

**REVISIONS TO ALCOHOLIC BEVERAGE
CONTROL ACT**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ addresses the nature of an adjudicative proceeding as a civil action including the burden of proof and the general applicability of mens rea requirements;
- ▶ makes procedural clarifications;
- ▶ **H→ requires training of law enforcement officers in certain circumstances; ←H**
- ▶ clarifies the application of criminal procedures, principles, and penalties; and
- ▶ makes technical 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 2008, Chapters 317, 322, and 391

32A-1-119, as last amended by Laws of Utah 2008, Chapters 317, 382, and 391

32A-12-101, as renumbered and amended by Laws of Utah 1990, Chapter 23

H→ 32A-12-102, as last amended by Laws of Utah 2004, Chapter 268 ←H

H.B. 376



28 **32A-12-104**, as last amended by Laws of Utah 2007, Chapter 322



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

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

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

33 As used in this title:

34 (1) "Airport lounge" means a place of business licensed to sell an alcoholic beverage,
35 at retail, for consumption on its premises located at an international airport with a United States
36 Customs office on the premises of the international airport.

37 (2) "Alcoholic beverage" means the following as the term is defined in this section:

- 38 (a) beer;
- 39 (b) flavored malt beverage; and
- 40 (c) liquor[~~; which on or after October 1, 2008;~~] includes a flavored malt beverage.

41 (3) (a) "Alcoholic product" means a product that:

- 42 (i) contains at least .5% of alcohol by volume; and
- 43 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
44 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
45 in an amount greater than the amount prescribed in Subsection (3)(a)(i).

46 (b) "Alcoholic product" does not include any of the following common items that
47 otherwise come within the definition of an alcoholic product:

- 48 (i) except as provided in Subsection (3)(c), extract;
- 49 (ii) vinegar;
- 50 (iii) cider;
- 51 (iv) essence;
- 52 (v) tincture;
- 53 (vi) food preparation; or
- 54 (vii) an over-the-counter drug or medicine.

55 (c) An extract containing alcohol obtained by distillation is regulated as an alcoholic
56 product when it is used as a flavoring in the manufacturing of an alcoholic product.

57 (4) "Bar" means a counter or similar structure:

- 58 (a) at which an alcoholic beverage is:

- 59 (i) stored; or
- 60 (ii) dispensed; or
- 61 (b) from which an alcoholic beverage is served.
- 62 (5) (a) Subject to Subsection (5)(d), "beer" means a product that:
- 63 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
- 64 volume or 3.2% by weight; and
- 65 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 66 (b) Beer may or may not contain hops or other vegetable products.
- 67 (c) Beer includes a product that:
- 68 (i) contains alcohol in the percentages described in Subsection (5)(a); and
- 69 (ii) is referred to as:
- 70 (A) beer;
- 71 (B) ale;
- 72 (C) porter;
- 73 (D) stout;
- 74 (E) lager; or
- 75 (F) a malt or malted beverage.
- 76 (d) [~~On or after October 1, 2008, "beer"~~] "Beer" does not include a flavored malt
- 77 beverage.
- 78 (6) (a) "Beer retailer" means a business that is:
- 79 (i) engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for
- 80 consumption on or off the business premises; and
- 81 (ii) licensed to sell beer by:
- 82 (A) the commission;
- 83 (B) a local authority; or
- 84 (C) both the commission and a local authority.
- 85 (b) (i) "Off-premise beer retailer" means a business that is engaged in the retail sale of
- 86 beer to a patron for consumption off the beer retailer's premises.
- 87 (ii) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 88 (c) "On-premise beer retailer" means a business that is engaged in the sale of beer to a
- 89 patron for consumption on the beer retailer's premises, regardless of whether the business sells

90 beer for consumption off the beer retailer's premises.

91 (7) "Billboard" means a public display used to advertise including:

92 (a) a light device;

93 (b) a painting;

94 (c) a drawing;

95 (d) a poster;

96 (e) a sign;

97 (f) a signboard; or

98 (g) a scoreboard.

99 (8) "Brewer" means a person engaged in manufacturing:

100 (a) beer;

101 (b) heavy beer; or

102 (c) a flavored malt beverage.

103 (9) "Cash bar" means the service of an alcoholic beverage:

104 (a) at:

105 (i) a banquet; or

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

107 (b) if an attendee at the banquet or temporary event is charged for the alcoholic

108 beverage.

109 (10) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by

110 a bus company to a group of persons pursuant to a common purpose:

111 (a) under a single contract;

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

113 (c) for the purpose of giving the group of persons the exclusive use of the passenger

114 bus, coach, or other motor vehicle and a driver to travel together to one or more specified

115 destinations.

116 (11) "Church" means a building:

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

118 (b) in which religious services are held;

119 (c) with which clergy is associated; and

120 (d) which is tax exempt under the laws of this state.

121 (12) "Club" and "private club" means any of the following organized primarily for the
122 benefit of its members:

- 123 (a) a social club;
- 124 (b) a recreational association;
- 125 (c) a fraternal association;
- 126 (d) an athletic association; or
- 127 (e) a kindred association.

128 (13) "Commission" means the Alcoholic Beverage Control Commission.

129 (14) "Community location" means:

- 130 (a) a public or private school;
- 131 (b) a church;
- 132 (c) a public library;
- 133 (d) a public playground; or
- 134 (e) a public park.

135 (15) "Community location governing authority" means:

- 136 (a) the governing body of the community location; or
- 137 (b) if the commission does not know who is the governing body of a community
138 location, a person who appears to the commission to have been given on behalf of the
139 community location authority to prohibit an activity at the community location.

140 (16) "Department" means the Department of Alcoholic Beverage Control.

141 (17) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
142 title:

- 143 (a) against:
 - 144 (i) a permittee;
 - 145 (ii) a licensee;
 - 146 (iii) a manufacturer;
 - 147 (iv) a supplier;
 - 148 (v) an importer;
 - 149 (vi) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;
- 150 or
- 151 (vii) an officer, employee, or agent of:

152 (A) a person listed in Subsections (17)(a)(i) through (vi); or

153 (B) a package agent; and

154 (b) that is brought on the basis of a violation of this title.

155 (18) "Director," unless the context requires otherwise, means the director appointed
156 under Section 32A-1-108.

157 (19) "Distressed merchandise" means an alcoholic beverage in the possession of the
158 department that is saleable, but for some reason is unappealing to the public.

159 (20) "Flavored malt beverage" means a beverage:

160 (a) that contains at least .5% alcohol by volume;

161 (b) that is treated by processing, filtration, or another method of manufacture that is not
162 generally recognized as a traditional process in the production of a beer as described in 27
163 C.F.R. Sec. 25.55;

164 (c) to which is added a flavor or other ingredient containing alcohol, except for a hop
165 extract; and

166 (d) (i) for which the producer is required to file a formula for approval with the United
167 States Alcohol and Tobacco Trade and Tax Bureau pursuant to 27 C.F.R. Sec. 25.55; or

168 (ii) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

169 (21) "Guest" means a person accompanied by an active member or visitor of a club
170 who enjoys only those privileges derived from the host for the duration of the visit to the club.

171 (22) (a) "Heavy beer" means a product that:

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

173 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

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

175 (23) "Hosted bar" means the service of an alcoholic beverage:

176 (a) without charge; and

177 (b) at a:

178 (i) banquet; or

179 (ii) privately hosted event.

180 (24) "Identification card" means an identification card issued under Title 53, Chapter 3,
181 Part 8, Identification Card Act.

182 (25) "Interdicted person" means a person to whom the sale, gift, or provision of an

183 alcoholic beverage is prohibited by:

184 (a) law; or

185 (b) court order.

186 (26) "Intoxicated" means that ~~[to a degree that is unlawful under Section 76-9-701]~~ a

187 person ~~[is under the influence of]:~~

188 (a) is significantly impaired as to the person's mental or physical functions as a result of

189 the use of:

190 ~~[(a)]~~ (i) an alcoholic beverage;

191 ~~[(b)]~~ (ii) a controlled substance;

192 ~~[(c)]~~ (iii) a substance having the property of releasing toxic vapors; or

193 ~~[(d)]~~ (iv) a combination of Subsections (26)(a)(i) through ~~[(c)]:~~ ~~(iii);~~ ~~H→~~ **[or]** **and** ~~←H~~

194 (b) exhibits plain and easily observed outward manifestations of behavior or physical

195 signs produced by the over consumption of an alcoholic beverage.

196 (27) "Licensee" means a person issued a license by the commission to sell,

197 manufacture, store, or allow consumption of an alcoholic beverage on premises owned or

198 controlled by the person.

199 (28) "Limousine" means a motor vehicle licensed by the state or a local authority, other
200 than a bus or taxicab:

201 (a) in which the driver and a passenger are separated by a partition, glass, or other
202 barrier; and

203 (b) that is provided by a company to one or more individuals at a fixed charge in
204 accordance with the company's tariff for the purpose of giving the one or more individuals the
205 exclusive use of the limousine and a driver to travel to one or more specified destinations.

206 (29) (a) (i) "Liquor" means alcohol, or an alcoholic, spirituous, vinous, fermented, malt,
207 or other liquid, or combination of liquids, a part of which is spirituous, vinous, or fermented, or
208 other drink, or drinkable liquid that:

209 (A) contains at least .5% alcohol by volume; and

210 (B) is suitable to use for beverage purposes.

211 (ii) ~~[On or after October 1, 2008, "liquor"]~~ "Liquor" includes a flavored malt beverage.

212 (b) "Liquor" does not include a beverage defined as a beer.

213 (30) "Local authority" means:

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

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

218 (31) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
219 otherwise make an alcoholic product for personal use or for sale or distribution to others.

220 (32) "Member" means a person who, after paying regular dues, has full privileges of a
221 club under this title.

222 (33) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
223 or homeport facility for a ship:

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

225 (B) of the National Guard;

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

227 (iii) including a leased facility.

228 (b) "Military installation" does not include a facility used primarily for:

229 (i) civil works;

230 (ii) a rivers and harbors project; or

231 (iii) a flood control project.

232 (34) "Minor" means an individual under the age of 21 years.

233 (35) "Nude," "nudity," or "state of nudity" means:

234 (a) the appearance of:

235 (i) the nipple or areola of a female human breast;

236 (ii) a human genital;

237 (iii) a human pubic area; or

238 (iv) a human anus; or

239 (b) a state of dress that fails to opaquely cover:

240 (i) the nipple or areola of a female human breast;

241 (ii) a human genital;

242 (iii) a human pubic area; or

243 (iv) a human anus.

244 (36) "Outlet" means a location other than a state store or package agency where an

245 alcoholic beverage is sold pursuant to a license issued by the commission.

246 (37) "Package" means any of the following containing liquor:

247 (a) a container;

248 (b) a bottle;

249 (c) a vessel; or

250 (d) other receptacle.

251 (38) "Package agency" means a retail liquor location operated:

252 (a) under a contractual agreement with the department; and

253 (b) by a person:

254 (i) other than the state; and

255 (ii) who is authorized by the commission to sell package liquor for consumption off the
256 premises of the package agency.

257 (39) "Package agent" means a person permitted by the commission to operate a
258 package agency pursuant to a contractual agreement with the department to sell liquor from
259 premises that the package agent shall provide and maintain.

260 (40) "Permittee" means a person issued a permit by the commission to perform an act
261 or exercise a privilege as specifically granted in the permit.

262 (41) "Person" means an individual, partnership, firm, corporation, limited liability
263 company, association, business trust, or other form of business enterprise, including a receiver
264 or trustee, and the plural as well as the singular number, unless the intent to give a more limited
265 meaning is disclosed by the context.

266 (42) "Premises" means a building, enclosure, room, or equipment used in connection
267 with the sale, storage, service, manufacture, distribution, or consumption of an alcoholic
268 product, unless otherwise defined in this title or in the rules adopted by the commission.

269 (43) "Prescription" means a writing in legal form, signed by a physician or dentist and
270 given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

271 (44) (a) "Privately hosted event" or "private social function" means a specific social,
272 business, or recreational event:

273 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
274 group; and

275 (ii) that is limited in attendance to people who are specifically designated and their

276 guests.

277 (b) "Privately hosted event" and "private social function" does not include an event to
278 which the general public is invited, whether for an admission fee or not.

279 (45) (a) "Proof of age" means:

280 (i) an identification card;

281 (ii) an identification that:

282 (A) is substantially similar to an identification card;

283 (B) is issued in accordance with the laws of a state other than Utah in which the
284 identification is issued;

285 (C) includes date of birth; and

286 (D) has a picture affixed;

287 (iii) a valid driver license certificate that:

288 (A) includes date of birth;

289 (B) has a picture affixed; and

290 (C) is issued:

291 (I) under Title 53, Chapter 3, Uniform Driver License Act; or

292 (II) in accordance with the laws of the state in which it is issued;

293 (iv) a military identification card that:

294 (A) includes date of birth; and

295 (B) has a picture affixed; or

296 (v) a valid passport.

297 (b) "Proof of age" does not include a driving privilege card issued in accordance with
298 Section 53-3-207.

299 (46) (a) "Public building" means a building or permanent structure owned or leased by
300 the state, a county, or local government entity that is used for:

301 (i) public education;

302 (ii) transacting public business; or

303 (iii) regularly conducting government activities.

304 (b) "Public building" does not mean or refer to a building owned by the state or a
305 county or local government entity when the building is used by a person, in whole or in part,
306 for a proprietary function.

307 (47) "Representative" means an individual who is compensated by salary, commission,
308 or other means for representing and selling an alcoholic beverage product of a manufacturer,
309 supplier, or importer of liquor including:

- 310 (a) wine;
- 311 (b) heavy beer; or
- 312 (c) [~~on or after October 1, 2008;~~] a flavored malt beverage.

313 (48) "Residence" means a person's principal place of abode within Utah.

314 (49) "Restaurant" means a business establishment:

315 (a) where a variety of foods is prepared and complete meals are served to the general
316 public;

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

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

320 (50) "Retailer" means a person engaged in the sale or distribution of an alcoholic
321 beverage to a consumer.

322 (51) (a) "Sample" includes:

- 323 (i) a department sample; and
- 324 (ii) an industry representative sample.

325 (b) "Department sample" means liquor that is placed in the possession of the
326 department for testing, analysis, and sampling including:

- 327 (i) wine;
- 328 (ii) heavy beer; or
- 329 (iii) [~~on or after October 1, 2008;~~] a flavored malt beverage.

330 (c) "Industry representative sample" means liquor that is placed in the possession of the
331 department:

332 (i) for testing, analysis, and sampling by a local industry representative on the premises
333 of the department to educate the local industry representative of the quality and characteristics
334 of the product; and

335 (ii) including:

- 336 (A) wine;
- 337 (B) heavy beer; or

338 (C) [~~on or after October 1, 2008,~~] a flavored malt beverage.

339 (52) (a) "School" means a building used primarily for the general education of minors.

340 (b) "School" does not include:

341 (i) a nursery school;

342 (ii) an infant day care center; or

343 (iii) a trade or technical school.

344 (53) "Sell," "sale," and "to sell" means a transaction, exchange, or barter whereby, for
345 consideration, an alcoholic beverage is either directly or indirectly transferred, solicited,
346 ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether
347 done by a person as a principal, proprietor, or as an agent, servant, or employee, unless
348 otherwise defined in this title or the rules made by the commission.

349 (54) "Seminude," "seminudity," or "state of seminudity" means a state of dress in
350 which opaque clothing covers no more than:

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

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

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

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

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

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

358 (55) "Sexually oriented entertainer" means a person who while in a state of seminudity
359 appears at or performs:

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

361 (b) on the premises of:

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

363 (ii) a tavern;

364 (c) on behalf of or at the request of the licensee described in Subsection (55)(b);

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

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

367 (i) an employee of the licensee described in Subsection (55)(b);

368 (ii) an independent contractor of the licensee described in Subsection (55)(b);

- 369 (iii) an agent of the licensee described in Subsection (55)(b); or
- 370 (iv) otherwise of the licensee described in Subsection (55)(b).
- 371 (56) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
- 372 beer, heavy beer, and flavored malt beverages per year.
- 373 (57) (a) "Spirituous liquor" means liquor that is distilled.
- 374 (b) "Spirituous liquor" includes an alcohol product defined as a "distilled spirit" by 27
- 375 U.S.C. 211 and 27 C.F.R. Sections 5.11 through 5.23.
- 376 (58) (a) "State label" means the official label designated by the commission affixed to a
- 377 liquor container sold in the state.
- 378 (b) "State label" includes the department identification mark and inventory control
- 379 number.
- 380 (59) (a) "State store" means a facility for the sale of package liquor:
- 381 (i) located on premises owned or leased by the state; and
- 382 (ii) operated by a state employee.
- 383 (b) "State store" does not apply to a:
- 384 (i) licensee;
- 385 (ii) permittee; or
- 386 (iii) package agency.
- 387 (60) "Supplier" means a person selling an alcoholic beverage to the department.
- 388 (61) (a) "Tavern" means a business establishment that is:
- 389 (i) engaged primarily in the retail sale of beer to a public patron for consumption on the
- 390 establishment's premises; and
- 391 (ii) licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.
- 392 (b) "Tavern" includes the following if the revenue from the sale of beer exceeds the
- 393 revenue of the sale of food, although food need not be sold in the establishment:
- 394 (i) a beer bar;
- 395 (ii) a parlor;
- 396 (iii) a lounge;
- 397 (iv) a cabaret; or
- 398 (v) a nightclub.
- 399 (62) "Temporary domicile" means the principal place of abode within Utah of a person

400 who does not have a present intention to continue residency within Utah permanently or
401 indefinitely.

402 (63) "Unsaleable liquor merchandise" means merchandise that:

403 (a) is unsaleable because the merchandise is:

404 (i) unlabeled;

405 (ii) leaky;

406 (iii) damaged;

407 (iv) difficult to open; or

408 (v) partly filled;

409 (b) is in a container:

410 (i) having faded labels or defective caps or corks;

411 (ii) in which the contents are:

412 (A) cloudy;

413 (B) spoiled; or

414 (C) chemically determined to be impure; or

415 (iii) that contains:

416 (A) sediment; or

417 (B) a foreign substance; or

418 (c) is otherwise considered by the department as unfit for sale.

419 (64) "Visitor" means an individual that in accordance with Section 32A-5-107 holds

420 limited privileges in a private club by virtue of a visitor card.

421 (65) "Warehouser" means a person, other than a licensed manufacturer, engaged in the

422 importation for sale, storage, or distribution of liquor regardless of amount.

423 (66) (a) "Wholesaler" means a person engaged in the importation for sale, or in the sale

424 of beer in wholesale or jobbing quantities to one or more retailers.

425 (b) Notwithstanding Subsection (66)(a), "wholesaler" does not include a small brewer

426 selling beer manufactured by that brewer.

427 (67) (a) "Wine" means an alcoholic beverage obtained by the fermentation of the

428 natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not

429 another ingredient is added.

430 (b) "Wine" is considered "liquor" for purposes of this title, except as otherwise

431 provided in this title.

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

433 **32A-1-119. Disciplinary proceedings -- Procedure.**

434 (1) As used in Subsection (4), "final adjudication" means an adjudication for which a
435 final [~~unappealable~~] judgment or order is issued[;] that:

436 (a) is not appealed, and the time to appeal the judgment has expired; or

437 (b) is appealed, and is affirmed, in whole or in part, on appeal.

438 (2) (a) Subject to Section 32A-1-119.5, the following may conduct an adjudicative
439 proceeding to inquire into a matter necessary and proper for the administration of this title and
440 rules adopted under this title:

441 (i) the commission;

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

444 (iii) the director; and

445 (iv) the department.

446 (b) Except as provided in this section or Section 32A-3-106, the following shall
447 comply with the procedures and requirements of Title 63G, Chapter 4, Administrative
448 Procedures Act, in an adjudicative proceeding:

449 (i) the commission;

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

451 (iii) the director; and

452 (iv) the department.

453 (c) Except where otherwise provided by law, an adjudicative proceeding before the
454 commission or a hearing examiner appointed by the commission shall be:

455 (i) video or audio recorded; and

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

458 (d) A person listed in Subsection (2)(a) shall conduct an adjudicative proceeding
459 concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State
460 Personnel Management Act.

461 (e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be

462 conducted in accordance with rules, policies, and procedures made by the commission,
463 director, or department.

464 (3) (a) Subject to Section 32A-1-119.5, a disciplinary proceeding shall be conducted
465 under the authority of the commission, which is responsible for rendering a final decision and
466 order on a disciplinary matter.

467 (b) (i) Nothing in this section precludes the commission from appointing a necessary
468 officer, including a hearing examiner, from within or without the department, to administer the
469 disciplinary proceeding process.

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

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

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

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

475 (II) conclusions of law; and

476 (III) recommendations.

477 (c) Nothing in this section precludes the commission, after the commission renders its
478 final decision and order, from having the director prepare, issue, and cause to be served on the
479 parties the final written order on behalf of the commission.

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

481 (a) The department may initiate a disciplinary proceeding described in Subsection

482 (4)(b) if the department receives:

483 (i) a report from a government agency, peace officer, examiner, or investigator alleging
484 that a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) violated this title or the
485 rules of the commission;

486 (ii) a final adjudication of criminal liability against a person listed in Subsections
487 32A-1-105(17)(a)(i) through (vii) based on an alleged violation of this title; or

488 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
489 Liability, against a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) based on an
490 alleged violation of this title.

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

493 (i) whether a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) violated
494 this title or rules of the commission; and

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

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

497 (i) if required by law;

498 (ii) before revoking or suspending a permit, license, or certificate of approval issued
499 under this title; or

500 (iii) before imposing a fine against a person listed in Subsections 32A-1-105(17)(a)(i)
501 through (vii).

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

504 (c) The validity of a disciplinary proceeding is not affected by the failure of a person to
505 attend or remain in attendance.

506 (d) The commission or an appointed hearing examiner shall preside over a disciplinary
507 proceeding hearing.

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

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

513 (A) administer oaths or affirmations;

514 (B) take evidence;

515 (C) take a deposition within or without this state; and

516 (D) require by subpoena from a place within this state:

517 (I) the testimony of a person at a hearing; and

518 (II) the production of a book, record, paper, contract, agreement, document, or other
519 evidence considered relevant to the inquiry.

520 (ii) A person subpoenaed in accordance with this Subsection (5)(f) shall testify and
521 produce a book, paper, document, or tangible thing as required in the subpoena.

522 (iii) A witness subpoenaed or called to testify or produce evidence who claims a
523 privilege against self-incrimination may not be compelled to testify, but the commission or the

524 hearing examiner shall file a written report with the county attorney or district attorney in the
525 jurisdiction where the privilege is claimed or where the witness resides setting forth the
526 circumstance of the claimed privilege.

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

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

531 (I) appear before the issuing party; and

532 (II) (Aa) produce documentary evidence if so ordered; or

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

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

535 (g) (i) In a disciplinary proceeding hearing heard by a hearing examiner, the hearing
536 examiner shall prepare a report required by Subsection (3)(b)(ii) to the commission.

537 (ii) The report required by Subsection (3)(b)(ii) and this Subsection (5)(g) may not
538 recommend a penalty more severe than that initially sought by the department in the notice of
539 agency action.

540 (iii) A copy of the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
541 shall be served upon the respective parties.

542 (iv) The respondent and the department shall be given reasonable opportunity to file a
543 written objection to the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
544 before final commission action.

545 (h) In a case heard by the commission, it shall issue its final decision and order in
546 accordance with Subsection (3).

547 (6) (a) The commission shall:

548 (i) render a final decision and order on a disciplinary action; and

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

550 (b) An order of the commission is [~~considered~~] final on the date the order [~~becomes~~
551 effective] is issued.

552 (c) If the commission is satisfied that a person listed in Subsections
553 32A-1-105(17)(a)(i) through (vii) violated this title or the commission's rules, in accordance
554 with Title 63G, Chapter 4, Administrative Procedures Act, the commission may:

- 555 (i) suspend or revoke the permit, license, or certificate of approval;
- 556 (ii) impose a fine against a person listed in Subsections 32A-1-105(17)(a)(i) through
- 557 (vii);
- 558 (iii) assess the administrative costs of a disciplinary proceeding to the permittee, the
- 559 licensee, or certificate holder; or
- 560 (iv) take a combination of actions described in Subsections (6)(c)(i) through (iii).
- 561 (d) A fine imposed in accordance with this Subsection (6) is subject to Subsections
- 562 32A-1-107(1)(p) and (4).
- 563 (e) (i) If a permit or license is suspended under this Subsection (6), the permittee or
- 564 licensee shall prominently post a sign provided by the department:
- 565 (A) during the suspension; and
- 566 (B) at the entrance of the premises of the permittee or licensee.
- 567 (ii) The sign required by this Subsection (6)(e) shall:
- 568 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the
- 569 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be
- 570 sold, served, furnished, or consumed on these premises during the period of suspension."; and
- 571 (B) include the dates of the suspension period.
- 572 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required
- 573 to be posted under this Subsection (6)(e) during the suspension period.
- 574 (f) If a permit or license is revoked, the commission may order the revocation of a
- 575 compliance bond posted by the permittee or licensee.
- 576 (g) A permittee or licensee whose permit or license is revoked may not reapply for a
- 577 permit or license under this title for three years from the date on which the permit or license is
- 578 revoked.
- 579 (h) The commission shall transfer all costs assessed into the General Fund in
- 580 accordance with Section 32A-1-113.
- 581 (7) Subject to Section 32A-1-119.5:
- 582 (a) In addition to an action taken against a permittee, licensee, or certificate holder
- 583 under this section, the department may initiate disciplinary action against an officer, employee,
- 584 or agent of a permittee, licensee, or certificate holder.
- 585 (b) If an officer, employee, or agent is found to have violated this title, the commission

586 may prohibit the officer, employee, or agent from serving, selling, distributing, manufacturing,
587 wholesaling, warehousing, or handling an alcoholic beverage in the course of acting as an
588 officer, employee, or agent with a permittee, licensee, or certificate holder under this title for a
589 period determined by the commission.

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

591 (a) The department may initiate a disciplinary proceeding for an alleged violation of
592 this title or the rules of the commission against:

593 (i) a manufacturer, supplier, or importer of an alcoholic beverage; or

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

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

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

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

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

603 (A) a manufacturer, supplier, or importer of liquor, wine, heavy beer, or a flavored malt
604 beverage, or its officer, employee, agent, or representative violates this title; and

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

606 (I) directly commits the violation; or

607 (II) solicits, requests, commands, encourages, or intentionally aids another to engage
608 in the violation.

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

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

613 (b) If the commission makes a finding that the brewer holding a certificate of approval
614 violates this title or rules of the commission, the commission may take an action against the
615 brewer holding a certificate of approval that the commission could take against a licensee
616 including:

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

618 (ii) imposition of a fine.

619 (10) (a) An adjudicative proceeding under this title, including a disciplinary

620 proceeding, is a civil action, notwithstanding whether at issue in the adjudicative proceeding is

621 a violation of statute that can be prosecuted criminally.

622 (b) Unless specifically adopted in this title, a procedure or principal that is applicable

623 to a criminal proceeding does not apply to an adjudicative proceeding permitted under this title

624 including:

625 (i) Title 76, Chapter 1, General Provisions;

626 (ii) Title 76, Chapter 2, Principles of Criminal Responsibility;

627 (iii) Title 76, Chapter 3, Punishments; and

628 (iv) Title 76, Chapter 4, Inchoate Offenses.

629 (c) (i) The burden of proof in an adjudicative proceeding under this title is by a

630 preponderance of the evidence.

631 (ii) If the subject of an adjudicative proceeding under this title asserts an affirmative

632 defense, the subject has the burden of proof to establish the affirmative defense by the

633 preponderance of the evidence.

634 (d) In an adjudicative proceeding under this title, to find a violation of this title the

635 commission:

636 (i) is required to determine whether the conduct that constitutes the violation occurred;

637 and

638 (ii) is not required to make a finding of knowledge or intent unless knowledge or intent

639 is expressly made an element of the violation by statute.

640 ~~(10)~~ (11) (a) If a respondent requests a disciplinary proceeding hearing, the hearing

641 held by the commission or a hearing examiner appointed by the commission shall proceed

642 formally in accordance with Sections 63G-4-204 through 63G-4-209 in a case where:

643 (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health,

644 and welfare;

645 (ii) the alleged violation involves:

646 (A) selling, serving, or otherwise furnishing an alcoholic product to a minor;

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

648 Entertainment Act;

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

651 (D) interfering or refusing to cooperate with:

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

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

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

657 (F) unlawful importation of an alcoholic product; or

658 (G) unlawful supply of liquor by a liquor industry member, as defined in Subsection
659 32A-12-601(2), to a person other than the department or a military installation, except to the
660 extent permitted by this title; or

661 (iii) the department determines to seek in a disciplinary proceeding hearing:

662 (A) an administrative fine exceeding \$3,000;

663 (B) a suspension of a license, permit, or certificate of approval of more than ten days;

664 or

665 (C) a revocation of a license, permit, or certificate of approval.

666 (b) If a respondent does not request a disciplinary proceeding hearing, a hearing shall
667 proceed informally unless it is designated as a formal proceeding pursuant to rules adopted by
668 the commission in accordance with Subsection (11)(c).

669 [~~(b)~~] (c) The commission shall make rules in accordance with Title 63G, Chapter 3,
670 Utah Administrative Rulemaking Act, to provide a procedure to implement this Subsection
671 [~~(10)~~] (11).

671a **H→ (12) Notwithstanding the other provisions of this title, the commission may not**
671b **order a disciplinary action or fine in accordance with this section if the disciplinary action or**
671c **fine is ordered on the basis of a violation:**

671d **(a) of a provision in this title related to intoxication or becoming intoxicated; and**

671e **(b) if the violation is first investigated by a law enforcement officer, as defined in**
671f **Section 53-13-103, who has not received training regarding the requirements of this title**
671g **related to responsible alcoholic beverage sale or service.** ←H

672 Section 3. Section **32A-12-101** is amended to read:

673 **32A-12-101. Utah Criminal Code applicable.**

674 Except as otherwise provided, Title 76, Chapters 1, 2, 3, and 4[; the Utah Criminal
675 Code, relating to principles of construction, jurisdiction, venue, limitations of actions, multiple
676 prosecutions, double jeopardy, burdens of proof, definitions, principles of criminal
677 responsibility, punishments, and inchoate offenses apply to any criminal offense defined in this
678 title, except as otherwise provided] apply to the prosecution of a criminal offense defined in

679 this chapter or expressly identified as a criminal offense in this title.

679a **H→ Section 4. Section 32A-12-102 is amended to read:**

679b **32A-12-102. Special burdens of proof -- Inferences and presumptions.**

679c **(1) In any prosecution of an offense defined in this title or in any proceeding brought to**
679d **enforce this title:**

679e **(a) it is not necessary that the state or commission establish the precise description or quantity**
679f **of the alcoholic beverages or products or the precise consideration, if any, given or received for the**
679g **alcoholic beverages or products;**

679h **(b) there is an inference, absent proof to the contrary, that the alcoholic beverage or product**
679i **in question is an alcoholic beverage or product if the witness describes it:**

679j **(i) as an alcoholic beverage or product;**

679k **(ii) by a name that is commonly applied to an alcoholic beverage or product; or**

679l **(iii) as intoxicating;**

679m **(c) if it is alleged that an association or corporation has violated this title, the fact of the**
679n **incorporation of the association or corporation is presumed absent proof to the contrary;**

679o **(d) a certificate or report signed or purporting to be signed by any state chemist, assistant**
679p **state chemist, or state crime laboratory chemist, as to the analysis or ingredients of any alcoholic**
679q **beverage or product is:**

679r **(i) prima facie evidence:**

679s **(A) of the facts stated in that certificate or report; and**

679t **(B) of the authority of the person giving or making the report; and**

679u **(ii) admissible in evidence without any proof of appointment or signature absent proof to the**
679v **contrary; and**

679w **(e) a copy of entries made in the records of the United States internal revenue collector,**
679x **certified by the collector or a qualified notary public, showing the payment of the United States**
679y **internal revenue special tax for the manufacture or sale of alcoholic beverages or products is prima**
679z **facie evidence of the manufacture or sale by the party named in the entry within the period set forth in**
679aa **the record.**

679ab **(2) (a) In proving the unlawful sale, disposal, gift, or purchase, gratuitous or otherwise, or**
679ac **consumption of alcoholic beverages or products, it is not necessary that the state or commission**
679ad **establish that any money or other consideration actually passed or that an alcoholic beverage or**
679ae **product was actually consumed if the court or trier of fact is satisfied that:**

679af **(i) a transaction in the nature of a sale, disposal, gift, or purchase actually occurred; or**

679ag **(ii) any consumption of alcoholic beverages or products was about to occur.**

679ah **(b) Proof of consumption or intended consumption of an alcoholic beverage or product on**
679ai **premises on which consumption is prohibited, by some person not authorized to consume alcoholic**
679aj **beverages or products on those premises, is evidence that an alcoholic beverage or product was sold**

679ak or given to or purchased by the person consuming, about to consume, or carrying away the alcoholic
679al beverage or product as against the occupant of the premises.

679am (3) Notwithstanding the other provisions of this chapter, a criminal offense identified in
679an this title as a criminal offense may not be enforced under this chapter if the criminal offense
679ao relates to a violation:

679ap (a) of a provision in this title related to intoxication or becoming intoxicated; and

679aq (b) if the violation is first investigated by a law enforcement officer, as defined in
679ar Section 53-13-103, who has not received training regarding the requirements of this title
679as related to responsible alcoholic beverage sale or service. ←H

680 Section H→ [4] 5 ←H . Section 32A-12-104 is amended to read:

681 **32A-12-104. Violation of title a misdemeanor.**

682 [~~Any~~] (1) Unless otherwise provided in this title, a person [who violates this title] is
683 guilty of a class B misdemeanor[; unless otherwise provided in this title.] if that person
684 violates:

685 (a) this chapter; or

686 (b) a provision of this title that is expressly identified as a criminal offense.

687 (2) This section is not applicable to an adjudicative proceeding under Section
688 32A-1-119, but only:

689 (a) makes a violation described in Subsection (1) a criminal offense; and

690 (b) establishes a penalty for a violation described in Subsection (1) that is prosecuted
691 criminally.

Legislative Review Note
as of 2-27-09 10:17 AM

Office of Legislative Research and General Counsel

H.B. 376 - Revisions to Alcoholic Beverage Control Act

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
