

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;
- ▶ 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

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



26 **32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334

27 ENACTS:

28 **32B-11-210**, Utah Code Annotated 1953

29

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

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

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

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

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

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

43 or

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

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

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

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

54 (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of
55 approval from selling, shipping, or transporting beer to the extent authorized by Subsection
56 **32B-11-503(5)** directly to:

57 (i) a beer retailer; or

58 (ii) an event permittee.

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

63 (i) the department;

64 (ii) a military installation;

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

66 or

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

68 (A) the department; or

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

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

72 (i) to the extent authorized by [~~Subsection 32B-11-303(4)(c)~~] Section 32B-11-210; or

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

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

78 (i) a beer wholesaler licensee;

79 (ii) a military installation; or

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

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

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

85 (A) a beer retailer; or

86 (B) an event permittee; or

87 (ii) a brewery manufacturing licensee from selling beer to a person on its

88 manufacturing premises under [~~Subsection 32B-11-503(4)(c)~~] Section 32B-11-210.

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

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

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

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

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

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

102 **32B-11-210. Tasting provided by manufacturing licensee.**

103 (1) As used in this section:

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

107 (b) "Taste" means an amount of an alcoholic product provided by a manufacturing
108 licensee for consumption under this section.

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

110 (3) Before conducting a tasting, the manufacturing licensee shall provide the
111 department:

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

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

116 (i) consumption area; and

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

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

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

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

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

126 (a) begins at midnight; and

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

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

130 (6) (a) A manufacturing licensee shall establish a distinct area for consumption of a
131 taste outside the view of minors and in which minors are not allowed during the time period
132 when tasting occurs.

133 (b) The distinct area for consumption for a taste established under this Subsection (6)
134 shall be in the same building as where the manufacturing licensee produces alcoholic product
135 or in a building on the same parcel as the building where the manufacturing licensee produces
136 alcoholic product.

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

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.
173 (13) A manufacturing licensee that as of May 10, 2016, provides tastings under a
174 scientific or educational use permit issued under Chapter 10, Part 5, Scientific or Educational
175 Use Permit, may continue to offer tasting under that scientific or educational use permit until
176 such time as the manufacturing licensee ceases operations.
177 Section 3. Section **32B-11-303** is amended to read:
178 **32B-11-303. Specific authority and operational requirements for winery**
179 **manufacturing license.**
180 (1) A winery manufacturing license allows a winery manufacturing licensee to:

- 181 (a) store, manufacture, transport, import, or export wine;
- 182 (b) sell wine at wholesale to the department and to out-of-state customers;
- 183 (c) purchase liquor for fortifying wine, if the department is notified of the purchase and
184 date of delivery; and
- 185 (d) warehouse on the licensed premises liquor that is manufactured or purchased for
186 manufacturing purposes.
- 187 (2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery
188 manufacturing license shall conform to the standards of identity and quality established in the
189 regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.
- 190 (b) The federal definitions, standards of identity, and quality and labeling requirements
191 for wine, in regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201
192 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with the
193 laws of this state.
- 194 (3) If considered necessary, the commission or department may require:
- 195 (a) the alteration of the plant, equipment, or licensed premises;
- 196 (b) the alteration or removal of unsuitable wine-making equipment or material;
- 197 (c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve
198 the sanitary and working conditions of the plant, licensed premises, and wine-making
199 equipment;
- 200 (d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed
201 premises because it is considered:
- 202 (i) unfit for wine making; or
- 203 (ii) as producing or likely to produce an unsanitary condition;
- 204 (e) a winery manufacturing licensee to distill or cause to be distilled or disposed of
205 under the department's supervision:
- 206 (i) any unsound, poor quality finished wine; or
- 207 (ii) unfinished wine that will not be satisfactory when finished; or
- 208 (f) that a record pertaining to the grapes and other materials and ingredients used in the
209 manufacture of wine be available to the commission or department upon request.
- 210 (4) A winery manufacturing licensee may not permit wine to be consumed on its
211 premises, except under the following circumstances:

212 (a) A winery manufacturing licensee may allow its on-duty staff to ~~[consume]~~ taste on
213 the licensed premises ~~[wine as]~~ the alcoholic product that the winery manufacturing licensee
214 ~~[furnishes to the staff]~~ manufactures on its premises without charge, but only in connection
215 with the on-duty staff's duties of manufacturing the alcoholic product during the manufacturing
216 process and not otherwise.

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

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

224 (c) A winery manufacturing licensee may conduct tastings as provided in Section
225 [32B-11-210](#).

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

227 **32B-11-403. Specific authority and operational requirements for distillery**
228 **manufacturing license.**

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

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

231 (b) sell liquor to:

232 (i) the department;

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

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

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

237 (i) the purchase; and

238 (ii) the date of delivery; and

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

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

243 (i) a mechanical or industrial business that requires the use of an alcoholic product; or
244 (ii) scientific pursuits that require the use of an alcoholic product.

245 (b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a
246 valid special use permit issued in accordance with Chapter 10, Special Use Permit Act,
247 authorizing the use of the alcoholic product.

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

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

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

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

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

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

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

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

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

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

272 (b) a distillery manufacturing licensee may allow a person who can lawfully purchase
273 an alcoholic product for wholesale or retail distribution to consume a bona fide sample of the

274 distillery manufacturing licensee's product on the licensed premises[-]; and

275 (c) a distillery manufacturing licensee may conduct tastings as provided in Section
276 [32B-11-210](#).

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

278 **32B-11-503. Specific authority and operational requirements for brewery**
279 **manufacturing license.**

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

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

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

284 (i) the department;

285 (ii) a military installation; or

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

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

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

290 (i) a retail licensee;

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

292 (iii) an event permittee; and

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

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

297 (a) heavy beer; or

298 (b) a flavored malt beverage.

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

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

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

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

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

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

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

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

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

- 318 (i) beer;
319 (ii) heavy beer; or
320 (iii) a flavored malt beverage.

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

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

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

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

330 (d) A brewery manufacturing licensee may conduct tastings as provided in Section
331 [32B-11-210](#).

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

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

- 336 (II) holds a brewery manufacturing license; or
337 (B) (I) is located outside this state; and
338 (II) holds a certificate of approval to sell beer in this state; and
339 (ii) sells beer manufactured by the small brewer directly to a person described in
340 Subsection (1)(d).
341 (b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless
342 the beer:
343 (i) is manufactured by the small brewer; and
344 (ii) is first placed in the small brewer's warehouse facility in this state.
345 (c) (i) A small brewer warehouse shall make and maintain complete beer importation,
346 inventory, tax, distribution, sales records, and other records as the department and State Tax
347 Commission may require.
348 (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:
349 (A) the department; and
350 (B) the State Tax Commission.
351 (iii) Section 32B-1-205 applies to a record required to be made or maintained in
352 accordance with this Subsection (5), except that the provision is considered to include an action
353 described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission,
354 or an official or employee of the State Tax Commission.
355 (6) Subject to Subsection (7):
356 (a) A brewery manufacturing licensee may not sell beer in this state except under a
357 written agreement with a beer wholesaler licensee in this state.
358 (b) An agreement described in Subsection (6)(a) shall:
359 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
360 persons entering into the agreement;
361 (ii) designate the one or more brands that may be distributed in the sales territory; and
362 (iii) set forth the exact geographical area of the sales territory.
363 (c) A brewery manufacturing licensee may have more than one agreement described in
364 this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one
365 exclusive sales territory.
366 (d) A brewery manufacturing licensee may not enter into an agreement with more than

367 one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or
368 any portion of the sales territory.

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