



UTAH STATE SENATE

UTAH STATE CAPITOL COMPLEX • WEST OFFICE BUILDING, SUITE W115
P.O. BOX 145115 • SALT LAKE CITY, UTAH 84114-5115 • (801) 538-1035

February 8, 2006

Mr. President:

The Business and Labor Committee reports a favorable recommendation on **S.B. 124**, ALCOHOL BEVERAGE CONTROL AMENDMENTS, by Senator P. Knudson, with the following amendments:

1. *Page 6, Lines 171 through 172:*

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

2. *Page 12, Line 355 through Page 13, Line 388:*

355 32A-1-120. Judicial review of disciplinary proceeding -- Stay of commission
356 order.
357 (1) (a) In a disciplinary proceeding, as defined in Section 32A-1-119, any [party]
358 respondent named in a final order of the commission may seek judicial review pursuant to
~~{this~~
359 section.} Title 63, Chapter 46b, Administrative Procedures Act, and Subsection
(2).
360 ~~[(2) (a) The findings of the commission on questions of fact are final and are not~~
361 ~~subject to review.]~~
362 ~~[(b) "Questions of fact" include ultimate facts and findings and conclusions of the~~
363 ~~commission on reasonableness and discretion.]~~
364 ~~[(3) After the hearing, the reviewing court shall enter judgment affirming or setting~~
365 ~~aside the order of the commission.]~~

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~~{ 366 (b) Judicial review of a final commission order concerning a disciplinary proceeding is
367 governed by this section and not Title 63, Chapter 46b, Administrative Procedures Act.
368 (2) The reviewing court of a final order described in Subsection (1) shall:
369 (a) review on the record the commission's final order for abuse of discretion; and
370 (b) (i) affirm the commission's final order if the reviewing court finds that the
371 commission did not abuse its discretion; or
372 (ii) remand the case to the commission for the commission to correct an error if the
373 reviewing court finds that the commission abused its discretion.~~

} 374 ~~[~~(4)~~] {~~(3)~~} (2) (a) The fact that a petition is pending in a reviewing court does not stay or
375 suspend the operation of any final order of the commission that has not been stayed by the
commission . Notwithstanding Title 63, Chapter 46a, Administrative Procedures Act, the stay or
suspension of the operation of a final order of the commission is governed by this Subsection (2).~~

376 (b) ~~[The]~~ Subject to Subsections {~~(3)~~} (2) (c) and (d), the reviewing court may order that the
377 commission's final order be stayed or suspended during the appeal.

378 (c) Before issuing an order staying or suspending the commission's final order, the
379 reviewing court shall:

380 (i) give three days' notice to the parties; and

381 (ii) hold a hearing to receive argument and evidence on whether or not the
382 commission's final order should be stayed or suspended.

383 (d) If the reviewing court decides to stay or suspend the commission's final order, it
384 shall make a written finding that:

385 (i) great or irreparable damage would result to the petitioner absent the stay or
386 suspension;

387 (ii) specifies the nature of the damage; and

388 (iii) is based upon evidence submitted to the court and identified by reference.

Respectfully,

Scott K. Jenkins
Committee Chair

Voting: 7-0-2

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