

PROOF OF AGE UNDER THE ALCOHOLIC

BEVERAGE CODE

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

This act modifies the Alcoholic Beverage Code to address the use of identification under the Alcoholic Beverage Code and to make conforming and technical changes including addressing unlawful transfer or use, presentation of proof of age or other identifying forms, reliance on proof of age or other identifying forms, and lawful detention. § THIS ACT PROVIDES

A COORDINATION CLAUSE. §

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

AMENDS:

32A-1-105, as last amended by Chapter 1, Laws of Utah 2000

32A-1-301, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-1-302, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-1-303, as last amended by Chapter 263, Laws of Utah 1998

32A-1-304, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-12-221, 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-1-105** is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of



28 alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion,
29 decoction, brewing, distillation, or any other process that uses any liquid or combinations of
30 liquids, whether drinkable or not, to create alcohol in an amount greater than the amount
31 prescribed in this Subsection (3)(a).

32 (b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences,
33 tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within
34 this definition.

35 (4) "Beer" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of
36 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are
37 obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain
38 hops or other vegetable products. Beer includes products referred to as malt liquor, malted
39 beverages, or malt coolers.

40 (5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally,
41 in the retail sale or distribution of beer to public patrons, whether for consumption on or off the
42 establishment's premises, and that is licensed to sell beer by the commission, by a local authority,
43 or both.

44 (b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or
45 incidentally, in the sale or distribution of beer to public patrons for consumption on the beer
46 retailer's premises.

47 (ii) "On-premise beer retailer" includes taverns.

48 (c) (i) "Tavern" means any business establishment engaged primarily in the retail sale or
49 distribution of beer to public patrons for consumption on the establishment's premises, and that
50 is licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

51 (ii) "Tavern" includes a beer bar, parlor, lounge, cabaret, and night club where the revenue
52 from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in the
53 establishment.

54 (6) "Billboard" means any light device, painting, drawing, poster, sign, signboard,
55 scoreboard, or other similar public display used to advertise, but does not include:

56 (a) displays on beer delivery vehicles if the displays do not overtly promote the
57 consumption of alcoholic beverages;

58 (b) displays in taverns and private clubs, if the displays are not visible to persons

59 off-premises;

60 (c) point-of-sale displays, other than light devices, in retail establishments that sell beer
61 for off-premise consumption, if the displays are not visible to persons off-premises;

62 (d) private business signs on the premises of any business engaged primarily in the
63 distribution of beer;

64 (e) newspapers, magazines, circulars, programs, or other similar printed materials, if the
65 materials are not directed primarily to minors;

66 (f) menu boards in retail establishments that sell beer for on-premise consumption if the
67 menu boards also contain food items;

68 (g) handles on alcoholic beverage dispensing equipment that identify brands of products
69 being dispensed; and

70 (h) displays at the site of a temporary special event for which a single event liquor permit
71 has been obtained from the commission or a temporary special event beer permit has been obtained
72 from a local authority to inform attendees of the location where alcoholic beverages are being
73 dispensed.

74 (7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted
75 beverages.

76 (8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a
77 bus company to a group of persons pursuant to a common purpose, under a single contract, and
78 at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group
79 of persons the exclusive use of the bus and a driver to travel together to a specified destination or
80 destinations.

81 (9) "Church" means a building:

82 (a) set apart primarily for the purpose of worship;

83 (b) in which religious services are held;

84 (c) with which clergy is associated;

85 (d) the main body of which is kept for that use and not put to any other use inconsistent
86 with its primary purpose; and

87 (e) which is tax exempt under the laws of this state.

88 (10) "Club" and "private club" means any nonprofit corporation operating as a social club,
89 recreational, fraternal, or athletic association, or kindred association organized primarily for the

90 benefit of its stockholders or members.

91 (11) "Commission" means the Alcoholic Beverage Control Commission.

92 (12) "Cork-finished wine" means a container of wine stopped by a cork and finished by
93 foil, lead, or other substance by the manufacturer.

94 (13) "Department" means the Department of Alcoholic Beverage Control.

95 (14) "Distressed merchandise" means any alcoholic beverage in the possession of the
96 department that is saleable, but for some reason is unappealing to the public.

97 (15) "General food store" means any business establishment primarily engaged in selling
98 food and grocery supplies to public patrons for off-premise consumption.

99 (16) "Governing body" means the board of not fewer than five shareholders or voting
100 members of a private club who have been elected and authorized to control or conduct the business
101 and affairs of that club.

102 (17) "Guest" means a person accompanied by an active member or visitor of a club who
103 enjoys only those privileges derived from the host for the duration of the visit to the club.

104 (18) "Heavy beer" means all products that contain more than 4% alcohol by volume
105 obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered
106 "liquor" for the purposes of this title.

107 (19) "Identification card" means the identification card issued [~~by the commissioner of the~~
108 ~~Department of Public Safety~~] under Title 53, Chapter 3, Part 8, Identification Card Act.

109 (20) "Interdicted person" means a person to whom the sale, gift, or provision of an
110 alcoholic beverage is prohibited by law or court order.

111 (21) "Licensee" means any person issued a license by the commission to sell, manufacture,
112 store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

113 (22) "Limousine" means any motor vehicle licensed by the state or a local authority, other
114 than a bus or taxicab:

115 (a) in which the driver and passengers are separated by a partition, glass, or other barrier;
116 and

117 (b) that is provided by a company to an individual or individuals at a fixed charge in
118 accordance with the company's tariff for the purpose of giving the individual or individuals the
119 exclusive use of the limousine and a driver to travel to a specified destination or destinations.

120 (23) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or

121 other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all
122 other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is
123 suitable to use for beverage purposes.

124 (b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted
125 beverage that has an alcohol content of less than 4% alcohol by volume.

126 (24) "Local authority" means:

127 (a) the county legislative body of the county if the premises are located in an
128 unincorporated area of a county; or

129 (b) the governing body of the city or town if the premises are located in an incorporated
130 city or town.

131 (25) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
132 otherwise make an alcoholic product for personal use or for sale or distribution to others.

133 (26) "Member" means a person who, after paying regular dues, has full privileges of a club
134 under this title.

135 (27) "Minor" means any person under the age of 21 years.

136 (28) "Outlet" means a location other than a state store or package agency where alcoholic
137 beverages are sold pursuant to a license issued by the commission.

138 (29) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

139 (30) "Package agency" means a retail liquor location operated under a contractual
140 agreement with the department, by a person other than the state, who is authorized by the
141 commission to sell package liquor for consumption off the premises of the agency.

142 (31) "Package agent" means any person permitted by the commission to operate a package
143 agency pursuant to a contractual agreement with the department to sell liquor from premises that
144 the package agent shall provide and maintain.

145 (32) "Permittee" means any person issued a permit by the commission to perform acts or
146 exercise privileges as specifically granted in the permit.

147 (33) "Person" means any individual, partnership, firm, corporation, association, business
148 trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as
149 the singular number, unless the intent to give a more limited meaning is disclosed by the context.

150 (34) "Policy" means a statement of principles established by the commission to guide the
151 administration of this title and the management of the affairs of the department.

152 (35) "Premises" means any building, enclosure, room, or equipment used in connection
153 with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products,
154 unless otherwise defined in this title or in the rules adopted by the commission.

155 (36) "Prescription" means a writing in legal form, signed by a physician or dentist and
156 given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

157 (37) (a) "Privately hosted event" or "private social function" means a specific social,
158 business, or recreational event for which an entire room, area, or hall has been leased or rented,
159 in advance by an identified group, and the event or function is limited in attendance to people who
160 have been specifically designated and their guests.

161 (b) "Privately hosted event" and "private social function" does not include events or
162 functions to which the general public is invited, whether for an admission fee or not.

163 (38) "Proof of age" means:

164 (a) an identification card;

165 (b) an identification that:

166 (i) is substantially similar to an identification card;

167 (ii) is issued in accordance with the laws of a state other than Utah in which the
168 identification is issued;

169 (iii) includes date of birth; and

170 (iv) has a picture affixed;

171 (c) a valid driver license certificate that:

172 (i) includes date of birth;

173 (ii) has a picture affixed; and

174 (iii) is issued:

175 (A) under Title 53, Chapter 3, Uniform Driver License Act; or

176 (B) in accordance with the laws of the state in which it is issued;

177 (d) a military identification card that:

178 (i) includes date of birth; and

179 (ii) has a picture affixed; or

180 (e) a valid passport.

181 [~~38~~] (39) (a) "Public building" means any building or permanent structure owned or
182 leased by the state, a county, or local government entity that is used for:

- 183 (i) public education;
184 (ii) transacting public business; or
185 (iii) regularly conducting government activities.

186 (b) "Public building" does not mean or refer to any building owned by the state or a county
187 or local government entity when the building is used by anyone, in whole or in part, for proprietary
188 functions.

189 [~~(39)~~] (40) "Representative" means an individual who is compensated by salary,
190 commission, or any other means for representing and selling the alcoholic beverage products of
191 a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

192 [~~(40)~~] (41) "Residence" means the person's principal place of abode within Utah.

193 [~~(41)~~] (42) "Restaurant" means any business establishment:

194 (a) where a variety of foods is prepared and complete meals are served to the general
195 public;

196 (b) located on a premises having adequate culinary fixtures for food preparation and dining
197 accommodations; and

198 (c) that is engaged primarily in serving meals to the general public.

199 [~~(42)~~] (43) "Retailer" means any person engaged in the sale or distribution of alcoholic
200 beverages to the consumer.

201 [~~(43)~~] (44) (a) "Rule" means a general statement adopted by the commission to guide the
202 activities of those regulated or employed by the department, to implement or interpret this title, or
203 to describe the organization, procedure, or practice requirements of the department in order to carry
204 out the intent of the law and ensure its uniform application. This definition includes any
205 amendment or repeal of a prior rule.

206 (b) "Rule" does not include a rule concerning only the internal management of the
207 department that does not affect private rights or procedures available to the public, including
208 intradepartmental memoranda.

209 [~~(44)~~] (45) (a) "Sample" includes:

- 210 (i) department samples;
211 (ii) industry representative samples; and
212 (iii) department trade show samples.

213 (b) "Department sample" means liquor, wine, and heavy beer that has been placed in the

214 possession of the department for testing, analysis, and sampling.

215 (c) "Department trade show sample" means liquor, wine, and heavy beer that has been
216 placed in the possession of the department for use in a trade show conducted by the department.

217 (d) "Industry representative sample" means liquor, wine, and heavy beer that has been
218 placed in the possession of the department for testing, analysis, and sampling by local industry
219 representatives on the premises of the department to educate themselves of the quality and
220 characteristics of the product.

221 (e) "Retail licensee wine tasting" means cork-finished wine checked out under the
222 procedures provided in Section 32A-12-603:

223 (i) to a local industry representative holding a license described in Section 32A-8-501;

224 (ii) to conduct the tasting of cork-finished wines to a retail licensee licensed to sell wine
225 at retail for consumption on its premises; and

226 (iii) for the purpose of disseminating information and educating the retail licensees
227 described in Subsection ~~[(44)]~~ (45)(e)(ii) as to the quality and characteristics of the cork-finished
228 wines.

229 ~~[(45)]~~ (46) (a) "School" means any building used primarily for the general education of
230 minors.

231 (b) "School" does not include nursery schools, infant day care centers, or trade or technical
232 schools.

233 ~~[(46)]~~ (47) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby,
234 for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited,
235 ordered, delivered for value, or by any means or under any pretext is promised or obtained,
236 whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless
237 otherwise defined in this title or the rules made by the commission.

238 ~~[(47)]~~ (48) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
239 beer and heavy beer per year.

240 ~~[(48)]~~ (49) (a) "State label" means the official label designated by the commission affixed
241 to all liquor containers sold in the state.

242 (b) "State label" includes the department identification mark and inventory control number.

243 ~~[(49)]~~ (50) (a) "State store" means a facility for the sale of package liquor located on
244 premises owned or leased by the state and operated by state employees.

245 (b) "State store" does not apply to any licensee, permittee, or to package agencies.

246 [~~(50)~~] (51) "Supplier" means any person selling alcoholic beverages to the department.

247 [~~(51)~~] (52) "Temporary domicile" means the principal place of abode within Utah of a
248 person who does not have a present intention to continue residency within Utah permanently or
249 indefinitely.

250 [~~(52)~~] (53) "Unsaleable liquor merchandise" means merchandise that is unsaleable because
251 it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded
252 labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically
253 determined to be impure, or that contains sediment, or any foreign substance, or is otherwise
254 considered by the department as unfit for sale.

255 [~~(53)~~] (54) "Visitor" means a person holding limited privileges in a club by virtue of a
256 visitor card purchased from the club and authorized by a sponsoring member of the club.

257 [~~(54)~~] (55) "Warehouser" means any person, other than a licensed manufacturer, engaged
258 in the importation for sale, storage, or distribution of liquor regardless of amount.

259 [~~(55)~~] (56) "Wholesaler" means any person engaged in the importation for sale, or in the
260 sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling beer
261 manufactured by that brewer.

262 [~~(56)~~] (57) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the
263 natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not
264 other ingredients are added.

265 (b) "Wine" is considered "liquor" for purposes of this title.

266 Section 2. Section **32A-1-301** is amended to read:

267 **32A-1-301. Unlawful transfer or use of proof of age.**

268 (1) It is unlawful for [~~the owner of an identification card~~] a person to transfer [~~the card~~]
269 that person's proof of age to any other person to aid that person:

270 (a) in procuring alcoholic beverages or products;

271 (b) to gain admittance to a place where alcoholic beverages or products are sold or
272 consumed; or

273 (c) to obtain any employment that [~~requires the employee to handle alcoholic products~~]
274 under this title may not be obtained by a minor.

275 (2) Any person who permits [~~his identification card~~] that person's proof of age to be used

276 by another for any purpose stated in this section is guilty of a class B misdemeanor.

277 Section 3. Section 32A-1-302 is amended to read:

278 **32A-1-302. Presentation of proof of age upon request.**

279 ~~[An identification card shall be presented by the holder upon request of any person~~
280 ~~authorized by law to sell or otherwise handle alcoholic beverages or upon request of any peace~~
281 ~~officer to determine whether the person is 21 years of age if the holder desires to procure]~~

282 (1) To obtain one or more of the following, a person shall present proof of age at the
283 request of a person listed in Subsection (2):

284 (a) an alcoholic beverage or product; or [obtain]

285 (b) employment that [requires the employee to handle alcoholic products] under this title
286 may not be obtained by a minor.

287 (2) To determine whether the person described in Subsection (1) is 21 years of age, the
288 following may request a person described in Subsection (1) to present proof of age:

289 (a) a person authorized by law to sell or otherwise handle alcoholic beverages or products;

290 (b) a peace officer;

291 (c) a representative of the Criminal Investigations Bureau of the Department of Public
292 Safety, established in Section 53-10-301; or

293 (d) an authorized employee of the department.

294 Section 4. Section 32A-1-303 is amended to read:

295 **32A-1-303. Additional requirements when age is in question.**

296 (1) In addition to requesting the presentation ~~[by the holder]~~ of ~~[an identification card]~~
297 proof of age under Section 32A-1-302, any person authorized to sell or otherwise handle alcoholic
298 beverages or products shall require any person whose age is in question to sign a statement of age
299 on the form provided under Subsection (2) that includes:

300 (a) the date the statement of age is signed; and

301 (b) the number [of] assigned to the person's [identification card] proof of age by the issuing
302 authority.

303 ~~[(2) If the person does not have an identification card, he shall sign an additional statement~~
304 ~~containing additional information as the commissioner of public safety requires.]~~

305 ~~[(3) The statement and identifying information shall be written on a form provided by the]~~

306 (2) (a) At the request of a licensee, the commissioner of public safety [and filed

307 ~~alphabetically by the~~ shall provide to a licensee under this title the form for the statement of age
 308 described in Subsection (1).

309 (b) The person authorized to sell or otherwise handle alcoholic beverages or products
 310 [before] shall:

311 (i) file in alphabetical order any statement of age obtained under Subsection (1) by no later
 312 than the close of business on the day on which the statement is executed[-]; and

313 (ii) maintain on file for three years any statement of age obtained under Subsection (1).

314 ~~[(4)]~~ (c) The [form] statement of age obtained under Subsection (1) is subject to
 315 examination by [any]:

316 (i) a peace officer[-];

317 (ii) a representative of the Criminal Investigations Bureau of the Department of Public
 318 Safety, established in Section 53-10-301[-]; or

319 (iii) an authorized employee of the department.

320 Section 5. Section **32A-1-304** is amended to read:

321 **32A-1-304. Acceptance of identification -- Evidence.**

322 (1) ~~[Any]~~ A person authorized by law to sell or otherwise handle alcoholic beverages or
 323 products may accept as evidence of the legal age [the identification card authorized by this part
 324 to the person presenting it if the person completes a statement as required in] of the person
 325 presenting the following:

326 (a) proof of age; or

327 (b) if a statement of age is required under Subsection 32A-1-303(1):

328 (i) proof of age; and

329 (ii) a statement of age obtained under Section 32A-1-303.

330 (2) ~~[The]~~ A statement of age described in Section 32A-1-303, if properly completed,
 331 signed, and filed in accordance with Section 32A-1-303, may be offered as a defense in any case
 332 where there is at issue the legality of:

333 (a) ~~§ [the legality of] §~~ selling or otherwise furnishing an alcoholic beverage or product to the
 334 person who signed the statement[-] of age; or

335 (b) allowing the person who signed the statement of age to be employed [to handle
 336 alcoholic products, is under consideration] in any employment that under this title may not be
 337 obtained by a minor.

338 (3) A person may not be subject to a penalty [~~may not be imposed~~] for a violation of this
 339 part if it is proved to the commission or the court hearing the matter that the person charged with
 340 the violation acted in good faith.

341 Section 6. Section **32A-12-221** is amended to read:

342 **32A-12-221. Lawful detention.**

343 (1) ~~(a) [Any state store employee, package agent, licensee, or permittee or the employee~~
 344 ~~of any of these, or any beer retailer or his employee, who has reason to believe that a person in the~~
 345 ~~facility where liquor or beer is sold is in violation of Section 32A-12-209, 32A-12-210, or~~
 346 ~~32A-12-211 may, for] For~~ the purpose of informing a peace officer of [~~the~~] a suspected violation[;]
 347 and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:

348 (i) detain [the] a person; and

349 (ii) hold any form of identification presented by the person.

350 (b) The following may take an action described in Subsection (1)(a):

351 (i) a state store employee;

352 (ii) a package agent;

353 (iii) a licensee or permittee under this title;

354 (iv) a beer retailer; or

355 (v) an employee of a person described in Subsections (1)(b)(i) through (iv).

356 (c) A person described in Subsection (1)(b) may take an action described in Subsection

357 (1)(a) only:

358 (i) if that person has reason to believe that the person against whom the action is taken is:

359 (A) in a facility where liquor or beer is sold; and

360 (B) in violation of Section 32A-12-209, 32A-12-210, or 32A-12-211; and

361 (ii) (A) in a reasonable manner; and

362 (B) for a reasonable length of time.

363 (2) [~~The~~] Unless the detention is unreasonable under all circumstances, the detention or

364 failure to detain does not create criminal or civil liability for;

365 (a) false arrest[;];

366 (b) false imprisonment[;];

367 (c) slander[;]; or

368 (d) unlawful detention [unless the detention is unreasonable under all the circumstances].

368a **§ SECTION 7. COORDINATION CLAUSE.**

368b **IF THIS BILL AND H.B. 6, PUBLIC SAFETY BUREAU NAME CHANGE, BOTH PASS, IT IS THE**

368c **INTENT OF THE LEGISLATURE THAT THE REFERENCE IN THIS BILL IN SUBSECTION 32A-1-302(2)**

368d **TO THE "CRIMINAL INVESTIGATIONS BUREAU" BE CHANGED TO "STATE BUREAU OF**

368e **INVESTIGATION". §**

Legislative Review Note

as of 1-8-02 3:48 PM

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

Office of Legislative Research and General Counsel