

ALCOHOLIC BEVERAGE CONTROL
VIOLATIONS AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

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LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to impose certain notification requirements.

Highlighted Provisions:

This bill:

- requires notification of violations within a specified time period in order for a disciplinary proceeding to be initiated or maintained on the basis of the alleged violation; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32A-1-105, as last amended by Laws of Utah 2007, Chapter 284

32 32A-1-119, as last amended by Laws of Utah 2007, Chapter 284

33 32A-1-120, as last amended by Laws of Utah 2007, Chapter 284

34 76-5-113, as last amended by Laws of Utah 2004, Chapter 280

35 ENACTS:

36 32A-1-119.5, Utah Code Annotated 1953



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

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

40 **32A-1-105. Definitions.**

41 As used in this title:

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

45 (2) "Alcoholic [~~beverages~~] beverage" means "beer" and "liquor" as the terms are
46 defined in this section.

47 (3) (a) "Alcoholic [~~products~~] product" means [~~all products~~] a product that:

48 (i) [~~contain~~] contains:

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

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

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

54 (b) "Alcoholic [~~products~~] product" does not include any of the following common items
55 that otherwise come within the definition of an alcoholic [~~products~~] product:

56 (i) [~~extracts~~] extract;

57 (ii) [~~vinegars~~] vinegar;

58 (iii) [~~ciders~~] cider;

59 (iv) [~~essences~~] essence;

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

88 (ii) "Off-premise beer retailer" does not include an on-premise beer retailer.

89 (c) "On-premise beer retailer" means a business that is engaged in the sale of beer to
90 ~~[patrons]~~ a patron for consumption on the beer retailer's premises, regardless of whether the
91 business sells beer for consumption off the beer retailer's premises.

92 (7) "Billboard" means ~~[any]~~ a public display used to advertise including:

93 (a) a light device;

94 (b) a painting;

95 (c) a drawing;

96 (d) a poster;

97 (e) a sign;

98 (f) a signboard; or

99 (g) a scoreboard.

100 (8) "Brewer" means ~~[any]~~ a person engaged in manufacturing beer.

101 (9) "Cash bar" means the service of an alcoholic ~~[beverages]~~ beverage:

102 (a) at:

103 (i) a banquet; or

104 (ii) a temporary event for which a permit is issued under this title; and

105 (b) if an attendee at the banquet or temporary event is charged for the alcoholic
106 beverage.

107 (10) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
108 a bus company to a group of persons pursuant to a common purpose:

109 (a) under a single contract;

110 (b) at a fixed charge in accordance with the bus company's tariff; and

111 (c) for the purpose of giving the group of persons the exclusive use of the bus and a
112 driver to travel together to ~~[a]~~ one or more specified ~~[destination or]~~ destinations.

113 (11) "Church" means a building:

114 (a) set apart for the purpose of worship;

115 (b) in which religious services are held;

- 116 (c) with which clergy is associated; and
- 117 (d) which is tax exempt under the laws of this state.
- 118 (12) "Club" and "private club" means any of the following organized primarily for the
- 119 benefit of its members:
- 120 (a) a social club;
- 121 (b) a recreational association;
- 122 (c) a fraternal association;
- 123 (d) an athletic association; or
- 124 (e) a kindred association.
- 125 (13) "Commission" means the Alcoholic Beverage Control Commission.
- 126 (14) "Department" means the Department of Alcoholic Beverage Control.
- 127 (15) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
- 128 title:
- 129 (a) against:
- 130 (i) a permittee;
- 131 (ii) a licensee;
- 132 (iii) a manufacturer;
- 133 (iv) a supplier;
- 134 (v) an importer;
- 135 (vi) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;
- 136 or
- 137 (vii) an officer, employee, or agent of:
- 138 (A) a person listed in Subsections (15)(a)(i) through (vi); or
- 139 (B) a package agent; and
- 140 (b) that is brought on the basis of a violation of this title.
- 141 [~~15~~] (16) "Distressed merchandise" means [~~any~~] an alcoholic beverage in the
- 142 possession of the department that is saleable, but for some reason is unappealing to the public.
- 143 [~~16~~] (17) "Guest" means a person accompanied by an active member or visitor of a

144 club who enjoys only those privileges derived from the host for the duration of the visit to the
145 club.

146 ~~[(17)]~~ (18) (a) "Heavy beer" means ~~[any]~~ a product that:

147 (i) contains more than 4% alcohol by volume; and

148 (ii) is obtained by fermentation, infusion, or decoction of ~~[any]~~ a malted grain.

149 (b) "Heavy beer" is considered "liquor" for the purposes of this title.

150 ~~[(18)]~~ (19) "Hosted bar" means the service of an alcoholic ~~[beverages]~~ beverage:

151 (a) without charge; and

152 (b) at a:

153 (i) banquet; or

154 (ii) privately hosted event.

155 ~~[(19)]~~ (20) "Identification card" means ~~[the]~~ an identification card issued under Title 53,
156 Chapter 3, Part 8, Identification Card Act.

157 ~~[(20)]~~ (21) "Interdicted person" means a person to whom the sale, gift, or provision of
158 an alcoholic beverage is prohibited by:

159 (a) law; or

160 (b) court order.

161 ~~[(21)]~~ (22) "Intoxicated" means that to a degree that is unlawful under Section
162 76-9-701 a person is under the influence of:

163 (a) an alcoholic beverage;

164 (b) a controlled substance;

165 (c) a substance having the property of releasing toxic vapors; or

166 (d) a combination of Subsections ~~[(21)]~~ (22)(a) through (c).

167 ~~[(22)]~~ (23) "Licensee" means ~~[any]~~ a person issued a license by the commission to sell,
168 manufacture, store, or allow consumption of an alcoholic ~~[beverages]~~ beverage on premises
169 owned or controlled by the person.

170 ~~[(23)]~~ (24) "Limousine" means ~~[any]~~ a motor vehicle licensed by the state or a local
171 authority, other than a bus or taxicab:

172 (a) in which the driver and ~~[passengers]~~ a passenger are separated by a partition, glass,
173 or other barrier; and

174 (b) that is provided by a company to ~~[an individual or]~~ one or more individuals at a
175 fixed charge in accordance with the company's tariff for the purpose of giving the ~~[individual or]~~
176 one or more individuals the exclusive use of the limousine and a driver to travel to ~~[a]~~ one or
177 more specified ~~[destination or]~~ destinations.

178 ~~[(24)]~~ (25) (a) "Liquor" means alcohol, or ~~[any]~~ an alcoholic, spirituous, vinous,
179 fermented, malt, or other liquid, or combination of liquids, a part of which is spirituous, vinous,
180 or fermented, ~~[and all other drinks]~~ or other drink, or drinkable ~~[liquids]~~ liquid that ~~[contain]~~
181 contains more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

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

184 ~~[(25)]~~ (26) "Local authority" means:

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

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

189 ~~[(26)]~~ (27) "Manufacture" means to distill, brew, rectify, mix, compound, process,
190 ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to
191 others.

192 ~~[(27)]~~ (28) "Member" means a person who, after paying regular dues, has full privileges
193 of a club under this title.

194 ~~[(28)]~~ (29) (a) "Military installation" means a base, air field, camp, post, station, yard,
195 center, or homeport facility for ~~[any]~~ a ship:

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

197 (B) of the National Guard;

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

199 (iii) including ~~[any]~~ a leased facility.

- 200 (b) "Military installation" does not include ~~[any]~~ a facility used primarily for:
- 201 (i) civil works;
- 202 (ii) a rivers and harbors ~~[projects]~~ project; or
- 203 (iii) a flood control ~~[projects]~~ project.
- 204 ~~[(29)]~~ (30) "Minor" means ~~[any person]~~ an individual under the age of 21 years.
- 205 ~~[(30)]~~ (31) "Nude," "nudity," or "state of nudity" means:
- 206 (a) the appearance of:
- 207 (i) the nipple or areola of a female human breast;
- 208 (ii) a human genital;
- 209 (iii) a human pubic area; or
- 210 (iv) a human anus; or
- 211 (b) a state of dress that fails to opaquely cover:
- 212 (i) the nipple or areola of a female human breast;
- 213 (ii) a human genital;
- 214 (iii) a human pubic area; or
- 215 (iv) a human anus.
- 216 ~~[(31)]~~ (32) "Outlet" means a location other than a state store or package agency where
- 217 an alcoholic ~~[beverages are]~~ beverage is sold pursuant to a license issued by the commission.
- 218 ~~[(32)]~~ (33) "Package" means any of the following containing liquor:
- 219 (a) a container;
- 220 (b) a bottle;
- 221 (c) a vessel; or
- 222 (d) other receptacle.
- 223 ~~[(33)]~~ (34) "Package agency" means a retail liquor location operated:
- 224 (a) under a contractual agreement with the department[;]; and
- 225 (b) by a person;
- 226 (i) other than the state[;]; and
- 227 (ii) who is authorized by the commission to sell package liquor for consumption off the

228 premises of the package agency.

229 ~~[(34)]~~ (35) "Package agent" means ~~[any]~~ a person permitted by the commission to
230 operate a package agency pursuant to a contractual agreement with the department to sell
231 liquor from premises that the package agent shall provide and maintain.

232 ~~[(35)]~~ (36) "Permittee" means ~~[any]~~ a person issued a permit by the commission to
233 perform ~~[acts]~~ an act or exercise ~~[privileges]~~ a privilege as specifically granted in the permit.

234 ~~[(36)]~~ (37) "Person" means ~~[any]~~ an individual, partnership, firm, corporation, limited
235 liability company, association, business trust, or other form of business enterprise, including a
236 receiver or trustee, and the plural as well as the singular number, unless the intent to give a
237 more limited meaning is disclosed by the context.

238 ~~[(37)]~~ (38) "Premises" means ~~[any]~~ a building, enclosure, room, or equipment used in
239 connection with the sale, storage, service, manufacture, distribution, or consumption of an
240 alcoholic ~~[products]~~ product, unless otherwise defined in this title or in the rules adopted by the
241 commission.

242 ~~[(38)]~~ (39) "Prescription" means a writing in legal form, signed by a physician or dentist
243 and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

244 ~~[(39)]~~ (40) (a) "Privately hosted event" or "private social function" means a specific
245 social, business, or recreational event;

246 (i) for which an entire room, area, or hall ~~[has been]~~ is leased or rented[;] in advance by
247 an identified group[;]; and ~~[the event or function]~~

248 (ii) that is limited in attendance to people who ~~[have been]~~ are specifically designated
249 and their guests.

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

252 ~~[(40)]~~ (41) "Proof of age" means:

253 (a) an identification card;

254 (b) an identification that:

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

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

258 (iii) includes date of birth; and

259 (iv) has a picture affixed;

260 (c) a valid driver license certificate that:

261 (i) includes date of birth;

262 (ii) has a picture affixed; and

263 (iii) is issued:

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

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

266 (d) a military identification card that:

267 (i) includes date of birth; and

268 (ii) has a picture affixed; or

269 (e) a valid passport.

270 [~~41~~] (42) (a) "Public building" means [~~any~~] a building or permanent structure owned
271 or leased by the state, a county, or local government entity that is used for:

272 (i) public education;

273 (ii) transacting public business; or

274 (iii) regularly conducting government activities.

275 (b) "Public building" does not mean or refer to [~~any~~] a building owned by the state or a
276 county or local government entity when the building is used by [~~anyone~~] a person, in whole or
277 in part, for a proprietary [~~functions~~] function.

278 [~~42~~] (43) "Representative" means an individual who is compensated by salary,
279 commission, or [~~any~~] other means for representing and selling [~~the~~] an alcoholic beverage
280 [~~products~~] product of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

281 [~~43~~] (44) "Residence" means [~~the~~] a person's principal place of abode within Utah.

282 [~~44~~] (45) "Restaurant" means [~~any~~] a business establishment:

283 (a) where a variety of foods is prepared and complete meals are served to the general

284 public;

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

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

288 [~~(45)~~] (46) "Retailer" means [~~any~~] a person engaged in the sale or distribution of an
289 alcoholic [~~beverages~~] beverage to [~~the~~] a consumer.

290 [~~(46)~~] (47) (a) "Sample" includes:

291 (i) a department sample; and

292 (ii) an industry representative sample.

293 (b) "Department sample" means liquor, wine, and heavy beer that [~~has been~~] is placed in
294 the possession of the department for testing, analysis, and sampling.

295 (c) "Industry representative sample" means liquor, wine, and heavy beer that [~~has been~~]
296 is placed in the possession of the department for testing, analysis, and sampling by a local
297 industry [~~representatives~~] representative on the premises of the department to educate the local
298 industry [~~representatives~~] representative of the quality and characteristics of the product.

299 [~~(47)~~] (48) (a) "School" means [~~any~~] a building used primarily for the general education
300 of minors.

301 (b) "School" does not include:

302 (i) a nursery school;

303 (ii) an infant day care center; or

304 (iii) a trade or technical school.

305 [~~(48)~~] (49) "Sell," "sale," and "to sell" means [~~any~~] a transaction, exchange, or barter
306 whereby, for [~~any~~] consideration, an alcoholic beverage is either directly or indirectly
307 transferred, solicited, ordered, delivered for value, or by [~~any~~] a means or under [~~any~~] a pretext
308 is promised or obtained, whether done by a person as a principal, proprietor, or as an agent,
309 servant, or employee, unless otherwise defined in this title or the rules made by the commission.

310 [~~(49)~~] (50) "Seminude," "seminudity," or "state of seminudity" means a state of dress in
311 which opaque clothing covers no more than:

312 (a) the nipple and areola of the female human breast in a shape and color other than the
313 natural shape and color of the nipple and areola; and

314 (b) the human genitals, pubic area, and anus:

315 (i) with no less than the following at its widest point:

316 (A) four inches coverage width in the front of the human body; and

317 (B) five inches coverage width in the back of the human body; and

318 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

319 ~~[(50)]~~ (51) "Sexually oriented entertainer" means a person who while in a state of
320 seminudity appears at or performs:

321 (a) for the entertainment of one or more patrons;

322 (b) on the premises of:

323 (i) a class D private club as defined in Subsection 32A-5-101(3); or

324 (ii) a tavern;

325 (c) on behalf of or at the request of the licensee described in Subsection ~~[(50)]~~ (51)(b);

326 (d) on a contractual or voluntary basis; and

327 (e) whether or not the person is designated:

328 (i) an employee of the licensee described in Subsection ~~[(50)]~~ (51)(b);

329 (ii) an independent contractor of the licensee described in Subsection ~~[(50)]~~ (51)(b);

330 (iii) an agent of the licensee described in Subsection ~~[(50)]~~ (51)(b); or

331 (iv) otherwise of the licensee described in Subsection ~~[(50)]~~ (51)(b).

332 ~~[(51)]~~ (52) "Small brewer" means a brewer who manufactures less than 60,000 barrels
333 of beer and heavy beer per year.

334 ~~[(52)]~~ (53) (a) "Spirituous liquor" means liquor that is distilled.

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

337 ~~[(53)]~~ (54) (a) "State label" means the official label designated by the commission
338 affixed to ~~[a]]~~ a liquor ~~[containers]~~ container sold in the state.

339 (b) "State label" includes the department identification mark and inventory control

340 number.

341 [~~54~~] (55) (a) "State store" means a facility for the sale of package liquor:

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

343 (ii) operated by a state [~~employees~~] employee.

344 (b) "State store" does not apply to [~~any~~] a:

345 (i) licensee;

346 (ii) permittee; or

347 (iii) package agency.

348 [~~55~~] (56) "Supplier" means [~~any~~] a person selling an alcoholic [~~beverages~~] beverage to
349 the department.

350 [~~56~~] (57) (a) "Tavern" means [~~any~~] a business establishment that is:

351 (i) engaged primarily in the retail sale of beer to a public [~~patrons~~] patron for
352 consumption on the establishment's premises; and

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

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

356 (i) a beer bar;

357 (ii) a parlor;

358 (iii) a lounge;

359 (iv) a cabaret; or

360 (v) a nightclub.

361 [~~57~~] (58) "Temporary domicile" means the principal place of abode within Utah of a
362 person who does not have a present intention to continue residency within Utah permanently or
363 indefinitely.

364 [~~58~~] (59) "Unsaleable liquor merchandise" means merchandise that:

365 (a) is unsaleable because the merchandise is:

366 (i) unlabeled;

367 (ii) leaky;

- 368 (iii) damaged;
- 369 (iv) difficult to open; or
- 370 (v) partly filled;
- 371 (b) is in a container:
 - 372 (i) having faded labels or defective caps or corks;
 - 373 (ii) in which the contents are:
 - 374 (A) cloudy;
 - 375 (B) spoiled; or
 - 376 (C) chemically determined to be impure; or
 - 377 (iii) that contains:
 - 378 (A) sediment; or
 - 379 (B) ~~[any]~~ a foreign substance; or
 - 380 (c) is otherwise considered by the department as unfit for sale.

381 ~~[(59)]~~ (60) "Visitor" means an individual that in accordance with Section 32A-5-107
382 holds limited privileges in a private club by virtue of a visitor card.

383 ~~[(60)]~~ (61) "Warehouser" means ~~[any]~~ a person, other than a licensed manufacturer,
384 engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

385 ~~[(61)]~~ (62) "Wholesaler" means ~~[any]~~ a person engaged in the importation for sale, or in
386 the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling
387 beer manufactured by that brewer.

388 ~~[(62)]~~ (63) (a) "Wine" means ~~[any]~~ an alcoholic beverage obtained by the fermentation
389 of the natural sugar content of fruits, plants, honey, or milk, or ~~[any]~~ other like substance,
390 whether or not ~~[other ingredients are]~~ another ingredient is added.

391 (b) "Wine" is considered "liquor" for purposes of this title, except as otherwise
392 provided in this title.

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

394 **32A-1-119. Disciplinary proceedings -- Procedure.**

395 ~~[(1) (a) As used in this section and Section 32A-1-120, "disciplinary proceeding" means~~

396 ~~an adjudicative proceeding permitted under this title:]~~
397 ~~[(i) against:]~~
398 ~~[(A) a permittee;]~~
399 ~~[(B) a licensee;]~~
400 ~~[(C) a manufacturer;]~~
401 ~~[(D) a supplier;]~~
402 ~~[(E) an importer;]~~
403 ~~[(F) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;~~
404 ~~or]~~
405 ~~[(G) an officer, employee, or agent of:]~~
406 ~~[(H) a person listed in Subsections (1)(a)(i)(A) through (F); or]~~
407 ~~[(I) a package agent; and]~~
408 ~~[(ii) that is brought on the basis of a violation of this title.]~~
409 ~~[(b)]~~ (1) As used in Subsection (4), "final adjudication" means an adjudication for which
410 a final unappealable judgment or order ~~[has been]~~ is issued.
411 (2) (a) ~~[The]~~ Subject to Section 32A-1-119.5, the following may conduct an
412 adjudicative [proceedings] proceeding to inquire into ~~[any]~~ a matter necessary and proper for
413 the administration of this title and rules adopted under this title:
414 (i) the commission;
415 (ii) a hearing examiner appointed by the commission for the purposes provided in
416 Subsection 32A-1-107(3);
417 (iii) the director; and
418 (iv) the department.
419 (b) Except as provided in this section or Section 32A-3-106, the following shall comply
420 with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act,
421 in an adjudicative ~~[proceedings]~~ proceeding:
422 (i) the commission;
423 (ii) a hearing examiner appointed by the commission;

424 (iii) the director; and

425 (iv) the department.

426 (c) Except where otherwise provided by law, ~~[att]~~ an adjudicative ~~[proceedings]~~
427 proceeding before the commission or ~~[its appointed]~~ a hearing examiner appointed by the
428 commission shall be:

429 (i) video or audio recorded; and

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

432 (d) ~~[AH]~~ A person listed in Subsection (2)(a) shall conduct an adjudicative
433 ~~[proceedings]~~ proceeding concerning departmental personnel ~~[shall be conducted]~~ in
434 accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

435 (e) ~~[All hearings that are]~~ A hearing that is informational, fact gathering, and
436 nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures
437 ~~[promulgated]~~ made by the commission, director, or department.

438 (3) (a) ~~[A]~~ Subject to Section 32A-1-119.5, a disciplinary proceeding shall be
439 conducted under the authority of the commission, which is responsible for rendering a final
440 decision and order on ~~[any]~~ a disciplinary matter.

441 (b) (i) Nothing in this section precludes the commission from appointing a necessary
442 ~~[officers]~~ officer, including a hearing ~~[examiners]~~ examiner, from within or without the
443 department, to administer the disciplinary proceeding process.

444 (ii) A hearing examiner appointed by the commission:

445 (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and

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

447 (I) findings of fact determined on the basis of a preponderance of the evidence
448 presented at the hearing;

449 (II) conclusions of law; and

450 (III) recommendations.

451 (c) Nothing in this section precludes the commission, after the commission ~~[has]~~

452 rendered] renders its final decision and order, from having the director prepare, issue, and cause
453 to be served on the parties the final written order on behalf of the commission.

454 (4) Subject to Section 32A-1-119.5:

455 ~~[(4)]~~ (a) The department may initiate a disciplinary proceeding described in Subsection
456 (4)(b) ~~[when]~~ if the department receives:

457 (i) a report from ~~[any]~~ a government agency, peace officer, examiner, or investigator
458 alleging that ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections
459 32A-1-105(15)(a)(i) through (vii) violated this title or the rules of the commission;

460 (ii) a final adjudication of criminal liability against ~~[any]~~ a person listed in ~~[Subsections~~
461 ~~(1)(a)(i)(A) through (G)]~~ Subsections 32A-1-105(15)(a)(i) through (vii) based on an alleged
462 violation of this title; or

463 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
464 Liability, against ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections
465 32A-1-105(15)(a)(i) through (vii) based on an alleged violation of this title.

466 (b) The department may initiate a disciplinary proceeding if the department receives an
467 item listed in Subsection (4)(a) to determine:

468 (i) whether ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~ Subsections
469 32A-1-105(15)(a)(i) through (vii) violated this title or rules of the commission; and

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

471 (5) (a) Unless waived by the respondent, a disciplinary proceeding shall be held:

472 (i) if required by law;

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

475 (iii) before imposing a fine against ~~[any]~~ a person listed in ~~[Subsections (1)(a)(i)(A)~~
476 ~~through (G)]~~ Subsections 32A-1-105(15)(a)(i) through (vii).

477 (b) Inexcusable failure of a respondent to appear at a scheduled disciplinary proceeding
478 hearing after receiving proper notice is an admission of the charged violation.

479 (c) The validity of a disciplinary proceeding is not affected by the failure of ~~[any]~~ a

480 person to attend or remain in attendance.

481 (d) ~~[All disciplinary proceeding hearings shall be presided over by the]~~ The commission
482 or an appointed hearing examiner shall preside over a disciplinary proceeding hearing.

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

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

488 (A) administer oaths or affirmations;

489 (B) take evidence;

490 (C) take ~~[depositions]~~ a deposition within or without this state; and

491 (D) require by subpoena from ~~[any]~~ a place within this state:

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

493 (II) the production of ~~[any books, records, papers, contracts, agreements, documents]~~ a
494 book, record, paper, contract, agreement, document, or other evidence considered relevant to
495 the inquiry.

496 (ii) A person subpoenaed in accordance with this Subsection (5)(f) shall testify and
497 produce ~~[any books, papers, documents]~~ a book, paper, document, or tangible ~~[things]~~ thing as
498 required in the subpoena.

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

504 (iv) (A) A person is not excused from obeying a subpoena without just cause.

505 (B) ~~[Any]~~ A district court within the judicial district in which a person alleged to be
506 guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon
507 application by the party issuing the subpoena, may issue an order requiring the person to:

- 508 (I) appear before the issuing party; and
- 509 (II) (Aa) produce documentary evidence if so ordered; or
- 510 (Bb) give evidence regarding the matter in question.
- 511 (C) Failure to obey an order of the court may be punished by the court as contempt.
- 512 (g) (i) In ~~all~~ a disciplinary proceeding ~~hearings~~ hearing heard by a hearing examiner,
- 513 the hearing examiner shall prepare a report required by Subsection (3)(b)(ii) to the commission.
- 514 (ii) The report required by Subsection (3)(b)(ii) and this Subsection (5)(g) may not
- 515 recommend a penalty more severe than that initially sought by the department in the notice of
- 516 agency action.
- 517 (iii) A copy of the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
- 518 shall be served upon the respective parties.
- 519 (iv) The respondent and the department shall be given reasonable opportunity to file
- 520 ~~any~~ a written ~~objections~~ objection to the report required by Subsection (3)(b)(ii) and this
- 521 Subsection (5)(g) before final commission action.
- 522 (h) In ~~all cases~~ a case heard by the commission, it shall issue its final decision and
- 523 order in accordance with Subsection (3).
- 524 (6) (a) The commission shall:
- 525 (i) render a final decision and order on ~~any~~ a disciplinary action; and
- 526 (ii) cause its final order to be prepared in writing, issued, and served on all parties.
- 527 (b) ~~Any~~ An order of the commission is considered final on the date the order becomes
- 528 effective.
- 529 (c) If the commission is satisfied that a person listed in ~~[Subsections (1)(a)(i)(A)~~
- 530 ~~through (G) has committed a violation of]~~ Subsections 32A-1-105(15)(a)(i) through (vii)
- 531 violated this title or the commission's rules, in accordance with Title 63, Chapter 46b,
- 532 Administrative Procedures Act, the commission may:
- 533 (i) suspend or revoke the permit, license, or certificate of approval;
- 534 (ii) impose a fine against a person listed in ~~[Subsections (1)(a)(i)(A) through (G)]~~
- 535 Subsections 32A-1-105(15)(a)(i) through (vii);

536 (iii) assess the administrative costs of ~~[any]~~ a disciplinary proceeding to the permittee,
537 the licensee, or certificate holder; or

538 (iv) ~~[any]~~ take a combination of actions described in Subsections (6)(c)(i) through (iii).

539 (d) A fine imposed in accordance with this Subsection (6) is subject to Subsections
540 32A-1-107(1)(p) and (4).

541 (e) (i) If a permit or license is suspended under this Subsection (6), the permittee or
542 licensee shall prominently post a sign provided by the department [~~shall be prominently posted~~]:

543 (A) during the suspension; and

544 [~~(B) by the permittee or licensee; and~~]

545 [~~(C)~~] (B) at the entrance of the premises of the permittee or licensee.

546 (ii) The sign required by this Subsection (6)(e) shall:

547 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the
548 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be sold,
549 served, furnished, or consumed on these premises during the period of suspension."; and

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

551 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required
552 to be posted under this Subsection (6)(e) during the suspension period.

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

555 (g) ~~[Any]~~ A permittee or licensee whose permit or license is revoked may not reapply
556 for a permit or license under this title for three years from the date on which the permit or
557 license is revoked.

558 (h) [~~All costs assessed by the~~] The commission shall [~~be transferred~~] transfer all costs
559 assessed into the General Fund in accordance with Section 32A-1-113.

560 (7) Subject to Section 32A-1-119.5:

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

564 (b) If ~~[any]~~ an officer, employee, or agent is found to have violated this title, the
565 commission may prohibit the officer, employee, or agent from serving, selling, distributing,
566 manufacturing, wholesaling, warehousing, or handling an alcoholic ~~[beverages]~~ beverage in the
567 course of ~~[employment]~~ acting as an officer, employee, or agent with ~~[any]~~ a permittee,
568 licensee, or certificate holder under this title for a period determined by the commission.

569 (8) Subject to Section 32A-1-119.5:

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

572 (i) a manufacturer, supplier, or importer of an alcoholic ~~[beverages]~~ beverage; or

573 (ii) an officer, employee, agent, or representative of a person listed in Subsection
574 (8)(a)(i).

575 (b) (i) If the commission makes the finding described in Subsection (8)(b)(ii), the
576 commission may, in addition to other penalties prescribed by this title, order:

577 (A) the removal of the manufacturer's, supplier's, or importer's one or more products
578 from the department's sales list; and

579 (B) a suspension of the department's purchase of the one or more products described in
580 Subsection (8)(b)(i)(A) for a period determined by the commission.

581 (ii) The commission may take the action described in Subsection (8)(b)(i) if:

582 (A) ~~[any]~~ a manufacturer, supplier, or importer of liquor, wine, or heavy beer or its
583 officer, employee, agent, or representative violates ~~[any provision of]~~ this title; and

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

585 (I) directly ~~[committed]~~ commits the violation; or

586 (II) ~~[solicited, requested, commanded, encouraged, or intentionally aided]~~

587 solicits, requests, commands, encourages, or intentionally aids another to engage in the
588 violation.

589 (9) Subject to Section 32A-1-119.5:

590 ~~[(9)]~~ (a) The department may initiate a disciplinary proceeding against a brewer holding
591 a certificate of approval under Section 32A-8-101 for an alleged violation of this title or the

592 rules of the commission.

593 (b) If the commission makes a finding that the brewer holding a certificate of approval
594 violates this title or rules of the commission, the commission may take [~~any~~] an action against
595 the brewer holding a certificate of approval that the commission could take against a licensee
596 including:

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

598 (ii) imposition of a fine.

599 (10) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by
600 the commission or a hearing examiner appointed by the commission shall proceed formally in
601 accordance with Sections 63-46b-6 through 63-46b-11 in [~~any~~] a case where:

602 (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health,
603 and welfare;

604 (ii) the alleged violation involves:

605 (A) selling, serving, or otherwise furnishing an alcoholic [~~products~~] product to a minor;

606 (B) attire, conduct, or entertainment prohibited by Part 6, Attire, Conduct, and

607 Entertainment Act;

608 (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf
609 of the respondent;

610 (D) interfering or refusing to cooperate with:

611 (I) an authorized official of the department or the state in the discharge of the official's
612 duties in relation to the enforcement of this title; or

613 (II) a peace officer in the discharge of the peace officer's duties in relation to the
614 enforcement of this title;

615 (E) an unlawful trade practice under Sections 32A-12-601 through 32A-12-606;

616 (F) unlawful importation of an alcoholic [~~products~~] product; or

617 (G) unlawful supply of liquor by a liquor industry member, as defined in Subsection
618 32A-12-601(2), to [~~any~~] a person other than the department or a military installation, except to
619 the extent permitted by this title; or

- 620 (iii) the department determines to seek in a disciplinary proceeding hearing:
- 621 (A) an administrative fine exceeding \$3,000;
- 622 (B) a suspension of a license, permit, or certificate of approval of more than ten days;
- 623 or
- 624 (C) a revocation of a license, permit, or certificate of approval.

625 (b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
626 Administrative Rulemaking Act, to provide a procedure to implement this Subsection (10).

627 Section 3. Section **32A-1-119.5** is enacted to read:

628 **32A-1-119.5. Timing of reporting violations.**

629 (1) As used in this section:

630 (a) "Department compliance officer" means an individual who is:

631 (i) an auditor or inspector; and

632 (ii) employed by the department.

633 (b) "Nondepartment enforcement agency" means an agency that:

634 (i) (A) is a state agency other than the department; or

635 (B) is an agency of a county, city, or town; and

636 (ii) has a responsibility, as provided in another provision of this title, to enforce one or
637 more provisions of this title.

638 (c) "Nondepartment enforcement officer" means an individual who is:

639 (i) a peace officer, examiner, or investigator; and

640 (ii) employed by an agency described in Subsection (1)(b).

641 (2) A disciplinary proceeding may not be initiated or maintained by the commission or
642 department on the basis, in whole or in part, of a violation of this title unless a person listed in
643 Subsections 32A-1-105(15)(a)(i) through (vi) against whom the violation is alleged is notified
644 by the department of the violation in accordance with this section.

645 (3) (a) A nondepartment enforcement agency or nondepartment enforcement officer
646 may not report a violation of this title to the department more than eight business days after the
647 day on which a nondepartment enforcement officer or agency completes an investigation that

648 finds a violation of this title.

649 (b) If the commission or department wants the right to initiate or maintain a disciplinary
650 proceeding on the basis, in whole or in part, of a violation of this title alleged in a report
651 described in Subsection (3)(a), the department shall notify a person listed in Subsections
652 32A-1-105(15)(a)(i) through (vi) alleged by the report to have violated this title:

653 (i) by no later than eight business days of the day on which the department receives the
654 report described in Subsection (3)(a); and

655 (ii) that the commission or department may initiate or maintain a disciplinary proceeding
656 on the basis, in whole or in part, of the violation.

657 (4) If the commission or department wants the right to initiate or maintain a disciplinary
658 proceeding on the basis, in whole or in part, of a violation of this title alleged by report of a
659 department compliance officer, the department shall notify a person listed in Subsections
660 32A-1-105(15)(a)(i) through (vi) alleged by the report to have violated this title:

661 (a) by no later than eight business days of the day on which the department compliance
662 officer completes an investigation that finds a violation of this title; and

663 (b) that the commission or department may initiate or maintain a disciplinary proceeding
664 on the basis, in whole or in part, of the violation.

665 (5) The notice described in Subsection (2), (3)(b), or (4) is not required with respect to
666 a person listed in Subsection 32A-1-105(15)(a)(vii).

667 (6) (a) A notice required by Subsection (2), (3)(b), or (4) may be done orally, if after
668 the oral notification the department provides written notification.

669 (b) The written notification described in Subsection (6)(a) may be sent outside the time
670 periods required by this section.

671 (7) The department shall maintain a record of a notification required by Subsection (2),
672 (3)(b), or (4) that includes:

673 (a) the name of the person notified; and

674 (b) the date of the notification.

675 Section 4. Section **32A-1-120** is amended to read:

676 **32A-1-120. Judicial review -- Enforcement.**

677 (1) In a disciplinary proceeding, [~~as defined in Section 32A-1-119,~~] a respondent found
678 in a final order of the commission to have violated this title or rules of the commission made
679 under this title may seek judicial review in a court of competent jurisdiction pursuant to the
680 judicial review provisions of Sections 63-46b-14 through 63-46b-18.

681 (2) Notwithstanding Subsection 63-46b-16(4)(g), an appellate court may not grant
682 relief on the basis that a finding of fact by the commission in a formal disciplinary proceeding is
683 not supported, if the commission's finding of fact is supported by any evidence of substance in
684 the record of the formal disciplinary proceeding when viewed in light of the whole record before
685 the court.

686 (3) In addition to [~~any other~~] another remedy provided by law, the commission may
687 seek enforcement of a commission order in a disciplinary proceeding by seeking civil
688 enforcement in a state district court in accordance with Section 63-46b-19.

689 Section 5. Section **76-5-113** is amended to read:

690 **76-5-113. Surreptitious administration of certain substances -- Definitions --**
691 **Penalties -- Defenses.**

692 (1) As used in this section:

693 (a) "Administer" means the introduction of a substance into the body by injection,
694 inhalation, ingestion, or by any other means.

695 (b) "Alcoholic beverage" has the same meaning as "alcoholic [~~beverages~~] beverage" in
696 Section 32A-1-105.

697 (c) "Bodily injury" has the same definition as in Section 76-1-601.

698 (d) "Controlled substance" has the same definition as in Section 58-37-2.

699 (e) "Deleterious substance" means a substance which, if administered, would likely
700 cause bodily injury.

701 (f) "Poisonous" means a substance which, if administered, would likely cause serious
702 bodily injury or death.

703 (g) "Prescription drug" has the same definition as in Section 58-17b-102.

704 (h) "Serious bodily injury" has the same definition as in Section 19-2-115.

705 (i) "Substance" means a controlled substance, poisonous substance, or deleterious
706 substance as defined in this Subsection (1).

707 (2) In addition to any other offense the actor's conduct may constitute, it is a criminal
708 offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to
709 cause another person to unknowingly consume or receive the administration of:

710 (a) any poisonous, deleterious, or controlled substance; or

711 (b) any alcoholic beverage.

712 (3) A violation of Subsection (2) is:

713 (a) a second degree felony if the substance is a poisonous substance, regardless of
714 whether the substance is a controlled substance or a prescription drug;

715 (b) a third degree felony if the substance is not within the scope of Subsection (3)(a),
716 and is a controlled substance or a prescription drug; and

717 (c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic
718 beverage.

719 (4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

720 (i) provided the appropriate administration of a prescription drug; and

721 (ii) acted on the reasonable belief that his conduct was in the best interest of the
722 well-being of the person to whom the prescription drug was administered.

723 (b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing
724 of his intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the
725 trial.

726 (ii) The notice shall specifically identify the factual basis for the defense and the names
727 and addresses of the witnesses the defendant proposes to examine to establish the defense.

728 (c) The prosecuting attorney shall file and serve the defendant with a notice containing
729 the names and addresses of the witnesses the prosecutor proposes to examine in order to
730 contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This
731 notice shall be filed or served not more than ten days after receipt of the defendant's notice

732 under Subsection (4)(b), or at another time as the court may direct.

733 (d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c)
734 entitles the opposing party to a continuance to allow for preparation.

735 (ii) If the court finds that a party's failure to comply is the result of bad faith, it may
736 impose appropriate sanctions.

737 (5) This section does not diminish the scope of authorized health care by a health care
738 provider as defined in Section 26-23a-1.