

1 **ALCOHOLIC BEVERAGE CONTROL**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Peter C. Knudson**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Alcoholic Beverage Control Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines "military installation";
- 13 ▶ removes the repeal date for on-premise banquet licensing;
- 14 ▶ requires on-premise banquet licensees to provide advance notice of banquets to
15 allow for random inspections;
- 16 ▶ clarifies that on-premise banquet premises are included in the prohibition of
17 operating without a license;
- 18 ▶ repeals a 2004 reporting requirement;
- 19 ▶ addresses liquor purchased on a military installation; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **32A-1-105**, as last amended by Chapter 268, Laws of Utah 2004



28 **32A-4-401**, as last amended by Chapter 268, Laws of Utah 2004

29 **32A-4-402**, as last amended by Chapter 268, Laws of Utah 2004

30 **32A-4-406**, as last amended by Chapter 268, Laws of Utah 2004

31 **32A-12-212**, as last amended by Chapter 314, Laws of Utah 2003

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

33 **63-55b-132**, as enacted by Chapter 314, Laws of Utah 2003

34 REPEALS:

35 **32A-4-407**, as enacted by Chapter 314, Laws of Utah 2003



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

38 Section 1. Section **32A-1-105** is amended to read:

39 **32A-1-105. Definitions.**

40 As used in this title:

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

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

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

47 (i) contain:

48 (A) at least 63/100 of 1% of alcohol by volume; or

49 (B) at least 1/2 of 1% by weight; and

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

53 (b) "Alcoholic products" does not include any of the following common items that
54 otherwise come within the definition of alcoholic products:

55 (i) extracts;

56 (ii) vinegars;

57 (iii) ciders;

58 (iv) essences;

- 59 (v) tinctures;
- 60 (vi) food preparations; or
- 61 (vii) over-the-counter drugs and medicines.
- 62 (4) "Bar" means a counter or similar structure:
- 63 (a) at which alcoholic beverages are:
- 64 (i) stored; or
- 65 (ii) dispensed; or
- 66 (b) from which alcoholic beverages are served.
- 67 (5) (a) "Beer" means any product that contains:
- 68 (i) 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more
- 69 than 4% of alcohol by volume or 3.2% by weight; and
- 70 (ii) is obtained by fermentation, infusion, or decoction of any malted grain.
- 71 (b) Beer may or may not contain hops or other vegetable products.
- 72 (c) Beer includes a product that:
- 73 (i) contains alcohol in the percentages described in Subsection (5)(a); and
- 74 (ii) is referred to as:
- 75 (A) malt liquor;
- 76 (B) malted beverages; or
- 77 (C) malt coolers.
- 78 (6) (a) "Beer retailer" means any business establishment that is:
- 79 (i) engaged, primarily or incidentally, in the retail sale of beer to public patrons,
- 80 whether for consumption on or off the establishment's premises; and
- 81 (ii) licensed to sell beer by:
- 82 (A) the commission;
- 83 (B) a local authority; or
- 84 (C) both the commission and a local authority.
- 85 (b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or
- 86 incidentally, in the sale of beer to public patrons for consumption on the beer retailer's
- 87 premises.
- 88 (ii) "On-premise beer retailer" includes a tavern.
- 89 (7) "Billboard" means any public display used to advertise including:

- 90 (a) a light device;
- 91 (b) a painting;
- 92 (c) a drawing;
- 93 (d) a poster;
- 94 (e) a sign;
- 95 (f) a signboard; or
- 96 (g) a scoreboard.
- 97 (8) "Brewer" means any person engaged in manufacturing beer.
- 98 (9) "Cash bar" means the service of alcoholic beverages:
- 99 (a) at:
- 100 (i) a banquet; or
- 101 (ii) a temporary event for which a permit is issued under this title; and
- 102 (b) if an attendee at the banquet or temporary event is charged for the alcoholic
- 103 beverage.
- 104 (10) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
- 105 a bus company to a group of persons pursuant to a common purpose:
- 106 (a) under a single contract;
- 107 (b) at a fixed charge in accordance with the bus company's tariff; and
- 108 (c) for the purpose of giving the group of persons the exclusive use of the bus and a
- 109 driver to travel together to a specified destination or destinations.
- 110 (11) "Church" means a building:
- 111 (a) set apart for the purpose of worship;
- 112 (b) in which religious services are held;
- 113 (c) with which clergy is associated; and
- 114 (d) which is tax exempt under the laws of this state.
- 115 (12) "Club" and "private club" means any of the following organized primarily for the
- 116 benefit of its members:
- 117 (a) a social club;
- 118 (b) a recreational association;
- 119 (c) a fraternal association;
- 120 (d) an athletic association; or

- 121 (e) a kindred association.
- 122 (13) "Commission" means the Alcoholic Beverage Control Commission.
- 123 (14) "Department" means the Department of Alcoholic Beverage Control.
- 124 (15) "Distressed merchandise" means any alcoholic beverage in the possession of the
125 department that is saleable, but for some reason is unappealing to the public.
- 126 (16) "General food store" means any business establishment primarily engaged in
127 selling food and grocery supplies to public patrons for off-premise consumption.
- 128 (17) "Guest" means a person accompanied by an active member or visitor of a club
129 who enjoys only those privileges derived from the host for the duration of the visit to the club.
- 130 (18) (a) "Heavy beer" means any product that:
 - 131 (i) contains more than 4% alcohol by volume; and
 - 132 (ii) is obtained by fermentation, infusion, or decoction of any malted grain.
- 133 (b) "Heavy beer" is considered "liquor" for the purposes of this title.
- 134 (19) "Hosted bar" means the service of alcoholic beverages:
 - 135 (a) without charge; and
 - 136 (b) at a:
 - 137 (i) banquet; or
 - 138 (ii) privately hosted event.
- 139 (20) "Identification card" means the identification card issued under Title 53, Chapter
140 3, Part 8, Identification Card Act.
- 141 (21) "Interdicted person" means a person to whom the sale, gift, or provision of an
142 alcoholic beverage is prohibited by:
 - 143 (a) law; or
 - 144 (b) court order.
- 145 (22) "Intoxicated" means that to a degree that is unlawful under Section 76-9-701 a
146 person is under the influence of:
 - 147 (a) an alcoholic beverage;
 - 148 (b) a controlled substance;
 - 149 (c) a substance having the property of releasing toxic vapors; or
 - 150 (d) a combination of Subsections (22)(a) through (c).
- 151 (23) "Licensee" means any person issued a license by the commission to sell,

152 manufacture, store, or allow consumption of alcoholic beverages on premises owned or
153 controlled by the person.

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

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

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

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

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

167 (26) "Local authority" means:

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

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

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

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

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

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

179 (B) of the National Guard;

180 (ii) that is located within the state; and

181 (iii) including any leased facility.

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

- 183 (i) civil works;
- 184 (ii) rivers and harbors projects; or
- 185 (iii) flood control projects.
- 186 [~~(29)~~] (30) "Minor" means any person under the age of 21 years.
- 187 [~~(30)~~] (31) "Outlet" means a location other than a state store or package agency where
- 188 alcoholic beverages are sold pursuant to a license issued by the commission.
- 189 [~~(31)~~] (32) "Package" means any of the following containing liquor:
- 190 (a) a container;
- 191 (b) a bottle;
- 192 (c) a vessel; or
- 193 (d) other receptacle.
- 194 [~~(32)~~] (33) "Package agency" means a retail liquor location operated under a
- 195 contractual agreement with the department, by a person other than the state, who is authorized
- 196 by the commission to sell package liquor for consumption off the premises of the agency.
- 197 [~~(33)~~] (34) "Package agent" means any person permitted by the commission to operate
- 198 a package agency pursuant to a contractual agreement with the department to sell liquor from
- 199 premises that the package agent shall provide and maintain.
- 200 [~~(34)~~] (35) "Permittee" means any person issued a permit by the commission to
- 201 perform acts or exercise privileges as specifically granted in the permit.
- 202 [~~(35)~~] (36) "Person" means any individual, partnership, firm, corporation, limited
- 203 liability company, association, business trust, or other form of business enterprise, including a
- 204 receiver or trustee, and the plural as well as the singular number, unless the intent to give a
- 205 more limited meaning is disclosed by the context.
- 206 [~~(36)~~] (37) "Premises" means any building, enclosure, room, or equipment used in
- 207 connection with the sale, storage, service, manufacture, distribution, or consumption of
- 208 alcoholic products, unless otherwise defined in this title or in the rules adopted by the
- 209 commission.
- 210 [~~(37)~~] (38) "Prescription" means a writing in legal form, signed by a physician or
- 211 dentist and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.
- 212 [~~(38)~~] (39) (a) "Privately hosted event" or "private social function" means a specific
- 213 social, business, or recreational event for which an entire room, area, or hall has been leased or

214 rented, in advance by an identified group, and the event or function is limited in attendance to
215 people who have been specifically designated and their guests.

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

218 [~~(39)~~] (40) "Proof of age" means:

219 (a) an identification card;

220 (b) an identification that:

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

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

224 (iii) includes date of birth; and

225 (iv) has a picture affixed;

226 (c) a valid driver license certificate that:

227 (i) includes date of birth;

228 (ii) has a picture affixed; and

229 (iii) is issued:

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

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

232 (d) a military identification card that:

233 (i) includes date of birth; and

234 (ii) has a picture affixed; or

235 (e) a valid passport.

236 [~~(40)~~] (41) (a) "Public building" means any building or permanent structure owned or
237 leased by the state, a county, or local government entity that is used for:

238 (i) public education;

239 (ii) transacting public business; or

240 (iii) regularly conducting government activities.

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

244 [~~(41)~~] (42) "Representative" means an individual who is compensated by salary,

245 commission, or any other means for representing and selling the alcoholic beverage products of
246 a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

247 [~~(42)~~] (43) "Residence" means the person's principal place of abode within Utah.

248 [~~(43)~~] (44) "Restaurant" means any business establishment:

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

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

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

254 [~~(44)~~] (45) "Retailer" means any person engaged in the sale or distribution of alcoholic
255 beverages to the consumer.

256 [~~(45)~~] (46) (a) "Sample" includes:

257 (i) a department sample; and

258 (ii) an industry representative sample.

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

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

265 [~~(46)~~] (47) (a) "School" means any building used primarily for the general education of
266 minors.

267 (b) "School" does not include:

268 (i) a nursery school;

269 (ii) an infant day care center; or

270 (iii) a trade or technical school.

271 [~~(47)~~] (48) "Sell," "sale," and "to sell" means any transaction, exchange, or barter
272 whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred,
273 solicited, ordered, delivered for value, or by any means or under any pretext is promised or
274 obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or
275 employee, unless otherwise defined in this title or the rules made by the commission.

276 [~~(48)~~] (49) "Small brewer" means a brewer who manufactures less than 60,000 barrels
277 of beer and heavy beer per year.

278 [~~(49)~~] (50) (a) "Spirituous liquor" means liquor that is distilled.

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

281 [~~(50)~~] (51) (a) "State label" means the official label designated by the commission
282 affixed to all liquor containers sold in the state.

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

285 [~~(51)~~] (52) (a) "State store" means a facility for the sale of package liquor:

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

287 (ii) operated by state employees.

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

289 (i) licensee;

290 (ii) permittee; or

291 (iii) package agency.

292 [~~(52)~~] (53) "Supplier" means any person selling alcoholic beverages to the department.

293 [~~(53)~~] (54) (a) "Tavern" means any business establishment that is:

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

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

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

299 (i) a beer bar;

300 (ii) a parlor;

301 (iii) a lounge;

302 (iv) a cabaret; or

303 (v) a nightclub.

304 [~~(54)~~] (55) "Temporary domicile" means the principal place of abode within Utah of a
305 person who does not have a present intention to continue residency within Utah permanently or
306 indefinitely.

307 [~~(55)~~] (56) "Unsaleable liquor merchandise" means merchandise that:

308 (a) is unsaleable because the merchandise is:

309 (i) unlabeled;

310 (ii) leaky;

311 (iii) damaged;

312 (iv) difficult to open; or

313 (v) partly filled;

314 (b) is in a container:

315 (i) having faded labels or defective caps or corks;

316 (ii) in which the contents are:

317 (A) cloudy;

318 (B) spoiled; or

319 (C) chemically determined to be impure; or

320 (iii) that contains:

321 (A) sediment; or

322 (B) any foreign substance; or

323 (c) is otherwise considered by the department as unfit for sale.

324 [~~(56)~~] (57) "Visitor" means an individual that in accordance with Section 32A-5-107

325 holds limited privileges in a private club by virtue of a visitor card.

326 [~~(57)~~] (58) "Warehouser" means any person, other than a licensed manufacturer,

327 engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

328 [~~(58)~~] (59) "Wholesaler" means any person engaged in the importation for sale, or in

329 the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling

330 beer manufactured by that brewer.

331 [~~(59)~~] (60) (a) "Wine" means any alcoholic beverage obtained by the fermentation of

332 the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether

333 or not other ingredients are added.

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

335 provided in this title.

336 Section 2. Section 32A-4-401 is amended to read:

337 **32A-4-401. Commission's power to grant licenses -- Limitations.**

338 (1) (a) For purposes of this part:
339 (i) "Banquet" means an event:
340 (A) for which there is a contract:
341 (I) between any person and a person listed in Subsection (1)(a)(i)(B); and
342 (II) under which a person listed in Subsection (1)(a)(i)(B) is required to provide
343 alcoholic beverages at the event;
344 (B) held at one or more designated locations approved by the commission in or on the
345 premises of a:
346 (I) hotel;
347 (II) resort facility;
348 (III) sports center; or
349 (IV) convention center; and
350 (C) at which food and alcoholic beverages may be sold and served.
351 (ii) "Convention center" is as defined by the commission by rule.
352 (iii) "Hotel" is as defined by the commission by rule.
353 (iv) "Resort facility" is as defined by the commission by rule.
354 (v) "Room service" means service of alcoholic beverages to a guest room of a:
355 (A) hotel; or
356 (B) resort facility.
357 (vi) "Sports center" is as defined by the commission by rule.
358 (b) [~~Beginning May 5, 2003, and ending June 30, 2005, the~~] The commission may
359 issue an on-premise banquet license to any of the following persons for the purpose of allowing
360 the storage, sale, service, and consumption of alcoholic beverages in connection with that
361 person's banquet and room service activities:
362 (i) hotel;
363 (ii) resort facility;
364 (iii) sports center; or
365 (iv) convention center.
366 (c) This chapter is not intended to prohibit liquor on the premises of a person listed in
367 Subsection (1) to the extent otherwise permitted by this title.
368 (2) (a) Subject to this section, the total number of on-premise banquet licenses may not

369 at any time aggregate more than that number determined by dividing the population of the state
370 by 30,000.

371 (b) For purposes of this Subsection (2), the population of the state shall be determined
372 by:

373 (i) the most recent United States decennial or special census; or

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

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

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

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

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

383 (a) a hosted bar; or

384 (b) a cash bar.

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

387 (6) (a) The premises of an on-premise banquet license may not be established within
388 600 feet of any public or private school, church, public library, public playground, or park, as
389 measured by the method in Subsection (7).

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

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

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

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

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

403 (C) a public hearing has been held in the city, town, or county, and where practical in
404 the neighborhood concerned; and

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

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

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

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

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

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

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

425 (i) a nursery school;

426 (ii) an infant day care center; and

427 (iii) a trade and technical school.

428 Section 3. Section **32A-4-402** is amended to read:

429 **32A-4-402. Application and renewal requirements.**

430 (1) (a) A person seeking an on-premise banquet license under this part shall file a

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

462 and (vi) if the applicant is:

463 (i) a state agency; or

464 (ii) a political subdivision of the state including:

465 (A) a county; or

466 (B) a municipality.

467 (2) Additional locations in or on the premises of an on-premise banquet license

468 applicant's business from which the on-premise banquet license applicant may propose that

469 alcoholic beverages may be stored, sold or served, or consumed, not included in the applicant's

470 original application may be approved by the department upon proper application, in accordance

471 with guidelines approved by the commission.

472 (3) (a) All on-premise banquet licenses expire on October 31 of each year.

473 (b) (i) Except as provided in Subsection (3)(b)(ii), a person desiring to renew that

474 person's on-premise banquet license shall submit a renewal fee of \$500 and a completed

475 renewal application to the department no later than September 30.

476 (ii) A licensee is not required to submit the renewal fee if the licensee is:

477 (A) a state agency; or

478 (B) a political subdivision of the state including:

479 (I) a county; or

480 (II) a municipality.

481 (c) Failure to meet the renewal requirements shall result in an automatic forfeiture of

482 the license effective on the date the existing license expires.

483 (d) Renewal applications shall be in a form as prescribed by the department.

484 (4) To ensure compliance with Subsection 32A-4-406[~~(26)~~](27), the commission may

485 suspend or revoke an on-premise banquet license if the on-premise banquet licensee fails to

486 immediately notify the department of any change in:

487 (a) ownership of the licensee;

488 (b) for a corporate owner, the:

489 (i) corporate officers or directors; or

490 (ii) shareholders holding at least 20% of the total issued and outstanding stock of the

491 corporation; or

492 (c) for a limited liability company:

- 493 (i) managers; or
494 (ii) members owning at least 20% of the limited liability company.

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

496 **32A-4-406. Operational restrictions.**

497 Each person granted an on-premise banquet license and the employees and management
498 personnel of the on-premise banquet licensee shall comply with this title, the rules of the
499 commission, and the following conditions and requirements. Failure to comply may result in a
500 suspension or revocation of the license or other disciplinary action taken against individual
501 employees or management personnel.

502 (1) A person involved in the sale or service of alcoholic beverages under the
503 on-premise banquet license shall:

- 504 (a) be under the supervision and direction of the on-premise banquet licensee; and
505 (b) complete the seminar provided for in Section 62A-15-401.

506 (2) (a) Liquor may not be purchased by the on-premise banquet licensee except from
507 state stores or package agencies.

508 (b) Liquor purchased in accordance with Subsection (2)(a) may be transported by the
509 on-premise banquet licensee from the place of purchase to the licensed premises.

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

512 (3) Alcoholic beverages may be sold or provided at a banquet subject to the restrictions
513 set forth in this Subsection (3).

514 (a) An on-premise banquet licensee may sell or provide any primary spirituous liquor
515 only in a quantity not to exceed one ounce per beverage dispensed through a calibrated metered
516 dispensing system approved by the department in accordance with commission rules adopted
517 under this title, except that:

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

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

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

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

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

527 (ii) spirituous liquor need not be dispensed through a calibrated metered dispensing
528 system if used:

529 (A) as a flavoring on desserts; and

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

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

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

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

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

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

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

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

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

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

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

552 (A) in an open container; and

553 (B) on draft.

554 (ii) Beer sold pursuant to Subsection (3)(d)(i) shall be in a size of container that does

555 not exceed two liters, except that beer may not be sold to an individual attendee in a container
556 size that exceeds one liter.

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

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

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

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

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

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

- 573 (i) at a banquet; or
- 574 (ii) in connection with room service.

575 (b) Notwithstanding Subsection (7)(a), a sale or service of alcoholic beverages may not
576 occur at a banquet or in connection with room service until after the polls are closed on the day
577 of:

- 578 (i) a regular general election;
- 579 (ii) a regular primary election; or
- 580 (iii) a statewide special election.

581 (8) Alcoholic beverages may not be sold, served, or otherwise furnished to any:

- 582 (a) minor;
- 583 (b) person actually, apparently, or obviously intoxicated;
- 584 (c) known habitual drunkard; or
- 585 (d) known interdicted person.

- 586 (9) (a) (i) Liquor may be sold only at prices fixed by the commission.
587 (ii) Liquor may not be sold at discount prices on any date or at any time.
588 (b) Alcoholic beverages may not be sold at less than the cost of the alcoholic beverage
589 to the licensee.
590 (c) An alcoholic beverage may not be sold at a special or reduced price that encourages
591 over consumption or intoxication.
592 (d) An alcoholic beverage may not be sold at a special or reduced price for only certain
593 hours of the on-premise banquet licensee's business day such as a "happy hour."
594 (e) The sale or service of more than one alcoholic beverage for the price of a single
595 alcoholic beverage is prohibited.
596 (f) An on-premise banquet licensee may not engage in a public promotion involving or
597 offering free alcoholic beverages to the general public.
598 (10) Alcoholic beverages may not be purchased for an attendee by:
599 (a) the on-premise banquet licensee; or
600 (b) any employee or agent of the on-premise banquet licensee.
601 (11) An attendee of a banquet may not bring any alcoholic beverage into or onto, or
602 remove any alcoholic beverage from the premises of a banquet.
603 (12) (a) Except as otherwise provided in this title, the sale and service of alcoholic
604 beverages by an on-premise banquet licensee at a banquet shall be made only for consumption
605 at the location of the banquet.
606 (b) The host of a banquet, an attendee, or any other person other than the on-premise
607 banquet licensee or its employees, may not remove any alcoholic beverage from the premises
608 of the banquet.
609 (13) An on-premise banquet licensee employee shall remain at the banquet at all times
610 when alcoholic beverages are being sold, served, or consumed at the banquet.
611 (14) (a) An on-premise banquet licensee may not leave any unsold alcoholic beverages
612 at the banquet following the conclusion of the banquet.
613 (b) At the conclusion of a banquet, the on-premise banquet licensee or its employees,
614 shall:
615 (i) destroy any opened and unused alcoholic beverages that are not saleable, under
616 conditions established by the department; and

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

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

619 (B) unopened containers of alcoholic beverages.

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

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

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

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

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

629 (a) consume an alcoholic beverage; or

630 (b) be intoxicated.

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

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

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

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

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

642 (b) employing or using the services of any person to mingle with the patrons while the
643 person is unclothed or in attire, costume, or clothing described in Subsection (19)(a);

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

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

648 (e) permitting any person to use artificial devices or inanimate objects to depict any of
649 the prohibited activities described in this Subsection (19);

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

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

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

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

658 (iii) scenes wherein artificial devices or inanimate objects are used to depict, or
659 drawings are used to portray, any of the prohibited activities described in this Subsection (19);

660 or

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

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

664 (21) (a) Although live entertainment is permitted at a banquet, an on-premise banquet
665 licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law,
666 including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the
667 touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of
668 the pubic hair, anus, vulva, or genitals.

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

671 (22) An on-premise banquet licensee may not engage in or permit any form of
672 gambling, or have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
673 Part 11, Gambling, on the premises of the:

674 (a) hotel;

675 (b) resort facility;

676 (c) sports center; or

677 (d) convention center.

678 (23) (a) An on-premise banquet licensee shall maintain accounting and such other

679 records and documents as the commission or department may require.

680 (b) An on-premise banquet licensee or person acting for the on-premise banquet
681 licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the
682 entries in any of the books of account or other documents of the on-premise banquet licensee
683 required to be made, maintained, or preserved by this title or the rules of the commission for
684 the purpose of deceiving the commission or department, or any of their officials or employees,
685 is subject to:

686 (i) the suspension or revocation of the on-premise banquet license; and

687 (ii) possible criminal prosecution under Chapter 12, Criminal Offenses.

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

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

694 (i) an authorized representative of the commission or the department; or

695 (ii) a law enforcement officer.

696 [~~24~~] (25) An on-premise banquet licensee shall maintain at least 50% of its total
697 annual banquet gross receipts from the sale of food, not including:

698 (a) mix for alcoholic beverages; and

699 (b) charges in connection with the service of alcoholic beverages.

700 [~~25~~] (26) A person may not transfer an on-premise banquet license from one business
701 location to another without prior written approval of the commission.

702 [~~26~~] (27) (a) An on-premise banquet licensee may not sell, transfer, assign, exchange,
703 barter, give, or attempt in any way to dispose of the license to any other person, whether for
704 monetary gain or not.

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

707 [~~27~~] (28) (a) Room service of alcoholic beverages to a guest room of a hotel or resort
708 facility shall be provided in person by an on-premise banquet licensee employee only to an
709 adult guest in the guest room.

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

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

713 Section 5. Section **32A-12-212** is amended to read:

714 **32A-12-212. Unlawful possession -- Exceptions.**

715 (1) A person may not have or possess within this state any liquor unless authorized by
716 this title or the rules of the commission, except that:

717 (a) a person who clears United States Customs when entering this country may have or
718 possess for personal consumption and not for sale or resale, a maximum of two liters of liquor
719 purchased from without the United States;

720 (b) a person who moves the person's residence to this state from outside of this state
721 may have or possess for personal consumption and not for sale or resale, any liquor previously
722 purchased outside the state and brought into this state during the move, if:

723 (i) the person first obtains department approval prior to moving the liquor into the
724 state;

725 (ii) the department affixes the official state label to the liquor; and

726 (iii) the person pays the department a reasonable administrative handling fee as
727 determined by the commission; [~~or~~]

728 (c) a person who as a beneficiary inherits as part of an estate liquor that is located
729 outside the state, may have or possess the liquor and transport or cause the liquor to be
730 transported into the state if:

731 (i) the person first obtains department approval prior to moving the liquor into the
732 state;

733 (ii) the person provides sufficient documentation to the department to establish the
734 person's legal right to the liquor as a beneficiary;

735 (iii) the department affixes the official state label to the liquor; and

736 (iv) the person pays the department a reasonable administrative handling fee as
737 determined by the commission[~~-~~]; or

738 (d) a person may transport, have, or possess liquor if:

739 (i) the person transports, has, or possesses the liquor:

740 (A) for personal household use and consumption; and

- 741 (B) not for:
 742 (I) sale;
 743 (II) resale;
 744 (III) gifting to another; or
 745 (IV) consumption on a premise licensed by the commission;
 746 (ii) the liquor is purchased from a store or outlet on a military installation; and
 747 (iii) the maximum amount the person transports, has, or possesses under this

748 Subsection (1)(d) is:

- 749 (A) two liters of:
 750 (I) spirituous liquor;
 751 (II) wine; or
 752 (III) a combination of spirituous liquor and wine; and
 753 (B) one case of heavy beer that does not exceed 288 ounces.
 754 (2) (a) Approval under Subsection (1)(b) may be obtained by a person who:
 755 (i) is transferring the person's permanent residence to this state; or
 756 (ii) maintains separate residences both in and out of this state.
 757 (b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more
 758 than once.

759 Section 6. Section **32A-12-301** is amended to read:

760 **32A-12-301. Operating without a license or permit.**

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

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

772 Section 7. Section **63-55b-132** is amended to read:
773 **63-55b-132. Repeal dates -- Title 32A.**
774 [~~Title 32A, Chapter 4, Part 4, On-Premise Banquet License is repealed July 1, 2005.~~]
775 Section 8. **Repealer.**
776 This bill repeals:
777 Section **32A-4-407, Report on pilot program.**

Legislative Review Note
as of 2-2-05 6:50 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0065

Alcoholic Beverage Control Amendments

08-Feb-05

5:18 PM

State Impact

Fiscal impacts can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst