcoholic product;
 - (B) consumption of an alcoholic product;
 - (C) distribution of an alcoholic product;
 - (D) transportation of an alcoholic product; or
 - (E) possession of an alcoholic product.
- (d) "Annual conviction time period" means the time period that:
 - (i) begins on July 1 and ends on June 30; and
 - (ii) immediately precedes the fiscal year for which an appropriation under this part is

made.

(e) "Municipality" means:

- (i) a city; or
- (ii) a town.

(f) (i) "Prevention" is as defined by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the Division of Substance Abuse and Mental Health within the Department of Human Services.

(ii) In defining the term "prevention," the Division of Substance Abuse and Mental Health shall:

(A) include only evidence based or evidence informed programs; and

(B) provide for coordination with local substance abuse authorities designated to provide substance abuse services in accordance with Section 17-43-201.

(2) For purposes of Subsection 32B-2-404(1)(b)(iii), the number of premises located within the limits of a municipality or county:

- (a) is the number determined by the department to be so located;
- (b) includes the aggregate number of premises of the following:
 - (i) a state store;
 - (ii) a package agency; and

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(iii) a retail licensee; and

(c) for a county, consists only of the number located within an unincorporated area of the county.

(3) The department shall determine:

(a) a population figure according to the most current population estimate prepared by the Utah Population Estimates Committee;

(b) a county's population for the 25% distribution to municipalities and counties under Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated areas of the county; and

(c) a county's population for the 25% distribution to counties under Subsection 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of a municipality.

(4) (a) A conviction occurs in the municipality or county that actually prosecutes the offense to judgment.

(b) If a conviction is based upon a guilty plea, the conviction is considered to occur in the municipality or county that, except for the guilty plea, would have prosecuted the offense.

Section 3. Section **32B-2-403** is amended to read:

32B-2-403. Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account created.

(1) (a) There is created in the General Fund a restricted account known as the "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account."

(b) The account is funded from:

(i) money deposited by the state treasurer in accordance with Section 59-15-109;

(ii) appropriations made to the account by the Legislature; and

(iii) interest described in Subsection (1)(c).

(c) Interest earned on the account shall be deposited into the account.

(2) (a) ~~(i)~~ Consistent with the policies provided in Subsection 32B-1-103(4)(b), money in the account shall be used for statewide public purposes, including promoting the reduction of the harmful effects of substance abuse, over consumption of alcoholic products by an adult, and alcohol consumption by minors, by exclusively funding programs or projects related to prevention, treatment, detection, prosecution, and control of violations of this title

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and other offenses in which alcohol or substance abuse is a contributing factor except as provided in Subsection (2)(b).

~~{ (ii) (A) Except for the portion distributed under Subsection 32B-2-404(1)(b)(iv) and except as provided in Subsection (2)(a)(ii)(B), a municipality or county shall expend not less than 10% of the portion distributed under this part to the municipality or county on prevention. (B) Subsection (2)(a)(ii)(A) does not apply to a municipality that in the prior fiscal year received a distribution of \$5,000 or less under this part.~~

‡ (b) The portion distributed under this part to a county may also be used for the confinement or treatment of persons arrested for or convicted of offenses in which alcohol or substance abuse is a contributing factor.

(c) A municipality or county entitled to receive money shall use the money exclusively as required by this Subsection (2).

(3) The appropriations provided for under Section 32B-2-404 are:

(a) intended to supplement the budget of the appropriate agencies of each municipality and county within the state to enable the municipalities and counties to more effectively fund the programs and projects described in Subsection (2); and

(b) not intended to replace money that would otherwise be allocated for the programs and projects in Subsection (2).

(4) It is the intent of the Legislature that the appropriations distributed under this part be used to fund a balanced approach to reducing the harmful effects of substance abuse, over consumption of alcoholic products by adults, and alcohol consumption by minors. To this end, the Legislature encourages municipalities and counties receiving money under this part to use the most effective formula allocation to fund evidence based and evidence informed prevention programs.

Section 4. Section **32B-2-404** is amended to read:

32B-2-404. Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account distribution.

(1) (a) The money deposited into the account under Section 32B-2-403 shall be distributed to municipalities and counties:

(i) to the extent appropriated by the Legislature, except that the Legislature shall appropriate each fiscal year an amount equal to at least the amount deposited in the account in

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accordance with Section 59-15-109; and

(ii) as provided in this Subsection (1).

(b) The amount appropriated from the account shall be distributed as follows:

(i) 25% to municipalities and counties on the basis of the percentage of the state population residing in each municipality and county;

(ii) 30% to municipalities and counties on the basis of each municipality's and county's percentage of the statewide convictions for all alcohol-related offenses;

(iii) 20% to municipalities and counties on the basis of the percentage of the following in the state that are located in each municipality and county:

(A) state stores;

(B) package agencies;

(C) retail licensees; and

(D) off-premise beer retailers; and

(iv) 25% to the counties for confinement and treatment purposes authorized by this part on the basis of the percentage of the state population located in each county.

(c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law enforcement agency:

(A) the municipality may not receive money under this part; and

(B) the State Tax Commission:

(I) may not distribute the money the municipality would receive but for the municipality not having a law enforcement agency to that municipality; and

(II) shall distribute the money that the municipality would have received but for it not having a law enforcement agency to the county in which the municipality is located for use by the county in accordance with this part.

(ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i) demonstrates that the municipality can use the money that the municipality is otherwise eligible to receive in accordance with this part, the advisory council may direct the State Tax Commission to distribute the money to the municipality.

(2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax Commission shall annually:

(a) for an annual conviction time period:

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(i) multiply by two the total number of convictions in the state obtained during the annual conviction time period for violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or Section 76-5-207; and

(ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions obtained during the annual conviction time period for the alcohol-related offenses other than the alcohol-related offenses described in Subsection (2)(a)(i);

(b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum obtained in Subsection (2)(a); and

(c) multiply the amount calculated under Subsection (2)(b), by the number of convictions obtained in each municipality and county during the annual conviction time period for alcohol-related offenses.

(3) By not later than September 1 each year:

(a) the state court administrator shall certify to the State Tax Commission the number of convictions obtained for alcohol-related offenses in each municipality or county in the state during the annual conviction time period; and

(b) the advisory council shall notify the State Tax Commission of any municipality that does not have a law enforcement agency.

(4) By not later than December 1 of each year, the advisory council shall notify the State Tax Commission for the fiscal year of appropriation of:

(a) a municipality that may receive a distribution under Subsection (1)(c)(ii);

(b) a county that may receive a distribution allocated to a municipality described in Subsection (1)(c)(i);

(c) a municipality or county that may not receive a distribution because the advisory council has suspended the payment under Subsection 32B-2-405(2)(a); and

(d) a municipality or county that receives a distribution because the suspension of payment has been cancelled under Subsection 32B-2-405(2).

(5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax Commission shall annually distribute to each municipality and county the portion of the appropriation that the municipality or county is eligible to receive under this part, except for

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any municipality or county that the advisory council notifies the State Tax Commission in accordance with Subsection (4) may not receive a distribution in that fiscal year.

(b) (i) The [~~State Tax Commission~~] advisory council shall prepare forms for use by a municipality or county in applying for a distribution under this part.

(ii) A form described in this Subsection (5) may require the submission of information the [~~State Tax Commission~~] advisory council considers necessary to enable the State Tax Commission to comply with this part.

Section 5. Section **62A-15-103** is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate and assist other organizations and private treatment centers for substance abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers;

(v) promote integrated programs that address an individual's substance abuse, mental health, and physical healthcare needs;

(vi) evaluate the effectiveness of programs described in Subsection (2);

(vii) consider the impact of the programs described in Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(viii) promote or establish programs for education and certification of instructors to

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educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that all individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of any local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

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(B) local mental health authorities; and

(C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

(B) a statewide comprehensive continuum of mental health services;

(C) services result in improved overall health and functioning; and

(D) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year; ~~and~~

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its

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contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their contract providers; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate[-]; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) (a) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the

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donor.

(b) Those donations, gifts, devises, or bequests shall be used by the division in performing its powers and duties. Any money so obtained shall be considered private funds and shall be deposited into an interest-bearing expendable special revenue fund to be used by the division for substance abuse or mental health services. The state treasurer may invest the fund and all interest shall remain with the fund.

(7) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

- (a) the use of public funds;
- (b) oversight responsibilities regarding public funds; and
- (c) governance of substance abuse and mental health programs and services.

(8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

Section 6. **Effective date.**

This bill takes effect on July 1, 2014.

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Legislative Review Note

~~as of 12-12-13 9:16 AM~~

~~Office of Legislative Research and General Counsel}~~