

ALCOHOLIC BEVERAGE CONTROL

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and related provisions.

Highlighted Provisions:

This bill:

- ▶ defines "military installation";
- ▶ addresses minors on premises of state stores or package agencies;
- ▶ removes the repeal date for on-premise banquet licensing;
- ▶ requires on-premise banquet licensees to provide advance notice of banquets to allow for random inspections;
- ▶ clarifies that on-premise banquet premises are included in the prohibition of operating without a license;
- ▶ repeals a 2004 reporting requirement;
- ▶ addresses liquor purchased on a military installation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32A-1-105, as last amended by Chapter 268, Laws of Utah 2004

32A-2-103, as last amended by Chapter 314, Laws of Utah 2003

32A-3-106, as last amended by Chapter 268, Laws of Utah 2004

32A-4-401, as last amended by Chapter 268, Laws of Utah 2004

32A-4-402, as last amended by Chapter 268, Laws of Utah 2004

32A-4-406, as last amended by Chapter 268, Laws of Utah 2004

32A-12-212, as last amended by Chapter 314, Laws of Utah 2003

32A-12-301, as last amended by Chapter 314, Laws of Utah 2003

63-55b-132, as enacted by Chapter 314, Laws of Utah 2003

REPEALS:

32A-4-407, as enacted by Chapter 314, Laws of Utah 2003

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 the premises of the international airport.

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

(3) (a) "Alcoholic products" means all products that:

(i) contain:

(A) at least 63/100 of 1% of alcohol by volume; or
(B) at least 1/2 of 1% by weight; and

(ii) are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in Subsection (3)(a)(i).

(b) "Alcoholic products" does not include any of the following common items that

otherwise come within the definition of alcoholic products:

- (i) extracts;
- (ii) vinegars;
- (iii) ciders;
- (iv) essences;
- (v) tinctures;
- (vi) food preparations; or
- (vii) over-the-counter drugs and medicines.

(4) "Bar" means a counter or similar structure:

- (a) at which alcoholic beverages are:
 - (i) stored; or
 - (ii) dispensed; or
- (b) from which alcoholic beverages are served.

(5) (a) "Beer" means any product that contains:

- (i) 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight; and
 - (ii) is obtained by fermentation, infusion, or decoction of any malted grain.
- (b) Beer may or may not contain hops or other vegetable products.
- (c) Beer includes a product that:
 - (i) contains alcohol in the percentages described in Subsection (5)(a); and
 - (ii) is referred to as:
 - (A) malt liquor;
 - (B) malted beverages; or
 - (C) malt coolers.

(6) (a) "Beer retailer" means any business establishment that is:

- (i) engaged, primarily or incidentally, in the retail sale of beer to public patrons, whether for consumption on or off the establishment's premises; and
 - (ii) licensed to sell beer by:

- (A) the commission;
 - (B) a local authority; or
 - (C) both the commission and a local authority.
- (b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale of beer to public patrons for consumption on the beer retailer's premises.
- (ii) "On-premise beer retailer" includes a tavern.
- (7) "Billboard" means any public display used to advertise including:
- (a) a light device;
 - (b) a painting;
 - (c) a drawing;
 - (d) a poster;
 - (e) a sign;
 - (f) a signboard; or
 - (g) a scoreboard.
- (8) "Brewer" means any person engaged in manufacturing beer.
- (9) "Cash bar" means the service of alcoholic beverages:
- (a) at:
 - (i) a banquet; or
 - (ii) a temporary event for which a permit is issued under this title; and
 - (b) if an attendee at the banquet or temporary event is charged for the alcoholic beverage.
- (10) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:
- (a) under a single contract;
 - (b) at a fixed charge in accordance with the bus company's tariff; and
 - (c) for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.
- (11) "Church" means a building:
- (a) set apart for the purpose of worship;

- (b) in which religious services are held;
- (c) with which clergy is associated; and
- (d) which is tax exempt under the laws of this state.

(12) "Club" and "private club" means any of the following organized primarily for the benefit of its members:

- (a) a social club;
- (b) a recreational association;
- (c) a fraternal association;
- (d) an athletic association; or
- (e) a kindred association.

(13) "Commission" means the Alcoholic Beverage Control Commission.

(14) "Department" means the Department of Alcoholic Beverage Control.

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

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

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

(18) (a) "Heavy beer" means any product that:

- (i) contains more than 4% alcohol by volume; and
- (ii) is obtained by fermentation, infusion, or decoction of any malted grain.

(b) "Heavy beer" is considered "liquor" for the purposes of this title.

(19) "Hosted bar" means the service of alcoholic beverages:

- (a) without charge; and
- (b) at a:
 - (i) banquet; or
 - (ii) privately hosted event.

(20) "Identification card" means the identification card issued under Title 53, Chapter 3,

Part 8, Identification Card Act.

(21) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by:

- (a) law; or
- (b) court order.

(22) "Intoxicated" means that to a degree that is unlawful under Section 76-9-701 a person is under the influence of:

- (a) an alcoholic beverage;
- (b) a controlled substance;
- (c) a substance having the property of releasing toxic vapors; or
- (d) a combination of Subsections (22)(a) through (c).

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

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

- (a) in which the driver and passengers are separated by a partition, glass, or other barrier; and
- (b) that is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

(25) (a) "Liquor" means alcohol, or any alcoholic, spirituous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spirituous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

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

(26) "Local authority" means:

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

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

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

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

(29) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for any ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including any leased facility.

(b) "Military installation" does not include any facility used primarily for:

(i) civil works;

(ii) rivers and harbors projects; or

(iii) flood control projects.

[~~(29)~~] (30) "Minor" means any person under the age of 21 years.

[~~(30)~~] (31) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

[~~(31)~~] (32) "Package" means any of the following containing liquor:

(a) a container;

(b) a bottle;

(c) a vessel; or

(d) other receptacle.

[~~(32)~~] (33) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the

commission to sell package liquor for consumption off the premises of the agency.

[~~(33)~~] (34) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises that the package agent shall provide and maintain.

[~~(34)~~] (35) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

[~~(35)~~] (36) "Person" means any individual, partnership, firm, corporation, limited liability company, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

[~~(36)~~] (37) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

[~~(37)~~] (38) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

[~~(38)~~] (39) (a) "Privately hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests.

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

[~~(39)~~] (40) "Proof of age" means:

(a) an identification card;

(b) an identification that:

(i) is substantially similar to an identification card;

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

(iii) includes date of birth; and

- (iv) has a picture affixed;
- (c) a valid driver license certificate that:
 - (i) includes date of birth;
 - (ii) has a picture affixed; and
 - (iii) is issued:
 - (A) under Title 53, Chapter 3, Uniform Driver License Act; or
 - (B) in accordance with the laws of the state in which it is issued;
- (d) a military identification card that:
 - (i) includes date of birth; and
 - (ii) has a picture affixed; or
- (e) a valid passport.

[~~(40)~~] (41) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for:

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

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

[~~(41)~~] (42) "Representative" means an individual who is compensated by salary, commission, or any other means for representing and selling the alcoholic beverage products of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

[~~(42)~~] (43) "Residence" means the person's principal place of abode within Utah.

[~~(43)~~] (44) "Restaurant" means any business establishment:

- (a) where a variety of foods is prepared and complete meals are served to the general public;
- (b) located on a premises having adequate culinary fixtures for food preparation and dining accommodations; and

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

[~~44~~] 45 "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

[~~45~~] 46 (a) "Sample" includes:

- (i) a department sample; and
- (ii) an industry representative sample.

(b) "Department sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling.

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

[~~46~~] 47 (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include:

- (i) a nursery school;
- (ii) an infant day care center; or
- (iii) a trade or technical school.

[~~47~~] 48 "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules made by the commission.

[~~48~~] 49 "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer and heavy beer per year.

[~~49~~] 50 (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcohol product defined as a "distilled spirit" by 27 U.S.C. 211 and 27 C.F.R. Sections 5.11 through 5.23.

[~~(50)~~] (51) (a) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state.

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

[~~(51)~~] (52) (a) "State store" means a facility for the sale of package liquor:

(i) located on premises owned or leased by the state; and

(ii) operated by state employees.

(b) "State store" does not apply to any:

(i) licensee;

(ii) permittee; or

(iii) package agency.

[~~(52)~~] (53) "Supplier" means any person selling alcoholic beverages to the department.

[~~(53)~~] (54) (a) "Tavern" means any business establishment that is:

(i) engaged primarily in the retail sale of beer to public patrons for consumption on the establishment's premises; and

(ii) licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

(b) "Tavern" includes the following if the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in the establishment:

(i) a beer bar;

(ii) a parlor;

(iii) a lounge;

(iv) a cabaret; or

(v) a nightclub.

[~~(54)~~] (55) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

[~~(55)~~] (56) "Unsaleable liquor merchandise" means merchandise that:

(a) is unsaleable because the merchandise is:

- (i) unlabeled;
 - (ii) leaky;
 - (iii) damaged;
 - (iv) difficult to open; or
 - (v) partly filled;
- (b) is in a container:
- (i) having faded labels or defective caps or corks;
 - (ii) in which the contents are:
 - (A) cloudy;
 - (B) spoiled; or
 - (C) chemically determined to be impure; or
- (iii) that contains:
 - (A) sediment; or
 - (B) any foreign substance; or
- (c) is otherwise considered by the department as unfit for sale.

[~~(56)~~] (57) "Visitor" means an individual that in accordance with Section 32A-5-107 holds limited privileges in a private club by virtue of a visitor card.

[~~(57)~~] (58) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

[~~(58)~~] (59) "Wholesaler" means any person engaged in the importation for sale, or in the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling beer manufactured by that brewer.

[~~(59)~~] (60) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added.

(b) "Wine" is considered "liquor" for purposes of this title, except as otherwise provided in this title.

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 intoxicated;

(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: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(8) (a) A minor may not be admitted into, or be on the premises of a state store unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) Any state store employee that has reason to believe that a person who is on the premises of a state store is under the age of 21 and is not accompanied by a person described in Subsection (8)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanied the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanied the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) Any state store employee shall refuse to sell liquor to the suspected minor and to the person who accompanied the suspected minor into the state store if they fail to provide any of the information specified in Subsection (8)(b).

(d) Any state store employee shall require the suspected minor and the person who accompanied the suspected minor into the state store to immediately leave the premises of the state store if they fail to provide any of the information specified in Subsection (8)(b).

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) (a) A package agency may not purchase liquor from any person except from the department.

(b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.

(3) The department may pay or otherwise remunerate a package agent on any basis including 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 intoxicated;

(c) known habitual drunkard; or

(d) known interdicted person.

(10) (a) Subject to Subsection (10)(b), 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:

(i) on Sunday;

(ii) on any state or federal legal holiday;

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

(iv) 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

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

(b) The restrictions in Subsections (10)(a)(i) and (ii) govern unless:

(i) the package agency is located at a winery licensed under Chapter 8, Manufacturing Licenses;

(ii) the winery licensed under Chapter 8, Manufacturing Licenses, holds:

(A) a restaurant liquor license under Chapter 4, Part 1, Restaurant Liquor Licenses; or

(B) a limited restaurant license under Chapter 4, Part 3, Limited Restaurant Licenses;

(iii) the restaurant described in Subsection (10)(b)(ii) is located at the winery;

(iv) the restaurant described in Subsection (10)(b)(ii) sells wines produced at the winery;

(v) the winery described in Subsection (10)(b)(i):

(A) owns the restaurant; or

(B) operates the restaurant;

(vi) the package agency only sells wine produced at the winery; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant described in Subsection (10)(b)(ii).

(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: 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:

(i) the package agency 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 (13)(a), in the case of emergency closure, immediate notice of closure shall be made to the department by telephone.
- (c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.
 - (ii) 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.
 - (iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.
- (d) The notice required by Subsection (13)(a) 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 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) Liquor may not be stored or sold in any place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(15) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

- (i) 21 years of age or older; and
- (ii) the minor's parent, legal guardian, or spouse.

(b) Any package agent or employee of the package agency that has reason to believe that a person who is on the premises of a package agency store is under the age of 21 and is not

accompanied by a person described in Subsection (15)(a) may:

- (i) ask the suspected minor for proof of age;
 - (ii) ask the person who accompanied the suspected minor for proof of age; and
 - (iii) ask the suspected minor or the person who accompanied the suspected minor for proof of parental, guardianship, or spousal relationship.
- (c) Any package agent or employee of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanied the suspected minor into the package agency if they fail to provide any of the information specified in Subsection (15)(b).
- (d) Any package agent or employee of a package agency shall require the suspected minor and the person who accompanied the suspected minor into the package agency to immediately leave the premises of the package agency if they fail to provide any of the information specified in Subsection (15)(b).

[~~(15)~~] (16) A package agency may not transfer its operations from one location to another without prior written approval of the commission.

[~~(16)~~] (17) (a) A person, having been granted a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to any other person, 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-4-401** is amended to read:

32A-4-401. Commission's power to grant licenses -- Limitations.

- (1) (a) For purposes of this part:
 - (i) "Banquet" means an event:
 - (A) for which there is a contract:
 - (I) between any person and a person listed in Subsection (1)(a)(i)(B); and
 - (II) under which a person listed in Subsection (1)(a)(i)(B) is required to provide alcoholic beverages at the event;
 - (B) held at one or more designated locations approved by the commission in or on the premises of a:

- (I) hotel;
 - (II) resort facility;
 - (III) sports center; or
 - (IV) convention center; and
- (C) at which food and alcoholic beverages may be sold and served.
- (ii) "Convention center" is as defined by the commission by rule.
 - (iii) "Hotel" is as defined by the commission by rule.
 - (iv) "Resort facility" is as defined by the commission by rule.
 - (v) "Room service" means service of alcoholic beverages to a guest room of a:
- (A) hotel; or
 - (B) resort facility.
- (vi) "Sports center" is as defined by the commission by rule.
- (b) ~~[Beginning May 5, 2003, and ending June 30, 2005, the]~~ The commission may issue an on-premise banquet license to any of the following persons for the purpose of allowing the storage, sale, service, and consumption of alcoholic beverages in connection with that person's banquet and room service activities:
- (i) hotel;
 - (ii) resort facility;
 - (iii) sports center; or
 - (iv) convention center.
- (c) This chapter is not intended to prohibit liquor on the premises of a person listed in Subsection (1) to the extent otherwise permitted by this title.
- (2) (a) Subject to this section, the total number of on-premise banquet licenses may not at any time aggregate more than that number determined by dividing the population of the state by 30,000.
- (b) For purposes of this Subsection (2), the population of the state shall be determined by:
- (i) the most recent United States decennial or special census; or

(ii) any other population determination made by the United States or state governments.

(3) Pursuant to a contract between the host of a banquet and an on-premise banquet licensee:

(a) the host of a contracted banquet may request an on-premise banquet licensee to provide alcoholic beverages served at a banquet; and

(b) an on-premise banquet licensee may provide the alcoholic beverages served at a banquet.

(4) At a banquet, an on-premise banquet licensee may provide:

(a) a hosted bar; or

(b) a cash bar.

(5) Nothing in this section shall prohibit a qualified on-premise banquet license applicant from applying for a package agency.

(6) (a) The premises of an on-premise banquet license may not be established within 600 feet of any public or private school, church, public library, public playground, or park, as measured by the method in Subsection (7).

(b) The premises of an on-premise banquet license may not be established within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground, or park.

(c) The restrictions contained in Subsections (6)(a) and (b) govern unless one of the following exemptions applies:

(i) with respect to the establishment of an on-premise banquet license within any location, the commission may authorize a variance to reduce the proximity requirements of Subsection (6)(a) or (b) if:

(A) the local governing authority has granted its written consent to the variance;

(B) alternative locations for establishing an on-premise banquet license in the community are limited;

(C) a public hearing has been held in the city, town, or county, and where practical in the

neighborhood concerned; and

(D) after giving full consideration to all of the attending circumstances and the policies stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the license would not be detrimental to the public health, peace, safety, and welfare of the community; or

(ii) with respect to the premises of any on-premise banquet license issued by the commission that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsections (6)(a) and (b) in considering whether to grant an on-premise banquet license to the new owner of the premises if:

(A) the premises previously received a variance reducing the proximity requirements of Subsection (6)(a) or (b); or

(B) a variance from proximity or distance requirements was otherwise allowed under this title.

(7) With respect to any public or private school, church, public library, public playground, or park, the 600 foot limitation is measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the public or private school, church, public library, public playground, school playground, or park.

(8) (a) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location.

(b) For purposes of this Subsection (8), "educational facility" includes:

- (i) a nursery school;
- (ii) an infant day care center; and
- (iii) a trade and technical school.

Section 5. Section **32A-4-402** is amended to read:

32A-4-402. Application and renewal requirements.

(1) (a) A person seeking an on-premise banquet license under this part shall file a written application with the department, in a form prescribed by the department. The application shall be

accompanied by:

- (i) a nonrefundable \$250 application fee;
- (ii) an initial license fee of \$500, which is refundable if a license is not granted;
- (iii) written consent of the local authority;
- (iv) a copy of the applicant's current business license;
- (v) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitation of Subsections 32A-4-401(6) and (7), the application shall be processed in accordance with those subsections;
- (vi) a bond as specified by Section 32A-4-405;
- (vii) a description or floor plan and boundary map of the premises, where appropriate, of the on-premise banquet license applicant's location, designating:
 - (A) the location at which the on-premise banquet license applicant proposes that alcoholic beverages be stored; and
 - (B) the designated locations on the premises of the applicant from which the on-premise banquet license applicant proposes that alcoholic beverages be sold or served, and consumed;
- (viii) evidence that the on-premise banquet license applicant is carrying public liability insurance in an amount and form satisfactory to the department;
- (ix) evidence that the on-premise banquet license applicant is carrying dramshop insurance coverage of at least \$500,000 per occurrence and \$1,000,000 in the aggregate;
- (x) a signed consent form stating that the on-premise banquet license applicant will permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the on-premise banquet premises;
- (xi) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the on-premise banquet license application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and
- (xii) any other information the commission or department may require.

(b) An applicant need not meet the requirements of Subsections (1)(a)(i), (ii), (iii), (iv), and (vi) if the applicant is:

- (i) a state agency; or
- (ii) a political subdivision of the state including:
 - (A) a county; or
 - (B) a municipality.

(2) Additional locations in or on the premises of an on-premise banquet license applicant's business from which the on-premise banquet license applicant may propose that alcoholic beverages may be stored, sold or served, or consumed, not included in the applicant's original application may be approved by the department upon proper application, in accordance with guidelines approved by the commission.

- (3) (a) All on-premise banquet licenses expire on October 31 of each year.
 - (b) (i) Except as provided in Subsection (3)(b)(ii), a person desiring to renew that person's on-premise banquet license shall submit a renewal fee of \$500 and a completed renewal application to the department no later than September 30.
 - (ii) A licensee is not required to submit the renewal fee if the licensee is:
 - (A) a state agency; or
 - (B) a political subdivision of the state including:
 - (I) a county; or
 - (II) a municipality.
 - (c) Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires.
 - (d) Renewal applications shall be in a form as prescribed by the department.
- (4) To ensure compliance with Subsection 32A-4-406[~~(26)~~](27), the commission may suspend or revoke an on-premise banquet license if the on-premise banquet licensee fails to immediately notify the department of any change in:
- (a) ownership of the licensee;
 - (b) for a corporate owner, the:

- (i) corporate officers or directors; or
- (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (c) for a limited liability company:
 - (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.

Section 6. Section **32A-4-406** is amended to read:

32A-4-406. Operational restrictions.

Each person granted an on-premise banquet license and the employees and management personnel of the on-premise banquet licensee shall comply with this title, the rules of the commission, and 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 person involved in the sale or service of alcoholic beverages under the on-premise banquet license shall:
 - (a) be under the supervision and direction of the on-premise banquet licensee; and
 - (b) complete the seminar provided for in Section 62A-15-401.
- (2) (a) Liquor may not be purchased by the on-premise banquet licensee except from state stores or package agencies.
 - (b) Liquor purchased in accordance with Subsection (2)(a) may be transported by the on-premise banquet 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.
- (3) Alcoholic beverages may be sold or provided at a banquet subject to the restrictions set forth in this Subsection (3).
 - (a) An on-premise banquet licensee may sell or provide any primary spirituous liquor only in a quantity not to exceed one ounce per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted

under this title, except that:

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

(B) the secondary ingredient may not be the only spirituous liquor in the beverage;

(C) the on-premise banquet 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) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(A) as a flavoring on desserts; and

(B) in the preparation of flaming food dishes, drinks, and desserts;

(iii) each attendee may have no more than 2.75 ounces of spirituous liquor at a time before the attendee; and

(iv) each attendee may have no more than one spirituous liquor drink at a time before the attendee.

(b) (i) (A) Wine may be sold and served by the glass or an individual portion not to exceed five ounces per glass or individual portion.

(B) An individual portion may be served to an attendee in more than one glass as long as the total amount of wine does not exceed five ounces.

(C) An individual portion of wine is considered to be one alcoholic beverage under Subsection (5)(c).

(ii) Wine may be sold and served in containers not exceeding 1.5 liters at prices fixed by the commission.

(iii) A wine service may be performed and a service charge assessed by the on-premise banquet licensee as authorized by commission rule for wine purchased on the banquet premises.

(c) (i) Heavy beer may be served in original containers not exceeding one liter at prices fixed by the commission.

(ii) A service charge may be assessed by the on-premise banquet licensee as authorized by commission rule for heavy beer purchased on the banquet premises.

(d) (i) Except as provided in Subsection (3)(d)(ii), beer may be sold and served for on-premise consumption:

(A) in an open container; and

(B) on draft.

(ii) Beer sold pursuant to Subsection (3)(d)(i) shall be in a size of container that does not exceed two liters, except that beer may not be sold to an individual attendee in a container size that exceeds one liter.

(4) Alcoholic beverages may not be stored, served, or sold in any place other than as designated in the on-premise banquet licensee's application, except that additional locations in or on the premises of an on-premise banquet licensee may be approved in accordance with guidelines approved by the commission as provided in Subsection 32A-4-402(2).

(5) (a) An attendee may only make alcoholic beverage purchases from and be served by a person employed, designated, and trained by the on-premise banquet licensee to sell and serve alcoholic beverages.

(b) Notwithstanding Subsection (5)(a), an attendee who has purchased bottled wine from an employee of the on-premise banquet licensee may thereafter serve wine from the bottle to the attendee or others at the attendee's table.

(c) Each attendee may have no more than two alcoholic beverages of any kind at a time before the attendee.

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

(7) (a) Except as provided in Subsection (7)(b), alcoholic beverages may be offered for sale, sold, served, or otherwise furnished from 10 a.m. to 1 a.m. seven days a week:

(i) at a banquet; or

- (ii) in connection with room service.
- (b) Notwithstanding Subsection (7)(a), a sale or service of alcoholic beverages may not occur at a banquet or in connection with room service until after the polls are closed on the day of:
 - (i) a regular general election;
 - (ii) a regular primary election; or
 - (iii) a statewide special election.
- (8) Alcoholic beverages may not be sold, served, or otherwise furnished to any:
 - (a) minor;
 - (b) person actually, apparently, or obviously intoxicated;
 - (c) known habitual drunkard; or
 - (d) known interdicted person.
- (9) (a) (i) Liquor may be sold only at prices fixed by the commission.
 - (ii) Liquor may not be sold at discount prices on any date or at any time.
- (b) Alcoholic beverages may not be sold at less than the cost of the alcoholic beverage to the licensee.
- (c) An alcoholic beverage may not be sold at a special or reduced price that encourages over consumption or intoxication.
- (d) An alcoholic beverage may not be sold at a special or reduced price for only certain hours of the on-premise banquet licensee's business day such as a "happy hour."
- (e) The sale or service of more than one alcoholic beverage for the price of a single alcoholic beverage is prohibited.
- (f) An on-premise banquet licensee may not engage in a public promotion involving or offering free alcoholic beverages to the general public.
- (10) Alcoholic beverages may not be purchased for an attendee by:
 - (a) the on-premise banquet licensee; or
 - (b) any employee or agent of the on-premise banquet licensee.
- (11) An attendee of a banquet may not bring any alcoholic beverage into or onto, or

remove any alcoholic beverage from the premises of a banquet.

(12) (a) Except as otherwise provided in this title, the sale and service of alcoholic beverages by an on-premise banquet licensee at a banquet shall be made only for consumption at the location of the banquet.

(b) The host of a banquet, an attendee, or any other person other than the on-premise banquet licensee or its employees, may not remove any alcoholic beverage from the premises of the banquet.

(13) An on-premise banquet licensee employee shall remain at the banquet at all times when alcoholic beverages are being sold, served, or consumed at the banquet.

(14) (a) An on-premise banquet licensee may not leave any unsold alcoholic beverages at the banquet following the conclusion of the banquet.

(b) At the conclusion of a banquet, the on-premise banquet licensee or its employees, shall:

(i) destroy any opened and unused alcoholic beverages that are not saleable, under conditions established by the department; and

(ii) return to the on-premise banquet licensee's approved locked storage area any:

(A) opened and unused alcoholic beverage that is saleable; and

(B) unopened containers of alcoholic beverages.

(15) Except as provided in Subsection (14), any open or sealed container of alcoholic beverages not sold or consumed at a banquet:

(a) shall be stored by the on-premise banquet licensee in the licensee's approved locked storage area; and

(b) may be used at more than one banquet.

(16) An on-premise banquet licensee may not employ a minor to sell, serve, dispense, or otherwise furnish alcoholic beverages in connection with the licensee's banquet and room service activities.

(17) An employee of an on-premise banquet licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be intoxicated.

(18) An on-premise banquet licensee shall prominently display at each banquet at which alcoholic beverages are sold or served:

(a) a copy of the licensee's on-premise banquet license; and

(b) a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(19) The following acts or conduct are considered contrary to the public welfare and morals, and are prohibited at and during the hours of a banquet:

(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 described in Subsection (19)(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 Subsection (19);

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of that person's 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 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 used to depict, or drawings are used to portray, any of the prohibited activities described in this Subsection (19); or

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

(20) Nothing in Subsection (19) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (19).

(21) (a) Although live entertainment is permitted at a banquet, an on-premise banquet 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.

(b) Nothing in Subsection (21)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (21)(a).

(22) An on-premise banquet 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:

- (a) hotel;
- (b) resort facility;
- (c) sports center; or
- (d) convention center.

(23) (a) An on-premise banquet licensee shall maintain accounting and such other records and documents as the commission or department may require.

(b) An on-premise banquet licensee or person acting for the on-premise banquet 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 banquet 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 department, or any of their officials or employees, is subject to:

- (i) the suspension or revocation of the on-premise banquet license; and
- (ii) possible criminal prosecution under Chapter 12, Criminal Offenses.

(24) (a) For the purpose described in Subsection (24)(b), an on-premise banquet licensee shall provide the department with advance notice of a scheduled banquet in accordance with rules made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) The advance notice required by Subsection (24)(a) is required to provide any of the following the opportunity to conduct a random inspection of a banquet:

- (i) an authorized representative of the commission or the department; or
- (ii) a law enforcement officer.

[(24)] (25) An on-premise banquet licensee shall maintain at least 50% of its total annual banquet gross receipts from the sale of food, not including:

- (a) mix for alcoholic beverages; and
- (b) charges in connection with the service of alcoholic beverages.

[(25)] (26) A person may not transfer an on-premise banquet license from one business location to another without prior written approval of the commission.

[(26)] (27) (a) An on-premise banquet licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to any other person, whether for monetary gain or not.

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

[(27)] (28) (a) Room service of alcoholic beverages to a guest room of a hotel or resort facility shall be provided in person by an on-premise banquet licensee employee only to an adult guest in the guest room.

(b) Alcoholic beverages may not be left outside a guest room for retrieval by a guest.

(c) An on-premise banquet licensee may only provide alcoholic beverages for room service in sealed containers.

Section 7. Section **32A-12-212** is amended to read:

32A-12-212. Unlawful possession -- Exceptions.

- (1) A person may not have or possess within this state any liquor unless authorized by

this title or the rules of the commission, except that:

- (a) a person who clears United States Customs when entering this country may have or possess for personal consumption and not for sale or resale, a maximum of two liters of liquor purchased from without the United States;
- (b) a person who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, any liquor previously purchased outside the state and brought into this state during the move, if:
 - (i) the person first obtains department approval prior to moving the liquor into the state;
 - (ii) the department affixes the official state label to the liquor; and
 - (iii) the person pays the department a reasonable administrative handling fee as determined by the commission; [or]
- (c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if:
 - (i) the person first obtains department approval prior to moving the liquor into the state;
 - (ii) the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary;
 - (iii) the department affixes the official state label to the liquor; and
 - (iv) the person pays the department a reasonable administrative handling fee as determined by the commission[.]; or
- (d) a person may transport, have, or possess liquor if:
 - (i) the person transports, has, or possesses the liquor:
 - (A) for personal household use and consumption; and
 - (B) not for:
 - (I) sale;
 - (II) resale;
 - (III) gifting to another; or
 - (IV) consumption on a premise licensed by the commission;

(ii) the liquor is purchased from a store or outlet on a military installation; and
(iii) the maximum amount the person transports, has, or possesses under this Subsection
(1)(d) is:

- (A) two liters of:
(I) spirituous liquor;
(II) wine; or
(III) a combination of spirituous liquor and wine; and
(B) one case of heavy beer that does not exceed 288 ounces.

(2) (a) Approval under Subsection (1)(b) may be obtained by a person who:
(i) is transferring the person's permanent residence to this state; or
(ii) maintains separate residences both in and out of this state.
(b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more than once.

Section 8. Section **32A-12-301** is amended to read:

32A-12-301. Operating without a license or permit.

[A] Except as provided by this title or the rules of the commission, a person may not operate [a restaurant, airport lounge, private club, on-premise beer retailer outlet, or similar] the following if that establishment [that] allows patrons, customers, members, guests, visitors, or other persons to purchase or consume alcoholic beverages on the premises[, except as provided by this title or the rules of the commission.]:

- (1) a restaurant;
- (2) an airport lounge;
- (3) a private club;
- (4) an on-premise beer retailer outlet;
- (5) on-premise banquet premises; or
- (6) an establishment similar to one listed in Subsections (1) through (5).

Section 9. Section **63-55b-132** is amended to read:

63-55b-132. Repeal dates -- Title 32A.

[Title 32A, Chapter 4, Part 4, On-Premise Banquet License is repealed July 1, 2005.]

Section 10. Repealer.

This bill repeals:

Section 32A-4-407, Report on pilot program.