

Part 6 Package Agency

32B-2-601 Commission's power to issue package agency.

- (1)
 - (a) The commission may, when the commission considers proper, issue authority to operate as a package agency by directing the department to enter into a package agency agreement with a person to sell, offer for sale, or furnish liquor in sealed containers from premises other than those owned or leased by the state.
 - (b) The commission shall authorize a person to operate a package agency by issuing a record that designates the person in charge of the package agency as a "package agent."
- (2)
 - (a) Subject to this Subsection (2), the commission may not issue a total number of package agencies that at any time exceeds the number determined by dividing the population of the state by 18,000.
 - (b)
 - (i) The commission may issue a seasonal package agency in an area the commission considers proper.
 - (ii) A seasonal package agency shall be for a period of six consecutive months.
 - (iii) A seasonal package agency issued for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a Seasonal A package agency shall:
 - (A) begin on May 1; and
 - (B) end on October 31.
 - (iv) A seasonal package agency issued for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a Seasonal B package agency shall:
 - (A) begin on November 1; and
 - (B) end on April 30.
 - (v) In determining the number of package agencies that the commission may issue under this section:
 - (A) a seasonal package agency is counted as one-half of one package agency; and
 - (B) each Seasonal A package agency shall be paired with a Seasonal B package agency.
 - (c)
 - (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:
 - (A) the hotel has a minimum of 150 guest rooms; and
 - (B) all locations under the package agency are:
 - (I) within the same hotel; and
 - (II) on premises that are managed or operated, and owned or leased, by the package agent.
 - (ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished.
- (3)

- (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a package agency's sale of liquor.
- (b) A package agent may not be a state employee. A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state.
- (c) A package agent, when selling liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.
- (4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title.

Amended by Chapter 307, 2011 General Session

32B-2-602 Application requirements for a package agency.

- (1) Before a person may store, sell, offer for sale, or furnish liquor in a sealed container on its premises under a package agency, the person shall first obtain a package agency issued by the commission in accordance with this part.
- (2) To obtain a package agency, a person seeking to be the package agent under this part shall submit to the department:
 - (a) a written application in a form prescribed by the department;
 - (b) a nonrefundable application fee of \$125;
 - (c) written consent of the local authority;
 - (d) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;
 - (e) a bond as specified by Section 32B-2-604;
 - (f) a floor plan of the premises, including a description and highlighting of that part of the premises in which the person proposes that the package agency be located;
 - (g) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;
 - (h) a signed consent form stating that the package agent permits any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the package agency;
 - (i) if the person applying is an entity, verification that a person who signs the package agency application is authorized to sign on behalf of the entity; and
 - (j) any other information the commission or department may require.
- (3) The commission may not issue a package agency to a person who is disqualified under Section 32B-1-304.
- (4) The commission may not issue a package agency for premises that do not meet the proximity requirements of Section 32B-1-202.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-603 Commission and department duties before issuing a package agency.

- (1)
 - (a) Before the commission may issue a package agency, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission to assure appropriate service to the general population of the state.

- (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 package agency, the commission shall:
 - (a) determine that the person filed a complete application and is in compliance with Section 32B-2-602;
 - (b) determine that the person is not disqualified under Section 32B-1-304;
 - (c) determine that the package agency premises complies with the zoning ordinances of the locality where the package agency will be located;
 - (d) consider the locality within which the proposed package agency will be located, including:
 - (i) physical characteristics, such as:
 - (A) condition of the premises;
 - (B) square footage;
 - (C) parking; and
 - (D) delivery access; and
 - (ii) operational factors, such as:
 - (A) tourist traffic;
 - (B) access to the public;
 - (C) demographics;
 - (D) population to be served;
 - (E) the nature of surrounding establishments;
 - (F) proximity to and density of other state stores, package agencies, and retail licensees;
 - (G) proximity to residential communities; and
 - (H) the extent of and proximity to educational, religious, and recreational facilities;
 - (e) consider the person's ability to manage and operate a package agency, including:
 - (i) management experience;
 - (ii) past retail liquor experience;
 - (iii) the type of establishment or business in which the package agency may be located;
 - (iv) hours of operation; and
 - (v) ability to maintain inventory levels as set by the department; and
 - (f) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

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 consignment surety bond payable to the department in the amount of the consignment inventory.
 - (b) A consignment surety bond shall be 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 at least \$1,000; 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.
 - (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.

Amended by Chapter 307, 2011 General Session

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 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.
 - (b) At the discretion of the department, liquor may be provided by the department 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 package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.
- (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.

(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 closing; 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 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 its 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 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.

(ii) 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; or
 - (D) dining club license;
 - (iii) the restaurant or dining club is located at the manufacturing facility;
 - (iv) the restaurant or dining club sells an alcoholic product produced at the manufacturing facility;
 - (v) the manufacturing facility:
 - (A) owns the restaurant or dining club; or
 - (B) operates the restaurant or dining club;
 - (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 or dining club.

- (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
 - (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:
 - (A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;
 - (B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; 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 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.

Amended by Chapter 80, 2016 General Session

32B-2-606 Delivery of liquor to package agency.

- (1) Liquor to be sold from a package agency may be transported from a warehouse or state store authorized by the department to the package agency if transported by a person authorized by the department to transport the liquor to the package agency, including a common carrier.
- (2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a container containing liquor.
- (3) A person may not drink, use, or allow to be drunk or used, any liquor while the liquor is in transit under this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-607 Return of inventory by package agent.

A package agent shall immediately return to the department liquor previously received from the department on consignment that remains unsold at the time the package agent's package agency agreement terminates or the liquor is subject to immediate seizure by the department.

Enacted by Chapter 276, 2010 General Session

