

**ALCOHOLIC BEVERAGE SERVICE -****WARNING REQUIRED**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Carlene M. Walker**

**This act modifies the Alcoholic Beverage Control Act to change the contents of warnings required to be posted by licensees and others governed by the Alcoholic Beverage Control Act.**

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

AMENDS:

**32A-1-107**, as last amended by Chapters 10 and 20, Laws of Utah 1993

**32A-2-103**, as last amended by Chapter 84, Laws of Utah 1995

**32A-3-106**, as last amended by Chapter 7, Laws of Utah 1993

**32A-4-106**, as last amended by Chapter 1, Laws of Utah 2000

**32A-4-206**, as last amended by Chapter 1, Laws of Utah 2000

**32A-5-107**, as last amended by Chapter 1, Laws of Utah 2000

**32A-6-202**, as renumbered and amended by Chapter 23, Laws of Utah 1990

**32A-10-206**, as last amended by Chapter 1, Laws of Utah 2000

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

Section 1. Section **32A-1-107** is amended to read:

**32A-1-107. Powers and duties of the commission.**

(1) The commission shall:

(a) act as a general policymaking body on the subject of alcoholic product control;

(b) adopt and issue policies, directives, rules, and procedures;

(c) set policy by written rules that establish criteria and procedures for:

(i) granting, denying, suspending, or revoking permits, licenses, and package agencies;

(ii) controlling liquor merchandise inventory including:



- 28 (A) listing and delisting products;
- 29 (B) the procedures for testing new products;
- 30 (C) purchasing policy;
- 31 (D) turnover requirements for regularly coded products to be continued; and
- 32 (E) the disposition of discontinued, distressed, or unsaleable merchandise;
- 33 (iii) determining the location of state stores, package agencies, and outlets; and
- 34 (iv) department trade shows;
- 35 (d) decide within the limits and under the conditions imposed by this title, the number and
- 36 location of state stores, package agencies, and outlets established in the state;
- 37 (e) issue, grant, deny, suspend, or revoke the following permits, licenses, and package
- 38 agencies for the purchase, sale, storage, service, manufacture, distribution, and consumption of
- 39 alcoholic products:
- 40 (i) package agencies;
- 41 (ii) restaurant licenses;
- 42 (iii) airport lounge licenses;
- 43 (iv) private club licenses;
- 44 (v) on-premise beer retailer licenses;
- 45 (vi) special use permits;
- 46 (vii) single event permits;
- 47 (viii) manufacturing licenses;
- 48 (ix) liquor warehousing licenses; and
- 49 (x) beer wholesaling licenses;
- 50 (f) fix prices at which liquors are sold that are the same at all state stores, package
- 51 agencies, and outlets;
- 52 (g) issue and distribute price lists showing the price to be paid by purchasers for each class,
- 53 variety, or brand of liquor kept for sale by the department;
- 54 (h) require the director to follow sound management principles and require periodic
- 55 reporting from the director to ensure that these principles are being followed and that policies
- 56 established by the commission are being observed;
- 57 (i) receive, consider, and act in a timely manner upon all reports, recommendations, and
- 58 matters submitted by the director to the commission, and do all things necessary to support the

department in properly performing its duties and responsibilities;

(j) obtain temporarily and for special purposes the services of experts and persons engaged in the practice of a profession or who possess any needed skills, talents, or abilities if considered expedient and if approved by the governor;

(k) prescribe the duties of departmental officials authorized to issue permits and licenses and to conduct trade shows under this title;

(l) prescribe, consistent with this title, the fees payable for permits, licenses, and package agencies issued under this title, or for anything done or permitted to be done under this title;

(m) prescribe the conduct, management, and equipment of any premises upon which alcoholic beverages may be sold, consumed, served, or stored;

(n) make rules governing the credit terms of beer sales to retailers within the state; and

(o) require that each state store, package agency, licensee, and permittee, where required in this title, display in a prominent place a sign in large letters stating: "Warning: ~~The consumption of alcoholic beverages purchased in this premises may be hazardous to your health and the safety of others.~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(2) The power of the commission to establish state stores, to create package agencies and grant authority to operate package agencies, and to grant or deny licenses and permits is plenary, except as otherwise provided by this title, and is not subject to review.

(3) The commission may appoint qualified hearing officers to conduct any suspension or revocation hearings required by law.

(4) (a) In any case where the commission is given the power to suspend any license or permit, it may impose a fine in addition to or in lieu of suspension. Fines imposed may not exceed \$25,000 in the aggregate for any single Notice of Agency Action.

(b) The commission shall promulgate, by rule, a schedule setting forth a range of fines for each violation.

Section 2. Section **32A-2-103** is amended to read:

**32A-2-103. Operational restrictions.**

(1) Liquor may not be sold from a state store except in a sealed package. The package may not be opened on the premises of any state store.

(2) (a) An officer, agent, clerk, or employee of a state store may not consume or allow to

be consumed by any person any alcoholic beverage on the premises of a state store.

(b) Violation of this Subsection (2) is a class B misdemeanor.

(3) All liquor sold shall be in packages that are properly marked and labeled in accordance with the rules adopted under this title.

(4) Liquor may not be sold except at prices fixed by the commission.

(5) Liquor may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(6) Sale or delivery of liquor may not be made on or from the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on Sunday;

(b) on any state or federal legal holiday;

(c) on any day on which any regular general election, regular primary election, or statewide special election is held;

(d) on any day on which any municipal, special district, or school election is held, but only within the boundaries of the municipality, special district, or school district holding the election and only if the municipality, special district, or school district in which the election is being held notifies the department at least 30 days prior to the date of the election; or

(e) except on days and during hours as the commission may direct by rule or order.

(7) Each state store shall display in a prominent place in the store a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

Section 3. Section **32A-3-106** is amended to read:

**32A-3-106. Operational restrictions.**

(1) (a) A package agency may not be operated until a package agency agreement has been entered into by the package agent and the department.

(b) The agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) If the package agent violates the conditions, terms, or covenants contained in the agreement, or violates any provisions of this title, the department may take whatever action against the agent that is allowed by the package agency agreement.

(d) Actions against the package agent are governed solely by the agreement and may include suspension or revocation of the agency.

(2) The department shall provide all liquor sold by package agencies.

(3) The department may pay or otherwise remunerate a package agent on any basis other than sales or volume of business done by the agency.

(4) Liquor may not be sold from any package agency except in a sealed package. The package may not be opened on the premises of a package agency.

(5) All liquor sold shall be in packages that are properly marked and labeled in accordance with the rules adopted under this title.

(6) A package agency may not display liquor or price lists in windows or showcases visible to passersby.

(7) (a) An officer, agent, clerk, or employee of a package agency may not consume or allow to be consumed by any person any alcoholic beverage on the premises of a package agency.

(b) Violation of this Subsection (7) is a class B misdemeanor.

(8) Liquor may not be sold except at prices fixed by the commission.

(9) Liquor may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(10) Sale or delivery of liquor may not be made on or from the premises of any package agency nor may any package agency be kept open for the sale of liquor:

(a) on Sunday;

(b) on any state or federal legal holiday;

(c) on any day on which any regular general election, regular primary election, or statewide special election is held until after the polls are closed;

(d) on any day on which any municipal, special district, or school election is held until after the polls are closed, but only within the boundaries of the municipality, special district, or

school district holding the election and only if the municipality, special district, or school district in which the election is being held notifies the department at least 30 days prior to the date of the election; or

(e) except on days and during hours as the commission may direct by rule or order.

(11) The package agency certificate issued by the commission shall be permanently posted in a conspicuous place in the package agency.

(12) Each package agent shall display in a prominent place in the package agency a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(13) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Each notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the agency will reopen or resume operation.

(e) Failure of the agency to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic termination of the package agency contract effective immediately.

(f) Failure of the agency to reopen or resume operation by the approved date shall result in an automatic termination of the package agency contract effective on that date.

(14) (a) All liquor shall be stored and sold from the location designated in the package agent's application as approved by the commission.

(b) A package agency may not transfer its operations from one location to another without prior written approval of the commission.

(15) (a) A person, having been granted a package agency, may not sell, exchange, barter, give, or attempt in any way to dispose of the agency, whether for monetary gain or not.

(b) A package agency has no monetary value for the purpose of any type of disposition.

Section 4. Section **32A-4-106** is amended to read:

**32A-4-106. Operational restrictions.**

Each person granted a restaurant liquor license and the employees and management personnel of the restaurant shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) (a) Liquor may not be purchased by a restaurant liquor licensee except from state stores or package agencies.

(b) Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises.

(c) Payment for liquor shall be made in accordance with rules established by the commission.

(2) A restaurant liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(d) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding

two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the commission.

(b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (3)(a) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, required by Subsection (3)(b) may result in a suspension or revocation of the restaurant's:

(i) state liquor license; and

(ii) alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the restaurant.

(b) A patron may only make alcoholic beverage purchases in the restaurant from a server designated and trained by the licensee.

(c) Any alcoholic beverage may only be consumed at the patron's table.

(d) Liquor may not be stored where it is visible to patrons of the restaurant.

(6) (a) Alcoholic beverages may not be dispensed directly to a patron from the storage area.

(b) Alcoholic beverages shall be delivered by a server to the patron.

(7) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(8) (a) Liquor may not be sold or offered for sale at a restaurant during the following days or hours:

(i) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(ii) on the day of any municipal, special district, or school election, but only:

(A) within the boundaries of the municipality, special district, or school district; and

(B) if closure is required by local ordinance; and



245 (iii) on any other day after 12 midnight and before 12 noon.

246 (b) The hours of beer sales are those specified in Chapter 10, Beer Retailer Licenses, for  
247 on-premise beer licensees.

248 (9) Alcoholic beverages may not be sold except in connection with an order for food  
249 prepared, sold, and served at the restaurant.

250 (10) Alcoholic beverages may not be sold, delivered, or furnished to any:

251 (a) minor;

252 (b) person actually, apparently, or obviously drunk;

253 (c) known habitual drunkard; or

254 (d) known interdicted person.

255 (11) (a) Liquor may not be sold except at prices fixed by the commission.

256 (b) Mixed drinks and wine may not be sold at discount prices on any date or at any time.

257 (12) Each restaurant patron may have only one alcoholic beverage at a time before the  
258 patron on the patron's table.

259 (13) No more than one ounce of primary liquor may be served to a patron at a time, except:

260 (a) wine as provided in Subsection (2)(c); and

261 (b) heavy beer as provided in Subsection (2)(d).

262 (14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent  
263 of the licensee, for patrons of the restaurant.

264 (15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any  
265 location where they are stored or dispensed.

266 (16) (a) A wine service may be performed and a service charge assessed by the restaurant  
267 as authorized by commission rule for wine purchased at the restaurant or carried in by a patron.

268 (b) If wine is carried in by a patron, the patron shall deliver the wine to a server or other  
269 representative of the licensee upon entering the licensee premises.

270 (17) (a) A person may not bring onto the premises of a restaurant liquor licensee any  
271 alcoholic beverage for on-premise consumption, except a person may bring, subject to the  
272 discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee  
273 and consume wine pursuant to Subsection (16).

274 (b) A restaurant, whether licensed under this title or unlicensed, or its officers, managers,  
275 employees, or agents may not allow:

(i) a person to bring onto the restaurant premises any alcoholic beverage for on-premise consumption; or

(ii) consumption of any such alcoholic beverage on its premises, except cork-finished wine under Subsection (17)(a).

(c) If a restaurant licensee, or any of its officers, managers, employees, or agents violates this Subsection (17):

(i) the commission may immediately suspend or revoke the restaurant's liquor license and the restaurant licensee is subject to possible criminal prosecution under Chapter 12, Criminal Offenses; and

(ii) the local authority may immediately suspend or revoke the restaurant's:

(A) local liquor license;

(B) local consent under Subsection 32A-4-102(1); or

(C) local business license.

(18) Alcoholic beverages purchased from the restaurant may not be removed from the restaurant premises.

(19) (a) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic beverages.

(b) Notwithstanding Subsection (19)(a), a minor may be employed to enter the sale at a cash register or other sales recording device.

(20) An employee of a restaurant liquor licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be under the influence of alcoholic beverages.

(21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a food menu except that a statement of availability of a liquor and wine menu on request, the content and form of which is approved by the department, may be attached to or carried on a food menu. The context of both food and liquor and wine menus may not in any manner attempt to promote or increase the sale of alcoholic beverages.

(b) A server, employee, or agent of a licensee may not draw attention to the availability of alcoholic beverages for sale, unless a patron or guest first inquires about it.

(c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic

307 beverage menus.

308 (22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

309 (a) the liquor license that is issued by the department;

310 (b) a list of the types and brand names of liquor being served through its calibrated metered  
311 dispensing system; and

312 (c) a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages~~  
313 ~~purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving  
314 under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

315 (23) The following acts or conduct in a restaurant licensed under this chapter are  
316 considered contrary to the public welfare and morals, and are prohibited upon the premises:

317 (a) employing or using any person in the sale or service of alcoholic beverages while the  
318 person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female  
319 breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks,  
320 vulva, or genitals;

321 (b) employing or using the services of any person to mingle with the patrons while the  
322 person is unclothed or in attire, costume, or clothing described in Subsection (23)(a);

323 (c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks,  
324 anus, or genitals of any other person;

325 (d) permitting any employee or person to wear or use any device or covering, exposed to  
326 view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

327 (e) permitting any person to use artificial devices or inanimate objects to depict any of the  
328 prohibited activities described in this Subsection (23);

329 (f) permitting any person to remain in or upon the premises who exposes to public view  
330 any portion of that person's genitals or anus; or

331 (g) showing films, still pictures, electronic reproductions, or other visual reproductions  
332 depicting:

333 (i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral  
334 copulation, flagellation, or any sexual acts prohibited by Utah law;

335 (ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or  
336 genitals;

337 (iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings

are used to portray, any of the prohibited activities described in this Subsection (23); or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(24) Nothing in Subsection (23) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (23).

(25) (a) Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (25)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (25)(a).

(26) A restaurant liquor licensee may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the premises of the restaurant liquor licensee.

(27) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) liquor;

(D) food; and

(E) all other items required by the department; and

(ii) sales made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) food; and

(D) all other items required by the department.

(b) The record required by Subsection (27)(a) shall be kept:

(i) in a form approved by the department; and

(ii) current for each three-month period.

(c) Each expenditure shall be supported by:

(i) delivery tickets;

(ii) invoices;

(iii) receipted bills;

(iv) canceled checks;

(v) petty cash vouchers; or

(vi) other sustaining data or memoranda.

(28) (a) Each restaurant liquor licensee shall maintain accounting and other records and documents as the department may require.

(b) Any restaurant or person acting for the restaurant, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the restaurant required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the restaurant's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(29) (a) A restaurant liquor licensee may not close or cease operation for a period longer than 240 hours, unless:

(i) the restaurant liquor license notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (29)(a), in the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the restaurant licensee and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior

to closure or cessation of operation shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year.

(30) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges.

(31) A person may not transfer a restaurant liquor license from one location to another, without prior written approval of the commission.

(32) (a) A person, having been granted a restaurant liquor license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) A restaurant liquor license has no monetary value for the purpose of any type of disposition.

(33) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(34) A person's willingness to serve alcoholic beverages may not be made a condition of employment as a server with a restaurant that has a restaurant liquor license.

Section 5. Section **32A-4-206** is amended to read:

**32A-4-206. Operational restrictions.**

Each person granted an airport lounge liquor license and the employees and management personnel of the airport lounge shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by an airport lounge liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with the

rules established by the commission.

(2) An airport lounge liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(c) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Airport lounges may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(b) Airport lounges that sell beer pursuant to Subsection (3)(a) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter that apply to airport lounges.

(c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, as set forth in Subsection (3)(b) may result in a suspension or revocation of the airport lounge's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the airport lounge.

(b) A patron or guest may only make purchases in the airport lounge from a server designated and trained by the licensee.

(c) Alcoholic beverages may not be stored where they are visible to persons outside the

462 airport lounge.

463 (6) The liquor storage area shall remain locked at all times other than those hours and days  
464 when liquor sales are authorized by law.

465 (7) Alcoholic beverages may not be sold or offered for sale at an airport lounge during the  
466 following days or hours:

467 (a) on the day of any regular general election, regular primary election, or statewide special  
468 election until after the polls are closed; and

469 (b) on any other day after 12 midnight and before 8 a.m.

470 (8) Alcoholic beverages may not be sold, delivered, or furnished to any:

471 (a) minor;

472 (b) person actually, apparently, or obviously drunk;

473 (c) known habitual drunkard; or

474 (d) known interdicted person.

475 (9) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and  
476 wine may not be sold at discount prices on any day or at any time.

477 (10) An airport lounge patron or guest may have only one alcoholic beverage at a time  
478 before him.

479 (11) No more than one ounce of primary liquor may be served to a patron or guest at a  
480 time, except:

481 (a) wine as provided in Subsection (2)(b); and

482 (b) heavy beer as provided in Subsection (2)(c).

483 (12) Alcoholic beverages may not be purchased by the licensee, or any employee or agent  
484 of the licensee, for patrons or guests of the airport lounge.

485 (13) (a) Beginning January 1, 1991, a person may not bring onto the premises of an airport  
486 lounge licensee any alcoholic beverage for on-premise consumption.

487 (b) Beginning January 1, 1991, an airport lounge or its officers, managers, employees, or  
488 agents may not allow a person to bring onto the airport lounge premises any alcoholic beverage  
489 for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

490 (c) Beginning January 1, 1991, if any airport lounge liquor licensee or any of its officers,  
491 managers, employees, or agents violates Subsection (13):

492 (i) the commission may immediately suspend or revoke the airport lounge's liquor license



and the airport lounge liquor licensee is subject to criminal prosecution under Chapter 12, Criminal Offenses; and

(ii) the local authority may immediately suspend or revoke the airport lounge's local liquor license, local consent under Subsection 32A-4-202(1), or local business license.

(14) Alcoholic beverages purchased from the airport lounge may not be removed from the airport lounge premises.

(15) Minors may not be employed by an airport lounge licensee to sell or dispense alcoholic beverages.

(16) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(17) Each airport lounge liquor licensee shall display in a prominent place in the airport lounge:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(18) (a) Each airport lounge liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, liquor, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(19) Each airport lounge liquor licensee shall maintain accounting and other records and documents as the department may require. Any airport lounge or person acting for the airport lounge, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries

in any of the books of account or other documents of the airport lounge required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the airport lounge's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(20) There shall be no transfer of an airport lounge liquor license from one location to another, without prior written approval of the commission.

(21) (a) A person, having been granted an airport lounge liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An airport lounge liquor license has no monetary value for the purpose of any type of disposition.

(22) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(23) An airport lounge liquor licensee's premises may not be leased for private functions.

(24) An airport lounge liquor licensee may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the premises of the airport lounge liquor licensee.

Section 6. Section **32A-5-107** is amended to read:

**32A-5-107. Operational restrictions.**

Each corporation or association granted a private club liquor license and its employees, officers, managing agent, and members shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Each private club shall hold regular meetings as required by its articles or bylaws and conduct its business through regularly elected officers. Within ten days following the election of any officer, the department shall be notified in writing of the officer's name, address, and office to which the officer has been elected, and the term of that office.

(2) Each private club may admit members only on written application signed by the applicant, following investigation and approval of the governing body. Admissions shall be

recorded in the official minutes of a regular meeting of the governing body and the application, whether approved or disapproved, shall be filed as a part of the official records of the licensee. An applicant may not be accorded the privileges of a member until a quorum of the governing body has formally voted upon and approved the applicant as a member. An applicant may not be admitted to membership until seven days after the application is submitted.

(3) Each private club shall maintain a current and complete membership record showing the date of application of each proposed member, the member's address, the date of admission following application, and the date initiation fees and dues were assessed and paid. The record shall also show the serial number of the membership card issued to each member. A current record shall also be kept indicating when members were dropped or resigned.

(4) Each private club shall establish in the club bylaws initial fees and monthly dues, as established by commission rules, which are collected from all members.

(5) Each private club may allow guests or visitors to use the premises only when previously authorized by a member. A member is responsible for all services extended to guests and visitors. If the guest or visitor is a member of the same fraternal organization as the private club liquor licensee, no previous authorization is required.

(6) Each private club shall limit the issuance of visitor cards for a period not to exceed two weeks and assess and collect a fee from each visitor of not less than \$5 for each two-week period the visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to the department for the administration of this title. A current record of the issuance of each card shall be maintained and shall contain the name of the member sponsoring the visitor.

(7) A private club may not sell alcoholic beverages to any person other than a member, guest, or visitor who holds a valid visitor card issued under Subsection (6).

(8) A person who is under 21 years of age may not be a member, officer, director, or trustee of a private club.

(9) An employee of a club, while on duty, may not consume an alcoholic beverage, be under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host for a guest.

(10) A visitor to a club may not host more than five guests at one time.

(11) Each private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll,

entertainment, rent, utilities, supplies, and all other expenditures. This record shall be kept in a form approved by the department and balanced each month. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal year documenting purchases made by officers of the club for the benefit of the club shall also be maintained.

(12) Each private club shall maintain a bank account that shows all income and expenditures as a control on the income and disbursements records. This account shall be balanced each month under the direction of the treasurer or other officer of the licensee.

(13) Each private club shall maintain a minute book that is posted currently by the secretary. This record shall contain the minutes of all regular and special meetings of the governing body and all committee meetings held to conduct club business. Membership lists shall also be maintained.

(14) Each private club shall maintain current copies of the club's articles of incorporation, current bylaws, and current house rules. Changes in the bylaws are not effective unless submitted to the department within ten days after adoption, and become effective 15 days after received by the department unless rejected by the department before the expiration of the 15-day period.

(15) Each private club shall maintain accounting and other records and documents as the department may require.

(16) Any club or person acting for the club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the club required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the club's license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(17) Each private club shall maintain and keep all the records required by this section and all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the department requires, for a minimum period of three years. All records, books, receipts, and disbursements are subject to inspection by authorized representatives of the commission and the department. The club shall allow the department, through its auditors or examiners, to audit all records of the club at times the department considers advisable. The department shall audit the

records of the licensee at least once annually.

(18) Each private club shall make available to the department, upon request, verified copies of any returns filed with the United States Treasury Department, Internal Revenue Service, under the federal Internal Revenue Code. Failure to provide any returns and supporting documents upon reasonable request by the department or, alternatively, to provide evidence of an extension granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to suspend or revoke a license. Any return or copy of a return so filed with the department is confidential and may not be used in any manner not directly connected with the enforcement of this title, nor may it be disclosed to any person or any department or agency of government, whether federal, state, or local.

(19) Each private club shall own or lease premises suitable for its activities in its own name. A copy of the lease shall be filed with the department.

(20) Each private club shall operate the club under the supervision of a manager or house committee, appointed by the governing body of the club.

(21) A private club may not maintain facilities in any manner that barricades or conceals the club operation. Any member of the commission, authorized department personnel, or any peace officer shall, upon presentation of credentials, be admitted immediately to the club and permitted without hindrance or delay to inspect completely the entire club premises and all books and records of the licensee, at any time during which the same are open for the transaction of business to its members.

(22) A private club may not pay any person or entity any fee, salary, rent, or other payment of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities or equipment rented. It is the intention of this subsection to insure that no officer, managing agent, employee, or other person derives a principal economic benefit from the operation of a club.

(23) A private club may not engage in any public solicitation or public advertising calculated to increase its membership.

(24) Each private club shall comply with the following operational restrictions:

(a) The liquor storage and sales area shall remain locked at all times when it is not open for business.

(b) Liquor may not be purchased by a private club liquor licensee except from state stores or package agencies. Liquor so purchased may be transported by the licensee from the place of

purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(i) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(A) the beverage shall contain liquor from a lawfully purchased container;

(B) the secondary ingredient is not the only liquor in the beverage;

(C) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(ii) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(iv) heavy beer may be served in standard containers not exceeding one liter.

(d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (24)(d)(i) shall comply with all appropriate operational restrictions under ~~[Title 32A,]~~ Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(iii) Failure to comply with the operational restrictions under ~~[Title 32A,]~~ Chapter 10, Beer Retailer Licenses, as set forth in Subsection (24)(d)(ii) may result in a suspension or revocation of the private club's state liquor license and its alcoholic beverage license issued by the local authority.

(e) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(f) A private club may not charge for the service or supply of glasses, ice, or mixers unless

the charges are fixed in the house rules of the club and a copy of the rules is kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic beverage.

(h) An officer, director, managing agent, employee, and any other person employed by or acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be sold, delivered, or furnished any liquor to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(i) (i) Liquor may not be sold or offered for sale at any private club during the following days or hours:

(A) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(B) on the day of any municipal, special district, or school election, but only within the boundaries of the municipality, special district, or school district, and only if closure is required by local ordinance; and

(C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

(ii) The hours of beer sales are those specified in Chapter 10, Beer Retailer Licenses, for on-premise beer licensees.

(j) On all other days the liquor storage and sales area in the club shall be closed from 1 a.m. until 10 a.m.

(k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a member, guest, or visitor at a time, except:

(i) wine as provided in Subsection (24)(c)(iii); and

(ii) heavy beer as provided in Subsection (24)(c)(iv).

(m) (i) Beginning January 1, 1991, a person may not bring onto the premises of a private

club liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private club liquor licensee and consume wine pursuant to Subsection (24)(n).

(ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or agents may not allow a person to bring onto the private club premises any alcoholic beverage for on-premise consumption, except cork-finished wine under Subsection (24)(m)(i).

(iii) Beginning January 1, 1991, if any private club licensee or any of its officers, managers, employees, or agents violates this Subsection (24):

(A) the commission may immediately suspend or revoke the private club's liquor license and the private club licensee is subject to criminal prosecution under Chapter 12, Criminal Offenses; and

(B) the local authority may immediately suspend or revoke the private club's local liquor license, local consent under Subsection 32A-5-102(1), or local business license.

(n) A wine service may be performed and a service charge assessed by the private club as authorized by commission rule for wine purchased at the private club or carried in by a member, guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(o) A member, guest, or visitor to a club may not carry from a club premises an open container used primarily for drinking purposes containing any alcoholic beverage.

(p) Each private club liquor licensee shall display in a prominent place in the private club:

(i) the private club liquor license that is issued by the department;

(ii) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(iii) a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(q) The following acts or conduct in a private club licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(i) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female



breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(ii) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (24)(q)(i);

(iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(iv) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(v) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this Subsection (24);

(vi) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(vii) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this Subsection (24); or

(D) scenes wherein a person displays the vulva or the anus or the genitals.

(r) Nothing in Subsection (24)(q) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(q).

(s) (i) Although live entertainment is permitted on the premises of a club liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(ii) Nothing in Subsection (24)(s)(i) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(s)(i).

(25) A private club may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the premises of the private club.

(26) (a) A private club may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the private club and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's license fee for the remainder of the license year.

(27) Each private club shall conduct its affairs so that it is not operated for a pecuniary profit.

(28) A private club may not transfer a private club liquor license from one location to another, without prior written approval of the commission.

(29) A person, having been granted a private club liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A private club liquor license has no monetary value for the purpose of any type of disposition.

Section 7. Section **32A-6-202** is amended to read:

**32A-6-202. Operational restrictions.**

In addition to the restrictions, conditions, and requirements of Section 32A-6-105, each public service permit is subject to the following operating restrictions:

(1) A public service permittee may purchase alcoholic beverages outside of the state and bring it into the state and sell and serve it to passengers traveling on the permittee's public conveyance for consumption while en route on the conveyance.

(2) A public service permittee may establish a hospitality room in which alcoholic beverages may be stored, sold, served, and consumed, if:

(a) the room is located within a depot, terminal, or similar facility adjacent to and servicing the permittee's airline, railroad, bus, boat, or other public conveyance;

(b) the room is completely enclosed and the interior is not visible to the public;

(c) the sale or service of alcoholic beverages is made only to persons then in transit using the host company's airline, railroad, bus line, or other public conveyance, and holding a valid boarding pass or similar travel document issued by the host company; and

(d) all liquor is purchased from a state store or package agency.

(3) Each public service permittee operating a hospitality room shall display in a prominent place in the hospitality room, a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(4) The operation of all hospitality rooms shall be done in accordance with this chapter and rules adopted by the commission.

Section 8. Section **32A-10-206** is amended to read:

**32A-10-206. Operational restrictions.**

Each person granted an on-premise beer retailer license and the employees and management personnel of the on-premise beer retailer licensee shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) On-premise beer retailer licensees may sell beer in open containers, in any size not exceeding two liters, and on draft.

(2) Liquor may not be stored or sold on the premises of any on-premise beer retailer licensee.

(3) A patron or guest may only make purchases in the on-premise beer retailer licensee from a server designated and trained by the licensee.

(4) (a) Beer may not be sold or offered for sale at any on-premise beer retailer licensee after 1 a.m. and before 10 a.m.

(b) Beer may not be sold, delivered, or furnished to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(5) Beer sold in sealed containers by the on-premise beer retailer licensee may be removed from the on-premise beer retailer premises.

(6) (a) Beginning January 1, 1991, a person may not bring onto the premises of an on-premise beer retailer licensee any alcoholic beverage for on-premise consumption.

(b) Beginning January 1, 1991, an on-premise beer retailer licensee or its officers, managers, employees, or agents may not allow a person to bring onto the on-premise beer retailer licensee premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

(c) Beginning January 1, 1991, if any on-premise beer retailer licensee or any of its officers, managers, employees, or agents violates this Subsection (6):

(i) the commission may immediately suspend or revoke the on-premise beer retailer license and the on-premise beer retailer licensee is subject to possible criminal prosecution under Chapter 12, Criminal Offenses; and

(ii) the local authority may immediately suspend or revoke the business license of the on-premise beer retailer licensee.

(7) Minors may not be employed by or be on the premises of an on-premise beer retailer licensee to sell or dispense beer. Minors may not be employed by or be on the premises of any tavern.

(8) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(9) Each on-premise beer retailer licensee shall display in a prominent place in the on-premise beer retailer licensee:

(a) the on-premise beer retailer license that is issued by the department; and

(b) a sign in large letters stating: "Warning: ~~[The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others.]~~ Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(10) The following acts or conduct in an on-premise beer retailer outlet licensed under this part are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing as described in Subsection (10)(a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this section;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts that are prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described in this section; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(11) Nothing in Subsection (10) precludes a local authority from being more restrictive

of acts or conduct of the type prohibited in Subsection (10).

(12) An on-premise beer retailer licensee may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the premises of the on-premise beer retailer licensee.

(13) (a) Although live entertainment is permitted on the premises of an on-premise beer retailer licensee, a licensee may not permit any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (13)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (13)(a).

(14) Each on-premise beer retailer licensee shall maintain accounting and other records and documents as the department may require. Any on-premise beer retailer licensee or person acting for the on-premise beer retailer licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the on-premise beer retailer licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the on-premise beer retailer license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(15) There shall be no transfer of an on-premise beer retailer license from one location to another, without prior written approval of the commission.

(16) (a) A person having been granted an on-premise beer retailer license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An on-premise beer retailer license has no monetary value for the purpose of any type of disposition.

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**Legislative Review Note****as of 10-4-01 2:54 PM**

This legislation modifies the warning that is required to be posted in a prominent location when alcoholic beverages are being provided. If determined to be speech that government requires a person to express, any legislation modifying this warning or a posting requirement may raise issues of free speech under the First Amendment. If viewed as a subsidy of government speech, courts look to factors such as whether a person is compelled to express views the person disfavors or to express political or ideological views, whether the regulation of speech is part of a larger regulatory marketing scheme, and whether the speech is tied to mandatory participation in a group. In examining the constitutionality of restrictions on commercial speech, courts generally assess whether the speech is protected by the First Amendment, whether the state has a substantial interest in the speech, whether the regulation advances the state's interest, and whether the regulation is more extensive than is necessary to serve the state's interest.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Transportation Interim Committee recommended this bill.