

### Part 3 Fiscal Matters

#### **32B-2-301 State property -- Liquor Control Fund -- Markup Holding Fund.**

- (1) The following are property of the state:
  - (a) the money received in the administration of this title, except as otherwise provided; and
  - (b) property acquired, administered, possessed, or received by the department.
- (2)
  - (a) There is created an enterprise fund known as the "Liquor Control Fund."
  - (b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.
- (3)
  - (a) There is created an enterprise fund known as the "Markup Holding Fund."
  - (b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.
  - (c) Money deposited into the Markup Holding Fund may be expended:
    - (i) to the extent appropriated by the Legislature; and
    - (ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection 32B-2-305(4).
- (4) The department may draw from the Liquor Control Fund only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund for an expenditure that is directly incurred by the department:
  - (a) to purchase an alcoholic product;
  - (b) to transport an alcoholic product from the supplier to a warehouse of the department; and
  - (c) for variances related to an alcoholic product.
- (5) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).
- (6)
  - (a) By the end of each day, the department shall:
    - (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
    - (ii) report the deposit to the state treasurer.
  - (b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.
  - (c) Money deposited in a qualified depository is entitled to the same priority of payment as other public funds of the state.
- (7) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant drawn against the Liquor Control Fund by the department, the cash resources of the General Fund may be used to the extent necessary. At no time may the fund equity of the Liquor Control Fund fall below zero.

Amended by Chapter 349, 2013 General Session

**32B-2-302 Exempt from Division of Finance -- Application of procurement -- External audits.**

- (1)
  - (a) The laws that govern the Division of Finance are not applicable to the department in the purchase and sale of an alcoholic product.
  - (b) The department is exempt from Title 63G, Chapter 6a, Utah Procurement Code, for the purchase of an alcoholic product. The department is subject to Title 63G, Chapter 6a, Utah Procurement Code, for any purchase other than for an alcoholic product.
- (2) The state auditor shall:
  - (a) annually perform a financial audit of the department's accounts; and
  - (b) determine the scope and focus of the financial audit in an open meeting of the commission before the audit commences.
- (3) Every two years, beginning for fiscal year 2013-14, the state auditor shall conduct an audit of the department's:
  - (a) management operations, best practices, and efficiency; and
  - (b) ethics and statutory compliance.
- (4) In addition to complying with Subsections (2) and (3), the state auditor may engage in an activity related to the department or commission allowed under Utah Constitution, Article VII, Section 15 or Title 67, Chapter 3, Auditor.
- (5) The state auditor shall forward an audit report issued under Subsection (2) or (3) to the following by no later than 30 days after the day on which the audit report is made:
  - (a) the governor;
  - (b) the Legislative Management Committee;
  - (c) the director; and
  - (d) the legislative auditor general.

Amended by Chapter 349, 2013 General Session

**32B-2-302.5 Internal audits.**

- (1) In accordance with Title 63I, Chapter 5, Utah Internal Audit Act, the department shall conduct various types of auditing procedures determined by the commission through an internal audit division.
- (2)
  - (a) The commission shall appoint an internal audit director who shall serve at the pleasure of the commission.
  - (b) The internal audit director shall hire auditors in the division with the approval of the commission.
  - (c) The internal audit director may dismiss an auditor with the approval of the commission.
- (3) Notwithstanding Section 63I-5-301, the commission shall serve as the audit committee.
- (4) Subject to the other provisions of this section, the internal audit director shall have the powers and duties described in Section 63I-5-401 or any other duty prescribed by the chair of the commission. The internal audit director shall oversee and materially participate in internal audits conducted under this section.
- (5)
  - (a) Once an internal audit is completed, the internal audit director shall provide an internal audit report to the director, the chair of the commission, and the other commissioners.
  - (b) Within five business days of receipt of the internal audit, the director shall prepare a written response and deliver it to the chair of the commission and the other commissioners.

- (c) Within five business days of receipt of the director's written response under Subsection (5)(b), the chair of the commission may prepare a separate response.
- (d) Within 12 business days of the internal audit being given to the director, chair of the commission, and the other commissioners under Subsection (5)(a), the chair of the commission shall forward the audit and any response to:
  - (i) the governor;
  - (ii) the legislative auditor general; and
  - (iii) the Legislative Management Committee.
- (e) Within 120 calendar days of an internal audit being completed, the commission shall prepare a report to the governor describing steps taken to implement the recommendations of the audit or a detailed explanation of why recommendations have not been implemented. The chair of the commission shall forward the report to:
  - (i) the legislative auditor general; and
  - (ii) the Legislative Management Committee.
- (f) The chair of the commission shall make such other reports as the governor requests.

Enacted by Chapter 365, 2012 General Session

**32B-2-303 Purchase of liquor.**

- (1) The department may not purchase or stock spirituous liquor in a container smaller than 200 milliliters, except as otherwise allowed by the commission.
- (2)
  - (a) An order by the department for the purchase of liquor, or a cancellation by the department of an order of liquor:
    - (i) shall be executed in writing by the department; and
    - (ii) is not valid or binding unless executed in writing.
  - (b) The department shall maintain a copy of an order or cancellation on file for at least three years.
  - (c) An electronic record satisfies Subsections (2)(a) and (b) pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act.

Amended by Chapter 307, 2011 General Session

**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" has the same meaning as 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 Subsection (3):
  - (a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 86% 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 86% 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 64.5% 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 in an amount not less than 86% 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 15% 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 47% 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 47% above the landed case cost to the department if:
    - (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; and
    - (ii) the manufacturer applies to the department for a reduced markup.
  - (d) Except for heavy beer sold by the department to a military installation in Utah, heavy beer that is sold by the department within the state shall be marked up 30% above the landed case cost to the department if:
    - (i) a small brewer manufactures the heavy beer; and
    - (ii) the small brewer applies to the department for a reduced markup.
  - (e) The department shall verify an amount described in Subsection (3)(b), (c), or (d) pursuant to a federal or other verifiable production report.
- (4) 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 lunch program administered by the State Board of Education under Section 53A-19-201.
- (5) This section does not prohibit the department from selling discontinued items at a discount.
- (6)
- (a) The department shall collect the markup and remit the markup collected by the department under this section:
    - (i) to the State Tax Commission monthly on or before the last day of the month immediately following the last day of the previous month; and
    - (ii) using a form prescribed by the State Tax Commission.
  - (b) For liquor provided to a package agency on consignment, the department shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department for the liquor provided to the package agency.
  - (c) The State Tax Commission shall deposit revenues remitted to it under Subsection (6)(a) into the Markup Holding Fund created in Section 32B-2-301.
  - (d) The assessment, collection, and refund of a markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
  - (e) The department, if it fails to comply with this Subsection (6), is subject to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

- (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

Amended by Chapter 357, 2012 General Session

**32B-2-305 Alcoholic Beverage Control Act Enforcement Fund.**

- (1) As used in this section:
  - (a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.
  - (b) "Enforcement ratio" is as defined in Section 32B-1-201.
  - (c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in this section.
- (2) There is created an expendable special revenue fund known as the "Alcoholic Beverage Control Act Enforcement Fund."
- (3)
  - (a) The fund consists of:
    - (i) deposits made under Subsection (4); and
    - (ii) interest earned on the fund.
  - (b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.
- (4) After the deposit made under Section 32B-2-304 for the school lunch program, the department shall deposit 1% of the total gross revenue from the sale of liquor with the state treasurer to be credited to the fund to be used by the Department of Public Safety as provided in Subsection (5).
- (5)
  - (a) The Department of Public Safety shall expend money from the fund to supplement appropriations by the Legislature so that the Department of Public Safety maintains a sufficient number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each year the enforcement ratio as of July 1 is equal to or less than the number specified in Section 32B-1-201.
  - (b) Beginning July 1, 2012, four alcohol-related law enforcement officers shall have as a primary focus the enforcement of this title in relationship to restaurants.

Amended by Chapter 400, 2013 General Session

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

- (1) As used in this section:
  - (a) "Advisory council" means the Utah Substance Abuse 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
    - (ii) interest earned on the restricted account.
- (3) The department shall deposit 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.

Enacted by Chapter 388, 2012 General Session