

## **Chapter 5 Retail License Act**

### **Part 1 General Provisions**

#### **32B-5-101 Title.**

This chapter is known as the "Retail License Act."

Enacted by Chapter 276, 2010 General Session

#### **32B-5-102 Definitions.**

Reserved.

Amended by Chapter 447, 2022 General Session

### **Part 2 Retail Licensing Process**

#### **32B-5-201 Application requirements for retail license.**

- (1)
  - (a) Before a person may store, sell, offer for sale, furnish, or permit consumption of an alcoholic product on licensed premises as a retail licensee, the person shall first obtain a retail license issued by the commission, notwithstanding whether the person holds a local license or a permit issued by a local authority.
  - (b) Violation of this Subsection (1) is a class B misdemeanor.
- (2) To obtain a retail license under this title, a person shall submit to the department:
  - (a) a written application in a form prescribed by the department;
  - (b) a nonrefundable application fee in the amount specified in the relevant chapter or part for the type of retail license for which the person is applying;
  - (c) an initial license fee:
    - (i) in the amount specified in the relevant chapter or part for the type of retail license for which the person is applying; and
    - (ii) that is refundable if a retail license is not issued;
  - (d) written consent of the local authority, including, if applicable, consent for each proposed sublicense;
  - (e) a copy of:
    - (i) every license the local authority requires, including the person's current business license; and
    - (ii) if the person is applying for a principal license, the current business license for each proposed sublicense, except if the local authority determines that the business license for a proposed sublicense is included in the person's current business license;
  - (f) evidence of the proposed retail licensee's proximity to any community location, with proximity requirements being governed by Section 32B-1-202;
  - (g) a bond as specified by Section 32B-5-204;

- (h) a floor plan, and boundary map where applicable, of the premises of the retail license and each, if any, accompanying sublicense, including any:
    - (i) consumption area; and
    - (ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic beverage;
  - (i) evidence that the retail licensee carries public liability insurance in an amount and form satisfactory to the department;
  - (j) evidence that the retail licensee carries dramshop insurance coverage of at least:
    - (i) \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
    - (ii) if the retail licensee is a hotel licensee or a resort licensee, \$1,000,000 per occurrence and \$2,000,000 in the aggregate to cover both the principal license and all accompanying sublicenses; or
    - (iii) if the retail licensee is an arena licensee, \$10,000,000 per occurrence and \$20,000,000 in the aggregate to cover both the arena license and all accompanying sublicenses;
  - (k) a signed consent form stating that the retail licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter:
    - (i) the premises of the retail licensee; and
    - (ii) if applicable, the premises of each of the retail licensee's accompanying sublicenses;
  - (l) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity;
  - (m) a responsible alcohol service plan;
  - (n) evidence that each individual the person has hired to work as a retail manager, as defined in Section 32B-1-701, has completed the alcohol training and education seminar as required under Chapter 1, Part 7, Alcohol Training and Education Act; and
  - (o) any other information the commission or department may require.
- (3) The commission may not issue a retail license to a person who:
- (a) is disqualified under Section 32B-1-304; or
  - (b) is not lawfully present in the United States.
- (4) Unless otherwise provided in the relevant chapter or part for the type of retail license for which the person is applying, the commission may not issue a retail license to a person if the proposed licensed premises does not meet the proximity requirements of Section 32B-1-202.
- (5) The commission may not deny an application for a retail license, an application for a conditional retail license under Section 32B-5-205, or an application for a sublicense under Chapter 8d, Sublicense Act, if:
- (a) the applicant satisfies the requirements of this chapter; and
  - (b) for a retail license or a conditional retail license, granting the retail license or the conditional retail license would not cause the commission to exceed the maximum number of licenses of that retail license type that the commission is authorized to issue under this chapter.

Amended by Chapter 94, 2024 General Session

**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.
- (2)
  - (a) To renew a person's retail license, a retail licensee shall, on or before 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;
  - (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;
  - (iii) a responsible alcohol service plan if, since the retail licensee's most recent application or renewal, the retail licensee:
    - (A) made substantial changes to the retail licensee's responsible alcohol service plan; or
    - (B) violated a provision of this chapter; and
  - (iv) a certification in a form prescribed by the department of the retail licensee's compliance with Section 32B-5-302.
- (b) 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.

Amended by Chapter 400, 2023 General Session

**32B-5-203 Commission and department duties before issuing a retail license.**

- (1)
- (a) Before the commission may issue a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a retail license and, if applicable, each accompanying sublicense should be issued.
  - (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 retail license, the commission shall:
- (a) determine that the person filed a complete application and is in compliance with:
    - (i) Section 32B-5-201; and
    - (ii) the specific licensing requirements specified in the relevant chapter or part for the type of retail license for which the person is applying;
  - (b) determine that the person and, if applicable, each of the person's accompanying sublicenses is not disqualified under Section 32B-1-304;
  - (c) consider the locality within which the proposed licensed premises and, if applicable, each proposed sublicensed premises is located, including:
    - (i) physical characteristics such as:
      - (A) condition of the licensed or sublicensed premises;
      - (B) square footage; and
      - (C) parking availability; and
    - (ii) operational factors such as:
      - (A) tourist traffic;
      - (B) demographics;
      - (C) population to be served;
      - (D) proximity to and density of other state stores, package agencies, and retail licensees; and
      - (E) the extent of and proximity to any community location;
  - (d) consider the person's ability to manage and operate a retail license, and if applicable the ability of each individual who will act in a supervisory or managerial capacity for each accompanying sublicense to supervise or manage a sublicense, of the type for which the person is applying, including:
    - (i) management experience;
    - (ii) past retail alcoholic product experience; and

- (iii) the type of management scheme to be used by the retail licensee or accompanying sublicensee;
- (e) consider the nature or type of retail licensee operation, and if applicable each proposed accompanying sublicensee's operation, of the proposed retail licensee, including:
  - (i) the type of menu items that will be offered and emphasized;
  - (ii) whether the retail licensee or the retail licensee's accompanying sublicensee will emphasize service to an adult clientele or to minors;
  - (iii) the proposed hours of operation;
  - (iv) the seating capacity of the premises; and
  - (v) the estimated gross sales of food items; and
- (f) consider any other factor the commission considers necessary.
- (3) The commission shall determine whether an applicant under this section has an adequate kitchen or culinary facilities by considering:
  - (a) the type of retail license or sublicense for which the person is applying;
  - (b) the purpose of the proposed retail license or sublicense; and
  - (c) the locality within which the proposed licensed or sublicensed premises is located.

Amended by Chapter 219, 2020 General Session

**32B-5-204 Bond for retail license.**

- (1)
  - (a) A retail licensee shall post a cash bond or surety bond:
    - (i) in the amount specified in the relevant chapter or part for the type of retail license for which the person is applying; and
    - (ii) payable to the department.
  - (b) A retail licensee shall procure and maintain the bond required under this section for as long as the retail licensee continues to operate as a retail licensee.
- (2) A bond required under this section shall be:
  - (a) in a form approved by the attorney general; and
  - (b) conditioned upon the retail licensee's faithful compliance with this title and the rules of the commission.
- (3)
  - (a) If a surety bond posted by a retail licensee under this section is canceled due to the retail licensee's negligence, the department may assess a \$300 reinstatement fee.
  - (b) No part of a bond posted by a retail licensee under this section may be withdrawn:
    - (i) during the period the retail license is in effect; or
    - (ii) while a revocation proceeding is pending against the retail licensee.
- (4)
  - (a) A bond posted under this section by a retail licensee may be forfeited if the retail license is revoked.
  - (b) Notwithstanding Subsection (4)(a), the department may make a claim against a bond posted by a retail licensee for money owed the department under this title without the commission first revoking the retail license.

Amended by Chapter 219, 2020 General Session

**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 obtain a valid retail license on the person submitting to the department:
      - (A) a copy of every license or permit the local authority requires for the valid retail license, including the holder's current business license;
      - (B) a bond;
      - (C) evidence that the person carries public liability insurance;
      - (D) evidence that the person carries dramshop insurance;
      - (E) evidence that each individual the conditional retail licensee has hired to work as a retail manager, as defined in Section 32B-1-701, has completed the alcohol training and education seminar as required under Chapter 1, Part 7, Alcohol Training and Education Act; or
      - (F) any other information the department or commission may require for licensure; and
    - (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 the holder's 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 each requirement to obtain the retail license for which the person is applying, except a requirement to submit to the department:
    - (i) a copy of every license or permit the local authority requires for the retail license, including the person's current business license;
    - (ii) a bond;
    - (iii) evidence that the person carries public liability insurance;
    - (iv) evidence that the person carries dramshop insurance coverage;
    - (v) evidence that each individual the conditional retail licensee has hired to work as a retail manager, as defined in Section 32B-1-701, has completed the alcohol training and education seminar as required under Chapter 1, Part 7, Alcohol Training and Education Act; or
    - (vi) a menu; and
  - (b) agrees not to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on the conditional retail licensee's 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) a copy of every license or permit the local authority requires for the retail license, including the person's current business license;
      - (B) a bond as specified by Section 32B-5-204;
      - (C) evidence that the conditional retail licensee carries public liability insurance in an amount and form satisfactory to the department;
      - (D) evidence that the conditional retail licensee carries dramshop insurance coverage as specified in Section 32B-5-201;

- (E) evidence that each individual the conditional retail licensee has hired to work as a retail manager, as defined in Section 32B-1-701, has completed an alcohol training and education seminar as required under Chapter 1, Part 7, Alcohol Training and Education Act; and
- (F) any other information the department or commission may require; 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 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 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 six-month period.

Amended by Chapter 447, 2022 General Session

**32B-5-206 Seasonal retail license.**

- (1) If authorized in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license, the commission may in accordance with this section issue a seasonal retail license located in an area the commission considers proper.
- (2)
  - (a) A seasonal retail license shall be for a period of six consecutive months.
  - (b) A seasonal retail license issued for operation during a summer time period is known as a "Seasonal A" retail license. The period of operation for a Seasonal A retail license:
    - (i) begins on May 1; and
    - (ii) ends on October 31.
  - (c) A seasonal retail license issued for operation during a winter time period is known as a "Seasonal B" retail license. The period of operation for a Seasonal B retail license:
    - (i) begins on November 1; and
    - (ii) ends on April 30.
- (3) In determining the number of each type of retail license that the commission may issue under the relevant part under Chapter 6, Specific Retail License Act:
  - (a) a seasonal retail license is counted as one-half of one retail license of the specific type of retail license; and
  - (b) each Seasonal A retail license shall be paired with a Seasonal B retail license of the same type of retail license.

Enacted by Chapter 276, 2010 General Session

**32B-5-207 Multiple retail licenses on same premises.**

- (1) As used in this section, "license" means:
  - (a) a retail license; or
  - (b) a sublicense.

- (2) Except as provided in Subsection (3), the commission may not issue and one or more licensees may not hold more than one type of license for the same premises.
- (3)
- (a) The commission may issue and one or more licensees may hold more than one type of license for the same premises if:
    - (i) the applicant or licensee satisfies the requirements for each license;
    - (ii) the types of licenses issued or held are two or more of the following:
      - (A) a restaurant license;
      - (B) an on-premise beer retailer license that is not a tavern;
      - (C) an on-premise banquet license or a reception center license; and
      - (D) a hospitality amenity license; and
    - (iii) the licenses do not operate at the same time on the same day.
  - (b) The commission may issue and two or more restaurant licensees may share an area of each restaurant licensee's licensed premises designated for alcoholic beverage consumption, if:
    - (i) the applicants or licensees satisfy the requirements for each license; and
    - (ii) the only shared premises between the issued or held restaurant licenses is the area for alcoholic beverage consumption.
  - (c) The commission may issue and two or more licensees may share a kitchen or culinary facilities located in or on one or more of the licensees' licensed premises, if:
    - (i) the types of licenses issued or held are two or more sublicenses of a principal licensee:
      - (A) one of which is an on-premise banquet sublicense; and
      - (B) one of which is a restaurant license that is a sublicense, an on-premise beer retailer sublicense that is not a tavern, or a bar sublicense; or
    - (ii)
      - (A) the same person applies for or holds each license;
      - (B) the licensed premises are each owned or leased by the same person and located in the same building; and
      - (C) the only shared premises between the issued or held licenses is the kitchen or culinary facilities area, including any pathway necessary to transport an item to and from the area.
- (4) When one or more licensees hold more than one type of license for the same premises under Subsection (3)(a), the one or more licensees shall post in a conspicuous location at the entrance of the room a sign that:
- (a) measures 8-1/2 inches by 11 inches; and
  - (b) states whether the premises is currently operating as:
    - (i) a restaurant;
    - (ii) an on-premise beer retailer that is not a tavern;
    - (iii) a banquet or a reception center; or
    - (iv) a hospitality amenity.
- (5) When two or more restaurant licensees share an area of each restaurant licensee's licensed premises designated for alcoholic beverage consumption in accordance with Subsection (3)(b), each licensee shall:
- (a) maintain control over the licensee's patrons; and
  - (b) use a visual marker to clearly identify which licensee served each patron.
- (6)
- (a) For purposes of Subsection (3)(a), the commission may not issue and one or more licensees may not hold a bar license or a tavern license in the same room as a restaurant license.
  - (b) For purposes of Subsection (6)(a), two licenses are not considered in the same room if:

- (i) each shared permanent wall between the premises licensed as a bar or a tavern and the premises licensed as a restaurant measures at least eight feet high;
  - (ii) the premises for each license has a separate entryway that does not require a patron to pass through the premises licensed as a bar or a tavern to access the premises licensed as a restaurant; and
  - (iii) if a patron must pass through the premises licensed as a restaurant to access the entryway to the premises licensed as a bar or a tavern, a patron on the premises licensed as a restaurant cannot see a dispensing structure on the premises licensed as a bar or a tavern.
- (7)
- (a) The commission may issue more than one type of sublicense to a resort licensed under Chapter 8, Resort License Act, or a hotel licensed under Chapter 8b, Hotel License Act, for the same room if the sublicensed premises are clearly delineated by one or more permanent physical structures, such as a wall or other architectural feature, that separate the sublicensed premises.
  - (b) A patron may not transport an alcoholic beverage between two sublicensed premises located in the same room in accordance with Subsection (7)(a).
  - (c) Notwithstanding any provision to the contrary, a minor may momentarily pass through a sublicensed premises that is a bar to reach another location where a minor may lawfully be, if there is no practical alternative route to the location.

Amended by Chapter 219, 2020 General Session

### **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 chapter or part 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 chapter or part for the specific type of retail license, the relevant chapter or part for the specific type of retail license 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 chapter or part for the retail licensee's specific type of retail license.
  - (c) Notwithstanding that this part or the relevant chapter or part for a specific retail licensee 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 in Section 76-10-1101, or fringe gambling, as defined in Section 76-10-1101;
  - (b) have any fringe gaming device, video gaming device, or gambling device or record as defined in Section 76-10-1101; 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 chapter or part for the retail licensee's specific 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.

- (8) An employee of a retail licensee who sells, offers for sale, or furnishes an alcoholic product to a patron shall wear an identification badge.
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:
  - (a) related to the requirement described in Subsection (8); and
  - (b) for dispensing systems and dispensing areas of restaurant licensees, bar licensees, and taverns, establishing standards:
    - (i) in accordance with the provisions of this title; and
    - (ii) prohibiting a dispensing system to remain at a patron's table.

Amended by Chapter 219, 2020 General Session

Amended by Chapter 291, 2020 General Session

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

- (1)
  - (a) A retail licensee shall make and maintain a record showing in detail:
    - (i) quarterly expenditures made separately for:
      - (A) malt or brewed beverages;
      - (B) liquor;
      - (C) set-ups;
      - (D) food; and
      - (E) any other item required by the department; and
    - (ii) sales made separately for:
      - (A) malt or brewed beverages;
      - (B) set-ups;
      - (C) food; and
      - (D) any other item required by the department.
  - (b) A retail licensee shall make and maintain a record required by Subsection (1)(a):
    - (i) in a form approved by the department; and
    - (ii) current for each three-month period.
  - (c) A retail licensee shall support an expenditure by:
    - (i) a delivery ticket;
    - (ii) an invoice;
    - (iii) a receipted bill;
    - (iv) a canceled check;
    - (v) a petty cash voucher; or
    - (vi) other sustaining datum or memorandum.
  - (d) In addition to a record required under Subsection (1)(a), a retail licensee shall make and maintain any other record the department may require.
- (2) After receiving written notice of an official proceeding or investigation under Chapter 15, Alcoholic Product Liability Act, or a criminal proceeding or investigation for a violation of Section 41-6a-502 or 41-6a-517, a retail licensee shall retain a record that is relevant to the proceeding or investigation, including any video surveillance, for a period of at least two years after the day on which the notice is received.
- (3)
  - (a) A record of a retail licensee is subject to inspection by an authorized representative of the commission or 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.
- (4) Sections 32B-1-205 and 32B-4-505 apply to a record required to be made or maintained in accordance with this section.

Amended by Chapter 400, 2023 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 except when:
  - (a) liquor sales are authorized by law; or
  - (b) the licensee:
    - (i) inventories or restocks the alcoholic product in the liquor storage area; or
    - (ii) repairs or cleans the liquor storage area.

Amended by Chapter 403, 2019 General Session

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

- (1)
  - (a) A retail licensee may sell, offer for sale, or furnish spirituous liquor that is 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.
  - (b) A retail license is not required to dispense spirituous liquor through a calibrated metered dispensing system if the spirituous liquor is:

- (i) a secondary flavoring ingredient;
  - (ii) used as a flavoring on a dessert;
  - (iii) used to set aflame a food dish, drink, or dessert; or
  - (iv) in a beverage that:
    - (A) is served to a patron in the original, sealed container;
    - (B) is not more than 12 ounces;
    - (C) contains no more than 10% alcohol by volume or 8% by weight; and
    - (D) is in a container that has the alcohol by volume percentage on the front label and in a font that measures at least three millimeters high.
- (c) A retail licensee that dispenses spirituous liquor that is a secondary flavoring ingredient shall:
  - (i) designate a location where the retail licensee stores secondary flavoring ingredients on the floor plan the retail licensee submits to the department; and
  - (ii) clearly and conspicuously label each secondary flavoring ingredient's container "flavorings".
- (d)
  - (i) A patron may have no more than 2.5 ounces of spirituous liquor at a time.
  - (ii) Subsection (1)(d)(i) does not apply to a beverage described in Subsection (1)(b)(iv).
- (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.
- (c) Notwithstanding Subsections (2)(a) and (b), a retail licensee may sell, offer for sale, or furnish hard cider that contains no more than 5% of alcohol by volume in a sealed container not to exceed 16 ounces.
- (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)
    - (i) Subject to Subsection (5)(a)(ii), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:
      - (A) in an open original container; and
      - (B) in a container on draft.
    - (ii) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a)(i):
      - (A) in a size of container that exceeds two liters; or
      - (B) to an individual patron in a size of container that exceeds one liter.
  - (b) A retail licensee may sell, offer for sale, or furnish beer for off-premise consumption:
    - (i) in a sealed container; and
    - (ii) in a size of container that does not exceed two liters.

- (c) A retail licensee may sell, offer for sale, or furnish a flight of beer to an individual patron if the total amount of beer does not exceed 16 ounces.

Amended by Chapter 94, 2024 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.
- (4) After a retail licensee closes the retail licensee's business at the licensed premises, the retail licensee may transfer the retail licensee's inventory of alcoholic product from that premises to another premises licensed under this chapter that is owned by the same retail licensee.

Amended by Chapter 403, 2019 General Session

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

- (1) Except as provided in Subsections (3) and (4):
  - (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; and
  - (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 Subsections (3) and (4) and Subsection 32B-4-415(5):
  - (a) a person may not carry from the 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 the 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 of the retail licensee 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) 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) 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.
- (5)
  - (a) A patron may carry from a retail licensee's licensed premises a sealed container of beer that has been purchased from the retail licensee.
  - (b) A retail licensee may permit a patron to carry from the retail licensee's licensed premises a sealed container of beer that has been purchased from the retail licensee.

Amended by Chapter 447, 2022 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.
- (3) A full-service restaurant licensee, limited-service restaurant licensee, or beer-only restaurant licensee may employ a minor who is at least 16 years of age to bus tables, including containers that contain an alcoholic product.

Amended by Chapter 403, 2019 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 an initial closure or cessation of operation of a retail licensee for a period not to exceed 60 days.
  - (b) Upon written request of the retail licensee and a showing of good cause, the department may extend the initial period described in Subsection (3)(a) for a period not to exceed the greater of:
    - (i) 30 days; or
    - (ii) the number of days until the day on which the commission holds the commission's next regularly scheduled meeting.
- (4) A closure or cessation of operation may not exceed the time limits described in Subsection (3) 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) If a retail licensee fails to provide notice and to obtain department approval before closure or cessation of operation, the commission may:
  - (a) suspend, revoke, or deem forfeited the retail license; or
  - (b) deem the unused portion of the retail license fee for the remainder of the retail license year forfeited.
- (7) If a retail licensee fails to reopen or resume operation by the date approved under Subsections (3) and (4), the commission may:
  - (a) suspend, revoke, or deem forfeited the retail license; or
  - (b) deem the unused portion of the retail license fee for the remainder of the retail license year forfeited.
- (8) This section does not apply to:
  - (a) an on-premise beer retailer who is not a tavern;
  - (b) an airport lounge licensee; or
  - (c) a hospitality amenity licensee.
- (9) For purposes of this section, the department may not base a determination that a retail licensee has ceased operation solely upon the retail licensee's lack of sales.

Amended by Chapter 371, 2023 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