

1                   **ALCOHOL BEVERAGE CONTROL AMENDMENTS**

2                                   2006 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Peter C. Knudson**

5                   House Sponsor: Fred R. Hunsaker

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7                   **LONG TITLE**

8                   **General Description:**

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

10                  **Highlighted Provisions:**

11                  This bill:

- 12                  ▶ modifies powers and duties of the commission;
- 13                  ▶ addresses adjudicative proceedings including:
  - 14                   • defining "disciplinary proceeding";
  - 15                   • addressing how proceedings are to be conducted;
  - 16                   • clarifying the relationship of proceedings to the Administrative Procedures Act;
  - 17                   • allowing the commission to have the director prepare, issue, and cause to be
  - 18                  served final written orders; and
  - 19                   • addressing holders of a certificate of approval;
- 20                  ▶ amends the number of certain licenses that may be issued by the commission in
- 21                  relationship to the state's population;
- 22                  ▶ addresses factors the commission shall consider before granting certain permits;
- 23                  ▶ modifies provision prohibiting operating without a license or permit;
- 24                  ▶ modifies the Administrative Procedures Act to clarify that certain applications filed
- 25                  under the Alcoholic Beverage Control Act are not requests for agency action;
- 26                  ▶ removes out-of-date language; and
- 27                  ▶ 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-4-101**, as last amended by Chapters 292 and 314, Laws of Utah 2003

37 **32A-4-302**, as enacted by Chapter 314, Laws of Utah 2003

38 **32A-5-101**, as last amended by Chapters 292 and 314, Laws of Utah 2003

39 **32A-7-104**, as last amended by Chapter 314, Laws of Utah 2003

40 **32A-10-201**, as last amended by Chapters 292 and 314, Laws of Utah 2003

41 **32A-10-304**, as enacted by Chapter 314, Laws of Utah 2003

42 **32A-12-301**, as last amended by Chapter 152, Laws of Utah 2005

43 **63-46b-3**, as last amended by Chapter 138, Laws of Utah 2001



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

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

47 **32A-1-107. Powers and duties of the commission.**

48 (1) The commission shall:

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

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

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

52 (i) granting, denying, suspending, or revoking permits, licenses, certificates of

53 approval, and package agencies;

54 (ii) controlling liquor merchandise inventory including:

55 (A) listing and delisting products;

56 (B) the procedures for testing new products;

57 (C) purchasing policy;

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

- 86 (ii) require periodic reporting from the director to ensure that:
- 87 (A) sound management principles are being followed; and
- 88 (B) policies established by the commission are being observed;
- 89 (i) (i) receive, consider, and act in a timely manner upon all reports, recommendations,
- 90 and matters submitted by the director to the commission[;]; and
- 91 (ii) do all things necessary to support the department in properly performing the
- 92 department's duties and responsibilities;
- 93 (j) obtain temporarily and for special purposes the services of experts and persons
- 94 engaged in the practice of a profession or who possess any needed skills, talents, or abilities if:
- 95 (i) considered expedient; and
- 96 (ii) approved by the governor;
- 97 (k) prescribe the duties of departmental officials authorized to ~~[issue]~~ assist the
- 98 commission in issuing permits ~~[and]~~, licenses, certificates of approval, and package agencies
- 99 under this title;
- 100 (l) prescribe, consistent with this title, the fees payable for:
- 101 (i) permits, licenses, certificates of approval, and package agencies issued under this
- 102 title[;]; or ~~[for]~~
- 103 (ii) anything done or permitted to be done under this title;
- 104 (m) prescribe the conduct, management, and equipment of any premises upon which
- 105 alcoholic beverages may be sold, consumed, served, or stored;
- 106 (n) make rules governing the credit terms of beer sales to retailers within the state;
- 107 ~~[and]~~
- 108 (o) require that each ~~[state store, package agency, licensee, and permittee]~~ of the
- 109 following, where required in this title, display in a prominent place a sign in large letters
- 110 stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is
- 111 prosecuted aggressively in Utah.";
- 112 (i) a state store;
- 113 (ii) a permittee;

114 (iii) a licensee; and  
115 (iv) a package agency; and  
116 (p) subject to Subsection (4) and as provided in this title, impose fines against:  
117 (i) a permittee, licensee, certificate holder, or package agent described in Subsection  
118 (1)(e); or

119 (ii) any officer, employee, or agent of a permittee, licensee, certificate holder, or  
120 package agent described in Subsection (1)(p)(i).

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

- 123 (a) establish state stores~~[-to];~~
- 124 (b) create package agencies ~~[and];~~
- 125 (c) grant authority to operate package agencies~~[-];~~ and ~~[to]~~
- 126 (d) grant or deny ~~[licenses and permits is plenary, except as otherwise provided by this~~  
127 title, and is not subject to review] permits, licenses, and certificates of approvals.

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

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

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

- 134 (i) any single Notice of Agency Action~~[-];~~ or
- 135 (ii) a single action against a package agency.

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

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

139 **32A-1-119. Adjudicative proceedings -- Procedure.**

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

- 142 (i) against:
- 143 (A) a permittee;
- 144 (B) a licensee;
- 145 (C) a manufacturer;
- 146 (D) a supplier;
- 147 (E) an importer;
- 148 (F) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;
- 149 or
- 150 (G) an officer, employee, or agent of a person listed in Subsections (1)(a)(i)(A) through
- 151 (F); and
- 152 (ii) that is brought on the basis of a violation of this title.
- 153 (b) As used in Subsection (4), "final adjudication" means an adjudication for which a
- 154 final unappealable judgment or order has been issued.
- 155 ~~[(+)]~~ (2) (a) The [commission, director, and department] following may conduct
- 156 adjudicative proceedings to inquire into any matter necessary and proper for the administration
- 157 of this title and rules adopted under this title[-];
- 158 (i) the commission;
- 159 (ii) a hearing examiner appointed by the commission for the purposes provided in
- 160 Subsection 32A-1-107(3);
- 161 (iii) the director; and
- 162 (iv) the department.
- 163 ~~[The commission, director, and department]~~ Except as provided in this section or
- 164 Section 32A-3-106, the following shall comply with the procedures and requirements of Title
- 165 63, Chapter 46b, Administrative Procedures Act, in [their] adjudicative proceedings[-];
- 166 (i) the commission;
- 167 (ii) a hearing examiner appointed by the commission;
- 168 (iii) the director; and
- 169 (iv) the department.

170 (c) Except where otherwise provided by law, all adjudicative proceedings before the  
171 commission or its appointed hearing examiner shall be:

172 (i) video or audio recorded; and

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

175 (d) All adjudicative proceedings concerning departmental personnel shall be conducted  
176 in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

177 (e) All hearings that are informational, fact gathering, and nonadversarial in nature  
178 shall be conducted in accordance with rules, policies, and procedures promulgated by the  
179 commission, director, or department.

180 ~~[(2)]~~ (3) (a) ~~[Disciplinary proceedings]~~ A disciplinary proceeding shall be conducted  
181 under the authority of the commission, which is responsible for rendering a final decision and  
182 order on any disciplinary matter.

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

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

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

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

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

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

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

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

196 ~~[(3)]~~ (4) (a) The department may initiate a disciplinary proceeding described in  
197 Subsection ~~[(3)]~~ (4)(b) when the department receives:

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

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

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

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

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

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

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

217 [~~(4)~~] (5) (a) Unless waived by the respondent, [~~an adjudicative~~] a disciplinary  
218 proceeding shall be held:

219 (i) if required by law;

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

222 (iii) before imposing a fine against [~~∓~~] any person listed in Subsections (1)(a)(i)(A)  
223 through (G).

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

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



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

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

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

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

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

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

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

240 (B) take evidence[;];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

272           (h) In all cases heard by the commission, it shall issue its final decision and order in  
273 accordance with Subsection (3).

274           ~~[(5)]~~ (6) (a) The commission shall:

275           (i) render a final decision and ~~[issue a written]~~ order on any disciplinary action~~[-];~~ and  
276 ~~[serve a copy]~~

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

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

280           (c) If the commission is satisfied that a ~~[permittee, licensee, or any officer, employee,~~  
281 ~~or agent of a permittee or licensee]~~ person listed in Subsections (1)(a)(i)(A) through (G) has

282 committed a violation of this title or the commission's rules, in accordance with Title 63,  
 283 Chapter 46b, Administrative Procedures Act, the commission may:

- 284 (i) suspend or revoke the permit ~~[or the]~~, license, or certificate of approval;
- 285 (ii) impose a fine against ~~[:]~~ a person listed in Subsections (1)(a)(i)(A) through (G);
- 286 ~~[(A) the permittee;]~~
- 287 ~~[(B) the licensee; or]~~
- 288 ~~[(C) any officer, employee, or agent of a permittee or licensee;]~~
- 289 (iii) assess the administrative costs of any hearing to the permittee ~~[or]~~, the licensee, or  
 290 certificate holder; or
- 291 (iv) any combination of Subsections ~~[(5)]~~ (6)(c)(i) through (iii).
- 292 (d) ~~[(f)]~~ A fine imposed in accordance with this Subsection ~~[(5) may not exceed~~  
 293 ~~\$25,000 in the aggregate for any single notice of agency action]~~ (6) is subject to Subsections  
 294 32A-1-107(1)(p) and (4).

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

- 297 (e) (i) If a permit or license is suspended under this Subsection ~~[(5)]~~ (6), a sign  
 298 provided by the department shall be prominently posted:
- 299 (A) during the suspension;
- 300 (B) by the permittee or licensee; and
- 301 (C) at the entrance of the premises of the permittee or licensee.
- 302 (ii) The sign required by this Subsection ~~[(5)]~~ (6)(e) shall:
- 303 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the  
 304 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be  
 305 sold, served, furnished, or consumed on these premises during the period of suspension."; and
- 306 (B) include the dates of the suspension period.
- 307 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required  
 308 to be posted under this Subsection ~~[(5)]~~ (6)(e) during the suspension period.
- 309 (f) If ~~[the]~~ a permit or license is revoked, the commission may order the revocation of

310 any compliance bond posted by the permittee or licensee.

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

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

316 [~~(6)~~] (7) (a) In addition to any action taken against a permittee [~~or~~], licensee, or  
317 certificate holder under this section, the department may initiate disciplinary action against an  
318 officer, employee, or agent of a permittee [~~or~~], licensee, or certificate holder.

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

324 [~~(7)~~] (8) (a) The department may initiate a disciplinary [~~action~~] proceeding for an  
325 alleged violation of this title or the rules of the commission against:

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

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

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

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

333 (B) a suspension of the department's purchase of the products described in Subsection  
334 [~~(7)~~] (8)(b)(i)(A) for a period determined by the commission.

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

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

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

339 (I) directly committed the violation; or

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

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

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

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

350 (ii) imposition of a fine.

351 Section 3. Section **32A-4-101** is amended to read:

352 **32A-4-101. Commission's power to grant licenses -- Limitations.**

353 (1) Before a restaurant may sell or allow the consumption of liquor on its premises, it  
354 shall first obtain a license from the commission as provided in this part.

355 (2) The commission may issue restaurant liquor licenses for the purpose of establishing  
356 restaurant liquor outlets at places and in numbers it considers proper for the storage, sale, and  
357 consumption of liquor on premises operated as public restaurants.

358 (3) (a) ~~[(†)]~~ Subject to the other provisions of this Subsection (3), the total number of  
359 restaurant liquor licenses may not at any time aggregate more than that number determined [~~as~~  
360 ~~follows:] by dividing the population of the state by 5,200.~~

361 ~~[(A) until October 31, 2003, by dividing the population of the state by 4,500; and]~~

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

363 ~~[(ii) If the total number of restaurant liquor licenses in effect on October 31, 2003,~~  
364 ~~equals or exceeds the limitation of Subsection (3)(a)(i):]~~

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

366           ~~[(F) is not invalidated by Subsection (3)(a)(i); and]~~  
367           ~~[(H) may be renewed in accordance with this chapter; and]~~  
368           ~~[(B) the commission may not grant a new restaurant liquor license until such time as~~  
369 ~~the total number of restaurant liquor licenses granted under this chapter is less than the~~  
370 ~~limitation of Subsection (3)(a)(i).]~~

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

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

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

375           (c) (i) The commission may issue seasonal restaurant liquor licenses established in  
376 areas the commission considers necessary.

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

378           (iii) A restaurant liquor license issued for operation during a summer time period is  
379 known as a "Seasonal A" restaurant liquor license. The period of operation for a "Seasonal A"  
380 restaurant liquor license shall:

381           (A) begin on May 1; and

382           (B) end on October 31.

383           (iv) A restaurant liquor license issued for operation during a winter time period is  
384 known as a "Seasonal B" restaurant liquor license. The period of operation for a "Seasonal B"  
385 restaurant liquor license shall:

386           (A) begin on November 1; and

387           (B) end on April 30.

388           (v) In determining the number of restaurant liquor licenses that the commission may  
389 issue under this section:

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

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

392           (d) (i) If the location, design, and construction of a hotel may require more than one  
393 restaurant liquor sales location within the hotel to serve the public convenience, the

394 commission may authorize the sale of liquor at as many as three restaurant locations within the  
395 hotel under one license if:

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

397        (B) all locations under the license are:

398            (I) within the same hotel facility; and

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

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

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

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

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

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

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

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

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

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

422 community; or

423 (ii) with respect to the premises of a restaurant liquor license issued by the commission  
424 that undergoes a change of ownership, the commission may waive or vary the proximity  
425 requirements of Subsection (4)(a) or (b) in considering whether to grant a restaurant liquor  
426 license to the new owner of the premises if:

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

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

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

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

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

439 (i) a nursery school;

440 (ii) an infant day care center; and

441 (iii) a trade and technical school.

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

443 **32A-4-302. Commission's power to grant licenses -- Limitations.**

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

448 (2) (a) Subject to the other provisions of this section, the commission may issue limited  
449 restaurant licenses for the purpose of establishing limited restaurant outlets at places and in



450 numbers the commission considers proper for the storage, sale, and consumption of wine,  
451 heavy beer, and beer on premises operated as public restaurants.

452 (b) The total number of limited restaurant licenses issued under this part may not at any  
453 time aggregate more than that number determined by dividing the population of the state by  
454 [~~13,000~~] 11,000.

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

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

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

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

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

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

466 (A) begin on May 1; and

467 (B) end on October 31.

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

471 (A) begin on November 1; and

472 (B) end on April 30.

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

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

477 (B) each "Seasonal A" limited restaurant license shall be paired with a "Seasonal B"

478 limited restaurant license.

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

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

484 (ii) all locations under the license are:

485 (A) within the same hotel facility; and

486 (B) on premises that are:

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

488 (II) owned or leased by the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

528 (i) a nursery school;

529 (ii) an infant day care center; and

530 (iii) a trade and technical school.

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

532 **32A-5-101. Commission's power to license private clubs -- Limitations.**

533 (1) Before a private club may sell or allow the consumption of alcoholic beverages on

534 its premises, the private club shall first obtain a license from the commission as provided in  
535 this chapter.

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

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

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

543 (i) meets the requirements of this chapter;

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

546 (A) a golf course; or

547 (B) a tennis facility;

548 (iii) has at least 50% of the total membership having:

549 (A) full voting rights; and

550 (B) an equal share of the equity of the club; and

551 (iv) if there is more than one class of membership, has at least one class of membership  
552 that entitles each member in that class to:

553 (A) full voting rights; and

554 (B) an equal share of the equity of the club.

555 (b) A "class B licensee" is a private club licensee that:

556 (i) meets the requirements of this chapter;

557 (ii) has no capital stock;

558 (iii) exists solely for:

559 (A) the benefit of its members and their beneficiaries; and

560 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,  
561 patriotic, or religious purpose for the benefit of its members or the public, carried on through

562 voluntary activity of its members in their local lodges;

563 (iv) has a representative form of government; and

564 (v) has a lodge system in which:

565 (A) there is a supreme governing body;

566 (B) subordinate to the supreme governing body are local lodges, however designated,

567 into which individuals are admitted as members in accordance with the laws of the fraternal;

568 (C) the local lodges are required by the laws of the fraternal to hold regular meetings at

569 least monthly; and

570 (D) the local lodges regularly engage in programs involving member participation to

571 implement the purposes of Subsection (3)(b)(iii).

572 (c) A "class C licensee" is a private club licensee that:

573 (i) meets the requirements of this chapter;

574 (ii) is a dining club, as determined by the commission in accordance with Subsection

575 (4)(~~fb~~); and

576 (iii) maintains at least 50% of its total private club business from the sale of food, not

577 including:

578 (A) mix for alcoholic beverages; or

579 (B) service charges.

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

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

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

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

584 [~~(4) (a) (i) Notwithstanding Subsection (3), for a private club license in effect on May~~

585 ~~5, 2003, the commission shall designate whether that license qualifies as a class A, B, C, or D~~

586 ~~license as defined in Subsection (3) at the time the license is renewed.]~~

587 [~~(ii) Until the class of license is designated under Subsection (4)(a)(i), the private club~~

588 ~~licensee holding a license described in Subsection (4)(a)(i) shall operate under the restrictions~~

589 ~~of the part applicable to the class of license for which the private club licensee qualifies.]~~

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

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

594           ~~[(A)]~~ (i) mix for alcoholic beverages;

595           ~~[(B)]~~ (ii) service charges; or

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

597           ~~[(i)]~~ (b) may consider:

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

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

601           ~~[(C)]~~ (iii) whether full meals including appetizers, main courses, and desserts are  
602 served;

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

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

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

608           ~~[(i)]~~ (A) management experience;

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

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

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

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

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

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

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

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

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

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

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

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

630 (A) begin on May 1; and

631 (B) end on October 31.

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

635 (A) begin on November 1; and

636 (B) end on April 30.

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

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

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

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

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

645 (B) all locations under the license are;

646           (I) within the same hotel facility; and  
647           (II) on premises which are managed or operated and owned or leased by the licensee.  
648           (ii) Facilities other than hotels may not have more than one private club location under  
649 a single private club license.

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

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

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

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

- 662           (A) the local governing authority has granted its written consent to the variance;
- 663           (B) alternative locations for establishing a private club license in the community are  
664 limited;
- 665           (C) a public hearing has been held in the city, town, or county, and where practical in  
666 the neighborhood concerned; and

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

671           (ii) with respect to the establishment of a private club license in any location, the  
672 commission may authorize a variance to reduce the proximity requirements of Subsection  
673 (7)(a) or (b) in relation to a church:



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

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

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

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

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

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

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

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

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

696 (i) a nursery school;

697 (ii) infant day care center; and

698 (iii) a trade and technical school.

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

701 Section 6. Section **32A-7-104** is amended to read:

702 **32A-7-104. Commission and department duties before granting permits.**

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

705 (i) conduct an investigation[;];

706 (ii) gather information[;]; and

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

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

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

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

715 (b) determine that the application is complete;

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

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

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

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

724 (ii) for an outdoor public event; and

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

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

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

729 (4) Upon commission approval of any application and upon [~~issuance~~] the granting of a

730 single event permit, the department shall send copies of the approved application and the  
 731 permit to state and local law enforcement authorities before the scheduled event.

732 Section 7. Section **32A-10-201** is amended to read:

733 **32A-10-201. Commission's power to grant licenses -- Limitations.**

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

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

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

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

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

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

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

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

752 ~~[(I) is not invalidated by Subsection (2)(b)(i); and]~~

753 ~~[(II) may be renewed in accordance with this chapter; and]~~

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

757 ~~[(iii)]~~ (c) For purposes of this Subsection (2), the population of the state shall be

758 determined by:

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

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

762       ~~[(C)]~~ (d) (i) The commission may issue seasonal licenses for taverns established in  
763 areas the commission considers necessary.

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

765       (iii) An on-premise beer retailer license for a tavern issued for operation during a  
766 summer time period is known as a "Seasonal A" on-premise beer retailer license for a tavern.

767 The period of operation for a "Seasonal A" on-premise beer retailer license for a tavern shall:

768       (A) begin on May 1; and

769       (B) end on October 31.

770       (iv) An on-premise beer retailer license for a tavern issued for operation during a  
771 winter time period is known as a "Seasonal B" on-premise beer retailer license for a tavern.

772 The period of operation for a "Seasonal B" on-premise beer retailer license for a tavern shall:

773       (A) begin on November 1; and

774       (B) end on April 30.

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

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

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

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

784       (b) The premises of an on-premise beer retailer license may not be established within  
785 200 feet of any public or private school, church, public library, public playground, or park,

786 measured in a straight line from the nearest entrance of the proposed outlet to the nearest  
787 property boundary of the public or private school, church, public library, public playground, or  
788 park.

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

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

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

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

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

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

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

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

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

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

813 (iii) with respect to the establishment of an on-premise beer retailer license that does

814 not operate as a tavern in any location, the commission may authorize a variance that reduces  
815 the proximity requirements of Subsection (3)(a) or (b) if:

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

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

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

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

825 (iv) with respect to any on-premise beer retailer license issued by the commission  
826 before July 1, 1991, to an establishment that undergoes a change in ownership after that date,  
827 the commission may waive or vary the proximity requirements of this Subsection (3) in  
828 considering whether to grant an on-premise retailer beer license to the new owner; and

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

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

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

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

841 (5) (a) Nothing in this section prevents the commission from considering the proximity

842 of any educational, religious, and recreational facility, or any other relevant factor in reaching a  
843 decision on a proposed location.

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

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

848 Section 8. Section **32A-10-304** is amended to read:

849 **32A-10-304. Commission and department duties before granting permits.**

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

- 852 (i) conduct an investigation[;];
- 853 (ii) gather information[;]; and
- 854 (iii) make recommendations to the commission as to whether or not a permit should be  
855 granted.

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

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

- 860 (a) determine that the applicant has complied with all basic qualifications and  
861 requirements as provided by Sections 32A-10-302 and 32A-10-303;
- 862 (b) determine that the application is complete;
- 863 (c) consider the times, dates, location, estimated attendance, nature, and purpose of the  
864 temporary special event;
- 865 (d) to minimize the risk of minors being sold or furnished alcohol or adults being  
866 overserved alcohol at the temporary special event, assess the adequacy of control measures for:
  - 867 (i) a large-scale public event where the estimated attendance is in excess of 1,000  
868 people; or
  - 869 (ii) an outdoor public event; and

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

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

875 Section 9. Section **32A-12-301** is amended to read:

876 **32A-12-301. Operating without a license or permit.**

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

880 [~~1~~] (a) a restaurant;

881 [~~2~~] (b) an airport lounge;

882 [~~3~~] (c) a private club;

883 [~~4~~] (d) an on-premise beer retailer outlet;

884 [~~5~~] (e) on-premise banquet premises; or

885 [~~6~~] (f) an establishment similar to one listed in Subsections (1)(a) through [~~5~~] (e).

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

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

892 Section 10. Section **63-46b-3** is amended to read:

893 **63-46b-3. Commencement of adjudicative proceedings.**

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

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

897 (b) a request for agency action, if proceedings are commenced by persons other than



898 the agency.

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

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

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

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

907 (iii) the name of the adjudicative proceeding;

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

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

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

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

918 (viii) if the adjudicative proceeding is to be informal and a hearing is required by  
919 statute or rule, or if a hearing is permitted by rule and may be requested by a party within the  
920 time prescribed by rule, a statement that the parties may request a hearing within the time  
921 provided by the agency's rules;

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

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

925 (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known

926 by the presiding officer, the questions to be decided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

950 (i) notify the requesting party in writing that the request is granted and that the  
951 adjudicative proceeding is completed;

952 (ii) notify the requesting party in writing that the request is denied and, if the  
953 proceeding is a formal adjudicative proceeding, that the party may request a hearing before the

954 agency to challenge the denial; or

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

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

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

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

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

965 (B) give the name of the proceeding;

966 (C) designate whether the proceeding is one of a category to be conducted informally  
967 according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with  
968 citation to the applicable rule authorizing that designation, or formally according to Sections  
969 63-46b-6 to 63-46b-11;

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

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

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

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

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

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

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

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