

Representative Gage Froerer proposes the following substitute bill:

ALCOHOL MODIFICATIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies provisions related to consumption of alcoholic products.

Highlighted Provisions:

This bill:

▶ defines terms;

▶ clarifies ~~§~~ → **[citations] provisions related to unlawful sale or furnishing of alcoholic**

products ← ~~§~~ ;

▶ authorizes tastings by manufacturing licensees under certain conditions;

▶ addresses when a manufacturing licensee may allow staff to consume alcoholic products; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

2nd Sub. H.B. 228



26 **32B-11-403**, as enacted by Laws of Utah 2010, Chapter 276

27 **32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334

28 ENACTS:

29 **32B-11-210**, Utah Code Annotated 1953



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

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

33 **32B-4-401. Unlawful sale or furnishing.**

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

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

- 41 (a) the department;
- 42 (b) a military installation;
- 43 (c) a holder of a special use permit, to the extent authorized in the special use permit;

44 or

- 45 (d) a liquor warehouser licensee licensed to distribute and transport liquor to:
 - 46 (i) the department; or
 - 47 (ii) an out-of-state wholesaler or retailer.

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

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

55 (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of
56 approval from selling, shipping, or transporting beer to the extent authorized by Subsection

57 32B-11-503(5) directly to:

58 (i) a beer retailer; or

59 (ii) an event permittee.

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

64 (i) the department;

65 (ii) a military installation;

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

67 or

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

69 (A) the department; or

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

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

73 (i) to the extent authorized by Subsection 32B-11-303(4)(~~e~~); or

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

75 (c) Subsection (4)(a) does not preclude a distillery manufacturing licensee located in
76 this state from selling liquor on its distillery premises:

77 (i) to the extent authorized in Subsection 32B-11-403(5); or

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

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

81 (i) to the extent authorized under Subsection 32B-11-503(4); or

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

83 (5) (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or
84 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,
85 shipped, or transported beer directly or indirectly to a person in this state except to the extent
86 authorized by this title to:

87 (i) a beer wholesaler licensee;

88 (ii) a military installation; or
89 (iii) a holder of a special use permit, to the extent authorized in the special use permit.

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

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

94 (A) a beer retailer; or

95 (B) an event permittee; or

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

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

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

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

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

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

110 Section 2. Section 32B-11-210 is enacted to read:

111 **32B-11-210. Tasting provided by manufacturing licensee.**

112 (1) As used in this section ~~§~~ → [,"taste"] :

112a **(a) "Parcel" means the same identifiable contiguous unit of property that is treated as**
112b **separate for valuation or zoning purposes and includes an improvement on that unit of**
112c **property.**

112d **(b) "Taste" ←§ means an amount of an alcoholic product provided**
113 **by a manufacturing licensee for consumption under this section.**

114 (2) A manufacturing licensee may provide for a tasting in accordance with this section.

115 (3) Before conducting a tasting, the manufacturing licensee shall provide the
116 department:

117 (a) evidence of proximity to any community location, with proximity requirements
118 being governed by Section 32B-1-202 as if the manufacturing licensee were a retail licensee;

119 (b) a floor plan, and boundary map where applicable, of the premises of the
 120 manufacturing licensee, including any:

121 (i) consumption area; and

122 (ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic
 123 product to be tasted;

124 (c) evidence that the manufacturing licensee is carrying public liability insurance in an
 125 amount and form satisfactory to the department;

126 (d) evidence that the manufacturing licensee is carrying dramshop insurance coverage
 127 in an amount and form satisfactory to the department; and

128 (e) any other information the commission or department may require.

129 (4) A manufacturing licensee may not sell, offer for sale, or furnish a taste on any day
 130 during the period that:

131 (a) begins at midnight; and

132 (b) ends at 10:59 a.m.

133 (5) A person who serves a taste on behalf of the manufacturing licensee shall complete
 134 an alcohol training and education seminar as if the person were employed by a retail licensee.

135 (6) ~~§~~ (a) ~~§~~ A manufacturing licensee shall establish a distinct area for consumption of a
 135a taste

136 ~~§~~ outside the view of minors ~~§~~ on the licensed premises ~~§~~ and ~~§~~ in which minors are
 136a1 not allowed during the time period
 136a when tasting occurs.

136b ~~§~~ (b) The distinct area for consumption for a taste established under this Subsection (6)
 136c shall be in the same building as where the manufacturing licensee produces alcoholic product
 136d ~~§~~ [or], ~~§~~ in a building on the same parcel as the building where the manufacturing
 136d1 licensee produces

136e alcoholic product ~~§~~, or in a patio or similar area immediately adjacent to a building
 136e1 described in this Subsection (6)(b) ~~§~~ . ~~§~~

137 (7) ~~§~~ (a) ~~§~~ A manufacturing licensee shall have ~~§~~ [a variety of] substantial ~~§~~
 137a food available that is served on the
 138 licensed premises to an individual consuming a taste.

138a ~~§~~ (b) The commission may define what constitutes "substantial food" by rule made in
 138b accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the
 138c rule may not require culinary facilities for food preparation that are equivalent to a restaurant
 138d or dining club. ~~§~~

139 (8) A manufacturing licensee shall charge an individual for a taste and may not sell,
 140 offer for sale, or furnish a taste at less than the cost of the taste to a retail licensee.

141 (9) (a) A manufacturing licensee may provide a taste in more than one container except

142 that the aggregate total of the taste in all of the containers may not exceed:

143 (i) 5 ounces of wine for a winery manufacturing licensee;

144 (ii) 2.5 ounces of spirituous liquor for a distillery manufacturing licensee; or

145 (iii) 16 ounces of beer, heavy beer, or flavored malt beverages for a brewery

146 manufacturing licensee.

147 (b) A manufacturing licensee may not allow an individual to participate in more than

148 one tasting within a calendar day.

149 (10) A manufacturing licensee may provide a taste of alcoholic product that is:

- 150 (a) manufactured by the manufacturing licensee; and
 151 (b) purchased by the manufacturing licensee from:
 152 (i) a state store or package agency; or
 153 (ii) for beer, the off-premise retail licensee described in Subsection 32B-11-503(4)(c).
 154 (11) (a) A manufacturing licensee shall display in a prominent place in the location
 155 where tastes are consumed a sign in large letters that consists of text in the following order:
 156 (i) a header that reads: "WARNING";
 157 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
 158 can cause birth defects and permanent brain damage for the child.";
 159 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
 160 [insert most current toll-free number] with questions or for more information.";
 161 (iv) a header that reads: "WARNING"; and
 162 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
 163 serious crime that is prosecuted aggressively in Utah."
 164 (b) (i) The text described in Subsections (11)(a)(i) through (iii) shall be in a different
 165 font style than the text described in Subsections (11)(a)(iv) and (v).
 166 (ii) The warning statements in the sign described in Subsection (11)(a) shall be in the
 167 same font size.
 168 (c) The Department of Health shall work with the commission and department to
 169 facilitate consistency in the format of a sign required under this Subsection (11).
 170 (12) A manufacturing licensee shall provide educational information as defined by rule
 171 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 172 Act, as part of the tasting.
 172a **§→ (13) A manufacturing licensee that conducts tastings under a scientific or educational use**
 172b **permit issued by the commission as of May 10, 2016, shall comply with this section by no later**
 172c **than December 31, 2016, in conducting a tasting. In accordance with Subsection 32B-10-**
 172d **206(1)(c), effective no later than January 1, 2017, the commission shall take action on a**
 172e **scientific or educational use permit used by a manufacturing licensee to conduct tastings. ←§**
 173 Section 3. Section 32B-11-303 is amended to read:
 174 **32B-11-303. Specific authority and operational requirements for winery**
 175 **manufacturing license.**
 176 (1) A winery manufacturing license allows a winery manufacturing licensee to:
 177 (a) store, manufacture, transport, import, or export wine;
 178 (b) sell wine at wholesale to the department and to out-of-state customers;
 179 (c) purchase liquor for fortifying wine, if the department is notified of the purchase and
 180 date of delivery; and

181 (d) warehouse on the licensed premises liquor that is manufactured or purchased for
182 manufacturing purposes.

183 (2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery
184 manufacturing license shall conform to the standards of identity and quality established in the
185 regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

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

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

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

192 (b) the alteration or removal of unsuitable wine-making equipment or material;

193 (c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve
194 the sanitary and working conditions of the plant, licensed premises, and wine-making
195 equipment;

196 (d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed
197 premises because it is considered:

198 (i) unfit for wine making; or

199 (ii) as producing or likely to produce an unsanitary condition;

200 (e) a winery manufacturing licensee to distill or cause to be distilled or disposed of
201 under the department's supervision:

202 (i) any unsound, poor quality finished wine; or

203 (ii) unfinished wine that will not be satisfactory when finished; or

204 (f) that a record pertaining to the grapes and other materials and ingredients used in the
205 manufacture of wine be available to the commission or department upon request.

206 (4) A winery manufacturing licensee may not permit wine to be consumed on its
207 premises, except under the following circumstances:

208 (a) A winery manufacturing licensee may allow its on-duty staff to ~~[consume]~~ taste on
209 the licensed premises ~~[wine as]~~ the alcoholic product that the winery manufacturing licensee
210 ~~[furnishes to the staff]~~ manufactures on its premises without charge, but only in connection
211 with the on-duty staff's duties of manufacturing the alcoholic product during the manufacturing

212 process and not otherwise.

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

216 ~~[(c) A winery manufacturing licensee may operate on its licensed premises a retail
217 facility allowing consumption of a sample on the licensed premises of wine as long as food is
218 also available. This type of retail facility located on the licensed premises shall be operated or
219 supervised by the winery manufacturing licensee.]~~

220 (c) A winery manufacturing licensee may conduct tastings as provided in Section
221 [32B-11-210](#).

222 Section 4. Section **32B-11-403** is amended to read:

223 **32B-11-403. Specific authority and operational requirements for distillery**
224 **manufacturing license.**

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

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

227 (b) sell liquor to:

228 (i) the department;

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

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

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

233 (i) the purchase; and

234 (ii) the date of delivery; and

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

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

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

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

241 (b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a
242 valid special use permit issued in accordance with Chapter 10, Special Use Permit Act,

243 authorizing the use of the alcoholic product.

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

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

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

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

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

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

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

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

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

263 (a) a distillery manufacturing licensee may allow its on-duty staff to ~~[consume]~~ taste on
264 the licensed premises an alcoholic product that the distillery ~~[furnishes to the staff]~~
265 manufacturing licensee manufactures on its premises without charge, but only in connection
266 with the on-duty staff's duties of manufacturing the alcoholic product during the manufacturing
267 process and not otherwise; ~~and~~

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

271 (c) a distillery manufacturing licensee may conduct tastings as provided in Section
272 [32B-11-210](#).

273 Section 5. Section **32B-11-503** is amended to read:

274 **32B-11-503. Specific authority and operational requirements for brewery**
275 **manufacturing license.**

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

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

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

280 (i) the department;

281 (ii) a military installation; or

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

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

284 (d) in the case of a small brewer, in accordance with Subsection (5), sell beer
285 manufactured by the small brewer to:

286 (i) a retail licensee;

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

288 (iii) an event permittee; and

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

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

293 (a) heavy beer; or

294 (b) a flavored malt beverage.

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

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

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

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

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

303 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored
304 malt beverage to be consumed on the licensed premises, except under the circumstances

305 described in this Subsection (4).

306 (a) A brewery manufacturing licensee may allow its ~~[off-duty]~~ on-duty staff to
307 ~~[consume beer, heavy beer, or a flavored malt beverage]~~ taste the alcoholic product that the
308 brewery manufacturing licensee manufactures on its premises without charge, but only in
309 connection with the on-duty staff's duties of manufacturing the alcoholic product during the
310 manufacturing process and not otherwise.

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

- 314 (i) beer;
- 315 (ii) heavy beer; or
- 316 (iii) a flavored malt beverage.

317 ~~[(c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail~~
318 ~~facility allowing consumption on premises of beer in a bottle or on draft if food is also~~
319 ~~available.]~~

320 ~~[(ii) A retail facility located on the licensed premises of a brewery manufacturing~~
321 ~~licensee shall be operated or supervised by the brewery manufacturing licensee.]~~

322 ~~[(iii) In operating a retail facility under this Subsection (4)(c), a]~~

323 (c) A brewery manufacturing licensee ~~[shall comply]~~ may operate a retail facility that
324 complies with the requirements of Chapter 7, Part 2, Off-Premise Beer Retailer Local
325 Authority.

326 (d) A brewery manufacturing licensee may conduct tastings as provided in Section
327 [32B-11-210](#).

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

- 331 (i) (A) (I) is located in this state; and
- 332 (II) holds a brewery manufacturing license; or
- 333 (B) (I) is located outside this state; and
- 334 (II) holds a certificate of approval to sell beer in this state; and
- 335 (ii) sells beer manufactured by the small brewer directly to a person described in

336 Subsection (1)(d).

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

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

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

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

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

345 (A) the department; and

346 (B) the State Tax Commission.

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

351 (6) Subject to Subsection (7):

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

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

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

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

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

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

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

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