

## Part 3 Retail Licensee Operational Requirements

### 32B-5-301 General operational requirements.

- (1)
  - (a) A retail licensee and staff of a retail licensee shall comply with this title and the rules of the commission, including the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license.
  - (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) a retail licensee;
    - (ii) individual staff of a retail licensee; or
    - (iii) both a retail licensee and staff of the retail licensee.
- (2)
  - (a) If there is a conflict between this part and the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license, the relevant part under Chapter 6 governs.
  - (b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.
  - (c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail License Act, refers to "retail licensee," staff of the retail licensee is subject to the same requirement or prohibition.
- (3)
  - (a) A retail licensee shall display in a prominent place in the licensed premises the retail license that is issued by the department.
  - (b) A retail licensee shall display in a prominent place 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 retail licensee may not on the licensed premises:
  - (a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;
  - (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling; or

- (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.
- (5) A retail licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:
  - (a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or
  - (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.
- (6) Upon the presentation of credentials, at any time during which a retail licensee is open for the transaction of business, the retail licensee shall immediately:
  - (a) admit a commissioner, authorized department employee, or law enforcement officer to the retail licensee's premises; and
  - (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to inspect completely:
    - (i) the entire premises of the retail licensee; and
    - (ii) the records of the retail licensee.
- (7) An individual may not consume an alcoholic product on the licensed premises of a retail licensee on any day during the period:
  - (a) beginning one hour after the time of day that the period during which a retail licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises begins; and
  - (b) ending at the time specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license when the retail licensee may first sell, offer for sale, or furnish an alcoholic product on the licensed premises on that day.

Amended by Chapter 334, 2011 General Session

**32B-5-302 Recordkeeping.**

- (1) A retail licensee shall make and maintain a record showing in detail:
  - (a) quarterly expenditures made separately for:
    - (i) malt or brewed beverages;
    - (ii) liquor;
    - (iii) set-ups;
    - (iv) food; and
    - (v) any other item required by the department; and
  - (b) sales made separately for:
    - (i) malt or brewed beverages;
    - (ii) set-ups;
    - (iii) food; and
    - (iv) any other item required by the department.
- (2) A retail licensee shall make and maintain a record required by Subsection (1):
  - (a) in a form approved by the department; and
  - (b) current for each three-month period.
- (3) A retail licensee shall support an expenditure by:
  - (a) a delivery ticket;
  - (b) an invoice;
  - (c) a receipted bill;

- (d) a canceled check;
  - (e) a petty cash voucher; or
  - (f) other sustaining datum or memorandum.
- (4) In addition to a record required under Subsection (1), a retail licensee shall make and maintain any other record the department may require.
- (5)
- (a) A record of a retail licensee is subject to inspection by an authorized representative of the commission and the department.
  - (b) A retail licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the retail licensee at times the department considers advisable.
- (6) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this section.

Enacted by Chapter 276, 2010 General Session

**32B-5-303 Purchase and storage of an alcoholic product by a retail licensee.**

- (1)
- (a) A retail licensee may not purchase liquor except from a state store or package agency.
  - (b) A retail licensee may transport liquor purchased from a state store or package agency from the place of purchase to the licensed premises.
  - (c) A retail licensee shall pay for liquor in accordance with rules established by the commission.
- (2)
- (a)
    - (i) A retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the retail licensee purchases from:
      - (A) a beer wholesaler licensee; or
      - (B) a small brewer that manufactures the beer.
    - (ii) Violation of this Subsection (2)(a) is a class A misdemeanor.
  - (b)
    - (i) If a retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the retail licensee 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 retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the retail licensee as provided in Section 32B-13-301.
    - (ii) Violation of Subsection (2)(b) is a class B misdemeanor.
- (3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.
- (4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Amended by Chapter 307, 2011 General Session

**32B-5-304 Portions in which alcoholic product may be sold.**

- (1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered

dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

- (a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following requirements:
    - (i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;
    - (ii) the secondary ingredient may not be the only spirituous liquor in the beverage;
    - (iii) the retail licensee shall designate a location where flavorings are stored on the floor plan submitted to the department; and
    - (iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";
  - (b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:
    - (i) as a flavoring on a dessert; and
    - (ii) in the preparation of a flaming food dish, drink, or dessert; and
  - (c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.
- (2)
- (a)
    - (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an individual portion that does not exceed 5 ounces per glass or individual portion.
    - (ii) A retail licensee may sell, offer for sale, or furnish an individual portion of wine to a patron in more than one glass if the total amount of wine does not exceed 5 ounces.
  - (b)
    - (i) A retail licensee may sell, offer for sale, or furnish wine in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.
    - (ii) A retail licensee may sell, offer for sale, or furnish wine in a container not to exceed 750 milliliters at a price fixed by the commission to a table of less than four persons.
- (3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original container at a price fixed by the commission, except that the original container may not exceed one liter.
- (4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an original container at a price fixed by the commission, except that the original container may not exceed one liter.
- (5)
- (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:
    - (i) in an open original container; and
    - (ii) in a container on draft.
  - (b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):
    - (i) in a size of container that exceeds two liters; or
    - (ii) to an individual patron in a size of container that exceeds one liter.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

**32B-5-305 Pricing of alcoholic product -- Other charge.**

- (1)
- (a) A retail licensee may sell, offer for sale, or furnish liquor only at a price fixed by the commission.

- (b) A retail licensee may not sell an alcoholic product at a discount price on any date or at any time.
- (2)
- (a) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at less than the cost of the alcoholic product to the retail licensee.
  - (b) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price that encourages overconsumption or intoxication.
  - (c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price for only certain hours of the retail licensee's business day, such as a "happy hour."
  - (d) A retail licensee may not sell, offer for sale, or furnish more than one alcoholic product for the price of a single alcoholic product.
  - (e) A retail licensee may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price.
  - (f) A retail licensee may not engage in a promotion involving or offering a free alcoholic product to the general public.
- (3) As authorized by commission rule, a retail licensee may charge a patron for providing:
- (a) a service related to liquor purchased at the licensed premises; or
  - (b) wine service performed for wine carried in by a patron in accordance with Section 32B-5-307.

Amended by Chapter 334, 2011 General Session

**32B-5-306 Purchasing or selling alcoholic product.**

- (1) A retail licensee 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.
- (2)
- (a) A patron may only purchase an alcoholic product in the licensed premises of a retail licensee from and be served by an individual who is:
    - (i) staff of the retail licensee; and
    - (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.
  - (b) An individual may sell, offer for sale, or furnish an alcoholic product to a patron only if the individual is:
    - (i) staff of the retail licensee; and
    - (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.
  - (c) Notwithstanding Subsection (2)(a) or (b), a patron who purchases bottled wine from staff of the retail licensee or carries bottled wine onto the retail licensee's premises pursuant to Section 32B-5-307 may thereafter serve wine from the bottle to the patron or others at the patron's table.
- (3) The following may not purchase an alcoholic product for a patron:
- (a) a retail licensee; or
  - (b) staff of a retail licensee.

Enacted by Chapter 276, 2010 General Session

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

- (1) Except as provided in Subsection (3):
  - (a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.
  - (b) 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.
  - (c) 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 Subsection (3):
  - (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).
  - (c) Except as provided in Subsection (3)(d) or Subsection 32B-4-415(5):
    - (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.
  - (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).
  - (d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased in 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.

Amended by Chapter 82, 2016 General Session

**32B-5-308 Requirements on staff or others on premises -- Employing a minor.**

- (1) Staff of a retail licensee, while on duty, may not:
  - (a) consume an alcoholic product; or
  - (b) be intoxicated.
- (2)
  - (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.
  - (b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Amended by Chapter 307, 2011 General Session

**32B-5-309 Ceasing operation.**

- (1) Except as provided in Subsection (8), a retail licensee may not close or cease operation for a period longer than 240 hours, unless:
  - (a) the retail licensee notifies the department in writing at least seven days before the day on which the retail licensee closes or ceases operation; and
  - (b) the closure or cessation of operation is first approved by the department.
- (2) Notwithstanding Subsection (1), in the case of emergency closure, a retail licensee shall immediately notify the department by telephone.
- (3)
  - (a) The department may authorize a closure or cessation of operation of a retail licensee for a period not to exceed 60 days.
  - (b) The department may extend the initial period an additional 30 days upon:
    - (i) written request of the retail licensee; and
    - (ii) a showing of good cause.
- (4) A closure or cessation of operation may not exceed a total of 90 days without commission approval.
- (5) A notice required under this section shall include:
  - (a) the dates of closure or cessation of operation;
  - (b) the reason for the closure or cessation of operation; and
  - (c) the date on which the retail licensee will reopen or resume operation.
- (6) Failure of a retail licensee to provide notice and to obtain department approval before closure or cessation of operation results in an automatic forfeiture of:
  - (a) the retail license; and
  - (b) the unused portion of the retail license fee for the remainder of the retail license year effective immediately.
- (7) Failure of a retail licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:
  - (a) the retail license; and
  - (b) the unused portion of the retail license fee for the remainder of the retail license year.
- (8) This section does not apply to:
  - (a) an on-premise beer retailer who is not a tavern; or
  - (b) an airport lounge licensee.

Revisor instructions Chapter 349, 2013 General Session  
Amended by Chapter 334, 2011 General Session

**32B-5-310 Notifying department of change in ownership.**

The commission may suspend or revoke a retail license if the retail licensee does not immediately notify the department of a change in:

- (1) ownership of the premises of the retail license;
- (2) for a corporate owner, the:
  - (a) corporate officers or directors of the retail licensee; or
  - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation;or
- (3) for a limited liability company:
  - (a) managers of the limited liability company; or
  - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

**32B-5-311 Use of breathalyzers.**

- (1) As used in this section:
- (a) "Breathalyzer" means:
    - (i) a device that uses electromechanical fuel cell sensor technology in the blood alcohol content testing process; or
    - (ii) a single-use, disposable alcohol breath tester that is cleared with the United States Food and Drug Administration as a Class 1 medical device with at least 99.8% accuracy and having a detection cut-off of 0.08 relative percent blood alcohol concentration.
  - (b) "Calibration" means the manual setting of specific levels on a breathalyzer by a person trained to reset the device to ensure as accurate results as possible.
  - (c)
    - (i) "Financial transaction card" means a card, code, or other means of access to a person's account issued to a person that allows the person to obtain, purchase, or receive goods, services, money, or anything else of value.
    - (ii) "Financial transaction card" includes:
      - (A) a credit card;
      - (B) a credit plate;
      - (C) a bank services card;
      - (D) a banking card;
      - (E) a check guarantee card;
      - (F) a debit card;
      - (G) a telephone credit card; or
      - (H) a device for access as defined in Section 7-16a-102.
- (2) If a retail licensee voluntarily installs, or sells or otherwise provides, a breathalyzer on its premises:
- (a) the breathalyzer may not store financial transaction card data or associate breathalyzer results with financial transaction card data;
  - (b) for a breathalyzer described in Subsection (1)(a)(i):
    - (i) the breathalyzer shall collect data that can be downloaded by a third-party that performs the calibration of the breathalyzer, except that the downloaded information may not be used for any purpose other than calibration;
    - (ii) the retail licensee shall ensure that a breathalyzer installed inside of the licensed premises is calibrated by a third-party the sooner of every:
      - (A) 30 days; or
      - (B) 300 uses;
    - (iii) the owner of the breathalyzer shall annually report to the department compliance with the calibration requirements of this section for the breathalyzer; and
    - (iv) the breathalyzer may be able to be shut down remotely; and
  - (c) the retail licensee shall post in a conspicuous location by the breathalyzer:
    - (i) a notice to the user of the breathalyzer that the timing of when a breathalyzer test is taken may affect the results of the breathalyzer test; and
    - (ii) a notice that states: "The National Transportation Safety Board has found that crash risk is consistently and significantly elevated by the time an individual reaches a blood alcohol content of 0.05."

- (3) Data from a breathalyzer installed in the licensed premises of, or sold or otherwise provided by, a retail licensee may not be used for enforcement purposes.
- (4) If a retail licensee or owner of the breathalyzer violates this section, the department may require the retail licensee to remove the installed breathalyzer described in Subsection (1)(a)(i) or not sell or otherwise provide a breathalyzer described in Subsection (1)(a)(ii).

Enacted by Chapter 235, 2014 General Session