

ALCOHOL BEVERAGE CONTROL AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies powers and duties of the commission;
- ▶ addresses adjudicative proceedings including:
 - clarifying the relationship of proceedings to the Administrative Procedures Act;
 - allowing the commission to have the director prepare, issue, and cause to be served final written orders;
 - addressing holders of a certificate of approval; and
 - addressing judicial review procedures;
- ▶ amends the number of certain licenses that may be issued by the commission in relationship to the state's population;
- ▶ addresses factors the commission shall consider before granting certain permits;
- ▶ modifies provision prohibiting operating without a license or permit;
- ▶ modifies the Administrative Procedures Act to clarify that applications for package agencies, licenses, and permits filed under the Alcoholic Beverage Control Act are not requests for agency action;
- ▶ removes out-of-date language; and
- ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34 **32A-1-107**, as last amended by Chapter 268, Laws of Utah 2004
- 35 **32A-1-119**, as last amended by Chapter 314, Laws of Utah 2003
- 36 **32A-1-120**, as renumbered and amended by Chapter 23, Laws of Utah 1990
- 37 **32A-4-101**, as last amended by Chapters 292 and 314, Laws of Utah 2003
- 38 **32A-4-302**, as enacted by Chapter 314, Laws of Utah 2003
- 39 **32A-5-101**, as last amended by Chapters 292 and 314, Laws of Utah 2003
- 40 **32A-7-104**, as last amended by Chapter 314, Laws of Utah 2003
- 41 **32A-10-201**, as last amended by Chapters 292 and 314, Laws of Utah 2003
- 42 **32A-10-304**, as enacted by Chapter 314, Laws of Utah 2003
- 43 **32A-12-301**, as last amended by Chapter 152, Laws of Utah 2005
- 44 **63-46b-3**, as last amended by Chapter 138, Laws of Utah 2001

45

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

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

48 **32A-1-107. Powers and duties of the commission.**

49 (1) The commission shall:

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

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

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

53 (i) granting, denying, suspending, or revoking permits, licenses, certificates of
54 approval, and package agencies;

55 (ii) controlling liquor merchandise inventory including:

56 (A) listing and delisting products;

57 (B) the procedures for testing new products;

58 (C) purchasing policy;

- 59 (D) turnover requirements for regularly coded products to be continued; and
- 60 (E) the disposition of discontinued, distressed, or unsaleable merchandise; and
- 61 (iii) determining the location of state stores, package agencies, and outlets;
- 62 (d) decide within the limits and under the conditions imposed by this title, the number
- 63 and location of state stores, package agencies, and outlets established in the state;
- 64 (e) issue, grant, deny, suspend, revoke, or not renew the following permits, licenses,
- 65 certificates of approval, and package agencies for the purchase, sale, storage, service,
- 66 manufacture, distribution, and consumption of alcoholic products:
- 67 (i) package agencies;
- 68 (ii) restaurant licenses;
- 69 (iii) airport lounge licenses;
- 70 (iv) limited restaurant licenses;
- 71 (v) [~~beginning on July 1, 2003 and ending June 30, 2005;~~] on-premise banquet
- 72 licenses;
- 73 (vi) private club licenses;
- 74 (vii) on-premise beer retailer licenses;
- 75 (viii) temporary special event beer permits;
- 76 (ix) special use permits;
- 77 (x) single event permits;
- 78 (xi) manufacturing licenses;
- 79 (xii) liquor warehousing licenses; [~~and~~]
- 80 (xiii) beer wholesaling licenses; and
- 81 (xiv) out-of-state brewer certificates of approval;
- 82 (f) fix prices at which liquors are sold that are the same at all state stores, package
- 83 agencies, and outlets;
- 84 (g) issue and distribute price lists showing the price to be paid by purchasers for each
- 85 class, variety, or brand of liquor kept for sale by the department;
- 86 (h) (i) require the director to follow sound management principles; and
- 87 (ii) require periodic reporting from the director to ensure that:
- 88 (A) sound management principles are being followed; and
- 89 (B) policies established by the commission are being observed;

90 (i) (i) receive, consider, and act in a timely manner upon all reports, recommendations,
91 and matters submitted by the director to the commission[-]; and

92 (ii) do all things necessary to support the department in properly performing the
93 department's duties and responsibilities;

94 (j) obtain temporarily and for special purposes the services of experts and persons
95 engaged in the practice of a profession or who possess any needed skills, talents, or abilities if:

96 (i) considered expedient; and

97 (ii) approved by the governor;

98 (k) prescribe the duties of departmental officials authorized to ~~[issue]~~ assist the
99 commission in issuing permits ~~[and]~~, licenses, certificates of approval, and package agencies
100 under this title;

101 (l) prescribe, consistent with this title, the fees payable for:

102 (i) permits, licenses, certificates of approval, and package agencies issued under this
103 title[-]; or ~~[for]~~

104 (ii) anything done or permitted to be done under this title;

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

107 (n) make rules governing the credit terms of beer sales to retailers within the state;
108 ~~[and]~~

109 (o) require that each ~~[state store, package agency, licensee, and permittee]~~ of the
110 following, where required in this title, display in a prominent place a sign in large letters
111 stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is
112 prosecuted aggressively in Utah.";

113 (i) a state store;

114 (ii) a permittee;

115 (iii) a licensee; and

116 (iv) a package agency; and

117 (p) subject to Subsection (4) and as provided in this title, impose fines against:

118 (i) a permittee, licensee, certificate holder, or package agent described in Subsection
119 (1)(e); or

120 (ii) any officer, employee, or agent of a permittee, licensee, certificate holder, or

121 package agent described in Subsection (1)(p)(i).

122 (2) The power of the commission to do the following is plenary, except as otherwise
 123 provided by this title, and not subject to review:

124 (a) establish state stores~~[, to];~~

125 (b) create package agencies ~~[and];~~

126 (c) grant authority to operate package agencies~~[-];~~ and ~~[to]~~

127 (d) grant or deny ~~[licenses and permits is plenary, except as otherwise provided by this~~
 128 ~~title, and is not subject to review]~~ permits, licenses, and certificates of approvals.

129 (3) The commission may appoint qualified hearing ~~[officers]~~ examiners to conduct any
 130 suspension or revocation hearings required by law.

131 (4) (a) In any case where the commission is given the power to suspend any permit,
 132 license ~~[or permit], certificate of approval, or package agency~~ the commission may impose a
 133 fine in addition to or in lieu of suspension.

134 (b) Fines imposed may not exceed \$25,000 in the aggregate for:

135 (i) any single Notice of Agency Action~~[-];~~ or

136 (ii) a single action against a package agency.

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

139 Section 2. Section **32A-1-119** is amended to read:

140 **32A-1-119. Adjudicative proceedings -- Procedure.**

141 (1) (a) As used in this section and Section 32A-1-120, "disciplinary proceeding" means
 142 an adjudicative proceeding permitted under this title:

143 (i) against:

144 (A) a permittee;

145 (B) a licensee;

146 (C) a manufacturer;

147 (D) a supplier;

148 (E) an importer;

149 (F) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;

150 or

151 (G) an officer, employee, or agent of a person listed in Subsections (1)(a)(i)(A) through

152 (F); and

153 (ii) that is brought on the basis of a violation of this title.

154 (b) As used in Subsection (4), "final adjudication" means an adjudication for which a
 155 final unappealable judgment or order has been issued.

156 ~~[(+)]~~ (2) (a) The [commission, director, and department] following may conduct
 157 adjudicative proceedings to inquire into any matter necessary and proper for the administration
 158 of this title and rules adopted under this title[-:];

159 (i) the commission;

160 (ii) a hearing examiner appointed by the commission for the purposes provided in
 161 Subsection 32A-1-107(3);

162 (iii) the director; and

163 (iv) the department.

164 ~~[(The commission, director, and department)]~~ Except as provided in this section or
 165 Section 32A-3-106, the following shall comply with the procedures and requirements of Title
 166 63, Chapter 46b, Administrative Procedures Act, in ~~[their]~~ adjudicative proceedings[-:];

167 (i) the commission;

168 (ii) a hearing examiner appointed by the commission;

169 (iii) the director; and

170 (iv) the department.

171 (c) Judicial review of a final commission order concerning a disciplinary proceeding is
 172 governed by Section 32A-1-120 and ~~§~~→ [not] ←~~§~~ Title 63, Chapter 46b, Administrative
 172a Procedures Act.

173 ~~[(e)]~~ (d) Except where otherwise provided by law, all adjudicative proceedings before
 174 the commission or its appointed hearing examiner shall be:

175 (i) video or audio recorded; and

176 (ii) subject to Subsection (5)(e), conducted in accordance with Title 52, Chapter 4,
 177 Open and Public Meetings.

178 ~~[(d)]~~ (e) All adjudicative proceedings concerning departmental personnel shall be
 179 conducted in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

180 (f) All hearings that are informational, fact gathering, and nonadversarial in nature
 181 shall be conducted in accordance with rules, policies, and procedures promulgated by the
 182 commission, director, or department.

183 ~~[(2)]~~ (3) (a) ~~[Disciplinary proceedings]~~ A disciplinary proceeding shall be conducted
184 under the authority of the commission, which is responsible for rendering a final decision and
185 order on any disciplinary matter.

186 (b) (i) Nothing in this section precludes the commission from appointing necessary
187 officers, including hearing examiners, from within or without the department, to administer the
188 disciplinary ~~[hearing]~~ proceeding process.

189 (ii) ~~[Officers and examiners]~~ A hearing examiner appointed by the commission:

190 (A) may conduct ~~[hearings]~~ a disciplinary proceeding hearing on behalf of the
191 commission; and

192 (B) shall submit to the commission a report including:

193 (I) findings of fact~~[-]~~;

194 (II) conclusions of law~~[-]~~; and

195 (III) recommendations ~~[to the commission]~~.

196 (c) Nothing in this section precludes the commission, after it has rendered its final
197 decision and order, from having the director prepare, issue, and cause to be served on the
198 parties the final written order on behalf of the commission.

199 ~~[(3)]~~ (4) (a) The department may initiate a disciplinary proceeding described in
200 Subsection ~~[(3)]~~ (4)(b) when the department receives:

201 (i) a report from any government agency, peace officer, examiner, or investigator
202 alleging that ~~[a permittee or licensee or any officer, employee, or agent of a permittee or~~
203 ~~licensee]~~ any person listed in Subsections (1)(a)(i)(A) through (G) has violated this title or the
204 rules of the commission;

205 (ii) a final adjudication of criminal liability against ~~[a permittee or licensee or any~~
206 ~~officer, employee, or agent of a permittee or licensee]~~ any person listed in Subsections
207 (1)(a)(i)(A) through (G) based on an alleged violation of this title; or

208 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
209 Liability, against ~~[a permittee or licensee or any officer, employee, or agent of a permittee or~~
210 ~~licensee]~~ any person listed in Subsections (1)(a)(i)(A) through (G) based on an alleged
211 violation of this title.

212 (b) The department may initiate a disciplinary ~~[proceedings]~~ proceeding if the
213 department receives an item listed in Subsection ~~[(3)]~~ (4)(a) to determine:

214 (i) whether [~~the permittee or licensee or any officer, employee, or agent of the~~
215 ~~permittee or licensee~~] any person listed in Subsections (1)(a)(i)(A) through (G) violated this
216 title or rules of the commission; and

217 (ii) if a violation is found, the appropriate sanction to be imposed.

218 [~~(c) For purposes of this Subsection (3), "final adjudication" means an adjudication for~~
219 ~~which a final unappealable judgment or order has been issued.~~]

220 [~~(4)~~ (5) (a) Unless waived by the respondent, [~~an adjudicative~~] a disciplinary
221 proceeding shall be held:

222 (i) if required by law;

223 (ii) before revoking or suspending any permit [~~or~~], license, or certificate of approval
224 issued under this title; or

225 (iii) before imposing a fine against [~~∴~~] any person listed in Subsections (1)(a)(i)(A)
226 through (G).

227 [~~(A) a permittee;~~]

228 [~~(B) a licensee; or~~]

229 [~~(C) any officer, employee, or agent of a permittee or licensee.~~]

230 (b) Inexcusable failure of a respondent to appear at a scheduled [~~evidentiary hearing~~]
231 disciplinary proceeding hearing after receiving proper notice is an admission of the charged
232 violation.

233 (c) The validity of [~~any hearing~~] a disciplinary proceeding is not affected by the failure
234 of any person to attend or remain in attendance.

235 (d) All [~~evidentiary~~] disciplinary proceeding hearings shall be presided over by the
236 commission or an appointed hearing examiner.

237 (e) A disciplinary proceeding hearing may be closed only after the commission or
238 hearing examiner makes a written finding that the public interest in an open hearing is clearly
239 outweighed by factors enumerated in the closure order.

240 (f) (i) The commission or its hearing examiner as part of a disciplinary proceeding
241 hearing may:

242 (A) administer oaths or affirmations[;];

243 (B) take evidence[;];

244 (C) take depositions within or without this state[;]; and

245 (D) require by subpoena from any place within this state;

246 (I) the testimony of any person at a hearing[;]; and

247 (II) the production of any books, records, papers, contracts, agreements, documents, or
248 other evidence considered relevant to the inquiry.

249 [~~(i) Persons~~] (ii) A person subpoenaed in accordance with this Subsection (5)(f) shall
250 testify and produce any books, papers, documents, or tangible things as required in the
251 subpoena.

252 [~~(ii)~~] (iii) Any witness subpoenaed or called to testify or produce evidence who claims
253 a privilege against self-incrimination may not be compelled to testify, but the commission or
254 the hearing examiner shall file a written report with the county attorney or district attorney in
255 the jurisdiction where the privilege was claimed or where the witness resides setting forth the
256 circumstance of the claimed privilege.

257 [~~(iii)~~] (iv) (A) A person is not excused from obeying a subpoena without just cause.

258 (B) Any district court within the judicial district in which a person alleged to be guilty
259 of willful contempt of court or refusal to obey a subpoena is found or resides, upon application
260 by the party issuing the subpoena, may issue an order requiring the person to:

261 (I) appear before the issuing party[;]; and [~~to~~]

262 (II) (Aa) produce documentary evidence if so ordered[;]; or [~~to~~]

263 (Bb) give evidence regarding the matter in question.

264 (C) Failure to obey an order of the court may be punished by the court as contempt.

265 (g) (i) In all [~~cases~~] disciplinary proceeding hearings heard by a hearing examiner, the
266 hearing examiner shall prepare a report required by Subsection (3)(b)(ii) to the commission.

267 (ii) The report required by Subsection (3)(b)(ii) and this Subsection (5)(g) may not
268 recommend a penalty more severe than that initially sought by the department in the notice of
269 [~~violation~~] agency action.

270 (iii) A copy of the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
271 shall be served upon the respective parties[~~, and the~~].

272 (iv) The respondent shall be given reasonable opportunity to file any written objections
273 to the report required by Subsection (3)(b)(ii) and this Subsection (5)(g) before final
274 commission action.

275 (h) In all cases heard by the commission, it shall issue its final decision and order in

276 accordance with Subsection (3).

277 ~~[(5)]~~ (6) (a) The commission shall:

278 (i) render a final decision and ~~[issue a written]~~ order on any disciplinary action~~[:]~~; and
279 ~~[serve a copy]~~

280 (ii) cause its final order to be prepared in writing, issued, and served on all parties.

281 (b) Any order of the commission is considered final on the date the order becomes
282 effective.

283 (c) If the commission is satisfied that a ~~[permittee, licensee, or any officer, employee,~~
284 ~~or agent of a permittee or licensee]~~ a person listed in Subsections (1)(a)(i)(A) through (G) has
285 committed a violation of this title or the commission's rules, in accordance with Title 63,
286 Chapter 46b, Administrative Procedures Act, the commission may:

287 (i) suspend or revoke the permit ~~[or the]~~, license, or certificate of approval;

288 (ii) impose a fine against ~~[:]~~ a person listed in Subsections (1)(a)(i)(A) through (G);
289 ~~[(A) the permittee;]~~

290 ~~[(B) the licensee; or]~~

291 ~~[(C) any officer, employee, or agent of a permittee or licensee;]~~

292 (iii) assess the administrative costs of any hearing to the permittee ~~[or]~~, the licensee, or
293 certificate holder; or

294 (iv) any combination of Subsections ~~[(5)]~~ (6)(c)(i) through (iii).

295 (d) ~~[(i)]~~ A fine imposed in accordance with this Subsection ~~[(5) may not exceed~~
296 ~~\$25,000 in the aggregate for any single notice of agency action]~~ (6) is subject to Subsections
297 32A-1-107(1)(p) and (4).

298 ~~[(ii) The commission shall, by rule, establish a schedule of fines specifying the range of~~
299 ~~fines for each violation of this title or commission rules.]~~

300 (e) (i) If a permit or license is suspended under this Subsection ~~[(5)]~~ (6), a sign
301 provided by the department shall be prominently posted:

302 (A) during the suspension;

303 (B) by the permittee or licensee; and

304 (C) at the entrance of the premises of the permittee or licensee.

305 (ii) The sign required by this Subsection ~~[(5)]~~ (6)(e) shall:

306 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the

307 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be
308 sold, served, furnished, or consumed on these premises during the period of suspension."; and

309 (B) include the dates of the suspension period.

310 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required
311 to be posted under this Subsection [~~(5)~~] (6)(e) during the suspension period.

312 (f) If [~~the~~] a permit or license is revoked, the commission may order the revocation of
313 any compliance bond posted by the permittee or licensee.

314 (g) Any permittee or licensee whose permit or license is revoked may not reapply for a
315 permit or license under this title for three years from the date on which the permit or license
316 [~~was~~] is revoked.

317 (h) All costs assessed by the commission shall be transferred into the General Fund in
318 accordance with Section 32A-1-113.

319 [~~(6)~~] (7) (a) In addition to any action taken against a permittee [~~or~~], licensee, or
320 certificate holder under this section, the department may initiate disciplinary action against an
321 officer, employee, or agent of a permittee [~~or~~], licensee, or certificate holder.

322 (b) If any officer, employee, or agent is found to have violated this title, the
323 commission may prohibit the officer, employee, or agent from serving, selling, distributing,
324 manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of
325 employment with any permittee [~~or~~], licensee, or certificate holder under this title for a period
326 determined by the commission.

327 [~~(7)~~] (8) (a) The department may initiate a disciplinary [~~action~~] proceeding for an
328 alleged violation of this title or the rules of the commission against:

329 (i) a manufacturer, supplier, or importer of alcoholic beverages; or

330 (ii) an officer, employee, agent, or representative of a person listed in Subsection [~~(7)~~]
331 (8)(a)(i).

332 (b) (i) If the commission makes the finding described in Subsection [~~(7)~~] (8)(b)(ii), the
333 commission may, in addition to other penalties prescribed by this title, order:

334 (A) the removal of the manufacturer's, supplier's, or importer's products from the
335 department's sales list; and

336 (B) a suspension of the department's purchase of the products described in Subsection
337 [~~(7)~~] (8)(b)(i)(A) for a period determined by the commission.

338 (ii) The commission may take the action described in Subsection ~~[(7)]~~ (8)(b)(i) if:

339 (A) any manufacturer, supplier, or importer of liquor, wine, or heavy beer or its officer,
340 employee, agent, or representative violates any provision of this title; and

341 (B) the manufacturer, supplier, or importer:

342 (I) directly committed the violation; or

343 (II) solicited, requested, commanded, encouraged, or intentionally aided another to
344 engage in the violation.

345 (9) (a) The department may initiate a disciplinary proceeding against a brewer holding
346 a certificate of approval under Section 32A-8-101 for an alleged violation of this title or the
347 rules of the commission.

348 (b) If the commission makes a finding that the brewer holding a certificate of approval
349 violates this title or rules of the commission, the commission may take any action against the
350 brewer holding a certificate of approval that the commission could take against a licensee
351 including:

352 (i) suspension or revocation of the certificate of approval; and

353 (ii) imposition of a fine.

354 Section 3. Section **32A-1-120** is amended to read:

355 **32A-1-120. Judicial review of disciplinary proceeding -- Stay of commission**
356 **order.**

357 (1) (a) In a disciplinary proceeding, as defined in Section 32A-1-119, any [party]
358 respondent named in a final order of the commission may seek judicial review pursuant to ~~§~~ **→ [this**
359 **section:] Title 63, Chapter 46b, Administrative Procedures Act, and Subsection (2).** ~~←~~ **§**

360 ~~[(2) (a) The findings of the commission on questions of fact are final and are not~~
361 ~~subject to review.]~~

362 ~~[(b) "Questions of fact" include ultimate facts and findings and conclusions of the~~
363 ~~commission on reasonableness and discretion.]~~

364 ~~[(3) After the hearing, the reviewing court shall enter judgment affirming or setting~~
365 ~~aside the order of the commission.]~~

366 **§** ~~→ [(b) Judicial review of a final commission order concerning a disciplinary proceeding is~~
367 ~~governed by this section and not Title 63, Chapter 46b, Administrative Procedures Act.~~

368 ~~— [(2) The reviewing court of a final order described in Subsection (1) shall:]~~ ~~←~~ **§**

369 ~~§→ [(a) review on the record the commission's final order for abuse of discretion; and~~
370 ~~—— (b) (i) affirm the commission's final order if the reviewing court finds that the~~
371 ~~commission did not abuse its discretion; or~~
372 ~~—— (ii) remand the case to the commission for the commission to correct an error if the~~
373 ~~reviewing court finds that the commission abused its discretion.~~
374 ~~—— [(4)](3) (2) ←§~~ (a) The fact that a petition is pending in a reviewing court does not stay or
375 suspend the operation of any final order of the commission ~~§→~~ **Notwithstanding Title 63, Chapter**
375a **46a, Administrative Procedures Act, the stay or suspension of the operation of a final order of**
375b **the commission is governed by this Subsection (2).** ←§ .
376 (b) [~~The~~] Subject to Subsections ~~§→ [(3)] (2) ←§~~ (c) and (d), the reviewing court may
376a order that the
377 commission's final order be stayed or suspended during the appeal.
378 (c) Before issuing an order staying or suspending the commission's final order, the
379 reviewing court shall:
380 (i) give three days' notice to the parties; and
381 (ii) hold a hearing to receive argument and evidence on whether or not the
382 commission's final order should be stayed or suspended.
383 (d) If the reviewing court decides to stay or suspend the commission's final order, it
384 shall make a written finding that:
385 (i) great or irreparable damage would result to the petitioner absent the stay or
386 suspension;
387 (ii) specifies the nature of the damage; and
388 (iii) is based upon evidence submitted to the court and identified by reference.
389 Section 4. Section **32A-4-101** is amended to read:
390 **32A-4-101. Commission's power to grant licenses -- Limitations.**
391 (1) Before a restaurant may sell or allow the consumption of liquor on its premises, it
392 shall first obtain a license from the commission as provided in this part.
393 (2) The commission may issue restaurant liquor licenses for the purpose of establishing
394 restaurant liquor outlets at places and in numbers it considers proper for the storage, sale, and
395 consumption of liquor on premises operated as public restaurants.
396 (3) (a) [(†)] Subject to the other provisions of this Subsection (3), the total number of
397 restaurant liquor licenses may not at any time aggregate more than that number determined [as
398 follows:] by dividing the population of the state by 5,200.
399 [~~(A) until October 31, 2003, by dividing the population of the state by 4,500; and]~~

400 ~~[(B) on or after November 1, 2003, by dividing the population of the state by 5,000;]~~

401 ~~[(ii) If the total number of restaurant liquor licenses in effect on October 31, 2003,~~

402 ~~equals or exceeds the limitation of Subsection (3)(a)(i);]~~

403 ~~[(A) a license that is in effect on October 31, 2003;]~~

404 ~~[(F) is not invalidated by Subsection (3)(a)(i); and]~~

405 ~~[(H) may be renewed in accordance with this chapter; and]~~

406 ~~[(B) the commission may not grant a new restaurant liquor license until such time as~~

407 ~~the total number of restaurant liquor licenses granted under this chapter is less than the~~

408 ~~limitation of Subsection (3)(a)(i).]~~

409 (b) For purposes of this Subsection (3), population shall be determined by:

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

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

412 governments.

413 (c) (i) The commission may issue seasonal restaurant liquor licenses established in

414 areas the commission considers necessary.

415 (ii) A seasonal restaurant liquor license shall be for a period of six consecutive months.

416 (iii) A restaurant liquor license issued for operation during a summer time period is

417 known as a "Seasonal A" restaurant liquor license. The period of operation for a "Seasonal A"

418 restaurant liquor license shall:

419 (A) begin on May 1; and

420 (B) end on October 31.

421 (iv) A restaurant liquor license issued for operation during a winter time period is

422 known as a "Seasonal B" restaurant liquor license. The period of operation for a "Seasonal B"

423 restaurant liquor license shall:

424 (A) begin on November 1; and

425 (B) end on April 30.

426 (v) In determining the number of restaurant liquor licenses that the commission may

427 issue under this section:

428 (A) a seasonal license is counted as 1/2 of one restaurant liquor license; and

429 (B) each "Seasonal A" license shall be paired with a "Seasonal B" license.

430 (d) (i) If the location, design, and construction of a hotel may require more than one

431 restaurant liquor sales location within the hotel to serve the public convenience, the
432 commission may authorize the sale of liquor at as many as three restaurant locations within the
433 hotel under one license if:

434 (A) the hotel has a minimum of 150 guest rooms; and [if]

435 (B) all locations under the license are:

436 (I) within the same hotel facility; and

437 (II) on premises that are managed or operated and owned or leased by the licensee.

438 (ii) Facilities other than hotels shall have a separate restaurant liquor license for each
439 restaurant where liquor is sold.

440 (4) (a) The premises of a restaurant liquor license may not be established within 600
441 feet of any public or private school, church, public library, public playground, or park, as
442 measured by the method in Subsection (5).

443 (b) The premises of a restaurant liquor license may not be established within 200 feet of
444 any public or private school, church, public library, public playground, or park, measured in a
445 straight line from the nearest entrance of the proposed outlet to the nearest property boundary
446 of the public or private school, church, public library, public playground, or park.

447 (c) The restrictions contained in Subsections (4)(a) and (b) govern unless one of the
448 following exemptions applies:

449 (i) with respect to the establishment of a restaurant liquor license in any location, the
450 commission may authorize a variance to reduce the proximity requirements of Subsection
451 (4)(a) or (b) if:

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

453 (B) alternative locations for establishing a restaurant liquor license in the community
454 are limited;

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

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

461 (ii) with respect to the premises of a restaurant liquor license issued by the commission

462 that undergoes a change of ownership, the commission may waive or vary the proximity
463 requirements of Subsection (4)(a) or (b) in considering whether to grant a restaurant liquor
464 license to the new owner of the premises if:

465 (A) the premises previously received a variance reducing the proximity requirements of
466 Subsection (4)(a) or (b); or

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

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

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

476 (b) For purposes of this Subsection (6), "educational facility" includes:

477 (i) a nursery school;

478 (ii) an infant day care center; and

479 (iii) a trade and technical school.

480 Section 5. Section **32A-4-302** is amended to read:

481 **32A-4-302. Commission's power to grant licenses -- Limitations.**

482 (1) A restaurant wanting to sell and allow the consumption of only wine, heavy beer,
483 and beer on its premises, but not spirituous liquor, [~~must~~] shall obtain a limited restaurant
484 license from the commission as provided in this part before selling or allowing the
485 consumption of wine, heavy beer, or beer on its premises.

486 (2) (a) Subject to the other provisions of this section, the commission may issue limited
487 restaurant licenses for the purpose of establishing limited restaurant outlets at places and in
488 numbers the commission considers proper for the storage, sale, and consumption of wine,
489 heavy beer, and beer on premises operated as public restaurants.

490 (b) The total number of limited restaurant licenses issued under this part may not at any
491 time aggregate more than that number determined by dividing the population of the state by
492 [~~13,000~~] 11,000.

493 (c) For purposes of this Subsection (2), population shall be determined by:

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

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

496 governments.

497 (3) (a) (i) The commission may issue seasonal limited restaurant licenses established in
498 areas the commission considers necessary.

499 (ii) A seasonal limited restaurant license shall be for a period of six consecutive
500 months.

501 (b) (i) A limited restaurant license issued for operation during a summer time period is
502 known as a "Seasonal A" limited restaurant license. The period of operation for a "Seasonal A"
503 limited restaurant license shall:

504 (A) begin on May 1; and

505 (B) end on October 31.

506 (ii) A limited restaurant license issued for operation during a winter time period is
507 known as a "Seasonal B" limited restaurant license. The period of operation for a "Seasonal B"
508 limited restaurant license shall:

509 (A) begin on November 1; and

510 (B) end on April 30.

511 (iii) In determining the number of limited restaurant licenses that the commission may
512 issue under this section:

513 (A) a seasonal limited restaurant license is counted as 1/2 of one limited restaurant
514 license; and

515 (B) each "Seasonal A" limited restaurant license shall be paired with a "Seasonal B"
516 limited restaurant license.

517 (c) If the location, design, and construction of a hotel may require more than one
518 limited restaurant sales location within the hotel to serve the public convenience, the
519 commission may authorize the sale of wine, heavy beer, and beer at as many as three limited
520 restaurant locations within the hotel under one license if:

521 (i) the hotel has a minimum of 150 guest rooms; and

522 (ii) all locations under the license are:

523 (A) within the same hotel facility; and

524 (B) on premises that are:

525 (I) managed or operated by the licensee; and

526 (II) owned or leased by the licensee.

527 (d) Facilities other than hotels shall have a separate limited restaurant license for each
528 restaurant where wine, heavy beer, and beer are sold.

529 (4) (a) The premises of a limited restaurant license may not be established within 600
530 feet of any public or private school, church, public library, public playground, or park, as
531 measured by the method in Subsection (5).

532 (b) The premises of a limited restaurant license may not be established within 200 feet
533 of any public or private school, church, public library, public playground, or park, measured in
534 a straight line from the nearest entrance of the proposed outlet to the nearest property boundary
535 of the public or private school, church, public library, public playground, or park.

536 (c) The restrictions contained in Subsections (4)(a) and (b) govern unless one of the
537 following exemptions applies:

538 (i) with respect to the establishment of a limited restaurant license in any location, the
539 commission may authorize a variance to reduce the proximity requirements of Subsection
540 (4)(a) or (b) if:

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

542 (B) alternative locations for establishing a limited restaurant license in the community
543 are limited;

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

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

550 (ii) with respect to the premises of any limited restaurant license issued by the
551 commission that undergoes a change of ownership, the commission may waive or vary the
552 proximity requirements of Subsections (4)(a) and (b) in considering whether to grant a limited
553 restaurant license to the new owner of the premises if:

554 (A) the premises previously received a variance reducing the proximity requirements of

555 Subsection (4)(a) or (b); or

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

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

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

565 (b) For purposes of this Subsection (6), "educational facility" includes:

566 (i) a nursery school;

567 (ii) an infant day care center; and

568 (iii) a trade and technical school.

569 Section 6. Section **32A-5-101** is amended to read:

570 **32A-5-101. Commission's power to license private clubs -- Limitations.**

571 (1) Before a private club may sell or allow the consumption of alcoholic beverages on
572 its premises, the private club shall first obtain a license from the commission as provided in
573 this chapter.

574 (2) The commission may grant private club licenses to social clubs, recreational,
575 athletic, or kindred associations that desire to maintain premises upon which alcoholic
576 beverages may be stored, sold, served, and consumed.

577 (3) At the time the commission grants a private club license the commission shall
578 designate whether the private club license qualifies as a class A, B, C, or D license as defined
579 in Subsections (3)(a) through (d).

580 (a) A "class A licensee" is a private club licensee that:

581 (i) meets the requirements of this chapter;

582 (ii) owns, maintains, or operates a substantial recreational facility in conjunction with a
583 club house such as:

584 (A) a golf course; or

585 (B) a tennis facility;

- 586 (iii) has at least 50% of the total membership having:
- 587 (A) full voting rights; and
- 588 (B) an equal share of the equity of the club; and
- 589 (iv) if there is more than one class of membership, has at least one class of membership
- 590 that entitles each member in that class to:
- 591 (A) full voting rights; and
- 592 (B) an equal share of the equity of the club.
- 593 (b) A "class B licensee" is a private club licensee that:
- 594 (i) meets the requirements of this chapter;
- 595 (ii) has no capital stock;
- 596 (iii) exists solely for:
- 597 (A) the benefit of its members and their beneficiaries; and
- 598 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
- 599 patriotic, or religious purpose for the benefit of its members or the public, carried on through
- 600 voluntary activity of its members in their local lodges;
- 601 (iv) has a representative form of government; and
- 602 (v) has a lodge system in which:
- 603 (A) there is a supreme governing body;
- 604 (B) subordinate to the supreme governing body are local lodges, however designated,
- 605 into which individuals are admitted as members in accordance with the laws of the fraternal;
- 606 (C) the local lodges are required by the laws of the fraternal to hold regular meetings at
- 607 least monthly; and
- 608 (D) the local lodges regularly engage in programs involving member participation to
- 609 implement the purposes of Subsection (3)(b)(iii).
- 610 (c) A "class C licensee" is a private club licensee that:
- 611 (i) meets the requirements of this chapter;
- 612 (ii) is a dining club, as determined by the commission in accordance with Subsection
- 613 (4)(~~b~~); and
- 614 (iii) maintains at least 50% of its total private club business from the sale of food, not
- 615 including:
- 616 (A) mix for alcoholic beverages; or

617 (B) service charges.

618 (d) A "class D licensee" is a private club licensee that:

619 (i) meets the requirements of this chapter; and

620 (ii) (A) does not meet the requirements of a class A, B, or C license; or

621 (B) seeks to qualify as a class D licensee.

622 [~~(4)(a)(i) Notwithstanding Subsection (3), for a private club license in effect on May~~
623 ~~5, 2003, the commission shall designate whether that license qualifies as a class A, B, C, or D~~
624 ~~license as defined in Subsection (3) at the time the license is renewed.~~]

625 [~~(ii) Until the class of license is designated under Subsection (4)(a)(i), the private club~~
626 ~~licensee holding a license described in Subsection (4)(a)(i) shall operate under the restrictions~~
627 ~~of the part applicable to the class of license for which the private club licensee qualifies.~~]

628 [~~(b)~~ (4) In determining whether an applicant is a dining club under Subsection (3)(c),
629 the commission:

630 [~~(i)~~ (a) shall determine whether the applicant maintains at least 50% of its total private
631 club business from the sale of food, not including:

632 [~~(A)~~ (i) mix for alcoholic beverages;

633 [~~(B)~~ (ii) service charges; or

634 [~~(C)~~ (iii) membership and visitor card fees; and

635 [~~(i)~~ (b) may consider:

636 [~~(A)~~ (i) the square footage and seating capacity of the applicant;

637 [~~(B)~~ (ii) what portion of the square footage and seating capacity will be used for a
638 dining area in comparison to the portion that will be used as a bar area;

639 [~~(C)~~ (iii) whether full meals including appetizers, main courses, and desserts are
640 served;

641 [~~(D)~~ (iv) whether the applicant will maintain adequate on-premise culinary facilities to
642 prepare full meals, except an applicant that is located on the premise of a hotel or resort facility
643 may use the culinary facilities of the hotel or resort facility;

644 [~~(E)~~ (v) whether the entertainment provided at the club is suitable for minors; and

645 [~~(F)~~ (vi) the club management's ability to manage and operate a dining club including:

646 [~~(i)~~ (A) management experience;

647 [~~(ii)~~ (B) past dining club or restaurant management experience; and

648 [~~(H)~~] (C) the type of management scheme employed by the private club.

649 (5) (a) A private club or any officer, director, managing agent, or employee of a private
650 club may not store, sell, serve, or permit consumption of alcoholic beverages upon the premises
651 of the club, under a permit issued by local authority or otherwise, unless a private club license
652 has been first issued by the commission.

653 (b) Violation of this Subsection (5) is a class B misdemeanor.

654 (6) (a) Subject to the other provisions of this Subsection (6), the commission may issue
655 private club licenses at places and in numbers as it considers necessary.

656 (b) The total number of private club licenses may not at any time aggregate more than
657 that number determined by dividing the population of the state by [~~7,000~~] 7,300.

658 (c) For purposes of this Subsection (6), population shall be determined by:

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

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

662 (d) (i) The commission may issue seasonal private club licenses to be established in
663 areas the commission considers necessary.

664 (ii) A seasonal private club license shall be for a period of six consecutive months.

665 (iii) A private club license issued for operation during a summer time period is known
666 as a "Seasonal A" private club license. The period of operation for a "Seasonal A" club license
667 shall:

668 (A) begin on May 1; and

669 (B) end on October 31.

670 (iv) A private club license issued for operation during a winter time period is known as
671 a "Seasonal B" private club license. The period of operation for a "Seasonal B" club license
672 shall:

673 (A) begin on November 1; and

674 (B) end on April 30.

675 (v) In determining the number of private club licenses that the commission may issue
676 under this section:

677 (A) a seasonal private club license is counted as 1/2 of one private club license; and

678 (B) each "Seasonal A" license shall be paired with a "Seasonal B" license.

679 (e) (i) If the location, design, and construction of a hotel may require more than one
680 private club location within the hotel to serve the public convenience, the commission may
681 authorize as many as three private club locations within the hotel under one license if:

682 (A) the hotel has a minimum of 150 guest rooms; and [if]

683 (B) all locations under the license are:

684 (I) within the same hotel facility; and

685 (II) on premises which are managed or operated and owned or leased by the licensee.

686 (ii) Facilities other than hotels may not have more than one private club location under
687 a single private club license.

688 (7) (a) The premises of a private club license may not be established within 600 feet of
689 any public or private school, church, public library, public playground, or park, as measured by
690 the method in Subsection (8).

691 (b) The premises of a private club license may not be established within 200 feet of any
692 public or private school, church, public library, public playground, or park, measured in a
693 straight line from the nearest entrance of the proposed outlet to the nearest property boundary
694 of the public or private school, church, public library, public playground, or park.

695 (c) The restrictions contained in Subsections (7)(a) and (b) govern unless one of the
696 following exemptions applies:

697 (i) with respect to the establishment of a private club license within a city of the third,
698 fourth, or fifth class, a town, or the unincorporated area of a county, the commission may
699 authorize a variance to reduce the proximity requirements of Subsection (7)(a) or (b) if:

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

701 (B) alternative locations for establishing a private club license in the community are
702 limited;

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

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

709 (ii) with respect to the establishment of a private club license in any location, the

710 commission may authorize a variance to reduce the proximity requirements of Subsection
711 (7)(a) or (b) in relation to a church:

712 (A) if the local governing body of the church in question gives its written consent to
713 the variance;

714 (B) following a public hearing in the city, town, or county and where practical in the
715 neighborhood concerned; and

716 (C) after giving full consideration to all of the attending circumstances and the policies
717 stated in Subsections 32A-1-104(3) and (4); or

718 (iii) with respect to the premises of a private club license issued by the commission that
719 undergoes a change of ownership, the commission may waive or vary the proximity
720 requirements of Subsection (7)(a) or (b) in considering whether to grant a private club license
721 to the new owner of the premises if:

722 (A) the premises previously received a variance reducing the proximity requirements of
723 Subsection (7)(a) or (b); or

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

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

730 (9) (a) Nothing in this section prevents the commission from considering the proximity
731 of any educational, religious, and recreational facility, or any other relevant factor in reaching a
732 decision on whether to issue a private club license.

733 (b) For purposes of this Subsection (9), "educational facility" includes:

734 (i) a nursery school;

735 (ii) infant day care center; and

736 (iii) a trade and technical school.

737 (10) If requested by a private club licensee, the commission may approve a change in
738 the class of private club license in accordance with rules made by the commission.

739 Section 7. Section **32A-7-104** is amended to read:

740 **32A-7-104. Commission and department duties before granting permits.**

741 (1) (a) Before any single event permit may be granted by the commission, the
742 department shall:

743 (i) conduct an investigation[;];

744 (ii) gather information[;]; and

745 (iii) make recommendations to the commission as to whether or not a permit should be
746 granted.

747 (b) The department shall forward the information [~~shall be forwarded~~] and
748 recommendations described in Subsection (1)(a) to the commission to aid in [~~its~~] the
749 commission's determination.

750 (2) Before [~~issuing~~] granting any single event permit, the commission shall:

751 (a) determine that the applicant has complied with all basic qualifications and
752 requirements as provided by Sections 32A-7-102 and 32A-7-103;

753 (b) determine that the application is complete;

754 (c) consider the purpose of the organization or its local lodge, chapter, or other local
755 unit;

756 (d) consider the times, dates, location, estimated attendance, nature, and purpose of the
757 event;

758 (e) to minimize the risk of minors being sold or furnished alcohol or adults being
759 overserved alcohol at the event, assess the adequacy of control measures for:

760 (i) a large-scale public event where the estimated attendance is in excess of 1,000
761 people; or

762 (ii) for an outdoor public event; and

763 (f) consider any other factors or circumstances the commission considers necessary.

764 (3) (a) The commission shall determine the maximum amount that may be charged by
765 a permittee for an alcoholic beverage, including any set-up fee or other charge.

766 (b) The maximum amount that may be charged shall be set forth in the permit.

767 (4) Upon commission approval of any application and upon [~~issuance~~] the granting of a
768 single event permit, the department shall send copies of the approved application and the
769 permit to state and local law enforcement authorities before the scheduled event.

770 Section 8. Section **32A-10-201** is amended to read:

771 **32A-10-201. Commission's power to grant licenses -- Limitations.**

772 (1) Before any establishment may sell beer at retail for on-premise consumption, it
773 shall first obtain:

774 (a) an on-premise beer retailer license from the commission as provided in this part;
775 and

776 (b) (i) a license issued by the local authority, as provided in Section 32A-10-101, to
777 sell beer at retail for on-premise consumption; or

778 (ii) other written consent of the local authority to sell beer at retail for on-premise
779 consumption.

780 (2) (a) ~~[The]~~ Subject to the requirements of this section, the commission may issue
781 on-premise beer retailer licenses for the purpose of establishing on-premise beer retailer outlets
782 at places and in numbers as it considers proper for the storage, sale, and consumption of beer
783 on premises operated as on-premise beer retailer outlets.

784 (b) ~~[(i)]~~ Notwithstanding Subsection (2)(a), the total number of on-premise beer
785 retailer licenses that are taverns may not at any time aggregate more than that number
786 determined by dividing the population of the state by ~~[22,500]~~ 25,000.

787 ~~[(ii) If the total number of on-premise beer retailer licenses in effect on May 5, 2003,
788 that are taverns equals or exceeds the limitation of Subsection (2)(b)(i):]~~

789 ~~[(A) a license for a tavern that is in effect on May 5, 2003:]~~

790 ~~[(F) is not invalidated by Subsection (2)(b)(i); and]~~

791 ~~[(H) may be renewed in accordance with this chapter; and]~~

792 ~~[(B) the commission may not grant a new on-premise beer retailer license to a tavern
793 until such time as the total number of licenses granted to a tavern under this chapter is less than
794 the limitation of Subsection (2)(b)(i).]~~

795 ~~[(iii)]~~ (c) For purposes of this Subsection (2), the population of the state shall be
796 determined by:

797 ~~[(A)]~~ (i) the most recent United States decennial special census; or

798 ~~[(B)]~~ (ii) any other population determination made by the United States or state
799 governments.

800 ~~[(c)]~~ (d) (i) The commission may issue seasonal licenses for taverns established in
801 areas the commission considers necessary.

802 (ii) A seasonal license for taverns shall be for a period of six consecutive months.

803 (iii) An on-premise beer retailer license for a tavern issued for operation during a
804 summer time period is known as a "Seasonal A" on-premise beer retailer license for a tavern.
805 The period of operation for a "Seasonal A" on-premise beer retailer license for a tavern shall:

- 806 (A) begin on May 1; and
- 807 (B) end on October 31.

808 (iv) An on-premise beer retailer license for a tavern issued for operation during a
809 winter time period is known as a "Seasonal B" on-premise beer retailer license for a tavern.
810 The period of operation for a "Seasonal B" on-premise beer retailer license for a tavern shall:

- 811 (A) begin on November 1; and
- 812 (B) end on April 30.

813 (v) In determining the number of tavern licenses that the commission may issue under
814 this section:

815 (A) a seasonal on-premise beer retailer license for a tavern is counted as 1/2 of one
816 on-premise beer retailer license for a tavern; and

817 (B) each "Seasonal A" on-premise beer retailer license for a tavern shall be paired with
818 a "Seasonal B" on-premise beer retailer license for a tavern.

819 (3) (a) The premises of an on-premise beer retailer license may not be established
820 within 600 feet of any public or private school, church, public library, public playground, or
821 park, as measured by the method in Subsection (4).

822 (b) The premises of an on-premise beer retailer license may not be established within
823 200 feet of any public or private school, church, public library, public playground, or park,
824 measured in a straight line from the nearest entrance of the proposed outlet to the nearest
825 property boundary of the public or private school, church, public library, public playground, or
826 park.

827 (c) The restrictions of Subsections (3)(a) and (b) govern unless one of the following
828 exemptions applies:

829 (i) with respect to the establishment of an on-premise beer retailer license that operates
830 as a tavern within a city of the third, fourth, or fifth class, a town, or the unincorporated area of
831 a county, the commission may authorize a variance to reduce the proximity requirements of
832 Subsection (3)(a) or (b) if:

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

834 (B) alternative locations for establishing an on-premise beer retailer tavern license in
835 the community are limited;

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

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

842 (ii) with respect to the establishment of an on-premise beer retailer license that operates
843 as a tavern in any location, the commission may authorize a variance to reduce the proximity
844 requirements of Subsection (3)(a) or (b) in relation to a church:

845 (A) if the local governing body of the church in question gives its written consent to
846 the variance;

847 (B) following a public hearing in the city, town, or county and where practical in the
848 neighborhood concerned; and

849 (C) after giving full consideration to all of the attending circumstances and the policies
850 stated in Subsections 32A-1-104(3) and (4);

851 (iii) with respect to the establishment of an on-premise beer retailer license that does
852 not operate as a tavern in any location, the commission may authorize a variance that reduces
853 the proximity requirements of Subsection (3)(a) or (b) if:

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

855 (B) alternative locations for establishing an on-premise beer retailer license that does
856 not operate as a tavern in the community are limited;

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

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

863 (iv) with respect to any on-premise beer retailer license issued by the commission
864 before July 1, 1991, to an establishment that undergoes a change in ownership after that date,

865 the commission may waive or vary the proximity requirements of this Subsection (3) in
866 considering whether to grant an on-premise retailer beer license to the new owner; and

867 (v) with respect to the premises of an on-premise beer retailer license issued by the
868 commission that undergoes a change of ownership, the commission may waive or vary the
869 proximity requirements of Subsection (3)(a) or (b) in considering whether to grant an
870 on-premise beer retailer license to the new owner of the premises if:

871 (A) the premises previously received a variance from the proximity requirements of
872 Subsection (3)(a) or (b); or

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

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

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

882 (b) For purposes of this Subsection (5), "educational facility" includes:

883 (i) a nursery school;

884 (ii) an infant day care center; and

885 (iii) a trade and technical school.

886 Section 9. Section **32A-10-304** is amended to read:

887 **32A-10-304. Commission and department duties before granting permits.**

888 (1) (a) Before any temporary special event beer permit may be granted by the
889 commission, the department shall:

890 (i) conduct an investigation[;];

891 (ii) gather information[;]; and

892 (iii) make recommendations to the commission as to whether or not a permit should be
893 granted.

894 (b) The department shall forward the information and recommendations described in
895 Subsection (1)(a) to the commission to aid in the commission's determination.

896 (2) Before [~~issuing~~] granting any temporary special event beer permit, the commission
897 shall:

898 (a) determine that the applicant has complied with all basic qualifications and
899 requirements as provided by Sections 32A-10-302 and 32A-10-303;

900 (b) determine that the application is complete;

901 (c) consider the times, dates, location, estimated attendance, nature, and purpose of the
902 temporary special event;

903 (d) to minimize the risk of minors being sold or furnished alcohol or adults being
904 overserved alcohol at the temporary special event, assess the adequacy of control measures for:

905 (i) a large-scale public event where the estimated attendance is in excess of 1,000
906 people; or

907 (ii) an outdoor public event; and

908 (e) consider any other factors or circumstances the commission considers necessary.

909 (3) Upon commission approval of any application and upon [~~issuance~~] the granting of a
910 temporary special event beer permit, the department shall send copies of the approved
911 application and the permit to state and local law enforcement authorities before the scheduled
912 event.

913 Section 10. Section **32A-12-301** is amended to read:

914 **32A-12-301. Operating without a license or permit.**

915 (1) Except as provided by this title or the rules of the commission, a person may not
916 operate the following if that establishment allows patrons, customers, members, guests,
917 visitors, or other persons to purchase or consume alcoholic beverages on the premises:

918 [~~(1)~~] (a) a restaurant;

919 [~~(2)~~] (b) an airport lounge;

920 [~~(3)~~] (c) a private club;

921 [~~(4)~~] (d) an on-premise beer retailer outlet;

922 [~~(5)~~] (e) on-premise banquet premises; or

923 [~~(6)~~] (f) an establishment similar to one listed in Subsections (1)(a) through [~~(5)~~] (e).

924 (2) A person conducting an event or function that is open to the general public may not
925 directly or indirectly sell, offer to sell, or otherwise furnish alcoholic beverages to persons
926 attending the event or function without first obtaining a permit under this title.

927 (3) A person conducting a privately hosted event or private social function may not
928 directly or indirectly sell or offer to sell alcoholic beverages to persons attending the privately
929 hosted event or private social function without first obtaining a permit under this title.

930 Section 11. Section **63-46b-3** is amended to read:

931 **63-46b-3. Commencement of adjudicative proceedings.**

932 (1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings
933 shall be commenced by either:

934 (a) a notice of agency action, if proceedings are commenced by the agency; or

935 (b) a request for agency action, if proceedings are commenced by persons other than
936 the agency.

937 (2) A notice of agency action shall be filed and served according to the following
938 requirements:

939 (a) The notice of agency action shall be in writing, signed by a presiding officer, and
940 shall include:

941 (i) the names and mailing addresses of all persons to whom notice is being given by the
942 presiding officer, and the name, title, and mailing address of any attorney or employee who has
943 been designated to appear for the agency;

944 (ii) the agency's file number or other reference number;

945 (iii) the name of the adjudicative proceeding;

946 (iv) the date that the notice of agency action was mailed;

947 (v) a statement of whether the adjudicative proceeding is to be conducted informally
948 according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally
949 according to the provisions of Sections 63-46b-6 to 63-46b-11;

950 (vi) if the adjudicative proceeding is to be formal, a statement that each respondent
951 must file a written response within 30 days of the mailing date of the notice of agency action;

952 (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute
953 or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose
954 for which the hearing is to be held, and a statement that a party who fails to attend or
955 participate in the hearing may be held in default;

956 (viii) if the adjudicative proceeding is to be informal and a hearing is required by
957 statute or rule, or if a hearing is permitted by rule and may be requested by a party within the

958 time prescribed by rule, a statement that the parties may request a hearing within the time
959 provided by the agency's rules;

960 (ix) a statement of the legal authority and jurisdiction under which the adjudicative
961 proceeding is to be maintained;

962 (x) the name, title, mailing address, and telephone number of the presiding officer; and

963 (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known
964 by the presiding officer, the questions to be decided.

965 (b) When adjudicative proceedings are commenced by the agency, the agency shall:

966 (i) mail the notice of agency action to each party;

967 (ii) publish the notice of agency action, if required by statute; and

968 (iii) mail the notice of agency action to any other person who has a right to notice
969 under statute or rule.

970 (3) (a) Where the law applicable to the agency permits persons other than the agency to
971 initiate adjudicative proceedings, that person's request for agency action shall be in writing and
972 signed by the person invoking the jurisdiction of the agency, or by that person's representative,
973 and shall include:

974 (i) the names and addresses of all persons to whom a copy of the request for agency
975 action is being sent;

976 (ii) the agency's file number or other reference number, if known;

977 (iii) the date that the request for agency action was mailed;

978 (iv) a statement of the legal authority and jurisdiction under which agency action is
979 requested;

980 (v) a statement of the relief or action sought from the agency; and

981 (vi) a statement of the facts and reasons forming the basis for relief or agency action.

982 (b) The person requesting agency action shall file the request with the agency and shall
983 mail a copy to each person known to have a direct interest in the requested agency action.

984 (c) An agency may, by rule, prescribe one or more forms eliciting the information
985 required by Subsection (3)(a) to serve as the request for agency action when completed and
986 filed by the person requesting agency action.

987 (d) The presiding officer shall promptly review a request for agency action and shall:

988 (i) notify the requesting party in writing that the request is granted and that the

989 adjudicative proceeding is completed;

990 (ii) notify the requesting party in writing that the request is denied and, if the
991 proceeding is a formal adjudicative proceeding, that the party may request a hearing before the
992 agency to challenge the denial; or

993 (iii) notify the requesting party that further proceedings are required to determine the
994 agency's response to the request.

995 (e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information
996 required by Subsection 63-46b-5(1)(i) in addition to disclosure required by Subsection
997 (3)(d)(ii).

998 (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except
999 that any notice required by Subsection (3)(d)(iii) may be published when publication is
1000 required by statute.

1001 (iii) The notice required by Subsection (3)(d)(iii) shall:

1002 (A) give the agency's file number or other reference number;

1003 (B) give the name of the proceeding;

1004 (C) designate whether the proceeding is one of a category to be conducted informally
1005 according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with
1006 citation to the applicable rule authorizing that designation, or formally according to Sections
1007 63-46b-6 to 63-46b-11;

1008 (D) in the case of a formal adjudicative proceeding, and where respondent parties are
1009 known, state that a written response must be filed within 30 days of the date of the agency's
1010 notice if mailed, or within 30 days of the last publication date of the agency's notice, if
1011 published;

1012 (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an
1013 informal adjudicative proceeding, state the time and place of any scheduled hearing, the
1014 purpose for which the hearing is to be held, and that a party who fails to attend or participate in
1015 a scheduled and noticed hearing may be held in default;

1016 (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute
1017 or rule, or if a hearing is permitted by rule and may be requested by a party within the time
1018 prescribed by rule, state the parties' right to request a hearing and the time within which a
1019 hearing may be requested under the agency's rules; and

1020 (G) give the name, title, mailing address, and telephone number of the presiding
1021 officer.

1022 (4) When initial agency determinations or actions are not governed by this chapter, but
1023 agency and judicial review of those initial determinations or actions are subject to the
1024 provisions of this chapter, the request for agency action seeking review must be filed with the
1025 agency within the time prescribed by the agency's rules.

1026 (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide
1027 for a longer response time than allowed by this section, and may provide for a shorter response
1028 time if required or permitted by applicable federal law.

1029 (6) Unless the agency provides otherwise by rule or order, [~~applications~~] an application
1030 for [~~licenses~~] a package agency, license, permit, or certificate of approval filed under authority
1031 of Title 32A, [~~Chapters 3, Packaging Agencies, 4, Public Liquor License, and 5, Private Club~~
1032 ~~Liquor License are~~] Alcoholic Beverage Control Act, is not considered to be a request for
1033 agency action under this chapter.

1034 (7) If the purpose of the adjudicative proceeding is to award a license or other privilege
1035 as to which there are multiple competing applicants, the agency may, by rule or order, conduct
1036 a single adjudicative proceeding to determine the award of that license or privilege.

Legislative Review Note
as of 1-9-06 3:22 PM

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 SB0124

Alcohol Beverage Control Amendments

14-Jan-06

7:34 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst