

Senator Peter C. Knudson proposes the following substitute bill:

ALCOHOL BEVERAGE CONTROL AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Fred R. Hunsaker

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:
 - defining "disciplinary proceeding";
 - addressing how proceedings are to be conducted;
 - 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; and
- addressing holders of a certificate of approval;
- ▶ 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



- 26 not requests for agency action;
- 27 ▶ removes out-of-date language; and
- 28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **32A-1-107**, as last amended by Chapter 268, Laws of Utah 2004
- 36 **32A-1-119**, as last amended by Chapter 314, Laws of Utah 2003
- 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



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[~~;~~];

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 ~~[(1)]~~ (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 ~~(b) [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) Except where otherwise provided by law, all adjudicative proceedings before the
172 commission or its appointed hearing examiner shall be:

173 (i) video or audio recorded; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

220 (i) if required by law;

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

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

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

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

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

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

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

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

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

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

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

241 (B) take evidence[;];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

274 accordance with Subsection (3).

275 ~~[(5)]~~ (6) (a) The commission shall:

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

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

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

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

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

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

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

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

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

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

293 (d) ~~[(i)]~~ A fine imposed in accordance with this Subsection ~~[(5) may not exceed~~
294 ~~\$25,000 in the aggregate for any single notice of agency action]~~ (6) is subject to Subsections
295 32A-1-107(1)(p) and (4).

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

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

300 (A) during the suspension;

301 (B) by the permittee or licensee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

334 (B) a suspension of the department's purchase of the products described in Subsection
335 [~~(7)~~] (8)(b)(i)(A) for a period determined by the commission.

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

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

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

340 (I) directly committed the violation; or

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

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

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

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

351 (ii) imposition of a fine.

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

353 **32A-4-101. Commission's power to grant licenses -- Limitations.**

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

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

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

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

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

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

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

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

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

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

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

375 governments.

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

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

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

382 (A) begin on May 1; and

383 (B) end on October 31.

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

387 (A) begin on November 1; and

388 (B) end on April 30.

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

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

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

393 (d) (i) If the location, design, and construction of a hotel may require more than one
394 restaurant liquor sales location within the hotel to serve the public convenience, the
395 commission may authorize the sale of liquor at as many as three restaurant locations within the
396 hotel under one license if:

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

398 (B) all locations under the license are;

399 (I) within the same hotel facility; and

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

401 (ii) Facilities other than hotels shall have a separate restaurant liquor license for each

402 restaurant where liquor is sold.

403 (4) (a) The premises of a restaurant liquor license may not be established within 600

404 feet of any public or private school, church, public library, public playground, or park, as

405 measured by the method in Subsection (5).

406 (b) The premises of a restaurant liquor license may not be established within 200 feet of

407 any public or private school, church, public library, public playground, or park, measured in a

408 straight line from the nearest entrance of the proposed outlet to the nearest property boundary

409 of the public or private school, church, public library, public playground, or park.

410 (c) The restrictions contained in Subsections (4)(a) and (b) govern unless one of the

411 following exemptions applies:

412 (i) with respect to the establishment of a restaurant liquor license in any location, the

413 commission may authorize a variance to reduce the proximity requirements of Subsection

414 (4)(a) or (b) if:

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

416 (B) alternative locations for establishing a restaurant liquor license in the community

417 are limited;

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

419 the neighborhood concerned; and

420 (D) after giving full consideration to all of the attending circumstances and the policies

421 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the

422 license would not be detrimental to the public health, peace, safety, and welfare of the

423 community; or

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

425 that undergoes a change of ownership, the commission may waive or vary the proximity

426 requirements of Subsection (4)(a) or (b) in considering whether to grant a restaurant liquor

427 license to the new owner of the premises if:

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

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

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

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

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

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

440 (i) a nursery school;

441 (ii) an infant day care center; and

442 (iii) a trade and technical school.

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

444 **32A-4-302. Commission's power to grant licenses -- Limitations.**

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

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

453 (b) The total number of limited restaurant licenses issued under this part may not at any
454 time aggregate more than that number determined by dividing the population of the state by
455 [~~13,000~~] 11,000.

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

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

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

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

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

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

467 (A) begin on May 1; and

468 (B) end on October 31.

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

472 (A) begin on November 1; and

473 (B) end on April 30.

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

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

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

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

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

485 (ii) all locations under the license are:

486 (A) within the same hotel facility; and

487 (B) on premises that are:

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

489 (II) owned or leased by the licensee.

490 (d) Facilities other than hotels shall have a separate limited restaurant license for each

491 restaurant where wine, heavy beer, and beer are sold.

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

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

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

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

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

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

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

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

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

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

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

521 (5) With respect to any public or private school, church, public library, public

522 playground, or park, the 600 foot limitation is measured from the nearest entrance of the outlet
523 by following the shortest route of ordinary pedestrian travel to the property boundary of the
524 public or private school, church, public library, public playground, school playground, or park.

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

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

529 (i) a nursery school;

530 (ii) an infant day care center; and

531 (iii) a trade and technical school.

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

533 **32A-5-101. Commission's power to license private clubs -- Limitations.**

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

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

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

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

544 (i) meets the requirements of this chapter;

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

547 (A) a golf course; or

548 (B) a tennis facility;

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

550 (A) full voting rights; and

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

552 (iv) if there is more than one class of membership, has at least one class of membership

553 that entitles each member in that class to:

554 (A) full voting rights; and

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

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

557 (i) meets the requirements of this chapter;

558 (ii) has no capital stock;

559 (iii) exists solely for:

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

561 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,

562 patriotic, or religious purpose for the benefit of its members or the public, carried on through

563 voluntary activity of its members in their local lodges;

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

565 (v) has a lodge system in which:

566 (A) there is a supreme governing body;

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

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

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

570 least monthly; and

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

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

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

574 (i) meets the requirements of this chapter;

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

576 (4)(~~fb~~); and

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

578 including:

579 (A) mix for alcoholic beverages; or

580 (B) service charges.

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

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

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

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

585 [~~(4)(a)(i) Notwithstanding Subsection (3), for a private club license in effect on May~~
586 ~~5, 2003, the commission shall designate whether that license qualifies as a class A, B, C, or D~~
587 ~~license as defined in Subsection (3) at the time the license is renewed.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

615 has been first issued by the commission.

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

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

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

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

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

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

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

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

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

631 (A) begin on May 1; and

632 (B) end on October 31.

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

636 (A) begin on November 1; and

637 (B) end on April 30.

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

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

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

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

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

646 (B) all locations under the license are:

647 (I) within the same hotel facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

697 (i) a nursery school;

698 (ii) infant day care center; and

699 (iii) a trade and technical school.

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

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

703 **32A-7-104. Commission and department duties before granting permits.**

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

706 (i) conduct an investigation[;];

707 (ii) gather information[;]; and

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

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

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

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

716 (b) determine that the application is complete;

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

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

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

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

725 (ii) for an outdoor public event; and

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

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

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

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

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

734 **32A-10-201. Commission's power to grant licenses -- Limitations.**

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

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

738 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

769 (A) begin on May 1; and

770 (B) end on October 31.

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

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

774 (A) begin on November 1; and

775 (B) end on April 30.

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

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

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

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

785 (b) The premises of an on-premise beer retailer license may not be established within
786 200 feet of any public or private school, church, public library, public playground, or park,
787 measured in a straight line from the nearest entrance of the proposed outlet to the nearest
788 property boundary of the public or private school, church, public library, public playground, or
789 park.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

830 (v) with respect to the premises of an on-premise beer retailer license issued by the
831 commission that undergoes a change of ownership, the commission may waive or vary the

832 proximity requirements of Subsection (3)(a) or (b) in considering whether to grant an
833 on-premise beer retailer license to the new owner of the premises if:

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

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

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

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

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

846 (i) a nursery school;

847 (ii) an infant day care center; and

848 (iii) a trade and technical school.

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

850 **32A-10-304. Commission and department duties before granting permits.**

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

853 (i) conduct an investigation[;];

854 (ii) gather information[;]; and

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

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

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

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

863 (b) determine that the application is complete;

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

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

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

870 (ii) an outdoor public event; and

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

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

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

877 **32A-12-301. Operating without a license or permit.**

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

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

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

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

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

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

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

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

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

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

894 **63-46b-3. Commencement of adjudicative proceedings.**

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

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

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

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

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

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

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

908 (iii) the name of the adjudicative proceeding;

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

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

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

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

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

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

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

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

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

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

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

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

931 (iii) mail the notice of agency action to any other person who has a right to notice

932 under statute or rule.

933 (3) (a) Where the law applicable to the agency permits persons other than the agency to

934 initiate adjudicative proceedings, that person's request for agency action shall be in writing and

935 signed by the person invoking the jurisdiction of the agency, or by that person's representative,

936 and shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

966 (B) give the name of the proceeding;

967 (C) designate whether the proceeding is one of a category to be conducted informally
968 according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with
969 citation to the applicable rule authorizing that designation, or formally according to Sections
970 63-46b-6 to 63-46b-11;

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

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

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

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

985 (4) When initial agency determinations or actions are not governed by this chapter, but
986 agency and judicial review of those initial determinations or actions are subject to the

987 provisions of this chapter, the request for agency action seeking review must be filed with the
988 agency within the time prescribed by the agency's rules.

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

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

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

Fiscal Note
Bill Number SB0124S01

Alcohol Beverage Control Amendments

23-Feb-06

9:30 AM

State Impact

No significant fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst