

# HB0371S01 compared with HB0371

~~text~~ shows text that was in HB0371 but was deleted in HB0371S01.

text shows text that was not in HB0371 but was inserted into HB0371S01.

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Representative Timothy D. Hawkes proposes the following substitute bill:

## ALCOHOLIC BEVERAGE CONTROL AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Timothy D. Hawkes**

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

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### LONG TITLE

#### General Description:

This bill amends provisions of and related to the Alcoholic Beverage Control Act.

#### Highlighted Provisions:

This bill:

- ▶ amends the definitions of "hotel," "room service," and "small brewer";
- ▶ amends and enacts provisions related to proximity to a community location;
- ▶ amends the calculation of ratio of gross receipts of food to alcoholic product for spirituous liquor;
- ▶ amends the qualifications for a special use permittee;
- ▶ amends the markup for heavy beer from certain small brewers;
- ▶ amends the percentage of the total gross revenue from sales of liquor deposited in the Underage Drinking Prevention Media and Education Campaign Restricted

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Account;

- ▶ requires a package agent who has a consignment liquor inventory owned by the state to post a cash or surety bond;
- ▶ amends the operational requirements of a package agency;
- ▶ amends provisions related to the unlawful sale, offer for sale, or furnishing to a minor or to an intoxicated person;
- ▶ enacts provisions related late applications for retail license renewal;
- ▶ amends provisions related to a conditional retail license;
- ▶ amends provisions related to bringing an alcoholic product on or carrying an alcoholic product from licensed premises;
- ▶ requires a retail licensee to notify the department within 60 days of certain changes;
- ▶ amends operational requirements for an on-premise banquet license;
- ▶ amends provisions related to an on-premise beer retailer license;
- ▶ requires the commission to approve an additional location for a hospitality amenity licensee;
- ▶ amends operational requirements for an off-premise beer retailer;
- ▶ amends provisions of the Transfer of Alcohol License Act regarding:
  - the definitions "transferor" and "transferee";
  - the transferability of an alcohol license;
  - the effect of transfer of ownership of a business entity;
  - operational requirements for a transferee;
  - application and approval process; and
  - transfer fees;
- ▶ repeals from the Transfer of Alcohol License Act, Part 4, Protection of Creditors;
- ▶ amends the general operational requirements of a sublicense to a hotel or resort regarding bringing an alcoholic product onto and carrying an alcoholic product from the licensed premises;
- ▶ allows certain actions without a manufacturing license;
- ▶ enacts provisions related to a change of location for a warehousing facility;
- ▶ exempts the director's emergency action suspending operations of a package agency, licensee, or permittee under certain circumstances from Title 63G, Chapter 4,

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Administrative Procedures Act;

- ▶ amends provisions related to the investigation of sales of alcohol, tobacco products, electronic cigarette products, and nicotine products to underage individuals; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**32B-1-102**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapters 3 and 4

**32B-1-202**, as last amended by Laws of Utah 2020, Chapter 219

**32B-1-207**, as last amended by Laws of Utah 2017, Chapter 455

**32B-1-304**, as last amended by Laws of Utah 2020, Chapter 219

**32B-2-304**, as last amended by Laws of Utah 2020, Chapters 21 and 178

**32B-2-306**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

**32B-2-604**, as last amended by Laws of Utah 2011, Chapter 307

**32B-2-605**, as last amended by Laws of Utah 2020, Chapter 219

**32B-4-403**, as enacted by Laws of Utah 2010, Chapter 276

**32B-4-404**, as enacted by Laws of Utah 2010, Chapter 276

**32B-5-202**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 6

**32B-5-205**, as last amended by Laws of Utah 2013, Chapter 349

**32B-5-307**, as last amended by Laws of Utah 2020, Chapter 219

**32B-5-310**, as last amended by Laws of Utah 2019, Chapter 403

**32B-6-605**, as last amended by Laws of Utah 2020, Chapter 219

**32B-6-703**, as last amended by Laws of Utah 2019, Chapter 403

**32B-6-1004**, as enacted by Laws of Utah 2020, Chapter 219

**32B-7-202**, as last amended by Laws of Utah 2019, Chapter 403

**32B-8-501**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-102**, as last amended by Laws of Utah 2020, Chapter 219

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**32B-8a-201**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-202**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-203**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-302**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-303**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-501**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8d-104**, as enacted by Laws of Utah 2020, Chapter 219

**32B-11-202**, as enacted by Laws of Utah 2010, Chapter 276

**32B-12-205**, as enacted by Laws of Utah 2010, Chapter 276

**63G-4-102**, as last amended by Laws of Utah 2019, Chapter 431

**63I-2-232**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 6

**77-39-101**, as last amended by Laws of Utah 2020, Chapters 302 and 347

### ENACTS:

**32B-1-202.1**, Utah Code Annotated 1953

**32B-12-207**, Utah Code Annotated 1953

### REPEALS:

**32B-8a-401**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-402**, as last amended by Laws of Utah 2020, Chapter 219

**32B-8a-404**, as last amended by Laws of Utah 2020, Chapter 219

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

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

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

As used in this title:

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

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

(b) that is located at an international airport.

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

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

(3) "Alcoholic beverage" means the following:

(a) beer; or

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(b) liquor.

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

(i) contains at least .5% of alcohol by volume; and

(ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.

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

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

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

(ii) vinegar;

(iii) preserved nonintoxicating cider;

(iv) essence;

(v) tincture;

(vi) food preparation; or

(vii) an over-the-counter medicine.

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

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

(a) required by Chapter 1, Part 7, Alcohol Training and Education Act; and

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

(6) "Arena" means an enclosed building:

(a) that is managed by:

(i) the same person who owns the enclosed building;

(ii) a person who has a majority interest in each person who owns or manages a space in the enclosed building; or

(iii) a person who has authority to direct or exercise control over the management or policy of each person who owns or manages a space in the enclosed building;

(b) that operates as a venue; and

(c) that has an occupancy capacity of at least 12,500.

(7) "Arena license" means a license issued in accordance with Chapter 5, Retail

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License Act, and Chapter 8c, Arena License Act.

(8) "Banquet" means an event:

(a) that is a private event or a privately sponsored event;

(b) that is held at one or more designated locations approved by the commission in or

on the premises of:

(i) a hotel;

(ii) a resort facility;

(iii) a sports center;

(iv) a convention center;

(v) a performing arts facility; or

(vi) an arena;

(c) for which there is a contract:

(i) between a person operating a facility listed in Subsection (8)(b) and another person that has common ownership of less than 20% with the person operating the facility; and

(ii) under which the person operating a facility listed in Subsection (8)(b) is required to provide an alcoholic product at the event; and

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

(9) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:

(a) stored; or

(b) dispensed.

(10) (a) "Bar establishment license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License.

(b) "Bar establishment license" includes:

(i) a dining club license;

(ii) an equity license;

(iii) a fraternal license; or

(iv) a bar license.

(11) "Bar license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License.

(12) (a) Subject to Subsection (12)(d), "beer" means a product that:

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(i) contains at least .5% of alcohol by volume, but not more than 5% of alcohol by volume or 4% by weight; and

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

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

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (12)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

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

(13) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-Only Restaurant License.

(14) "Beer retailer" means a business that:

(a) is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) is licensed as:

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

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

(15) "Beer wholesaling license" means a license:

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

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

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

(a) a light device;

(b) a painting;

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- (c) a drawing;
- (d) a poster;
- (e) a sign;
- (f) a signboard; or
- (g) a scoreboard.

(17) "Brewer" means a person engaged in manufacturing:

- (a) beer;
- (b) heavy beer; or
- (c) a flavored malt beverage.

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

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

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

- (a) under a single contract;
- (b) at a fixed charge in accordance with the bus company's tariff; and
- (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.

(21) "Church" means a building:

- (a) set apart for worship;
- (b) in which religious services are held;
- (c) with which clergy is associated; and
- (d) that is tax exempt under the laws of this state.

(22) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.

(23) "Commissioner" means a member of the commission.

(24) "Community location" means:

- (a) a public or private school;
- (b) a church;
- (c) a public library;



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(d) a public playground; or

(e) a public park.

(25) "Community location governing authority" means:

(a) the governing body of the community location; or

(b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.

(26) "Container" means a receptacle that contains an alcoholic product, including:

(a) a bottle;

(b) a vessel; or

(c) a similar item.

(27) "Convention center" means a facility that is:

(a) in total at least 30,000 square feet; and

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

(28) (a) "Counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) "Counter" does not include a dispensing structure.

(29) "Crime involving moral turpitude" is as defined by the commission by rule.

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

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

(a) an auditor or inspector; and

(b) employed by the department.

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

(33) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the commission as a dining club license.

(34) "Director," unless the context requires otherwise, means the director of the department.

(35) "Disciplinary proceeding" means an adjudicative proceeding permitted under this

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title:

- (a) against a person subject to administrative action; and
- (b) that is brought on the basis of a violation of this title.

(36) (a) Subject to Subsection (36)(b), "dispense" means:

- (i) drawing an alcoholic product; and
- (ii) using the alcoholic product at the location from which it was drawn to mix or

prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (36) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license;
- (iv) a beer-only restaurant license;
- (v) a bar license;
- (vi) an on-premise beer retailer;
- (vii) an airport lounge license;
- (viii) an on-premise banquet license; and
- (ix) a hospitality amenity license.

(37) "Dispensing structure" means a surface or structure on a licensed premises:

- (a) where an alcoholic product is dispensed; or
- (b) from which an alcoholic product is served.

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

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

(40) "Equity license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the commission as an equity license.

(41) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

(42) "Exempt license" means a license exempt under Section 32B-1-201 from being

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considered in determining the total number of retail licenses that the commission may issue at any time.

(43) (a) "Flavored malt beverage" means a beverage:

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

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

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

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

(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(44) "Fraternal license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the commission as a fraternal license.

(45) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-Service Restaurant License.

(46) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

(i) serve;

(ii) deliver; or

(iii) otherwise make available.

(47) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

(48) "Hard cider" means the same as that term is defined in 26 U.S.C. Sec. 5041.

(49) "Health care practitioner" means:

(a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

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(d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

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

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

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

(50) (a) "Heavy beer" means a product that:

(i) contains more than 5% alcohol by volume; and

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

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

(51) "Hospitality amenity license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 10, Hospitality Amenity License.

(52) (a) "Hotel" means a commercial lodging establishment that:

~~[(a)]~~ (i) offers at least 40 rooms as temporary sleeping accommodations for compensation;

~~[(b)]~~ (ii) is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract; and

~~[(c)-(i)]~~ (iii) (A) has adequate kitchen or culinary facilities on the premises to provide complete meals; ~~[or]~~

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~~[(ii)(A)]~~ (B) has at least 1,000 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract and can accommodate at least 75 individuals; or

~~[(B)]~~ (C) if the establishment is located in a small or unincorporated locality, has an appropriate amount of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract, as determined by the commission.

(b) "Hotel" includes a commercial lodging establishment that:

(i) meets the requirements under Subsection (52)(a); and

(ii) has one or more privately owned dwelling units.

(53) "Hotel license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8b, Hotel License Act.

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

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

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

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

(a) law; or

(b) court order.

(58) "International airport" means an airport:

(a) with a United States Customs and Border Protection office on the premises of the airport; and

(b) at which international flights may enter and depart.

(59) "Intoxicated" means that a person:

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

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- (i) an alcoholic product;
- (ii) a controlled substance;
- (iii) a substance having the property of releasing toxic vapors; or
- (iv) a combination of Subsections (59)(a)(i) through (iii); and
- (b) exhibits plain and easily observed outward manifestations of behavior or physical

signs produced by the overconsumption of an alcoholic product.

(60) "Investigator" means an individual who is:

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

(61) "License" means:

- (a) a retail license;
- (b) a sublicense;
- (c) a license issued in accordance with Chapter 11, Manufacturing and Related

Licenses Act;

- (d) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;
- (e) a license issued in accordance with Chapter 13, Beer Wholesaling License Act; or
- (f) a license issued in accordance with Chapter 17, Liquor Transport License Act.

(62) "Licensee" means a person who holds a license.

(63) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-Service Restaurant License.

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

- (a) in which the driver and a passenger are separated by a partition, glass, or other barrier;
- (b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and
- (c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

(65) (a) (i) "Liquor" means a liquid that:

- (A) is:
- (I) alcohol;

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- (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
- (IV) other drink or drinkable liquid; and

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

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

(A) heavy beer;

(B) wine; and

(C) a flavored malt beverage.

(b) "Liquor" does not include beer.

(66) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

(67) "Liquor transport license" means a license issued in accordance with Chapter 17, Liquor Transport License Act.

(68) "Liquor warehousing license" means a license that is issued:

(a) in accordance with Chapter 12, Liquor Warehousing License Act; and

(b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

(69) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county;

(b) for premises that are located in an incorporated city, town, or metro township, the governing body of the city, town, or metro township; or

(c) for premises that are located in a project area as defined in Section 63H-1-102 and in a project area plan adopted by the Military Installation Development Authority under Title 63H, Chapter 1, Military Installation Development Authority Act, the Military Installation Development Authority.

(70) "Lounge or bar area" is as defined by rule made by the commission.

(71) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(72) "Member" means an individual who, after paying regular dues, has full privileges in an equity licensee or fraternal licensee.

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(73) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

- (i) (A) under the control of the United States Department of Defense; or
- (B) of the National Guard;
- (ii) that is located within the state; and
- (iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

- (i) civil works;
- (ii) a rivers and harbors project; or
- (iii) a flood control project.

(74) "Minibar" means an area of a hotel guest room where one or more alcoholic products are kept and offered for self-service sale or consumption.

(75) "Minor" means an individual under the age of 21 years.

(76) "Nondepartment enforcement agency" means an agency that:

- (a) (i) is a state agency other than the department; or
- (ii) is an agency of a county, city, town, or metro township; and
- (b) has a responsibility to enforce one or more provisions of this title.

(77) "Nondepartment enforcement officer" means an individual who is:

- (a) a peace officer, examiner, or investigator; and
- (b) employed by a nondepartment enforcement agency.

(78) (a) "Off-premise beer retailer" means a beer retailer who is:

- (i) licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act; and
- (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(79) "Off-premise beer retailer state license" means a state license issued in accordance with Chapter 7, Part 4, Off-Premise Beer Retailer State License.

(80) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-Premise Banquet License.

(81) "On-premise beer retailer" means a beer retailer who is:

- (a) authorized to sell, offer for sale, or furnish beer under a license issued in



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accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(82) "Opaque" means impenetrable to sight.

(83) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

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

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

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

(a) a customer;

(b) a member;

(c) a guest;

(d) an attendee of a banquet or event;

(e) an individual who receives room service;

(f) a resident of a resort; or

(g) a hospitality guest, as defined in Section 32B-6-1002, under a hospitality amenity license.

(86) (a) "Performing arts facility" means a multi-use performance space that:

(i) is primarily used to present various types of performing arts, including dance, music, and theater;

(ii) contains over 2,500 seats;

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(iii) is owned and operated by a governmental entity; and

(iv) is located in a city of the first class.

(b) "Performing arts facility" does not include a space that is used to present sporting events or sporting competitions.

(87) "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

(88) "Person subject to administrative action" means:

(a) a licensee;

(b) a permittee;

(c) a manufacturer;

(d) a supplier;

(e) an importer;

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

(i) an out-of-state brewer;

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

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

(g) staff of:

(i) a person listed in Subsections (88)(a) through (f); or

(ii) a package agent.

(89) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

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

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

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

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

(91) (a) "Primary spirituous liquor" means the main distilled spirit in a beverage.

(b) "Primary spirituous liquor" does not include a secondary flavoring ingredient.

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(92) "Principal license" means:

- (a) a resort license;
- (b) a hotel license; or
- (c) an arena license.

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

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

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

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

(94) "Privately sponsored event" means a specific social, business, or recreational event:

- (a) that is held in or on the premises of an on-premise banquet licensee; and
- (b) to which entry is restricted by an admission fee.

(95) (a) "Proof of age" means:

- (i) an identification card;
- (ii) an identification that:
  - (A) is substantially similar to an identification card;
  - (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

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

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

(iv) a military identification card that:

(A) includes date of birth; and

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(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(96) "Provisions applicable to a sublicense" means:

(a) for a full-service restaurant sublicense, the provisions applicable to a full-service restaurant license under Chapter 6, Part 2, Full-Service Restaurant License;

(b) for a limited-service restaurant sublicense, the provisions applicable to a limited-service restaurant license under Chapter 6, Part 3, Limited-Service Restaurant License;

(c) for a bar establishment sublicense, the provisions applicable to a bar establishment license under Chapter 6, Part 4, Bar Establishment License;

(d) for an on-premise banquet sublicense, the provisions applicable to an on-premise banquet license under Chapter 6, Part 6, On-Premise Banquet License;

(e) for an on-premise beer retailer sublicense, the provisions applicable to an on-premise beer retailer license under Chapter 6, Part 7, On-Premise Beer Retailer License;

(f) for a beer-only restaurant sublicense, the provisions applicable to a beer-only restaurant license under Chapter 6, Part 9, Beer-Only Restaurant License;

(g) for a hospitality amenity license, the provisions applicable to a hospitality amenity license under Chapter 6, Part 10, Hospitality Amenity License; and

(h) for a resort spa sublicense, the provisions applicable to the sublicense under Chapter 8d, Part 2, Resort Spa Sublicense.

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

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

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

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function.

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

(99) "Reception center" means a business that:

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

(b) has as its primary purpose the leasing of the facilities described in Subsection

(99)(a) to a third party for the third party's event.

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

(101) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or

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

(b) "Record" includes:

(i) a book;

(ii) a book of account;

(iii) a paper;

(iv) a contract;

(v) an agreement;

(vi) a document; or

(vii) a recording in any medium.

(102) "Residence" means a person's principal place of abode within Utah.

(103) "Resident," in relation to a resort, means the same as that term is defined in Section 32B-8-102.

(104) "Resort" means the same as that term is defined in Section 32B-8-102.

(105) "Resort facility" is as defined by the commission by rule.

(106) "Resort spa sublicense" means a resort license sublicense issued in accordance with Chapter 8d, Part 2, Resort Spa Sublicense.

(107) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(108) "Responsible alcohol service plan" means a written set of policies and

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procedures that outlines measures to prevent employees from:

- (a) over-serving alcoholic beverages to customers;
- (b) serving alcoholic beverages to customers who are actually, apparently, or obviously

intoxicated; and

- (c) serving alcoholic beverages to minors.

(109) "Restaurant" means a business location:

- (a) at which a variety of foods are prepared;
- (b) at which complete meals are served; and
- (c) that is engaged primarily in serving meals.

(110) "Restaurant license" means one of the following licenses issued under this title:

- (a) a full-service restaurant license;
- (b) a limited-service restaurant license; or
- (c) a beer-only restaurant license.

(111) "Retail license" means one of the following licenses issued under this title:

- (a) a full-service restaurant license;
- (b) a master full-service restaurant license;
- (c) a limited-service restaurant license;
- (d) a master limited-service restaurant license;
- (e) a bar establishment license;
- (f) an airport lounge license;
- (g) an on-premise banquet license;
- (h) an on-premise beer license;
- (i) a reception center license;
- (j) a beer-only restaurant license;
- (k) a hospitality amenity license;
- (l) a resort license;
- (m) a hotel license; or
- (n) an arena license.

(112) "Room service" means furnishing an alcoholic product to a person in a guest room or privately owned dwelling unit of a:

- (a) hotel; or

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(b) resort facility.

(113) (a) "School" means a building in which any part is used for more than three hours each weekday during a school year as a public or private:

(i) elementary school;

(ii) secondary school; or

(iii) kindergarten.

(b) "School" does not include:

(i) a nursery school;

(ii) a day care center;

(iii) a trade and technical school;

(iv) a preschool; or

(v) a home school.

(114) "Secondary flavoring ingredient" means any spirituous liquor added to a beverage for additional flavoring that is different in type, flavor, or brand from the primary spirituous liquor in the beverage.

(115) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(116) "Serve" means to place an alcoholic product before an individual.

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

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

(b) on the premises of:

(i) a bar licensee; or

(ii) a tavern;

(c) on behalf of or at the request of the licensee described in Subsection (117)(b);

(d) on a contractual or voluntary basis; and

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

(i) an employee;

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- (ii) an independent contractor;
- (iii) an agent of the licensee; or
- (iv) a different type of classification.

(118) "Shared seating area" means the licensed premises of two or more restaurant licensees that the restaurant licensees share as an area for alcoholic beverage consumption in accordance with Subsection 32B-5-207(3).

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

(120) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt ~~[beverages]~~ beverage per year, not including beer, heavy beer, or flavored malt beverage a brewer:

(a) manufactures that is unfit for consumption as, or in, a beverage, as the commission determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) does not sell for consumption as, or in, a beverage.

(121) "Small or unincorporated locality" means:

- (a) a city of the third, fourth, or fifth class, as classified under Section 10-2-301;
- (b) a town, as classified under Section 10-2-301; or
- (c) an unincorporated area in a county of the third, fourth, or fifth class, as classified under Section 17-50-501.

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

(123) (a) "Spirituous liquor" means liquor that is distilled.

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

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

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

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

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



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

(b) "Staff" includes:

- (i) an officer;
- (ii) a director;
- (iii) an employee;
- (iv) personnel management;
- (v) an agent of the licensee, including a managing agent;
- (vi) an operator; or
- (vii) a representative.

(126) "State of nudity" means:

- (a) the appearance of:
  - (i) the nipple or areola of a female human breast;
  - (ii) a human genital;
  - (iii) a human pubic area; or
  - (iv) a human anus; or
- (b) a state of dress that fails to opaquely cover:
  - (i) the nipple or areola of a female human breast;
  - (ii) a human genital;
  - (iii) a human pubic area; or
  - (iv) a human anus.

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

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

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

- (i) with no less than the following at its widest point:
  - (A) four inches coverage width in the front of the human body; and
  - (B) five inches coverage width in the back of the human body; and
- (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

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

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

(b) "State store" does not include:

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

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

(b) "Store" means to place or maintain in a location an alcoholic product.

(130) "Sublicense" means:

(a) any of the following licenses issued as a subordinate license to, and contingent on the issuance of, a principal license:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a bar establishment license;
- (iv) an on-premise banquet license;
- (v) an on-premise beer retailer license;
- (vi) a beer-only restaurant license; or
- (vii) a hospitality amenity license; or

(b) a resort spa sublicense.

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

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

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

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

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

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

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

(136) "Unsaleable liquor merchandise" means a container that:

(a) is unsaleable because the container is:

(i) unlabeled;

(ii) leaky;

(iii) damaged;

(iv) difficult to open; or

(v) partly filled;

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

(ii) has contents that are:

(A) cloudy;

(B) spoiled; or

(C) chemically determined to be impure; or

(iii) contains:

(A) sediment; or

(B) a foreign substance; or

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

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

(b) "Wine" includes:

(i) an alcoholic beverage defined as wine under 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 4.10; and

(ii) hard cider.

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

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

Section 2. Section **32B-1-202** is amended to read:

**32B-1-202. Proximity to community location.**

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(1) As used in this section:

(a) (i) "Outlet" means:

(A) a state store;

(B) a package agency; or

(C) a retail licensee.

(ii) "Outlet" does not include:

(A) an airport lounge licensee; or

(B) a restaurant.

(b) "Restaurant" means:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee; or

(iii) a beer-only restaurant licensee.

(2) (a) [~~The~~] Except as otherwise provided in this section or Section 32B-1-202.1, the commission may not issue a license for an outlet if, on the date the commission takes final action to approve or deny the application, there is a community location:

(i) within 600 feet of the proposed outlet, as measured from the nearest patron entrance of the proposed outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(ii) within 200 feet of the proposed outlet, measured in a straight line from the nearest patron entrance of the proposed outlet to the nearest property boundary of the community location.

(b) [~~The~~] Except as otherwise provided in this section or Section 32B-1-202.1, the commission may not issue a license for a restaurant if, on the date the commission takes final action to approve or deny the application, there is a community location:

(i) within 300 feet of the proposed restaurant, as measured from the nearest patron entrance of the proposed restaurant by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(ii) within 200 feet of the proposed restaurant, measured in a straight line from the nearest patron entrance of the proposed restaurant to the nearest property boundary of the community location.

(3) (a) For an outlet or a restaurant that holds a license on May 9, 2017, and operates

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under a previously approved variance to one or more proximity requirements in effect before May 9, 2017, subject to the other provisions of this title, that outlet or restaurant, or another outlet or restaurant with the same type of license as that outlet or restaurant, may operate under the previously approved variance regardless of whether:

- (i) the outlet or restaurant changes ownership;
- (ii) the property on which the outlet or restaurant is located changes ownership; or
- (iii) there is a lapse in the use of the property as an outlet or a restaurant with the same

type of license, unless during the lapse, the property is used for a different purpose.

(b) An outlet or a restaurant that has continuously operated at a location since before January 1, 2007, is considered to have a previously approved variance.

(4) An outlet or restaurant that holds a license on May 12, 2020, and operates in accordance with the proximity requirements in effect at the time the commission issued the license or operates under a previously approved variance described in Subsection (3), subject to the other provisions of this title, that outlet or restaurant or an outlet or a restaurant with the same type of license as that outlet or restaurant may operate at the premises regardless of whether:

- (a) the outlet or restaurant changes ownership;
- (b) the property on which the outlet or restaurant is located changes ownership; or
- (c) there is a lapse of one year or less in the use of the property as an outlet or a

restaurant with the same type of license, unless during the lapse the property is used for a different purpose.

(5) (a) If, after an outlet or a restaurant obtains a license under this title, a person establishes a community location on a property that puts the outlet or restaurant in violation of the proximity requirements in effect at the time the license is issued or a previously approved variance described in Subsection (3), subject to the other provisions of this title, that outlet or restaurant, or an outlet or a restaurant with the same type of license as that outlet or restaurant, may operate at the premises regardless of whether:

- (i) the outlet or restaurant changes ownership;
- (ii) the property on which the outlet or restaurant is located changes ownership; or
- (iii) there is a lapse in the use of the property as an outlet or a restaurant with the same

type of license, unless during the lapse the property is used for a different purpose.

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(b) The provisions of this Subsection (5) apply regardless of when the outlet's or restaurant's license is issued.

(6) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet.

Section 3. Section **32B-1-202.1** is enacted to read:

**32B-1-202.1. Proximity ~~in certain community reinvestment areas:~~**

**for certain hotel licensees.**

**(1) As used in this section:**

**(a) "Hotel" means the same as that term is defined in Section 32B-8b-102.**

**(b) "Boundary of a hotel" means the same as that term is defined in Section 32B-8b-102.**

**(2) The commission may issue a ~~bar establishment license, a restaurant license, an on-premise banquet license, or a package agency~~ hotel license for a proposed location that does not meet the proximity requirements under Section 32B-1-202, if:**

**(~~1~~)a) the hotel is not scheduled to open for business until after June 1, 2021;**

**(b) the proposed ~~location~~ boundary of the hotel is:**

**(~~a~~)i) ~~is~~ located in a city classified as a city of the first class under Section 10-2-301;**

**~~(b) is within the boundaries of a community reinvestment project area under Title 17C, Chapter 5, Community Reinvestment;~~**

**~~(~~c~~)ii) ~~is not~~ within ~~300~~600 feet of ~~a~~two community ~~location~~;~~**

**~~(d) locations; and~~**

**(iii) not within 300 feet of a community location;**

**(c) the proposed sublicensed premises of a bar establishment sublicense under the hotel license:**

**(i) is on the second or higher floor of a hotel;**

**(~~c~~)ii) is not accessible at street level; and**

**(~~f~~)iii) is only accessible to an individual who passes through another area of the hotel**

**in which the ~~licensed premises of the retail license or package agency is located;~~**

**(2) the relevant board, as described in Section 17C-1-203, approves the community reinvestment project area plan, as defined in Section 17C-1-102, that designates the boundaries**

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~~of the community reinvestment project area in which the proposed retail license or package agency is located for the following purposes, as written in the resolution described in Section 17C-5-108 that approves the community reinvestment project area plan:~~

- ~~— (a) to strengthen the culturally rich minority neighborhood;~~
- ~~— (b) to advance the purpose and appreciation of the minority neighborhood culture; and~~
- ~~— (c) to provide needed economic support to strengthen the culturally rich minority neighborhood; and~~
- ~~— (3) bar establishment sublicense is located; and~~
- ~~(d) the applicant meets all other criteria under this title ~~{required}~~ for the ~~{type of retail}~~ hotel license ~~{or}~~.~~

(3) The commission may issue authority to operate as a package agency to a hotel licensee who meets the ~~{applicant seeks}~~ requirements described in Subsection (2).

Section 4. Section **32B-1-207** is amended to read:

### **32B-1-207. Calculation of ratio of gross receipts of food to alcoholic product.**

In calculating the annual gross receipts of a retail license or sublicense for purposes of determining the percentage of gross receipts from the sale, offer for sale, or furnishing of food or an alcoholic product, a retail licensee may not include in the calculation the money from the sale of:

- (1) a bottle of wine by the retail licensee or under a sublicense that is in excess of \$175;  
[or]
- (2) an individual portion of wine, as described in Subsection 32B-5-304(2)(a), by the retail licensee or under a sublicense that is in excess of \$30[-:]; or
- (3) an individual portion of spirituous liquor, as described in Subsection 32B-5-304(1), by the retail licensee or under a sublicense that is in excess of \$30.

Section 5. Section **32B-1-304** is amended to read:

### **32B-1-304. Qualifications for a package agency, license, or permit -- Minors.**

- (1) (a) Except as provided in Subsection (7), the commission may not issue a package agency, license, or permit to a person who has been convicted of:
  - (i) within seven years before the day on which the commission issues the package agency, license, or permit, a felony under a federal law or state law;
  - (ii) within four years before the day on which the commission issues the package

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agency, license, or permit:

(A) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product; or

(B) a crime involving moral turpitude; or

(iii) on two or more occasions within the five years before the day on which the package agency, license, or permit is issued, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.

(b) If the person is a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of an offense described in Subsection (1)(a):

(i) a partner;

(ii) a managing agent;

(iii) a manager;

(iv) an officer;

(v) a director;

(vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(vii) a member who owns at least 20% of the limited liability company.

(c) Except as provided in Subsection (7), the proscription under Subsection (1)(a) applies if a person who is employed to act in a supervisory or managerial capacity for a package agency, licensee, or permittee has been convicted of an offense described in Subsection (1)(a).

(2) Except as described in Section 32B-8-501, the commission may immediately suspend or revoke a package agency, license, or permit, and terminate a package agency agreement, if a person described in Subsection (1):

(a) after the day on which the package agency, license, or permit is issued, is found to have been convicted of an offense described in Subsection (1)(a) before the package agency, license, or permit is issued; or

(b) on or after the day on which the package agency, license, or permit is issued:

(i) is convicted of an offense described in Subsection (1)(a)(i) or (ii); or



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(ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) Except as described in Section 32B-8-501, the director may take emergency action by immediately suspending the operation of the package agency, licensee, or permittee for the period during which a criminal matter is being adjudicated if a person described in Subsection (1):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i) or (ii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not issue a package agency, license, or permit to a person who has had any type of agency, license, or permit issued under this title revoked within the last three years.

(ii) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if a partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the corporation, or member who owns at least 20% of the limited liability company is or was:

(A) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of a limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

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(b) The commission may not issue a package agency, licence, or permit to a partnership, corporation, or limited liability company if any of the following had any type of agency, license, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) a partner or managing agent of a partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of a corporation; or

(iii) a manager or member who owns at least 20% of a limited liability company.

(c) The commission may not issue a package agency, license, or permit to a person acting in an individual capacity if that person was:

(i) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of the limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

(5) (a) The commission may not issue a package agency, license, or permit to a minor.

(b) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(iii) a manager or member who owns at least 20% of the limited liability company.

(6) Except as described in Section 32B-8-501, if a package agent, licensee, or permittee no longer possesses the qualifications required by this title for obtaining a package agency, license, or permit, the commission may terminate the package agency agreement, or revoke the license or permit.

(7) (a) If the licensee is a resort licensee:

~~(a)~~ (i) Subsection (1)(a) only applies if an individual listed in Subsection (1)(b)

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engages in the management of the resort, as the commission defines in rule; and

~~[(b)]~~ (ii) Subsection (1)(c) only applies to an individual employed to act in a supervisory or managerial capacity for the resort licensee or in relation to a sublicense of the resort license.

(b) If the permittee is a public service permittee under Chapter 10, Special Use Permit Act:

(i) Subsection (1)(a) only applies if an individual listed in Subsection (1)(b) engages in the management of the airline, railroad, or other public conveyance, as the commission defines in rule; and

(ii) Subsection (1)(c) only applies to an individual employed to act in a supervisory or managerial capacity for the public service permittee.

Section 6. Section **32B-2-304** is amended to read:

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

(1) For purposes of this section:

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

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

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

(b) "Proof gallon" means the same as that term is defined in 26 U.S.C. Sec. 5002.

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

(2) Except as provided in Subsections (3) and (4):

(a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 88% above the landed case cost to the department;

(b) wine sold by the department within the state shall be marked up in an amount not less than 88% above the landed case cost to the department;

(c) heavy beer sold by the department within the state shall be marked up in an amount not less than 66.5% above the landed case cost to the department; and

(d) a flavored malt beverage sold by the department within the state shall be marked up

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in an amount not less than 88% above the landed case cost to the department.

(3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than 17% above the landed case cost to the department.

(b) Except for spirituous liquor sold by the department to a military installation in Utah, spirituous liquor that is sold by the department within the state shall be marked up 49% above the landed case cost to the department if:

(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and

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

(c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up 49% above the landed case cost to the department if:

(i) (A) except as provided in Subsection (3)(c)(i)(B), the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; or

(B) for hard cider, the hard cider is manufactured by a manufacturer producing less than 620,000 gallons of hard cider in a calendar year; and

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

(d) Except for heavy beer ~~and flavored malt beverage~~ sold by the department to a military installation in Utah, heavy beer ~~and flavored malt beverage~~ that is sold by the department within the state shall be marked up:

(i) 32% above the landed case cost to the department if:

~~(ii) (A) a small brewer that manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage manufactures the heavy beer~~ ~~or flavored malt beverage~~; and

~~(ii) (B) the small brewer applies to the department for a reduced markup[-]; and~~

~~(ii) 49% above the landed case cost to the department if:~~

~~(A) a small brewer that manufactures in a calendar year 40,000 or more barrels of beer, heavy beer, and flavored malt beverage manufactures the heavy beer~~ ~~or flavored malt beverage~~; and

~~(B) the small brewer applies to the department for a reduced markup.~~

~~(e) For purposes of Subsection (3)(d), the amount of beer, heavy beer, and flavored~~

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malt beverage a small brewer manufactures in a calendar year does not include beer, heavy beer, or flavored malt beverage the brewer:

(i) manufactures that is unfit for consumption as, or in, a beverage, as the commission determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) does not sell for consumption as, or in, a beverage.

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

~~(g)~~ (g) For purposes of determining whether an alcoholic product qualifies for a markup under this Subsection (3), the department shall evaluate whether the manufacturer satisfies the applicable production requirement without considering the manufacturer's production of any other type of alcoholic product.

(4) Wine the department purchases on behalf of a subscriber through the wine subscription program established in Section 32B-2-702 shall be marked up not less than 88% above the cost of the subscription for the interval in which the wine is purchased.

(5) The department shall deposit 10% of the total gross revenue from sales of liquor with the state treasurer to be credited to the Uniform School Fund and used to support the school meals program administered by the State Board of Education under Section 53E-3-510.

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

Section 7. Section **32B-2-306** is amended to read:

### **32B-2-306. Underage drinking prevention media and education campaign.**

(1) As used in this section:

(a) "Advisory council" means the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301.

(b) "Restricted account" means the Underage Drinking Prevention Media and Education Campaign Restricted Account created in this section.

(2) (a) There is created a restricted account within the General Fund known as the "Underage Drinking Prevention Media and Education Campaign Restricted Account."

(b) The restricted account consists of:

(i) deposits made under Subsection (3); and

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(ii) interest earned on the restricted account.

(3) The department shall deposit [~~0.468%~~] 0.6% of the total gross revenue from sales of liquor with the state treasurer, as determined by the total gross revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made, to be credited to the restricted account and to be used by the department as provided in Subsection (5).

(4) The advisory council shall:

(a) provide ongoing oversight of a media and education campaign funded under this section;

(b) create an underage drinking prevention workgroup consistent with guidelines proposed by the advisory council related to the membership and duties of the underage drinking prevention workgroup;

(c) create guidelines for how money appropriated for a media and education campaign can be used;

(d) include in the guidelines established pursuant to this Subsection (4) that a media and education campaign funded under this section is carefully researched and developed, and appropriate for target groups; and

(e) approve plans submitted by the department in accordance with Subsection (5).

(5) (a) Subject to appropriation from the Legislature, the department shall expend money from the restricted account to direct and fund one or more media and education campaigns designed to reduce underage drinking in cooperation with the advisory council.

(b) The department shall:

(i) in cooperation with the underage drinking prevention workgroup created under Subsection (4), prepare and submit a plan to the advisory council detailing the intended use of the money appropriated under this section;

(ii) upon approval of the plan by the advisory council, conduct the media and education campaign in accordance with the guidelines made by the advisory council; and

(iii) submit to the advisory council annually by no later than October 1, a written report detailing the use of the money for the media and education campaigns conducted under this Subsection (5) and the impact and results of the use of the money during the prior fiscal year ending June 30.

Section 8. Section **32B-2-604** is amended to read:

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### 32B-2-604. Bond related to package agency.

(1) (a) A package agent who has a consignment liquor inventory owned by the state shall post a:

(i) consignment surety bond:

(A) payable to the department; and

(B) in the amount of the consignment inventory[-]; and

(ii) cash or surety bond:

(A) payable to the department; and

(B) in the penal amount of at least \$1,000, as the department determines.

(b) A package agent who has a consignment liquor inventory shall ensure that a consignment surety bond [shall be] is conditioned upon a package agent's return of the unsold consignment liquor inventory at the termination of a package agency agreement.

(2) (a) A package agent that owns the package agency's liquor inventory shall post a cash bond or surety bond:

(i) in the penal amount [~~fixed by the department, except that the penal amount shall be~~] of at least \$1,000, as the department determines; and

(ii) payable to the department.

(3) A package agent shall procure and maintain the bond required under this section for as long as the package agent continues to operate as a package agent.

(4) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the package agent's faithful compliance with this title, the rules of the commission, and the package agency agreement.

(5) (a) If a surety bond posted by a package agency under this section is canceled due to the package agent's or package agency's negligence, the department may assess a \$300 reinstatement fee.

(b) No part of a bond posted by a package agent under this section may be withdrawn:

(i) during the period the package agency is in effect; or

(ii) while a revocation of the package agency is pending against the package agent.

(6) (a) A bond posted under this section by a package agent may be forfeited if the package agency is revoked.

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(b) Notwithstanding Subsection (6)(a), the department may make a claim against a bond posted by a package agent for money owed the department under this title without the commission first revoking the package agency.

Section 9. Section **32B-2-605** is amended to read:

### **32B-2-605. Operational requirements for package agency.**

(1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.

(b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

(ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.

(iii) A package agency agreement shall provide procedures to be followed if a package agent fails to pay money owed to the department including a procedure for replacing the package agent or operator of the package agency.

(iv) A package agency agreement shall provide that the package agency is subject to covert investigations for selling an alcoholic product to a minor.

(v) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or prohibition.

(2) (a) A package agency shall be operated by an individual who is either:

(i) the package agent; or

(ii) an individual designated by the package agent.

(b) An individual who is a designee under this Subsection (2) shall be:

(i) an employee of the package agent; and

(ii) responsible for the operation of the package agency.

(c) The conduct of the designee is attributable to the package agent.

(d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.

(e) A package agent shall state the name and title of a designee on the application for a



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package agency.

(f) A package agent shall:

(i) inform the department of a proposed change in the individual designated to operate a package agency; and

(ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).

(g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.

(3) (a) A package agent shall display in a prominent place in the package agency the record issued by the commission that designates the package agency.

(b) A package agent that displays or stores liquor at a location visible to the public shall display in a prominent place in the package agency a sign in large letters that consists of text in the following order:

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

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

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

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

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

(c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).

(ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.

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

(4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.

(5) (a) A package agency may not purchase liquor from a person except from the department.

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(b) At the discretion of the department, the department may provide liquor to a package agency for sale on consignment.

(6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(7) (a) Except as provided in Subsection (7)(b), a package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(b) A package agency may provide as room service one alcoholic product free of charge per guest reservation, per guest room, if:

(i) the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish an alcoholic product as part of room service;

(ii) staff of the package agency provides the alcoholic product:

(A) in person; and

(B) only to an adult guest in the guest room;

(iii) staff of the package agency does not leave the alcoholic product outside a guest room for retrieval by a guest; and

(iv) the alcoholic product:

(A) is not a spirituous liquor; and

(B) is in an unopened container not to exceed 750 milliliters.

(8) A package agency may not sell, offer for sale, or furnish liquor to:

(a) a minor;

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

(9) (a) A package agency may not employ a minor to handle liquor.

(b) (i) Staff of a package agency may not:

(A) consume an alcoholic product on the premises of a package agency; or

(B) allow any person to consume an alcoholic product on the premises of a package agency.

(ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

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(10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the day on which the package agency closes or ceases operation; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period described in Subsection (10)(c)(i) an additional 30 days upon written request of the package agency and upon a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) The notice required by Subsection (10)(a) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the package agency will reopen or resume operation.

(e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.

(f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.

(11) A package agency may not transfer the package agency's operations from one location to another location without prior written approval of the commission.

(12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.

(b) A package agency has no monetary value for any type of disposition.

(13) (a) Subject to the other provisions of this Subsection (13):

(i) sale or delivery of liquor may not be made on or from the premises of a package

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agency, and a package agency may not be kept open for the sale of liquor:

- (A) on Sunday; or
- (B) on a state or federal legal holiday[-]; and

(ii) [~~State~~] sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(b) A package agency located at a manufacturing facility is not subject to Subsection (13)(a) if:

(i) the package agency is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:

- (A) a full-service restaurant license;
- (B) a limited-service restaurant license;
- (C) a beer-only restaurant license;
- (D) a dining club license; or
- (E) a bar license;

(iii) the restaurant, dining club, or bar is located at the manufacturing facility;

(iv) the restaurant, dining club, or bar sells an alcoholic product produced at the manufacturing facility;

(v) the manufacturing facility:

- (A) owns the restaurant, dining club, or bar; or
- (B) operates the restaurant, dining club, or bar;

(vi) the package agency only sells an alcoholic product produced at the manufacturing facility; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant, dining club, or bar.

(c) (i) Subsection (13)(a) does not apply to a package agency held by the following if the package agent that holds the package agency to sell liquor at a resort or hotel does not sell liquor in a manner similar to a state store:

- (A) a resort licensee; or

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(B) a hotel licensee.

(ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of, a package agency unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanies the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.

(b) A person may not open a sealed container on the premises of a package agency.

(c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:

(i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;

(ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

(iii) subject to:

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(A) staff of the package agency providing the liquor in person only to an adult guest in the guest room or privately owned dwelling unit;

(B) staff of the package agency not leaving the liquor outside a guest room or privately owned dwelling unit for retrieval by a guest or resident; and

(C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.

(16) [~~On or after October 1, 2011, a~~] A package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

(17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

- (a) physical facilities;
- (b) conditions of operation;
- (c) hours of operation;
- (d) inventory levels;
- (e) payment schedules;
- (f) methods of payment;
- (g) premises security; and
- (h) any other matter considered appropriate by the commission.

(19) A package agency may not maintain a minibar.

(20) A package agency that is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, may permit a patron to pick up from the package agency's licensed premises an alcoholic product that the patron ordered online, if the package agency does not process payment for the alcoholic product before:

(a) the patron picks up the alcoholic product from the package agency's licensed premises; and

(b) the package agency verifies that the person who picks up the alcoholic product is the patron who placed the order for the alcoholic product online.

Section 10. Section **32B-4-403** is amended to read:

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### **32B-4-403. Unlawful sale, offer for sale, or furnishing to minor.**

(1) A person may not sell, offer for sale, or furnish an alcoholic product to a minor.

(2) (a) (i) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person who violates Subsection (1) negligently or recklessly fails to determine whether the recipient of the alcoholic product is a minor.

(ii) As used in this Subsection (2)(a), "negligently" means with simple negligence.

(b) Except as provided in Subsection (3), a person is guilty of a class A misdemeanor if the person who violates Subsection (1) knows the [recipient] purchaser of the alcoholic product is a minor.

(3) This section does not apply to the furnishing of an alcoholic product to a minor in accordance with this title:

(a) for medicinal purposes by:

(i) the parent or guardian of the minor; or

(ii) the health care practitioner of the minor, if the health care practitioner is authorized by law to write a prescription; or

(b) as part of a religious organization's religious services.

Section 11. Section **32B-4-404** is amended to read:

### **32B-4-404. Unlawful sale, offer for sale, or furnishing to intoxicated person.**

(1) A person may not sell, offer for sale, or furnish an alcoholic product directly to:

(a) a person who is actually or apparently intoxicated; or

(b) a person whom the person furnishing the alcoholic product knows or should know from the circumstances is actually or apparently intoxicated.

(2) (a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.

(b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.

(3) As used in Subsection (2)(a), "negligently" means with simple negligence.

Section 12. Section **32B-5-202** is amended to read:

### **32B-5-202. Renewal requirements.**

(1) A retail license expires each year on the day specified in the relevant chapter or part for that type of retail license.

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(2) (a) To renew a person's retail license, a retail licensee shall ~~by no later than the day specified in the relevant chapter or part for the type of retail license that the person seeks to renew,~~ submit:

(i) a completed renewal application in a form prescribed by the department; ~~and~~

(ii) a renewal fee in the amount specified in the relevant chapter or part for the type of retail license that the person seeks to renew~~[-]; and~~

~~[(b) A retail licensee shall submit]~~ (iii) a responsible alcohol service plan ~~[as part of the retail licensee's renewal application]~~ if, since the retail licensee's most recent application or renewal, the retail licensee:

~~[(i)]~~ (A) made substantial changes to the retail licensee's responsible alcohol service plan; or

~~[(ii)]~~ (B) violated a provision of this chapter.

(b) (i) Except as provided for in Subsection (2)(b)(ii), a retail licensee shall fulfill the renewal requirements under Subsection (2)(a) on or before the day specified in the relevant chapter or part for the type of retail license that the person seeks to renew.

(ii) The commission may:

(A) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, permitting and establishing the parameters of late retail license renewals; and

(B) establish a fee, in accordance with Section 63J-1-504, for late retail license renewals.

(c) The department may audit a retail licensee's responsible alcohol service plan.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the retail license effective on the day on which the existing retail license expires.

Section 13. Section **32B-5-205** is amended to read:

### **32B-5-205. Conditional retail license.**

(1) As used in this section:

(a) "Conditional retail license" means a retail license that:

(i) conditions the holder's ability to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises on the person submitting to the department a copy of the holder's current business license before obtaining a valid retail license; and



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(ii) provides that the holder will be issued a valid retail license if the holder complies with the requirements of Subsection (3).

(b) "Valid retail license" means a retail license issued pursuant to this part under which the holder is permitted to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises.

(2) Subject to the requirements of this section, the commission may issue a conditional retail license to a person if the person:

(a) meets the requirements to obtain the retail license for which the person is applying except the requirement to submit a copy of the person's current business license; and

(b) agrees not to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises before obtaining a valid retail license.

(3) (a) A conditional retail license becomes a valid retail license on the day on which the department notifies the person who holds the conditional retail license that the department finds that the person has complied with Subsection (3)(b).

(b) For a conditional retail license to become a valid retail license, a person who holds the conditional retail license shall:

(i) submit to the department a copy of the person's current business license; and

(ii) provide to the department evidence satisfactory to the department that:

(A) there has been no change in the information submitted to the commission as part of the person's application for a retail license; and

(B) the person continues to qualify for the retail license.

(4) (a) A conditional retail license expires [~~nine~~] 18 months after the day on which the commission issues the conditional retail license, unless the conditional retail license becomes a valid retail license before that day.

(b) Notwithstanding Subsection (4)(a), the commission may extend the time period of a conditional retail license an additional [~~three~~] six months if the holder of the conditional license can show to the satisfaction of the commission that the holder of the conditional license:

(i) has an active building permit related to the licensed premises; and

(ii) is engaged in a good faith effort to pursue completion within the [~~three~~] six-month period.

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Section 14. Section **32B-5-307** is amended to read:

**32B-5-307. Bringing alcoholic product onto or removing alcoholic product from premises.**

(1) Except as provided in Subsections (3) [~~through (5)~~] and (4):

(a) [~~A~~] a person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption[-];

(b) [~~A~~] a retail licensee may not allow a person to:

(i) bring onto licensed premises an alcoholic product for on-premise consumption; or

(ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee[-]; and

(c) [~~A~~] a retail licensee may not sell, offer for sale, or furnish an alcoholic product through a window or door to a location off the licensed premises or to a vehicular traffic area.

(2) Except as provided in Subsections (3) [~~through (5)~~], (4), and Subsection 32B-4-415(5):

(a) a person may not carry from a licensed premises of a retail licensee an open container that:

(i) is used primarily for drinking purposes; and

(ii) contains an alcoholic product;

(b) a retail licensee may not permit a patron to carry from the licensed premises an open container described in Subsection (2)(a); and

(c) (i) a person may not carry from a licensed premises of a retail licensee a sealed container of liquor that has been purchased from the retail licensee; and

(ii) a retail licensee may not permit a patron to carry from the licensed premises a sealed container of liquor that has been purchased from the retail licensee.

(3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:

(i) permitted by the retail licensee; and

(ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

(b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.

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(c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3) or a bottled wine purchased at the licensed premises.

(d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased at the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

~~[(4) A patron may transport beer between the sublicensed premises of an arena licensee's accompanying sublicenses, if the patron transports the beer from and to an area of each sublicensed premises:]~~

~~[(a) that is adjacent to the other, and]~~

~~[(b) where the consumption of beer is permitted:]~~

~~[(5)]~~ (4) Neither a patron nor a retail licensee violates this section if:

(a) the patron is in shared seating; and

(b) the patron purchased the patron's alcoholic beverage from a restaurant licensee whose licensed premises include the shared seating area the patron is in.

Section 15. Section **32B-5-310** is amended to read:

### **32B-5-310. Notifying department of change in ownership -- Inventory transfers -- Interim alcoholic beverage management agreements.**

(1) The commission may suspend or revoke a retail license if the retail licensee does not ~~[immediately]~~ notify the department, within 60 days after the day on which the change occurs, of a change in:

(a) ownership of the retail license;

(b) the entity that manages the retail licensee or a premises licensed under this chapter;

(c) for a corporate owner, the:

(i) corporate officers or directors of the retail licensee; or

(ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or

(d) for a limited liability company:

(i) managers of the limited liability company; or

(ii) members owning at least 20% of the limited liability company.

(2) Notwithstanding any other provision of this title, in connection with an event

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described in Section 32B-8a-202 or an asset sale of a retail licensee, the parties to the transaction may enter into an inventory transfer agreement.

(3) A retail licensee may enter into an interim alcoholic beverage management agreement that provides:

(a) all proceeds, less cost of goods sold, from the sale of alcohol shall accrue to the current retail licensee; and

(b) for the duration of the agreement, the current retail licensee:

(i) shall comply with the requirements of this title that are applicable to the retail license; and

(ii) in accordance with this title, is subject to disciplinary action by the commission for any violation of this title.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules governing the requirements of:

(a) an inventory transfer agreement; and

(b) an interim alcoholic beverage management agreement.

Section 16. Section **32B-6-605** is amended to read:

### **32B-6-605. Specific operational requirements for on-premise banquet license.**

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

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise banquet licensee;

(ii) individual staff of an on-premise banquet licensee; or

(iii) both an on-premise banquet licensee and staff of the on-premise banquet licensee.

(2) An on-premise banquet licensee shall comply with Subsections 32B-5-301(4) and (5) for the entire premises of the hotel, resort facility, sports center, convention center, or performing arts facility that is the basis for the on-premise banquet license.

(3) (a) For the purpose described in Subsection (3)(b), an on-premise banquet licensee shall provide the department with advance notice of a scheduled banquet in accordance with rules made by the commission.

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(b) Any of the following may conduct a random inspection of a banquet:

- (i) an authorized representative of the commission or the department; or
- (ii) a law enforcement officer.

(4) (a) An on-premise banquet licensee is not subject to Section 32B-5-302, but shall make and maintain the records the commission or department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) (a) Except as otherwise provided in this title, an on-premise banquet licensee may sell, offer for sale, or furnish an alcoholic product at a banquet only for consumption at the location of the banquet.

(b) Except as provided in [~~Subsections~~] Subsection 32B-5-307(4) [~~and (5)~~], a host of a banquet, a patron, or a person other than the on-premise banquet licensee or staff of the on-premise banquet licensee, may not remove an alcoholic product from the premises of the banquet.

(c) Notwithstanding Subsection 32B-5-307(3) and except as provided in [~~Subsections~~] Subsection 32B-5-307(4) [~~and (5)~~], a patron at a banquet may not bring an alcoholic product into or onto, or remove an alcoholic product from, the premises of a banquet.

(6) (a) An on-premise banquet licensee may not leave an unsold alcoholic product at the banquet following the conclusion of the banquet.

(b) At the conclusion of a banquet, an on-premise banquet licensee shall:

(i) destroy an opened and unused alcoholic product that is not saleable, under conditions established by the department; and

(ii) return to the on-premise banquet licensee's approved locked storage area any:

(A) opened and unused alcoholic product that is saleable; and

(B) unopened container of an alcoholic product.

(c) Except as provided in Subsection (6)(b) with regard to an open or sealed container of an alcoholic product not sold or consumed at a banquet, an on-premise banquet licensee:

(i) shall store the alcoholic product in the on-premise banquet licensee's approved locked storage area; and

(ii) may use the alcoholic product at more than one banquet.

(7) Notwithstanding Section 32B-5-308, an on-premise banquet licensee may not

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employ a minor to sell, furnish, or dispense an alcoholic product in connection with the on-premise banquet licensee's banquet and room service activities.

(8) An on-premise banquet licensee:

(a) may provide room service in portions described in Section 32B-5-304;

(b) may not sell, offer for sale, or furnish an alcoholic product at a banquet or in connection with room service any day during a period that:

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

(ii) ends at 9:59 a.m.; and

(c) notwithstanding Section 32B-5-305, may provide as room service one alcoholic product free of charge per guest reservation, per guest room, if the alcoholic product:

(i) is not a spirituous liquor; and

(ii) is in an unopened container not to exceed 750 milliliters.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) (a) An on-premise banquet licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product shall complete an alcohol training and education seminar.

(11) A staff person of an on-premise banquet licensee shall remain at the banquet at all times when an alcoholic product is sold, offered for sale, furnished, or consumed at the banquet.

(12) (a) Room service of an alcoholic product to a guest room or privately owned dwelling unit of a hotel or resort facility shall be provided in person by staff of an on-premise banquet licensee only to an adult guest in the guest room or privately owned dwelling unit.

(b) An alcoholic product may not be left outside a guest room or privately owned dwelling unit for retrieval by a guest or resident.

(13) An on-premise banquet licensee may not maintain a minibar.

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Section 17. Section **32B-6-703** is amended to read:

### **32B-6-703. Commission's power to issue on-premise beer retailer license.**

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.

(2) (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.

(b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.

(c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.

(d) (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.

(ii) In making a determination under this Subsection (2)(d), the commission shall consider:

(A) whether the on-premise beer retailer will operate as one of the following:

(I) a beer bar;

(II) a parlor;

(III) a lounge;

(IV) a cabaret; or

(V) a nightclub;

(B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

(I) whether the on-premise beer retailer will sell food in the establishment; and

(II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;

(C) whether full meals including appetizers, main courses, and desserts will be served;

(D) the square footage and seating capacity of the premises;

(E) what portion of the square footage and seating capacity will be used for a dining

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area in comparison to the portion that will be used as a lounge or bar area;

(F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(G) whether the entertainment provided on the premises of the beer retailer will be suitable for minors; and

(H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:

(I) management experience;

(II) past beer retailer management experience; and

(III) the type of management scheme that will be used by the beer retailer.

~~[(e) On or after March 1, 2012:]~~

(e) (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

(A) own or operate a recreational amenity and maintain at least 70% of the person's total gross revenues from business directly related to ~~[a]~~ the recreational amenity on or directly adjoining the licensed premises of the beer retailer, except that a person may include gross revenue from business directly related to a recreational amenity that is owned or operated by a political subdivision if the person has a contract meeting the requirements of Subsection (2)(e)(iv) with the political subdivision; ~~[or]~~

(B) ~~[have]~~ own or operate a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food~~[-];~~ or

(C) if the licensed premises of the on-premise beer retailer is on or directly adjoining a ski resort on January 1, 2021, obtain the consent of the ski resort to operate as an on-premise beer retailer that is not a tavern and maintain at least 70% of the person's total gross revenues from the sale of food.

(ii) The commission may not license a person as an on-premise beer retailer if the person does not:

(A) meet the requirements of Subsection (2)(e)(i); or

(B) operate as a tavern.

(iii) A person who ~~[, after August 1, 2011,]~~ applies for an on-premise beer retailer



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license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(11)(a)(ii).

(iv) A contract described in Subsection (2)(e)(i)(A) shall:

(A) allow the beer retailer to include the total gross revenue from operations of the recreational amenity in the beer retailer's total gross receipts for purposes of Subsection (2)(e)(i)(A); and

(B) give the department the authority to audit financial information of the political subdivision to the extent necessary to confirm that the requirements of Subsection (2)(e)(i)(A) are met.

(3) Subject to Section 32B-1-201:

(a) [~~The~~] the commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 73,666[-]; and

(b) [~~The~~] the commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.

(4) (a) Unless otherwise provided in Subsection (4)(b):

(i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and

(ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.

(b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.

(ii) If each retail beer dispensing location does not operate in the same manner:

(A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and

(B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.

Section 18. Section **32B-6-1004** is amended to read:

**32B-6-1004. Specific licensing requirements for a hospitality amenity license.**

(1) To obtain a hospitality amenity license a person shall comply with Chapter 5, Part

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### 2, Retail Licensing Process.

(2) (a) A hospitality amenity license expires on October 31 of each year.

(b) To renew a person's hospitality amenity license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a hospitality amenity license is \$330.

(b) The initial license fee for a hospitality amenity license is \$2,000.

(c) The renewal fee for a hospitality amenity license is \$1,000.

(4) The bond amount required for a hospitality amenity license is the penal sum of \$10,000.

(5) Notwithstanding Subsection 32B-5-303(3), the [~~department~~] commission may approve an additional location in or on the licensed premises of a hospitality amenity licensee from which the hospitality amenity licensee may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product that is not included in the person's original application only:

(a) upon proper application by a hospitality amenity licensee; and

(b) in accordance with guidelines the commission approves.

Section 19. Section **32B-7-202** is amended to read:

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

(1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply with the provisions of this title and any applicable rules made by the commission.

(b) Failure to comply with this section may result in:

(i) a suspension or revocation of a local license; and [~~on or after July 1, 2018;~~]

(ii) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act.

(2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

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

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

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

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

(4) (a) Staff of an off-premise beer retailer, while on duty, may not:

(i) consume an alcoholic product; or

(ii) be intoxicated.

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

(i) the sale is done under the supervision of a person 21 years [~~of age~~] old or older who is on the licensed premises; and

(ii) the minor is at least 16 years [~~of age~~] old.

(5) An off-premise beer retailer may not sell, offer for sale, or furnish an alcoholic product to:

(a) a minor;

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

(6) (a) Subject to the other provisions of this Subsection (6), an off-premise beer retailer shall:

(i) display all beer accessible by and visible to a patron in no more than two locations on the retail sales floor, each of which is:

(A) a display cabinet, cooler, aisle, floor display, or room where beer is the only beverage displayed; and

(B) not adjacent to a display of nonalcoholic beverages, unless the location is a cooler with a door from which the nonalcoholic beverages are not accessible, or the beer is separated from the display of nonalcoholic beverages by a display of one or more nonbeverage products

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or another physical divider; and

(ii) display a sign in the area described in Subsection (6)(a)(i) that:

(A) is prominent;

(B) is easily readable by a consumer;

(C) meets the requirements for format established by the commission by rule; and

(D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully."

(b) Notwithstanding Subsection (6)(a), a nonalcoholic beer may be displayed with beer if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.

(c) The requirements of this Subsection (6) apply to beer notwithstanding that it is labeled, packaged, or advertised as:

(i) a malt cooler; or

(ii) a beverage that may provide energy.

(d) A violation of this Subsection (6) is an infraction.

~~[(c) (i) Except as provided in Subsection (6)(c)(ii), the provisions of Subsection (6)(a)(i) apply on and after May 9, 2017.]~~

~~[(ii) For a beer retailer that operates two or more off-premise beer retailers, the provisions of Subsection (6)(a)(i) apply on and after August 1, 2017.]~~

(7) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or who sells beer to a patron for consumption off the premises of the off-premise beer retailer shall wear a unique identification badge:

(i) on the front of the staff's clothing;

(ii) visible above the waist;

(iii) bearing the staff's:

(A) first or last name;

(B) initials; or

(C) unique identification in letters or numbers; and

(iv) with the number or letters on the unique identification badge being sufficiently large to be clearly visible and identifiable while engaging in or directly supervising the retail sale of beer.

(b) An off-premise beer retailer shall make and maintain a record of each current staff's

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unique identification badge assigned by the off-premise beer retailer that includes the staff's:

- (i) full name;
- (ii) address; and
- (iii) (A) driver license number; or  
(B) similar identification number.

(c) An off-premise beer retailer shall make available a record required to be made or maintained under this Subsection (7) for immediate inspection by:

- (i) a peace officer;
- (ii) a representative of the local authority that issues the off-premise beer retailer

license; or

(iii) for an off-premise beer retailer state license, a representative of the commission or department.

(d) A local authority may impose a fine of up to \$250 against an off-premise beer retailer that does not comply or require its staff to comply with this Subsection (7).

(8) (a) An off-premise beer retailer may sell, offer for sale, or furnish beer through a drive through window.

(b) Subsection (8)(a) does not modify the display limitations and requirements described in Subsection (6).

(9) An off-premise beer retailer may permit a patron to pick up from the off-premise beer retailer's licensed premises beer that the patron ordered online, if the off-premise beer retailer does not process payment for the beer before:

- (a) the patron picks up the beer from the off-premise beer retailer's licensed premises;

and

(b) the off-premise beer retailer verifies that the patron who picks up the beer is the patron who placed the order for the beer online.

Section 20. Section **32B-8-501** is amended to read:

### **32B-8-501. Enforcement of qualifications for resort license or sublicense.**

(1) The commission or department may not take an action described in Subsection (2) with regard to a resort license unless the person who is found not to meet the qualifications of Subsection 32B-1-304(1) is one of the following who is engaged in the management of the resort:

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- (a) a partner;
- (b) a managing agent;
- (c) a manager;
- (d) an officer;
- (e) a director;
- (f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation;
- (g) a member who owns at least 20% of the limited liability company; or
- (h) a person employed to act in a supervisory or managerial capacity for the resort licensee.

(2) Subsection (1) applies to:

(a) the commission immediately suspending or revoking a resort license, if after the day on which the resort license is issued, a person described in Subsection 32B-1-304(7)(a)(i):

(i) is found to have been convicted of an offense described in Subsection 32B-1-304(1)(a) before the commission issues the resort license; or

(ii) on or after the day on which the commission issues the resort license:

(A) is convicted of an offense described in Subsection 32B-1-304(1)(a)(i) or (ii); or

(B) (I) is convicted of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug; and

(II) was convicted of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A);

(b) the director taking an emergency action by immediately suspending the operation of a resort license in accordance with Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection 32B-1-304(7)(a):

(i) is arrested on a charge for an offense described in Subsection 32B-1-304(1)(a)(i) or (ii); or

(ii) (A) is arrested on a charge for the offense of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug; and

(B) was convicted of driving under the influence of alcohol, a drug, or the combined

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influence of alcohol and a drug within five years before the day on which the person is arrested on a charge described in Subsection (2)(b)(ii)(A); and

(c) the commission suspending or revoking a resort license because a person to whom the commission issues a resort license under this chapter no longer possesses the qualifications required by this title for obtaining the resort license.

(3) This section does not prevent the commission from suspending or revoking a sublicense that is part of a resort license if a person employed to act in a supervisory or managerial capacity for a sublicense no longer meets the qualification requirements in the provisions applicable to the sublicense.

Section 21. Section **32B-8a-102** is amended to read:

### **32B-8a-102. Definitions.**

As used in this chapter:

(1) (a) "Alcohol license" means:

~~[(a)]~~ (i) a retail license;

~~[(b)]~~ (ii) an off-premise beer retailer state license;

~~[(c)]~~ (iii) a brewery manufacturing license;

~~[(d)]~~ (iv) a distillery manufacturing license;

~~[(e)]~~ (v) a winery manufacturing license; and

~~[(f)]~~ (vi) a special use permit that is an industrial or manufacturing use permit.

(b) "Alcohol license" does not include a:

(i) master full-service restaurant license;

(ii) master limited-service restaurant license; or

(iii) master off-premise beer retailer state license.

(2) "Business entity" means a corporation, partnership, limited liability company, sole proprietorship, or similar entity.

(3) "Transfer fee" means a fee described in Section 32B-8a-303.

(4) "Transferee or buyer" means a person who intends to hold an alcohol license after the transfer of the alcohol license if the transfer is approved by the commission under this chapter.

(5) "Transferor or seller" means an alcohol licensee who intends to transfer an alcohol license held by the alcohol licensee if the commission approves the transfer under this chapter.

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Section 22. Section **32B-8a-201** is amended to read:

### **32B-8a-201. Transferability of alcohol license.**

(1) (a) An alcohol license is separate from other property of an alcohol licensee.

(b) Notwithstanding Subsection (1)(a), the Legislature may terminate or modify the existence of any type of alcohol license.

(c) Except as provided in this chapter, a person may not:

(i) transfer an alcohol license from one location to another location; or

(ii) sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the alcohol license to another person whether for monetary gain or not.

(d) If approved by the commission and subject to the requirements of this chapter, an alcohol licensee may transfer the alcohol license:

(i) from the alcohol licensee to another person, regardless of whether the alcohol license is for the same premises; and

(ii) from one premises of the alcohol licensee to another premises of the alcohol licensee.

(2) (a) The commission may not approve the transfer of an alcohol license that results in a transferee or buyer holding a different type of alcohol license than is held by the transferor or seller.

(b) Unless the alcohol license is a bar establishment license, the commission may not approve the transfer of an alcohol license from one location to another location, if the location of the premises to which the alcohol license would be transferred is in a different county than the location of the licensed premises of the alcohol license being transferred.

(3) The commission may not approve the transfer of an alcohol license if the transferee ~~[(a)]~~ or buyer:

~~[(a)]~~ is not eligible to hold the same type of alcohol license as the alcohol license to be transferred at the premises to which the alcohol license would be transferred ~~[(b)]~~ or ~~[(c)]~~

~~[(b)] is delinquent in the payment of any of the following that arises in full or in part out of the operation of a alcohol license:]~~

~~[(i) a tax, fee, or charge due under this title or Title 59, Revenue and Taxation; or]~~

~~[(ii) an amount due under Title 35A, Chapter 4, Employment Security Act.]~~

~~[(4) This chapter does not apply to a:]~~



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~~[(a) master full-service restaurant license;]~~

~~[(b) master limited-service restaurant license; or]~~

~~[(c) master off-premise beer retailer state license.]~~

~~(~~4~~) ~~does not attest~~ The commission may not approve the transfer of an alcohol license unless the transferee or buyer attests, subject to the penalty for making a false material statement under Section 32B-4-504, that the transferee or buyer is in compliance with:~~

~~(~~i~~) a~~ federal tax laws;

~~(~~ii~~) b~~ Title 35A, Chapter 4, Employment Security Act; and

~~(~~iii~~) c~~ Title 59, Revenue and Taxation.

~~(~~4~~) ~~5~~ The commission may not approve the transfer of an alcohol license unless the transferor or seller attests, subject to the penalty for making a false material statement under Section 32B-4-504, that the transferor or seller is not delinquent on any lease obligation related to the licensed premises for the alcohol license the transferor or seller is transferring.~~

Section 23. Section **32B-8a-202** is amended to read:

### **32B-8a-202. Effect of transfer of ownership of business entity.**

(1) (a) When the ownership of 51% or more of the shares of stock of a corporation is acquired by or transferred to one or more persons who did not hold the ownership of 51% of those shares of stock on the date an alcohol license is issued to the corporation, the corporation shall comply with this chapter to transfer the alcohol license to the corporation as if the corporation is newly constituted.

(b) When there is a new general partner or when the ownership of 51% or more of the capital or profits of a limited partnership is acquired by or transferred to one or more persons as general or limited partners and who did not hold ownership of 51% or more of the capital or profits of the limited partnership on the date an alcohol license is issued to the limited partnership, the limited partnership shall comply with this chapter to transfer the alcohol license to the limited partnership as if the limited partnership is newly constituted.

(c) When the ownership of 51% or more of the interests in a limited liability company is acquired by or transferred to one or more persons as members who did not hold ownership of 51% or more of the interests in the limited liability company on the date an alcohol license is issued to the limited liability company, the limited liability company shall comply with this chapter to transfer the alcohol license to the limited liability company as if the limited liability

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company is newly constituted.

(2) A business entity shall comply with this section within 60 days after the day on which ~~[the event]~~ a sale or transfer described in Subsection (1) occurs.

Section 24. Section **32B-8a-203** is amended to read:

### **32B-8a-203. Operational requirements for transferee or buyer.**

(1) (a) A transferee or buyer shall begin operations of the alcohol license within 30 days after the day on which a transfer is approved by the commission, except that:

(i) the department may grant an extension of this time period not to exceed 30 days; and

(ii) after the extension is authorized by the department under Subsection (1)(a)(i), the commission may grant one or more additional extensions not to exceed, in the aggregate, seven months from the day on which the commission approves the transfer, if the transferee or buyer can demonstrate to the commission that the transferee or buyer:

(A) cannot begin operations because the transferee or buyer is improving the licensed premises;

(B) has obtained a building permit for the improvements described in Subsection (1)(a)(ii)(A), if the respective local government entity requires a building permit for the improvements; and

(C) is working expeditiously to complete the improvements to the licensed premises.

(b) A transferee or buyer is considered to have begun operations of the alcohol license if the transferee or buyer:

(i) has a licensed premises that is open for business;

(ii) (A) sells, offers for sale, or furnishes alcoholic products to a patron on the licensed premises described in Subsection (1)(b)(i);

(B) manufactures an alcoholic product on the licensed premises described in Subsection (1)(b)(i); or

(C) engages in an industrial or manufacturing pursuit containing alcohol on the licensed premises described in Subsection (1)(b)(i); and

(iii) has a valid business license.

(2) If a transferee or buyer fails to begin operations of the alcohol license within the time period required by Subsection (1), the following are automatically forfeited effective

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immediately:

(a) the alcohol license; and

(b) the alcohol license fee.

(3) A transferee or buyer shall begin operations of the alcohol license at the location to which the transfer applies before the transferee or buyer may seek a transfer of the alcohol license to a different location.

(4) Notwithstanding Subsection (1), the commission may not issue a conditional license unless the requirements of Section 32B-5-205 are met, except that the time periods required by this section supersede the time period provided in Section 32B-5-205.

Section 25. Section **32B-8a-302** is amended to read:

### **32B-8a-302. Application -- Approval process.**

(1) To obtain the transfer of an alcohol license from an alcohol licensee, the transferee or buyer shall file a transfer application with the department that includes:

(a) an application in the form provided by the department;

(b) a statement as to whether the consideration, if any, to be paid to the transferor or seller includes payment for transfer of the alcohol license; and

~~[(c) a statement executed under penalty of perjury that the consideration as set forth in the escrow agreement required by Section 32B-8a-401 is deposited with the escrow holder; and]~~

~~[(d)]~~ (c) (i) an application fee of \$300; and

(ii) a transfer fee determined in accordance with Section 32B-8a-303.

~~[(2) If the intended transfer of an alcohol license involves consideration, at least 10 days before the commission may approve the transfer, the department shall post a notice of the intended transfer on the Public Notice Website created in Section 63F-1-701 that states the following:]~~

~~[(a) the name of the transferor;]~~

~~[(b) the name and address of the business currently associated with the alcohol license;]~~

~~[(c) instructions for filing a claim with the escrow holder; and]~~

~~[(d) the projected date that the commission may consider the transfer application.]~~

~~[(3)]~~ (2) (a) (i) Before the commission may approve the transfer of an alcohol license,

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the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether the transfer of the alcohol license should be approved.

(ii) The department shall forward the information and recommendations described in this Subsection [~~(3)(a)~~] (2)(a) to the commission to aid in the commission's determination.

(b) Before approving a transfer, the commission shall:

(i) determine that the transferee or buyer filed a complete application;

(ii) determine that the transferee or buyer is eligible to hold the type of alcohol license that is to be transferred at the premises to which the alcohol license would be transferred;

(iii) determine that the transferee [~~is not delinquent in the payment of an amount described in~~] or buyer has made the attestation described in Subsection 32B-8a-201[~~(3)~~](4);

(iv) determine that the transferee is not disqualified under Section 32B-1-304;

(v) consider the locality within which the proposed licensed premises is located, including:

(A) the factors listed in Section 32B-5-203 for the issuance of a retail license;

(B) the factors listed in Section 32B-7-404 for the issuance of an off-premise beer retailer state license;

(C) the factors listed in Section 32B-11-206 for the issuance of a manufacturing license; and

(D) the factors listed in Section 32B-10-204 for the issuance of a special use permit that is an industrial and manufacturing use permit;

(vi) consider the [~~transferee's~~] transferee or buyer's ability to manage and operate the retail license to be transferred, including:

(A) the factors listed in Section 32B-5-203 for the issuance of a retail license;

(B) the factors listed in Section 32B-7-404 for the issuance of an off-premise beer retailer state license;

(C) the factors listed in Section 32B-11-206 for the issuance of a manufacturing license; and

(D) the factors listed in Section 32B-10-204 for the issuance of a special use permit that is an industrial and manufacturing use permit;

(vii) consider the nature or type of alcohol licensee operation of the transferee or buyer,

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including:

(A) the factors listed in Section 32B-5-203 for the issuance of a retail license;

(B) the factors listed in Section 32B-7-404 for the issuance of an off-premise beer retailer state license;

(C) the factors listed in Section 32B-11-206 for the issuance of a manufacturing license; and

(D) the factors listed in Section 32B-10-204 for the issuance of a special use permit that is an industrial and manufacturing use permit; and

~~[(viii) if the transfer involves consideration, determine that the transferee and transferor have complied with Part 4, Protection of Creditors; and]~~

~~[(ix)]~~ (viii) consider any other factor the commission considers necessary.

~~[(4)]~~ (3) Except as otherwise provided in Section 32B-1-202, the commission may not approve the transfer of an alcohol license to premises that do not meet the proximity requirements of Subsection 32B-1-202(2), Section 32B-7-201, or Section 32B-11-210, as applicable.

Section 26. Section **32B-8a-303** is amended to read:

### **32B-8a-303. Transfer fees.**

(1) Except as otherwise provided in this section, the department shall charge the following transfer fees:

(a) for a transfer of an alcohol license from an alcohol licensee to another person, the transfer fee equals the initial license fee amount specified in the relevant chapter or part for the type of alcohol license that is being transferred;

(b) for the transfer of an alcohol license from one premises to another premises of the same alcohol licensee, the transfer fee ~~[equals the renewal fee amount specified in the relevant chapter or part for the type of alcohol license that is being transferred]~~ is \$300;

(c) subject to Subsections (1)(d) and (2), for a transfer described in Section 32B-8a-202, the transfer fee equals the renewal fee amount specified in the relevant chapter or part for the type of alcohol license that is being transferred;

(d) for a transfer of an alcohol license to include the parent or adult child of an alcohol licensee, when no consideration is given for the transfer, the transfer fee is one-half of the amount described in Subsection (1)(a); and

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(e) for one of the following transfers, the transfer fee is one-half of the amount described in Subsection (1)(a):

(i) an alcohol license of one spouse to the other spouse when the transfer application is made before the entry of a final decree of divorce;

(ii) an alcohol license of a deceased alcohol licensee to:

(A) the one or more surviving partners of the deceased alcohol licensee;

(B) the executor, administrator, or conservator of the estate of the deceased alcohol licensee; or

(C) the surviving spouse of the deceased alcohol licensee, if the deceased alcohol licensee leaves no estate to be administered;

(iii) an alcohol license of an incompetent person or conservatee by or to the conservator or guardian for the incompetent person or conservatee who is the alcohol licensee;

(iv) an alcohol license of a debtor in a bankruptcy case by or to the trustee of a bankrupt estate of the alcohol licensee;

(v) an alcohol license of a person for whose estate a receiver is appointed may be transferred by or to a receiver of the estate of the alcohol licensee;

(vi) an alcohol license of an assignor for the benefit of creditors by or to an assignee for the benefit of creditors of a licensee with the consent of the assignor;

(vii) an alcohol license transferred to a revocable living trust if the alcohol licensee is the trustee of the revocable living trust;

(viii) an alcohol license transferred between partners when no new partner is being licensed;

(ix) an alcohol license transferred between corporations whose outstanding shares of stock are owned by the same individuals;

(x) upon compliance with Section 32B-8a-202, an alcohol license to a corporation whose entire stock is owned by:

(A) the transferor or seller; or

(B) the spouse of the transferor;

(xi) upon compliance with Section 32B-8a-202, an alcohol license to a limited liability company whose entire membership consists of:

(A) the transferor or seller; or

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(B) the spouse of the transferor or seller; or

(xii) an alcohol license transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation.

(2) If there are multiple and simultaneous transfers of alcohol licenses under Section 32B-8a-202, a transfer fee described in Subsection (1)(c) is required for only one of the alcohol licenses being transferred.

(3) (a) Except as provided in Subsection (3)(b), a transfer fee required under Subsection (1) is due for a transfer subsequent to a transfer under Subsection (1)(e)(xii) if the subsequent transfer is of 51% of the stock in a corporation to which an alcohol license is transferred by an alcohol licensee or the spouse of an alcohol licensee.

(b) If the transfer of stock described in Subsection (3)(a) is from a parent to the parent's adult child or adult grandchild, the transfer fee is one-half of the amount described in Subsection (1)(a).

(4) Money collected from a transfer fee shall be deposited in the Liquor Control Fund. Section 27. Section **32B-8a-501** is amended to read:

### **32B-8a-501. License not to be pledged as security -- Prohibited transfers.**

(1) An alcohol licensee may not enter into any agreement under which the alcohol licensee pledges the alcohol license as security for a loan or as security for the fulfillment of any agreement.

(2) An alcohol licensee may not transfer an alcohol license if the transfer is to:

(a) satisfy a loan or to fulfill an agreement entered into more than 90 days before the day on which the transfer application is filed;

(b) gain or establish a preference to or for any creditor of the transferor or seller, except as provided by Section 32B-8a-202; or

(c) defraud or injure a creditor of the transferor or seller.

(3) An alcohol licensee may not transfer a bar establishment license in a manner that circumvents the limitations of Subsection 32B-8d-103(3)(b) or (c).

(4) An alcohol licensee may not transfer an alcohol license except in accordance with this chapter.

Section 28. Section **32B-8d-104** is amended to read:

### **32B-8d-104. General operational requirements for a sublicense.**

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(1) Except as provided in Subsections (2) [~~and (3)~~] through (4), a person operating under a sublicense is subject to the operational requirements under the provisions applicable to the sublicense.

(2) Notwithstanding a requirement in the provisions applicable to the sublicense, a person operating under the sublicense is not subject to a requirement that a certain percentage of the gross receipts for the sublicense be from the sale of food, except to the extent that the gross receipts for the sublicense are included in calculating the percentages under Subsections 32B-8-401(3), 32B-8b-301(5), and 32B-8c-301(3).

(3) Notwithstanding Sections 32B-6-202 and 32B-6-302, a bar structure in a sublicensed premises operated under a full-service restaurant sublicense or a limited-service restaurant sublicense is considered a grandfathered bar structure if the sublicense is a sublicense to a resort license issued on or before December 31, 2010.

(4) Notwithstanding Section 32B-5-307:

(a) a patron may transport beer between the sublicensed premises of an arena licensee's accompanying sublicenses, if the patron transports the beer from and to an area of each sublicensed premises:

(i) that is adjacent to the other; and

(ii) where the consumption of beer is permitted; and

(b) staff of a sublicensee or person otherwise operating under a sublicense of a hotel licensee **or a resort licensee** may transport an alcoholic beverage from and to sublicensed premises of the hotel **license or resort** license, if:

(i) the sublicensee is ~~a~~:

(A) **a full-service restaurant** ~~{sublicensees}~~**sublicensee;**

(B) **a limited-service restaurant** ~~{sublicensees}~~**sublicensee;**

(C) **a bar establishment sublicensee;**

(D) **a beer-only restaurant** ~~{sublicensees}~~**sublicensee;** or

~~{D}~~**E) ~~{bar establishment sublicensees}~~**an on-premise beer retailer sublicensee;****

(ii) the individual staff carries the alcoholic beverage:

(A) from the ~~{sublicensee's sublicensed premises or from the }~~sublicensed premises of a ~~{bar establishment }~~sublicensee **described in Subsection (4)(b)(i);**

(B) briefly through an unlicensed area or briefly through sublicensed premises on



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which the type of alcoholic beverage that the individual staff carries is permitted; and

(C) to the ~~{sublicensee's sublicensed premises}~~ sublicensed premises of a sublicensee described in Subsection (4)(b)(i); and

(iii) the individual staff at all times stays within:

(A) the boundary of the hotel, as defined in Section 32B-8b-102; or

(B) the boundary of the resort building, as defined in Section 32B-8-102.

~~[(4)] (5)~~ Except as provided in Section 32B-8-502, for purposes of interpreting an operational requirement imposed by the provisions applicable to a sublicense:

(a) a requirement imposed on a sublicensee or person operating under a sublicense applies to the principal licensee; and

(b) a requirement imposed on staff of a sublicensee or person operating under a sublicense applies to staff of the principal licensee.

Section 29. Section **32B-11-202** is amended to read:

### **32B-11-202. Exemption for manufacture of fermented beverage.**

(1) As used in this section, "fermented alcoholic beverage" means:

(a) beer;

(b) heavy beer; or

(c) wine.

(2) An individual may without being licensed under this chapter manufacture ~~[in the individual's personal residence]~~ a fermented alcoholic beverage if:

(a) the individual ferments the alcoholic beverage:

(i) in the individual's personal residence; or

(ii) (A) on the premises of a winery manufacturing license or brewery manufacturing license; and

(B) under the supervision of a winery manufacturing licensee or brewery manufacturing licensee;

(b) the individual is 21 years ~~[of age]~~ old or older;

~~[(b)] (c)~~ the individual manufactures no more than:

(i) 100 gallons in a calendar year, if there is one individual that is 21 years ~~[of age]~~ old or older residing in the household; or

(ii) 200 gallons in a calendar year, if there are two or more individuals who are 21

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years [~~of age~~] old or older residing in the household;

~~(c)~~ (d) the fermented alcoholic beverage is manufactured and used for personal or family use and consumption, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality; and

~~(d)~~ (e) the fermented alcoholic beverage is not for:

- (i) sale or offering for sale; or
- (ii) consumption on a licensed premise.

(3) An individual may store a fermented alcoholic beverage manufactured as provided in Subsection (2) in the individual's personal residence.

(4) A fermented alcoholic beverage manufactured in accordance with Subsection (2) may be removed from the premises where it is manufactured:

(a) for personal or family use, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality;

(b) if the fermented alcoholic beverage is transported in compliance with Section 41-6a-526; and

(c) if the fermented alcoholic beverage is removed only in the following quantities:

(i) for personal and family use that is unrelated to an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be possessed at one time is:

(A) one liter of wine for each individual who is 21 years [~~of age~~] old or older residing in the household;

(B) 72 ounces of heavy beer for each individual who is 21 years [~~of age~~] old or older residing in the household; or

(C) 72 ounces of beer for each individual who is 21 years [~~of age~~] old or older residing in the household; and

(ii) for on-premise consumption at an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be removed for each organized event is:

(A) one liter of wine for each wine category in which the individual enters, except that the individual may not remove wine for more than three categories for the same organized event;

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(B) 72 ounces of heavy beer for each heavy beer category in which the individual enters, except that the individual may not remove heavy beer for more than three categories for the same organized event; or

(C) 72 ounces of beer for each beer category in which the individual enters, except that the individual may not remove beer for more than three categories for the same organized event.

(5) A partnership, corporation, or association may not manufacture a fermented alcoholic beverage under this section for personal or family use and consumption without obtaining a license under this chapter, except that an individual who operates a brewery under this chapter as an individual owner or in partnership with others, may remove beer from the brewery for personal or family use in the amounts described in Subsection (2)~~(b)~~(c).

Section 30. Section **32B-12-205** is amended to read:

**32B-12-205. Duties of commission and department before issuing liquor warehousing license.**

(1) (a) Before the commission may issue a warehousing license or approve a change of location for a licensee's warehouse facility, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a liquor warehousing license should be issued or a change of location granted.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a liquor warehousing license, the commission shall:

(a) determine that the person filed a complete application and has complied with Sections 32B-12-202 and 32B-12-204;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the premises where ~~[it is proposed that liquor be warehoused, such as]~~ the person proposes to warehouse liquor, including:

(i) location;

(ii) proximity to transportation; and

(iii) condition, size, and security of the licensed premises;

(d) consider the person's ability to properly use the liquor warehousing license within the requirements of this title and the commission rules including:

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- (i) the types of products other than liquor that the person is warehousing;
- (ii) the brands of liquor the person intends to warehouse; and
- (iii) the means the person intends to use to distribute the liquor; and
- (e) consider any other factor the commission considers necessary.

(3) Before approving a liquor warehousing licensee's request to change the location of the licensee's warehouse facility, the commission shall:

(a) determine that the licensee filed a complete change of location application;

(b) consider the physical characteristics of the premises where the licensee proposes to warehouse liquor, including:

(i) location;

(ii) proximity to transportation; and

(iii) condition, size, and security of the licensed premises; and

(c) consider any other factor the commission considers necessary.

Section 31. Section **32B-12-207** is enacted to read:

### **32B-12-207. Changing location of a warehousing facility.**

(1) A liquor warehousing licensee may change the location of the licensee's warehousing facility, if the licensee:

(a) submits to the department:

(i) a completed change of location application in a form prescribed by the department;

(ii) a nonrefundable \$300 application fee;

(iii) written consent of the local authority;

(iv) a floor plan of the licensee's proposed new warehouse, including the area in which the licensee proposes to store liquor; and

(v) any other information the commission or department may require; and

(b) begins operation at the new facility within 30 days after the day on which the commission approves the requested change in location.

Section 32. Section **63G-4-102** is amended to read:

### **63G-4-102. Scope and applicability of chapter.**

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

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(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of

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Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates,

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caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;

(v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act; [~~or~~]

(w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action[~~]; or~~

(x) the suspension of operations under Subsection 32B-1-304(3).

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

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(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

(11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Section 33. Section **63I-2-232** is amended to read:

### **63I-2-232. Repeal dates -- Title 32B.**

(1) Subsection 32B-1-102(9) is repealed July 1, 2022.

(2) Subsection 32B-1-407(3)(d) is repealed July 1, 2022.

~~[(3) Section 32B-2-211.1 is repealed November 1, 2020.]~~

~~[(4) Subsection 32B-5-202(4), which addresses license renewal during 2020, is repealed January 1, 2021.]~~



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- [(5)] (3) Subsections 32B-6-202(3) and (4) are repealed July 1, 2022.
- [(6)] (4) Section 32B-6-205 is repealed July 1, 2022.
- [(7)] (5) Subsection 32B-6-205.2(16) is repealed July 1, 2022.
- [(8)] (6) Section 32B-6-205.3 is repealed July 1, 2022.
- [(9)] (7) Subsections 32B-6-302(3) and (4) are repealed July 1, 2022.
- [(10)] (8) Section 32B-6-305 is repealed July 1, 2022.
- [(11)] (9) Subsection 32B-6-305.2(15) is repealed July 1, 2022.
- [(12)] (10) Section 32B-6-305.3 is repealed July 1, 2022.
- [(13)] (11) Section 32B-6-404.1 is repealed July 1, 2022.
- [(14)] (12) Section 32B-6-409 is repealed July 1, 2022.
- [(15)] (13) Subsection 32B-6-703(2)(e) ~~[(iv)]~~ [(iii)] is repealed July 1, 2022.
- [(16)] (14) Subsections 32B-6-902(1)(c), (1)(d), and (2) are repealed July 1, 2022.
- [(17)] (15) Section 32B-6-905 is repealed July 1, 2022.
- [(18)] (16) Subsection 32B-6-905.1(15) is repealed July 1, 2022.
- [(19)] (17) Section 32B-6-905.2 is repealed July 1, 2022.
- [(20)] (18) Subsection 32B-8d-104(3) is repealed July 1, 2022.

Section 34. Section **77-39-101** is amended to read:

**77-39-101. Investigation of sales of alcohol, tobacco products, electronic cigarette products, and nicotine products to underage individuals.**

(1) As used in this section:

(a) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(b) "Nicotine product" means the same as that term is defined in Section 76-10-101.

(c) "Peace officer" means the same as the term is described in Section 53-13-109.

~~[(e)]~~ (d) "Tobacco product" means the same as that term is defined in Section 76-10-101.

(2) (a) A peace officer ~~[, as defined by Title 53, Chapter 13, Peace Officer Classifications,]~~ may investigate the possible violation of:

(i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

(ii) Section 76-10-114 by requesting an individual under 21 years old to enter into and

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attempt to purchase or make a purchase from a retail establishment of:

- (A) a tobacco product;
- (B) an electronic cigarette product; or
- (C) a nicotine product.

(b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the individual requested to make the purchase.

(c) Immediately following a purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase:

- (i) alcohol; or
- (ii) (A) a tobacco product;
- (B) an electronic cigarette product; or
- (C) a nicotine product.

(d) If a citation or information is issued, the citation or information shall be issued within seven days ~~[of the purchase]~~ after the day on which the purchase occurs.

(3) (a) If an individual under 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained ~~[prior to that individual participating]~~ before the individual participates in any attempted purchase.

(b) An individual requested by the peace officer to attempt a purchase may:

- (i) be a trained volunteer; or
- (ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco products, electronic cigarette products, or nicotine products.

(4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase ~~[may not during the attempted purchase misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.]~~ may use false identification in attempting the purchase if:

(a) the Department of Public Safety created in Section 53-1-103 provides the false identification:

(~~a~~)b) the false identification:

- (i) accurately represents the individual's age; and
- (ii) displays a current photo of the individual; and

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(b)(c) the peace officer maintains possession of the false identification at all times outside the attempt to purchase.

(5) An individual requested to attempt to purchase or make a purchase pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a tobacco product, an electronic cigarette product, or a nicotine product if a peace officer directs, supervises, and monitors the individual.

(6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section shall be conducted within a 12-month period:

(i) on a random basis at any one retail establishment location, not more often than four times for the attempted purchase of alcohol; and

(ii) a minimum of two times at a retail establishment that sells tobacco products, electronic cigarette products, or nicotine products for the attempted purchase of a tobacco product, an electronic cigarette product, or a nicotine product.

(b) This section does not prohibit an investigation or an attempt to purchase alcohol, a tobacco product, an electronic cigarette product, or a nicotine product under this section if:

(i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a tobacco product, an electronic cigarette product, or a nicotine product to an individual under the age established by Section 32B-4-403 or 76-10-114; and

(ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.

(7) (a) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made.

(b) The report required by this Subsection (7) shall include:

(i) the name of the supervising peace officer;

(ii) the name of the individual attempting the purchase;

(iii) a photograph of the individual attempting the purchase showing how that individual appeared at the time of the attempted purchase;

(iv) the name and description of the cashier or proprietor from whom the individual attempted the purchase;

(v) the name and address of the retail establishment; and

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(vi) the date and time of the attempted purchase.

**Section 35. Repealer.**

This bill repeals:

**Section 32B-8a-401, Notification of creditors -- Escrow -- Priority of payments.**

**Section 32B-8a-402, Duties of escrow holder.**

**Section 32B-8a-404, When escrow not required.**