

**Representative Gage Froerer** proposes the following substitute bill:

**MANUFACTURING LICENSEE PROVISIONS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Alcoholic Beverage Control Act to address manufacturing licensees.

**Highlighted Provisions:**

This bill:

- ▶ addresses unlawful sale or furnishing;
- ▶ grants rulemaking authority to define "bona fide sample";
- ▶ changes references to "sample" to "bona fide sample";
- ▶ permits the consumption of bona fide samples on the premises of a distillery manufacturing licensee;
- ▶ addresses staff consumption on the premises of a beer manufacturing licensee;
- ▶ refers to bona fide samples of beer, heavy beer, or flavored malt beverages;
- ▶ removes language related to off-premise beer retailer local authority because it is addressed elsewhere in the Alcoholic Beverage Control Act provisions; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **32B-4-401**, as enacted by Laws of Utah 2010, Chapter 276

30 **32B-11-303**, as enacted by Laws of Utah 2010, Chapter 276

31 **32B-11-403**, as enacted by Laws of Utah 2010, Chapter 276

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



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

35 Section 1. Section **32B-4-401** is amended to read:

36 **32B-4-401. Unlawful sale or furnishing.**

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

40 (2) It is unlawful for a person in the business of selling liquor, a manufacturer, a  
41 supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to  
42 sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state  
43 location directly or indirectly into this state except to the extent authorized by this title to:

- 44 (a) the department;
- 45 (b) a military installation;
- 46 (c) a holder of a special use permit, to the extent authorized in the special use permit;

47 or

48 (d) a liquor warehouser licensee licensed to distribute and transport liquor to:

- 49 (i) the department; or
- 50 (ii) an out-of-state wholesaler or retailer.

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

- 55 (i) a beer wholesaler licensee;
- 56 (ii) a military installation; or

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

58 (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of  
59 approval from selling, shipping, or transporting beer to the extent authorized by Subsection  
60 [32B-11-503\(5\)](#) directly to:

61 (i) a beer retailer; or

62 (ii) an event permittee.

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

67 (i) the department;

68 (ii) a military installation;

69 (iii) a holder of a special use permit, to the extent authorized in the special use permit;

70 or

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

72 (A) the department; or

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

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

76 (i) to the extent authorized by Subsection [32B-11-303\(4\)\(c\)](#); or

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

78 (c) Subsection (4)(a) does not preclude a distillery manufacturing licensee located in  
79 this state from selling liquor to a person on its distillery premises:

80 (i) to the extent authorized by Subsection [32B-11-403\(5\)\(c\)](#); or

81 (ii) under a package agency issued by the commission on the distillery premises.

82 (d) Subsection (4)(a) does not preclude a brewery manufacturing licensee located in  
83 this state from selling heavy beer or flavored malt beverages to a person on its brewery  
84 premises:

85 (i) to the extent authorized by Subsection [32B-11-503\(4\)\(c\)](#); or

86 (ii) under a package agency issued by the commission on the brewery premises.

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

88 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,  
89 shipped, or transported beer directly or indirectly to a person in this state except to the extent  
90 authorized by this title to:

- 91 (i) a beer wholesaler licensee;
- 92 (ii) a military installation; or
- 93 (iii) a holder of a special use permit, to the extent authorized in the special use permit.

94 (b) Subsection (5)(a) does not preclude:

- 95 (i) a small brewer who is a brewery manufacturing licensee located in this state from  
96 selling, shipping, and transporting beer to the extent authorized by Subsection 32B-11-503(5)  
97 directly to one of the following in this state:

- 98 (A) a beer retailer; or
- 99 (B) an event permittee; or

100 (ii) a brewery manufacturing licensee from selling beer to a person on its  
101 manufacturing premises under Subsection 32B-11-503(4)(c).

102 (6) It is unlawful for a person other than a person described in Subsection (2) or (3) to  
103 sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product from an  
104 out-of-state location directly or indirectly into this state, except as otherwise provided by this  
105 title.

106 (7) It is unlawful for a person in this state other than a person described in Subsection  
107 (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic  
108 product directly or indirectly to another person in this state, except as otherwise provided by  
109 this title.

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

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

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

114 Section 2. Section 32B-11-303 is amended to read:

115 **32B-11-303. Specific authority and operational requirements for winery**  
116 **manufacturing license.**

117 (1) A winery manufacturing license allows a winery manufacturing licensee to:

- 118 (a) store, manufacture, transport, import, or export wine;

- 119 (b) sell wine at wholesale to the department and to out-of-state customers;
- 120 (c) purchase liquor for fortifying wine, if the department is notified of the purchase and  
121 date of delivery; and
- 122 (d) warehouse on the licensed premises liquor that is manufactured or purchased for  
123 manufacturing purposes.
- 124 (2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery  
125 manufacturing license shall conform to the standards of identity and quality established in the  
126 regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.
- 127 (b) The federal definitions, standards of identity, and quality and labeling requirements  
128 for wine, in regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201  
129 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with the  
130 laws of this state.
- 131 (3) If considered necessary, the commission or department may require:
- 132 (a) the alteration of the plant, equipment, or licensed premises;
- 133 (b) the alteration or removal of unsuitable wine-making equipment or material;
- 134 (c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve  
135 the sanitary and working conditions of the plant, licensed premises, and wine-making  
136 equipment;
- 137 (d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed  
138 premises because it is considered:
- 139 (i) unfit for wine making; or
- 140 (ii) as producing or likely to produce an unsanitary condition;
- 141 (e) a winery manufacturing licensee to distill or cause to be distilled or disposed of  
142 under the department's supervision:
- 143 (i) any unsound, poor quality finished wine; or
- 144 (ii) unfinished wine that will not be satisfactory when finished; or
- 145 (f) that a record pertaining to the grapes and other materials and ingredients used in the  
146 manufacture of wine be available to the commission or department upon request.
- 147 (4) A winery manufacturing licensee may not permit wine to be consumed on its  
148 premises, except under the following circumstances:
- 149 (a) A winery manufacturing licensee may allow its staff to consume on the licensed

150 premises wine as the winery manufacturing licensee furnishes to the staff without charge.

151 (b) A winery manufacturing licensee may allow a person who can lawfully purchase  
152 wine for wholesale or retail distribution to consume a bona fide sample of the winery  
153 manufacturing licensee's product on the licensed premises.

154 (c) A winery manufacturing licensee may [~~operate on its licensed premises a retail~~  
155 ~~facility allowing~~] allow consumption of a bona fide sample on the licensed premises of wine  
156 manufactured by the winery manufacturing licensee as long as food is also available. [~~This~~  
157 ~~type of retail facility located~~] Consumption of a bona fide sample on the licensed premises  
158 shall be operated or supervised by the winery manufacturing licensee.

159 (d) The commission may define by rule, made in accordance with Title 63G, Chapter 3,  
160 Utah Administrative Rulemaking Act, the term "bona fide sample."

161 Section 3. Section **32B-11-403** is amended to read:

162 **32B-11-403. Specific authority and operational requirements for distillery**  
163 **manufacturing license.**

164 (1) A distillery manufacturing license allows a distillery manufacturing licensee to:

165 (a) store, manufacture, transport, import, or export liquor;

166 (b) sell liquor to:

167 (i) the department;

168 (ii) an out-of-state customer; and

169 (iii) as provided in Subsection (2);

170 (c) purchase an alcoholic product for mixing and manufacturing purposes if the  
171 department is notified of:

172 (i) the purchase; and

173 (ii) the date of delivery; and

174 (d) warehouse on its licensed premises an alcoholic product that the distillery  
175 manufacturing licensee manufactures or purchases for manufacturing purposes.

176 (2) (a) Subject to the other provisions of this Subsection (2), a distillery manufacturing  
177 licensee may directly sell an alcoholic product to a person engaged within the state in:

178 (i) a mechanical or industrial business that requires the use of an alcoholic product; or

179 (ii) scientific pursuits that require the use of an alcoholic product.

180 (b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a

181 valid special use permit issued in accordance with Chapter 10, Special Use Permit Act,  
182 authorizing the use of the alcoholic product.

183 (c) A distillery manufacturing licensee may sell to a special use permittee described in  
184 Subsection (2)(b) an alcoholic product only in the type for which the special use permit  
185 provides.

186 (d) The sale of an alcoholic product under this Subsection (2) is subject to rules  
187 prescribed by the department and the federal government.

188 (3) The federal definitions, standards of identity and quality, and labeling requirements  
189 for distilled liquor, in the regulations issued under Federal Alcohol Administration Act, 27  
190 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or  
191 inconsistent with laws of this state.

192 (4) If considered necessary, the commission or department may require:

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

194 (b) the alteration or removal of unsuitable alcoholic product-making equipment or  
195 material;

196 (c) a distillery manufacturing licensee to clean, disinfect, ventilate, or otherwise  
197 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

198 (d) that a record pertaining to the materials and ingredients used in the manufacture of  
199 an alcoholic product be made available to the commission or department upon request.

200 (5) A distillery manufacturing licensee may not permit an alcoholic product to be  
201 consumed on its premises, except that:

202 (a) a distillery manufacturing licensee may allow its staff to consume on the licensed  
203 premises an alcoholic product that the distillery furnishes to the staff without charge; ~~and~~

204 (b) a distillery manufacturing licensee may allow a person who can lawfully purchase  
205 an alcoholic product for wholesale or retail distribution to consume a bona fide sample of the  
206 distillery manufacturing licensee's product on the licensed premises[-]; and

207 (c) (i) a distillery manufacturing licensee may allow consumption on the licensed  
208 premises of a bona fide sample of the distillery manufacturing licensee's product as long as  
209 food is also available; and

210 (ii) consumption of a bona fide sample on the licensed premises shall be operated or  
211 supervised by the distillery manufacturing licensee.

212 (6) The commission may define by rule, made in accordance with Title 63G, Chapter 3,  
213 Utah Administrative Rulemaking Act, the term "bona fide sample."

214 Section 4. Section **32B-11-503** is amended to read:

215 **32B-11-503. Specific authority and operational requirements for brewery**  
216 **manufacturing license.**

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

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

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

221 (i) the department;

222 (ii) a military installation; or

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

224 (c) sell beer to a beer wholesaler licensee;

225 (d) in the case of a small brewer, in accordance with Subsection (5), sell beer

226 manufactured by the small brewer to:

227 (i) a retail licensee;

228 (ii) an off-premise beer retailer; or

229 (iii) an event permittee; and

230 (e) warehouse on its premises an alcoholic product that the brewery manufacturing  
231 licensee manufactures or purchases for manufacturing purposes.

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

234 (a) heavy beer; or

235 (b) a flavored malt beverage.

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

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

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

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

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

242 (d) that a record pertaining to the materials and ingredients used in the manufacture of



243 an alcoholic product be available to the commission or department upon request.

244 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored  
245 malt beverage to be consumed on the licensed premises, except under the circumstances  
246 described in this Subsection (4).

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

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

252 (i) beer;

253 (ii) heavy beer; or

254 (iii) a flavored malt beverage.

255 (c) (i) A brewery manufacturing licensee may [~~operate on its licensed premises a retail~~  
256 ~~facility allowing~~] allow consumption on the premises of [~~beer in a bottle or on draft~~] a bona  
257 fide sample of beer, heavy beer, and flavored malt beverages manufactured by the brewery  
258 manufacturing licensee if food is also available.

259 (ii) [~~A retail facility located~~] Consumption of a bona fide sample on the licensed  
260 premises of a brewery manufacturing licensee shall be operated or supervised by the brewery  
261 manufacturing licensee.

262 [~~(iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing~~  
263 ~~licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer~~  
264 ~~Local Authority.~~]

265 (d) The commission may define by rule, made in accordance with Title 63G, Chapter 3,  
266 Utah Administrative Rulemaking Act, the term "bona fide sample."

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

270 (i) (A) (I) is located in this state; and

271 (II) holds a brewery manufacturing license; or

272 (B) (I) is located outside this state; and

273 (II) holds a certificate of approval to sell beer in this state; and

274 (ii) sells beer manufactured by the small brewer directly to a person described in  
275 Subsection (1)(d).

276 (b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless  
277 the beer:

278 (i) is manufactured by the small brewer; and

279 (ii) is first placed in the small brewer's warehouse facility in this state.

280 (c) (i) A small brewer warehouse shall make and maintain complete beer importation,  
281 inventory, tax, distribution, sales records, and other records as the department and State Tax  
282 Commission may require.

283 (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:

284 (A) the department; and

285 (B) the State Tax Commission.

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

290 (6) Subject to Subsection (7):

291 (a) A brewery manufacturing licensee may not sell beer in this state except under a  
292 written agreement with a beer wholesaler licensee in this state.

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

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

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

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

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

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

304 (7) A small brewer is not subject to the requirements of Subsection (6).