

DRAMSHOP MODIFICATIONS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO ALCOHOLIC BEVERAGES; REQUIRING ALCOHOLIC BEVERAGE LICENSEES TO CARRY DRAMSHOP INSURANCE COVERAGE CONSISTENT WITH EXISTING CAPS; AMENDING THE DRAMSHOP LIABILITY LAW TO CLARIFY TYPES OF RECOVERY; EXCLUDING THE APPLICATION OF THE LIABILITY REFORM ACT; ADDRESSING THE CAP ON RECOVERY; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

32A-4-102, as last amended by Chapter 132, Laws of Utah 1991

32A-4-202, as last amended by Chapter 132, Laws of Utah 1991

32A-5-102, as last amended by Chapter 132, Laws of Utah 1991

32A-10-202, as last amended by Chapter 282, Laws of Utah 1998

ENACTS:

32A-14a-101, Utah Code Annotated 1953

32A-14a-103, Utah Code Annotated 1953

§ **32A-14a-105**, Utah Code Annotated 1953 §

RENUMBERS AND AMENDS:

32A-14a-102, (Renumbered from 32A-14-101, as last amended by Chapters 94 and 375, Laws of Utah 1997)

32A-14a-104, (Renumbered from 32A-14-102, as renumbered and amended by Chapter 23, Laws of Utah 1990)

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

Section 1. Section **32A-4-102** is amended to read:

32A-4-102. Application and renewal requirements.

28 (1) A person seeking a restaurant liquor license under this chapter shall file a written
29 application with the department, in a form prescribed by the department. It shall be accompanied
30 by:

31 (a) a nonrefundable \$300 application fee;

32 (b) an initial license fee of \$300, which is refundable if a license is not granted;

33 (c) written consent of the local authority;

34 (d) a copy of the applicant's current business license;

35 (e) evidence of proximity to any public or private school, church, public library, public
36 playground, or park, and if the proximity is within the 600 foot or 200 foot limitation of
37 Subsections 32A-4-101(4), (5), and (6), the application shall be processed in accordance with
38 those subsections;

39 (f) a bond as specified by Section 32A-4-105;

40 (g) a floor plan of the restaurant, including consumption areas and the area where the
41 applicant proposes to keep, store, and sell liquor;

42 (h) evidence that the restaurant is carrying public liability insurance in an amount and form
43 satisfactory to the department;

44 (i) evidence that the restaurant is carrying dramshop insurance coverage of at least
45 [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;

46 (j) a signed consent form stating that the restaurant will permit any authorized
47 representative of the commission, department, council, or any law enforcement officer unrestricted
48 right to enter the restaurant;

49 (k) in the case of a corporate applicant, proper verification evidencing that the person or
50 persons signing the restaurant application are authorized to so act on the corporation's behalf; and

51 (l) any other information the commission or department may require.

52 (2) All restaurant liquor licenses expire on October 31 of each year. Persons desiring to
53 renew their restaurant liquor license shall submit a renewal fee of \$300 and a completed renewal
54 application to the department no later than September 30. Failure to meet the renewal
55 requirements shall result in an automatic forfeiture of the license effective on the date the existing
56 license expires. Renewal applications shall be in a form as prescribed by the department.

57 (3) If any restaurant liquor licensee does not immediately notify the department of any
58 change in ownership of the restaurant, or in the case of a Utah corporate owner of any change in

59 the corporate officers or directors, the commission may suspend or revoke that license.

60 Section 2. Section **32A-4-202** is amended to read:

61 **32A-4-202. Application and renewal requirements.**

62 (1) A person seeking an airport lounge liquor license under this part shall file a written
63 application with the department, in a form prescribed by the department, accompanied by:

64 (a) a nonrefundable \$1,000 application fee;

65 (b) an initial license fee of \$1,000, which is refundable if a license is not granted;

66 (c) written consent of the local and airport authority;

67 (d) a copy of the applicant's current business license;

68 (e) a bond as specified by Section 32A-4-205;

69 (f) a floor plan of the airport lounge, including consumption areas and the area where the
70 applicant proposes to keep, store, and sell liquor;

71 (g) a copy of the sign proposed to be used by the licensee on its premises to inform the
72 public that alcoholic beverages are sold and consumed there;

73 (h) evidence that the airport lounge is carrying public liability insurance in an amount and
74 form satisfactory to the department;

75 (i) evidence that the airport lounge is carrying dramshop insurance coverage of at least
76 [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;

77 (j) a signed consent form stating that the airport lounge will permit any authorized
78 representative of the commission, department, council, or any law enforcement officer unrestricted
79 right to enter the airport lounge;

80 (k) in the case of a corporate applicant, proper verification evidencing that the person or
81 persons signing the airport lounge application are authorized to so act on the corporation's behalf;
82 and

83 (l) any other information the commission or department may require.

84 (2) All airport lounge liquor licenses expire on October 31 of each year. Persons desiring
85 to renew their airport lounge liquor license shall submit a renewal fee of \$1,000 and a completed
86 renewal application to the department no later than September 30. Failure to meet the renewal
87 requirements shall result in an automatic forfeiture of the license, effective on the date the existing
88 license expires. Renewal applications shall be in a form as prescribed by the department.

89 (3) If any airport liquor licensee does not immediately notify the department of any change

90 in ownership of the licensee, or in the case of a Utah corporate owner of any change in the
91 corporate officers or directors, the commission may suspend or revoke that license.

92 Section 3. Section **32A-5-102** is amended to read:

93 **32A-5-102. Application and renewal requirements.**

94 (1) A person seeking a private club liquor license under this chapter shall file a written
95 application with the department, in the name of an officer or director of a corporation, in a form
96 prescribed by the department. It shall be accompanied by:

97 (a) a nonrefundable \$1,000 application fee;

98 (b) an initial license fee of \$750, which is refundable if a license is not granted;

99 (c) written consent of the local authority;

100 (d) a copy of the applicant's current business license;

101 (e) evidence that the applicant is a corporation or association organized under the Utah
102 Nonprofit Corporation and Cooperative Association Act, and is in good standing;

103 (f) evidence of proximity to any public or private school, church, public library, public
104 playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of
105 Subsections 32A-5-101(5), (6), and (7), the application shall be processed in accordance with those
106 subsections;

107 (g) evidence that the applicant operates a club where a variety of food is prepared and
108 served in connection with dining accommodations;

109 (h) a bond as specified by Section 32A-5-106;

110 (i) a floor plan of the club premises, including consumption areas and the area where the
111 applicant proposes to keep and store liquor;

112 (j) evidence that the club is carrying public liability insurance in an amount and form
113 satisfactory to the department;

114 (k) evidence that the club is carrying dramshop insurance coverage of at least [~~\$100,000~~]
115 \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;

116 (l) a copy of the club's articles, bylaws, house rules, and any amendments to those
117 documents, which shall be kept on file with the department at all times;

118 (m) a signed consent form stating that the club and its management will permit any
119 authorized representative of the commission, department, council, or any law enforcement officer
120 unrestricted right to enter the club premises;

121 (n) a signed consent form authorizing the department to obtain Internal Revenue Service
122 tax information on the club;

123 (o) a signed consent form authorizing the department to obtain state and county real and
124 personal property tax information on the club;

125 (p) profit and loss statements for the previous fiscal year and pro forma statements for one
126 year if the applicant has not previously operated; and

127 (q) any other information, documents, and evidence the department may require by rule
128 or policy to allow complete evaluation of the application.

129 (2) (a) Each application shall be signed and verified by oath or affirmation by an executive
130 officer or any person specifically authorized by the corporation or association to sign the
131 application, to which shall be attached written evidence of said authority.

132 (b) The applicant may attach to the application a verified copy of a letter of exemption
133 from federal tax, issued by the United States Treasury Department, Internal Revenue Service,
134 which the commission may consider as evidence of the applicant's nonprofit status. The
135 commission may also consider the fact that the licensee has lost its tax exemption from federal tax
136 as evidence that the licensee has ceased to operate as a nonprofit corporation.

137 (3) (a) The commission may refuse to issue a license if it determines that any provisions
138 of the club's articles, bylaws, house rules, or amendments to any of those documents are not
139 reasonable and consistent with the declared nature and purpose of the applicant and the purposes
140 of this chapter.

141 (b) Club bylaws shall include provisions respecting the following:

142 (i) standards of eligibility for members;

143 (ii) limitation of members, consistent with the nature and purpose of the corporation or
144 association;

145 (iii) the period for which dues are paid, and the date upon which the period expires;

146 (iv) provisions for dropping members for the nonpayment of dues or other cause; and

147 (v) provisions for guests or visitors, if any, and for the issuance and use of visitor cards.

148 (4) All private club liquor licenses expire on June 30 of each year. Persons desiring to
149 renew their private club liquor license shall submit a renewal fee of \$750 and a completed renewal
150 application to the department no later than May 31. Failure to meet the renewal requirements shall
151 result in an automatic forfeiture of the license effective on the date the existing license expires.

152 Renewal applications shall be in a form as prescribed by the department.

153 Section 4. Section **32A-10-202** is amended to read:

154 **32A-10-202. Application and renewal requirements.**

155 (1) A person seeking an on-premise beer retailer license under this chapter shall file a
156 written application with the department, in a form prescribed by the department. It shall be
157 accompanied by:

158 (a) a nonrefundable \$300 application fee;

159 (b) an initial license fee of \$100, which is refundable if a license is not granted;

160 (c) written consent of the local authority or a license to sell beer at retail for on-premise
161 consumption granted by the local authority under Section 32A-10-101;

162 (d) a copy of the applicant's current business license;

163 (e) for applications made on or after July 1, 1991, evidence of proximity to any public or
164 private school, church, public library, public playground, or park, and if the proximity is within
165 the 600 foot or 200 foot limitation of Subsections 32A-10-201(3), (4), and (5), the application shall
166 be processed in accordance with those subsections;

167 (f) a bond as specified by Section 32A-10-205;

168 (g) a floor plan of the premises, including consumption areas and the area where the
169 applicant proposes to keep, store, and sell beer;

170 (h) evidence that the on-premise beer retailer licensee is carrying public liability insurance
171 in an amount and form satisfactory to the department;

172 (i) for those licensees that sell more than \$5,000 of beer annually, evidence that the
173 on-premise beer retailer licensee is carrying dramshop insurance coverage of at least [~~\$100,000~~
174 \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;

175 (j) a signed consent form stating that the on-premise beer retailer licensee will permit any
176 authorized representative of the commission, department, council, or any peace officer unrestricted
177 right to enter the licensee premises;

178 (k) in the case of a corporate applicant, proper verification evidencing that the person or
179 persons signing the on-premise beer retailer licensee application are authorized to so act on the
180 corporation's behalf; and

181 (l) any other information the department may require.

182 (2) All on-premise beer retailer licenses expire on the last day of February of each year,

183 except that all on-premise beer retailer licenses obtained before the last day of February 1991
 184 expire on the last day of February 1992. Persons desiring to renew their on-premise beer retailer
 185 license shall submit a renewal fee of \$100 and a completed renewal application to the department
 186 no later than January 31. Failure to meet the renewal requirements shall result in an automatic
 187 forfeiture of the license, effective on the date the existing license expires. Renewal applications
 188 shall be in a form as prescribed by the department.

189 (3) If any beer retailer licensee does not immediately notify the department of any change
 190 in ownership of the beer retailer, or in the case of a Utah corporate owner of any change in the
 191 officers or directors, the commission may suspend or revoke that license.

192 (4) If the applicant is a county, municipality, or other political subdivision, it need not meet
 193 the requirements of Subsections (1)(a), (b), (c), (d), and (f).

194 (5) Only one state on-premise beer retailer license is required for each building or resort
 195 facility owned or leased by the same applicant. Separate licenses are not required for each retail
 196 beer dispensing outlet located in the same building or on the same resort premises owned or
 197 operated by the same applicant.

198 Section 5. Section **32A-14a-101** is enacted to read:

199 **CHAPTER 14a. ALCOHOLIC BEVERAGE LIABILITY**

200 **32A-14a-101. Definitions.**

201 As used in this chapter:

202 (1) "Death of a third person" includes recovery for all damages, special and general,
 203 resulting from such death, except punitive damages.

204 (2) (a) "Injury" includes injury in person, property, or means of support.

205 (b) "Injury" also includes recovery for intangibles such as mental and emotional injuries,
 206 loss of affection, and companionship.

207 Section 6. Section **32A-14a-102**, which is renumbered from Section 32A-14-101 is
 208 renumbered and amended to read:

209 ~~[32A-14-101].~~ **32A-14a-102. Liability for injuries resulting from distribution**
 210 **of alcoholic beverages -- Causes of action -- Statute of limitations -- Employee protections.**

211 (1) (a) Except as provided in ~~[Subsection (9)]~~ Section 32A-14a-103, a person described
 212 in Subsection (1)(b) is liable for:

213 (i) ~~[an] any and all injury [in person, property, or means of support]~~ and damage, except

214 punitive damages to:

215 (A) any third person; or

216 (B) the heir, as defined in Section 78-11-6.5, of that third person; or

217 (ii) for the death of a third person.

218 (b) A person is liable under Subsection (1)(a) if:

219 (i) the person directly gives, sells, or otherwise provides an alcoholic beverage:

220 (A) to a person described in Subsection (1)(b)(ii); and

221 (B) as part of the commercial sale, storage, service, manufacture, distribution, or

222 consumption of alcoholic products;

223 (ii) those actions cause the intoxication of:

224 (A) any individual under the age of 21 years;

225 (B) any individual who is apparently under the influence of intoxicating alcoholic products

226 or drugs;

227 (C) any individual whom the person furnishing the alcoholic beverage knew or should

228 have known from the circumstances was under the influence of intoxicating alcoholic beverages

229 or products or drugs; or

230 (D) any individual who is a known interdicted person; and

231 (iii) the injury or death described in Subsection (1)(a) results from the intoxication of the

232 individual who is provided the alcoholic beverage.

233 (2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:

234 (i) ~~[an] any and all injury [in person, property, or means of support] and damage, except~~

235 punitive damages to:

236 (A) any third person; or

237 (B) the heir, as defined in Section 78-11-6.5, of that third person; or

238 (ii) for the death of the third person.

239 (b) A person is liable under Subsection (2)(a) if:

240 (i) that person directly gives or otherwise provides an alcoholic beverage to an individual

241 who the person knows or should have known is under the age of 21 years;

242 (ii) those actions caused the intoxication of the individual provided the alcoholic beverage;

243 (iii) the injury or death described in Subsection (2)(a) results from the intoxication of the

244 individual who is provided the alcoholic beverage; and

245 (iv) the person is not liable under Subsection (1), because the person did not directly give
 246 or provide the alcoholic beverage as part of the commercial sale, storage, service, manufacture,
 247 distribution, or consumption of alcoholic products.

248 (3) Except for a violation of Subsection (2), an employer is liable for the actions of its
 249 employees in violation of this chapter.

250 (4) A person who suffers an injury under Subsection (1) or (2) has a cause of action against
 251 the person who provided the alcoholic beverage in violation of Subsection (1) or (2).

252 (5) If a person having rights or liabilities under this chapter dies, the rights or liabilities
 253 provided by this chapter survive to or against that person's estate.

254 (6) The total amount ~~[of damages]~~ that may be awarded to any person pursuant to a cause
 255 of action for injury and damage under this chapter that arises after January 1, 1998, is limited to
 256 \$500,000 and the aggregate amount which may be awarded to all persons injured as a result of one
 257 occurrence is limited to \$1,000,000.

258 (7) An action based upon a cause of action under this chapter shall be commenced within
 259 two years after the date of the injury § AND DAMAGE § .

260 (8) (a) Nothing in this chapter precludes any cause of action or additional recovery against
 261 the person causing the injury.

262 ~~[(9)(a) An employer may not sanction or terminate the employment of an employee of a
 263 restaurant, airport lounge, private club, on-premise beer retailer, or any other establishment serving
 264 alcoholic beverages as a result of the employee having exercised the employee's independent
 265 judgment to refuse to sell alcoholic beverages to any person the employee considers to meet one
 266 or more of the conditions described in Subsection (1).]~~

267 ~~[(b) Any employer who terminates an employee or imposes sanctions on the employee
 268 contrary to this section is considered to have discriminated against that employee and is subject
 269 to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.]~~

270 (b) Any cause of action or additional recovery against the person causing the injury § AND

270a DAMAGE § , which

271 action is not brought under this chapter § [;

272 —(i) § is exempt from the damage cap in Subsection (6) § [; and] . (c) ANY CAUSE OF

272a ACTION BROUGHT UNDER THIS CHAPTER IS EXEMPT FROM SECTIONS 78-27-37 THROUGH
 272b 78-27-43.

273 [(ii) (A) is exempt from the comparative negligence provisions of Sections 78-27-37

274 through 78-27-43; and

275 —(B) may not be used to reduce or impact an award of damages to persons recovering under] §

276 § ~~[a cause of action under this chapter.]~~ §

277 ~~[(10)]~~ (9) This section does not apply to a general food store or other establishment
278 licensed under Chapter 10, Part 1, to sell beer at retail for off-premise consumption.

279 Section 7. Section **32A-14a-103** is enacted to read:

280 **32A-14a-103. Employee protected in exercising judgment.**

281 (1) An employer may not sanction or terminate the employment of an employee of a
282 restaurant, airport lounge, private club, on-premise beer retailer, or any other establishment serving
283 alcoholic beverages as a result of the employee having exercised the employee's independent
284 judgment to refuse to sell alcoholic beverages to any person the employee considers to meet one
285 or more of the conditions described in Subsection 32A-14a-102(1).

286 (2) Any employer who terminates an employee or imposes sanctions on the employee
287 contrary to this section is considered to have discriminated against that employee and is subject
288 to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

289 Section 8. Section **32A-14a-104**, which is renumbered from Section 32A-14-102 is
290 renumbered and amended to read:

291 ~~[32A-14-102].~~ **32A-14a-104. Governmental immunity.**

292 No provision of this title creates any civil liability on the part of the state or its agencies
293 and employees, the commission, the department, or any political subdivision arising out of their
294 activities in regulating, controlling, authorizing, or otherwise being involved in the sale or other
295 distribution of alcoholic beverages.

295a § **Section 9. Section 32A-14a-105 is enacted to read:**

295b **32A-14a-105. Action for contribution by provider of alcoholic beverage.**

295c (1) **(a) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), A PERSON, AS DEFINED**
295d **UNDER SUBSECTION 32A-14a-102(1), (2), OR (3), AGAINST WHOM AN AWARD HAS BEEN MADE**
295e **UNDER THIS CHAPTER, MAY BRING A SEPARATE CAUSE OF ACTION FOR CONTRIBUTION**
295f **AGAINST ANY PERSON CAUSING THE INJURY AND DAMAGE.**

295g (b) **THE MAXIMUM AMOUNT FOR WHICH ANY PERSON CAUSING THE INJURY AND**
295h **DAMAGE MAY BE LIABLE TO ANY PERSON SEEKING CONTRIBUTION IS THAT PERCENTAGE OR**
295i **PROPORTION OF THE DAMAGES EQUIVALENT TO THE PERCENTAGE OR PROPORTION OF FAULT**
295j **ATTRIBUTED TO THAT PERSON CAUSING THE INJURY AND DAMAGE.**

295k (2) **THIS ACTION FOR CONTRIBUTION UNDER THIS SECTION MAY NOT BE**
BROUGHT

295l **AGAINST:**

295m (a) **ANY PERSON ENTITLED TO RECOVERY AS DESCRIBED IN SUBSECTION**
295n **32A-14a-102(1)(a)(i) OR (ii); OR**

295o (b) **ANY PERSON ENTITLED TO RECOVER AS DESCRIBED IN SUBSECTION**
295p **32A-14a-102(2)(a)(i) OR (ii).** §

295q (3) AN ACTION FOR CONTRIBUTION UNDER THIS SECTION MAY NOT DIMINISH THE
295r AMOUNT OF RECOVERY FOR INJURY OR DAMAGES AWARDED AND RECEIVED TO ANY PERSON
295s ENTITLED TO RECOVER AS DESCRIBED IN SUBSECTION 32A-14a-102(1)(a)(i) OR (ii) OR
295t 32A-14a-102(2)(a)(i) OR (ii):
295u (a) IN A CAUSE OF ACTION BROUGHT UNDER THIS CHAPTER; OR
295v (b) IN A SEPARATE CAUSE OF ACTION FOR INJURY AND DAMAGES THAT IS NOT
295w BROUGHT UNDER THIS CHAPTER. §

Legislative Review Note
as of 2-14-00 2:19 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel