

**DRAMSHOP MODIFICATIONS**

2000 GENERAL SESSION

STATE OF UTAH

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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 CERTAIN PROVISIONS FROM THIS CHAPTER; ADDRESSING THE CAP ON RECOVERY; PROVIDING AN ACTION FOR CONTRIBUTION BY A PROVIDER OF ALCOHOLIC BEVERAGES; 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.**

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

- (a) a nonrefundable \$300 application fee;
- (b) an initial license fee of \$300, which is refundable if a license is not granted;
- (c) written consent of the local authority;
- (d) a copy of the applicant's current business license;
- (e) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitation of Subsections 32A-4-101(4), (5), and (6), the application shall be processed in accordance with those subsections;
- (f) a bond as specified by Section 32A-4-105;
- (g) a floor plan of the restaurant, including consumption areas and the area where the applicant proposes to keep, store, and sell liquor;
- (h) evidence that the restaurant is carrying public liability insurance in an amount and form satisfactory to the department;
- (i) evidence that the restaurant is carrying dramshop insurance coverage of at least [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;
- (j) a signed consent form stating that the restaurant will permit any authorized representative of the commission, department, council, or any law enforcement officer unrestricted right to enter the restaurant;
- (k) in the case of a corporate applicant, proper verification evidencing that the person or persons signing the restaurant application are authorized to so act on the corporation's behalf; and
- (l) any other information the commission or department may require.

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

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

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

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

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

- (a) a nonrefundable \$1,000 application fee;
- (b) an initial license fee of \$1,000, which is refundable if a license is not granted;
- (c) written consent of the local and airport authority;
- (d) a copy of the applicant's current business license;
- (e) a bond as specified by Section 32A-4-205;
- (f) a floor plan of the airport lounge, including consumption areas and the area where the applicant proposes to keep, store, and sell liquor;
- (g) a copy of the sign proposed to be used by the licensee on its premises to inform the public that alcoholic beverages are sold and consumed there;
- (h) evidence that the airport lounge is carrying public liability insurance in an amount and form satisfactory to the department;
- (i) evidence that the airport lounge is carrying dramshop insurance coverage of at least [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;
- (j) a signed consent form stating that the airport lounge will permit any authorized representative of the commission, department, council, or any law enforcement officer unrestricted right to enter the airport lounge;

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

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

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

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

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

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

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

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

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

(c) written consent of the local authority;

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

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

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

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

- (h) a bond as specified by Section 32A-5-106;
  - (i) a floor plan of the club premises, including consumption areas and the area where the applicant proposes to keep and store liquor;
  - (j) evidence that the club is carrying public liability insurance in an amount and form satisfactory to the department;
  - (k) evidence that the club is carrying dramshop insurance coverage of at least [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;
  - (l) a copy of the club's articles, bylaws, house rules, and any amendments to those documents, which shall be kept on file with the department at all times;
  - (m) a signed consent form stating that the club and its management will permit any authorized representative of the commission, department, council, or any law enforcement officer unrestricted right to enter the club premises;
  - (n) a signed consent form authorizing the department to obtain Internal Revenue Service tax information on the club;
  - (o) a signed consent form authorizing the department to obtain state and county real and personal property tax information on the club;
  - (p) profit and loss statements for the previous fiscal year and pro forma statements for one year if the applicant has not previously operated; and
  - (q) any other information, documents, and evidence the department may require by rule or policy to allow complete evaluation of the application.
- (2) (a) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation or association to sign the application, to which shall be attached written evidence of said authority.
- (b) The applicant may attach to the application a verified copy of a letter of exemption from federal tax, issued by the United States Treasury Department, Internal Revenue Service, which the commission may consider as evidence of the applicant's nonprofit status. The commission may also consider the fact that the licensee has lost its tax exemption from federal tax as evidence that the licensee has ceased to operate as a nonprofit corporation.

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

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

(i) standards of eligibility for members;

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

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

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

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

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

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

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

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

(a) a nonrefundable \$300 application fee;

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

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

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

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

- (f) a bond as specified by Section 32A-10-205;
- (g) a floor plan of the premises, including consumption areas and the area where the applicant proposes to keep, store, and sell beer;
- (h) evidence that the on-premise beer retailer licensee is carrying public liability insurance in an amount and form satisfactory to the department;
- (i) for those licensees that sell more than \$5,000 of beer annually, evidence that the on-premise beer retailer licensee is carrying dramshop insurance coverage of at least [~~\$100,000~~] \$500,000 per occurrence and [~~\$300,000~~] \$1,000,000 in the aggregate;
- (j) a signed consent form stating that the on-premise beer retailer licensee will permit any authorized representative of the commission, department, council, or any peace officer unrestricted right to enter the licensee premises;
- (k) in the case of a corporate applicant, proper verification evidencing that the person or persons signing the on-premise beer retailer licensee application are authorized to so act on the corporation's behalf; and
  - (1) any other information the department may require.
  - (2) All on-premise beer retailer licenses expire on the last day of February of each year, except that all on-premise beer retailer licenses obtained before the last day of February 1991 expire on the last day of February 1992. Persons desiring to renew their on-premise beer retailer license shall submit a renewal fee of \$100 and a completed renewal application to the department no later than January 31. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license, effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.
  - (3) If any beer retailer licensee does not immediately notify the department of any change in ownership of the beer retailer, or in the case of a Utah corporate owner of any change in the officers or directors, the commission may suspend or revoke that license.
  - (4) If the applicant is a county, municipality, or other political subdivision, it need not meet the requirements of Subsections (1)(a), (b), (c), (d), and (f).
  - (5) Only one state on-premise beer retailer license is required for each building or resort

facility owned or leased by the same applicant. Separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premises owned or operated by the same applicant.

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

**CHAPTER 14a. ALCOHOLIC BEVERAGE LIABILITY**

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

As used in this chapter:

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

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

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

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

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

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

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

(A) any third person; or

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

(ii) for the death of a third person.

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

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

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

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



consumption of alcoholic products;

(ii) those actions cause the intoxication of:

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

(B) any individual who is apparently under the influence of intoxicating alcoholic products or drugs;

(C) any individual whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs; or

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

(iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic beverage.

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

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

(A) any third person; or

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

(ii) for the death of the third person.

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

(i) that person directly gives or otherwise provides an alcoholic beverage to an individual who the person knows or should have known is under the age of 21 years;

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

(iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic beverage; and

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

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

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

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

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

(7) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

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

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

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

(b) Any cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (6).

(c) Any cause of action brought under this chapter is exempt from Sections 78-27-37 through 78-27-43.

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

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

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

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

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

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

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

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

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

**32A-14a-105. Action for contribution by provider of alcoholic beverages.**

(1) (a) Except as provided in Subsections (2) and (3), a person, as defined under Subsection 32A-14a-102(1), (2), or (3), against whom an award has been made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which any person causing the injury and damage may be liable to any person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

(a) any person entitled to recovery as described in Subsection 32A-14a-102(1)(a)(i) or (ii);

or

(b) any person entitled to recover as described in Subsection 32A-14a-102(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to any person entitled to recover as described in

Subsection 32A-14a-102(1)(a)(i) or (ii) or 32A-14a-102(2)(a)(i) or (ii):

(a) in a cause of action brought under this chapter; or

(b) in a separate cause of action for injury and damage that is not brought under this chapter.