

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

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

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

33 (1) The commission shall:

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

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

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

37 (i) granting, denying, suspending, or revoking [~~permits, licenses, certificates of~~
38 ~~approval, and package agencies~~] a permit, license, certificate of approval, or package agency;

39 (ii) controlling liquor merchandise inventory including:

40 (A) listing and delisting [~~products~~] a product;

41 (B) the procedures for testing a new [~~products~~] product;

42 (C) purchasing policy;

43 (D) turnover requirements for a regularly coded [~~products~~] product to be continued;

44 and

45 (E) the disposition of discontinued, distressed, or unsaleable merchandise; and

46 (iii) determining the location of a state [~~stores, package agencies, and outlets~~] store,
47 package agency, or outlet;

48 (d) decide within the limits and under the conditions imposed by this title, the number
49 and location of state stores, package agencies, and outlets established in the state;

50 (e) issue, grant, deny, suspend, revoke, or not renew the following permits, licenses,
51 certificates of approval, and package agencies for the purchase, sale, storage, service,

52 manufacture, distribution, and consumption of an alcoholic [~~products~~] product:

53 (i) a package [~~agencies~~] agency;

54 (ii) a restaurant [~~licenses~~] license;

55 (iii) an airport lounge [~~licenses~~] license;

56 (iv) a limited restaurant [~~licenses~~] license;

57 (v) an on-premise banquet [~~licenses~~] license;

58 (vi) a private club [licenses] license;
59 (vii) an on-premise beer retailer [licenses] license;
60 (viii) a temporary special event beer [permits] permit;
61 (ix) a special use [permits] permit;
62 (x) a single event [permits] permit;
63 (xi) a manufacturing [licenses] license;
64 (xii) a liquor warehousing [licenses] license;
65 (xiii) a beer wholesaling [licenses] license; and
66 (xiv) an out-of-state brewer [certificates] certificate of approval;
67 (f) in accordance with Subsection (5), issue, grant, deny, suspend, or revoke one of the
68 following conditional licenses for the purchase, sale, storage, service, manufacture,
69 distribution, and consumption of an alcoholic product:
70 (i) a conditional restaurant license; or
71 (ii) a conditional limited restaurant license;
72 ~~(f)~~ (g) fix prices at which [liquors are] liquor is sold that are the same at all state
73 stores, package agencies, and outlets;
74 ~~(g)~~ (h) issue and distribute price lists showing the price to be paid by [purchasers] a
75 purchaser for each class, variety, or brand of liquor kept for sale by the department;
76 ~~(h)~~ (i) (i) require the director to follow sound management principles; and
77 (ii) require periodic reporting from the director to ensure that:
78 (A) sound management principles are being followed; and
79 (B) policies established by the commission are being observed;
80 ~~(i)~~ (j) (i) receive, consider, and act in a timely manner upon [aH] the reports,
81 recommendations, and matters submitted by the director to the commission; and
82 (ii) do [aH] the things necessary to support the department in properly performing the
83 department's duties and responsibilities;
84 ~~(j)~~ (k) obtain temporarily and for special purposes the services of [experts and
85 persons] an expert or person engaged in the practice of a profession or who possess any

86 needed skills, talents, or abilities if:

87 (i) considered expedient; and

88 (ii) approved by the governor;

89 ~~[(k)]~~ (l) prescribe the duties of a departmental ~~[officials]~~ official authorized to assist
90 the commission in issuing ~~[permits, licenses, certificates of approval, and package agencies]~~ a
91 permit, license, certificate of approval, or package agency under this title;

92 ~~[(h)]~~ (m) prescribe, consistent with this title, the fees payable for:

93 (i) ~~[permits, licenses, certificates of approval, and package agencies]~~ a permit, license,
94 certificate of approval, or package agency issued under this title; or

95 (ii) anything done or permitted to be done under this title;

96 ~~[(m)]~~ (n) prescribe the conduct, management, and equipment of ~~[any premises]~~ a
97 premise upon which an alcoholic ~~[beverages]~~ beverage may be sold, consumed, served, or
98 stored;

99 ~~[(n)]~~ (o) make rules governing the credit terms of beer sales to retailers within the
100 state;

101 ~~[(o)]~~ (p) require that each of the following, where required in this title, display in a
102 prominent place a sign in large letters stating: "Warning: Driving under the influence of
103 alcohol or drugs is a serious crime that is prosecuted aggressively in Utah.":

104 (i) a state store;

105 (ii) a permittee;

106 (iii) a licensee; and

107 (iv) a package agency; and

108 ~~[(p)]~~ (q) subject to Subsection (4) and as provided in this title, impose fines against:

109 (i) a permittee, licensee, certificate holder, or package agent described in Subsection
110 (1)(e); or

111 (ii) ~~[any]~~ an officer, employee, or agent of a permittee, licensee, certificate holder, or
112 package agent described in Subsection (1)~~[(p)(i)]~~(q)(i).

113 (2) The power of the commission to do the following is plenary, except as otherwise

114 provided by this title, and not subject to review:

115 (a) establish a state [stores] store;

116 (b) create a package [agencies] agency;

117 (c) grant authority to operate a package [agencies] agency; and

118 (d) grant or deny [~~permits, licenses, and certificates~~] a permit, license, or certificate of
119 approval.

120 (3) The commission may appoint a qualified hearing [examiners] examiner to conduct
121 [any] a suspension or revocation [hearings] hearing required by law.

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

125 (b) [~~Fines~~] A fine imposed may not exceed \$25,000 in the aggregate for:

126 (i) [any] a single Notice of Agency Action; or

127 (ii) a single action against a package agency.

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

130 (5) (a) As used in this Subsection (5):

131 (i) "Conditional license" means a license issued to a person that:

132 (A) is for one of the following:

133 (I) a restaurant license; or

134 (II) a limited restaurant license; and

135 (B) conditions the person's ability to sell or allow the consumption of an alcoholic
136 beverage on its premises on the person providing a copy of the person's current business
137 license before obtaining a valid license; and

138 (C) provides that the person will be issued or granted a valid license if the person
139 complies with the requirements of Subsection (5)(c).

140 (ii) "Valid license" means a license issued under Subsection (1)(f) under which the
141 person is permitted to sell or allow the consumption of an alcoholic beverage on its premises.

142 (b) Subject to the requirements of this Subsection (5), the commission may grant a
143 conditional license to a person if the person:

144 (i) meets all of the requirements to obtain the license for which the person is applying
145 except the requirement to submit a copy of the applicant's current business license; and

146 (ii) agrees not to sell or allow the consumption of an alcoholic beverage on its
147 premises before obtaining a valid license.

148 (c) (i) A conditional license becomes a valid license on the day on which the
149 department notifies the person who holds the conditional license that the department finds that
150 the person has complied with Subsection (5)(c)(ii).

151 (ii) For a conditional license to become a valid license, a person who holds the
152 conditional license shall:

153 (A) submit to the department a copy of the person's current business license; and

154 (B) provide to the department evidence satisfactory to the department that:

155 (I) there has been no change in the information provided to the commission as part of
156 the person's application for a license; and

157 (II) the person continues to qualify for the license.

158 (d) A conditional license expires six months after the day on which the commission
159 issues or grants the license, unless it becomes a valid license before that day.

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

161 **32A-1-119. Disciplinary proceedings -- Procedure.**

162 (1) As used in Subsection (4), "final adjudication" means an adjudication for which a
163 final unappealable judgment or order is issued.

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

167 (i) the commission;

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

170 (iii) the director; and

171 (iv) the department.

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

175 (i) the commission;

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

177 (iii) the director; and

178 (iv) the department.

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

181 (i) video or audio recorded; and

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

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

187 (e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be
188 conducted in accordance with rules, policies, and procedures made by the commission,
189 director, or department.

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

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

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

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

198 (B) shall submit to the commission a report including:
199 (I) findings of fact determined on the basis of a preponderance of the evidence
200 presented at the hearing;
201 (II) conclusions of law; and
202 (III) recommendations.
203 (c) Nothing in this section precludes the commission, after the commission renders its
204 final decision and order, from having the director prepare, issue, and cause to be served on the
205 parties the final written order on behalf of the commission.
206 (4) Subject to Section 32A-1-119.5:
207 (a) The department may initiate a disciplinary proceeding described in Subsection
208 (4)(b) if the department receives:
209 (i) a report from a government agency, peace officer, examiner, or investigator
210 alleging that a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) violated this title
211 or the rules of the commission;
212 (ii) a final adjudication of criminal liability against a person listed in Subsections
213 32A-1-105(17)(a)(i) through (vii) based on an alleged violation of this title; or
214 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
215 Liability, against a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) based on an
216 alleged violation of this title.
217 (b) The department may initiate a disciplinary proceeding if the department receives
218 an item listed in Subsection (4)(a) to determine:
219 (i) whether a person listed in Subsections 32A-1-105(17)(a)(i) through (vii) violated
220 this title or rules of the commission; and
221 (ii) if a violation is found, the appropriate sanction to be imposed.
222 (5) (a) Unless waived by the respondent, a disciplinary proceeding shall be held:
223 (i) if required by law;
224 (ii) before revoking or suspending a permit, license, or certificate of approval issued
225 under this title; or

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

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

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

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

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

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

239 (A) administer oaths or affirmations;

240 (B) take evidence;

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

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

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

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

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

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

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

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

257 (I) appear before the issuing party; and

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

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

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

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

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

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

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

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

273 (6) (a) The commission shall:

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

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

276 (b) An order of the commission is considered final on the date the order becomes
277 effective.

278 (c) If the commission is satisfied that a person listed in Subsections
279 32A-1-105(17)(a)(i) through (vii) violated this title or the commission's rules, in accordance
280 with Title 63G, Chapter 4, Administrative Procedures Act, the commission may:

281 (i) suspend or revoke the permit, license, or certificate of approval;

282 (ii) impose a fine against a person listed in Subsections 32A-1-105(17)(a)(i) through
283 (vii);

284 (iii) assess the administrative costs of a disciplinary proceeding to the permittee, the
285 licensee, or certificate holder; or

286 (iv) take a combination of actions described in Subsections (6)(c)(i) through (iii).

287 (d) A fine imposed in accordance with this Subsection (6) is subject to Subsections
288 32A-1-107(1)~~(p)~~(q) and (4).

289 (e) (i) If a permit or license is suspended under this Subsection (6), the permittee or
290 licensee shall prominently post a sign provided by the department:

291 (A) during the suspension; and

292 (B) at the entrance of the premises of the permittee or licensee.

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

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

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

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

300 (f) If a permit or license is revoked, the commission may order the revocation of a
301 compliance bond posted by the permittee or licensee.

302 (g) A permittee or licensee whose permit or license is revoked may not reapply for a
303 permit or license under this title for three years from the date on which the permit or license is
304 revoked.

305 (h) The commission shall transfer all costs assessed into the General Fund in
306 accordance with Section 32A-1-113.

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

308 (a) In addition to an action taken against a permittee, licensee, or certificate holder
309 under this section, the department may initiate disciplinary action against an officer,

310 employee, or agent of a permittee, licensee, or certificate holder.

311 (b) If an officer, employee, or agent is found to have violated this title, the commission
312 may prohibit the officer, employee, or agent from serving, selling, distributing, manufacturing,
313 wholesaling, warehousing, or handling an alcoholic beverage in the course of acting as an
314 officer, employee, or agent with a permittee, licensee, or certificate holder under this title for a
315 period determined by the commission.

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

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

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

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

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

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

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

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

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

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

332 (I) directly commits the violation; or

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

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

336 (a) The department may initiate a disciplinary proceeding against a brewer holding a
337 certificate of approval under Section 32A-8-101 for an alleged violation of this title or the

338 rules of the commission.

339 (b) If the commission makes a finding that the brewer holding a certificate of approval
340 violates this title or rules of the commission, the commission may take an action against the
341 brewer holding a certificate of approval that the commission could take against a licensee
342 including:

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

344 (ii) imposition of a fine.

345 (10) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by
346 the commission or a hearing examiner appointed by the commission shall proceed formally in
347 accordance with Sections 63G-4-204 through 63G-4-209 in a case where:

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

350 (ii) the alleged violation involves:

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

352 (B) attire, conduct, or entertainment prohibited by Part 6, Attire, Conduct, and
353 Entertainment Act;

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

356 (D) interfering or refusing to cooperate with:

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

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

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

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

363 (G) unlawful supply of liquor by a liquor industry member, as defined in Subsection
364 32A-12-601(2), to a person other than the department or a military installation, except to the
365 extent permitted by this title; or

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

371 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
372 Administrative Rulemaking Act, to provide a procedure to implement this Subsection (10).

373 Section 3. Section **32A-5-109** is enacted to read:

374 **32A-5-109. Information obtained by investigator.**

375 (1) As used in this section:

376 (a) "Investigator" means an individual who is:

377 (i) (A) an auditor or inspector; and

378 (B) employed by the department; or

379 (ii) (A) a peace officer, examiner, or investigator; and

380 (B) employed by a nondepartment enforcement agency.

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

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

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

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

386 (c) (i) "Record" means information that is:

387 (A) inscribed on a tangible medium; or

388 (B) stored in an electronic or other medium and is retrievable in perceivable form.

389 (ii) "Record" includes:

390 (A) book;

391 (B) book of account;

392 (C) paper;

393 (D) contract;

394 (E) agreement;
395 (F) document; or
396 (G) recording in any medium.
397 (2) (a) Subject to Subsection (2)(b), if an investigator is permitted by another
398 provision of this chapter to inspect a book or record of a private club licensee, in addition to
399 any other rights under this title, the investigator may inspect, have a copy of, or otherwise
400 review any record of the private club licensee that is a visual recording of the operations of the
401 private club licensee.

402 (b) An investigator who is a peace officer may not inspect, have a copy of, or
403 otherwise review a visual recording described in Subsection (2)(a) without probable cause.

404 Section 4. Section **32A-10-207** is enacted to read:

405 **32A-10-207. Information obtained by investigator.**

406 (1) As used in this section:

407 (a) "Investigator" means an individual who is:

408 (i) (A) an auditor or inspector; and

409 (B) employed by the department; or

410 (ii) (A) a peace officer, examiner, or investigator; and

411 (B) employed by a nondepartment enforcement agency.

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

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

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

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

417 (c) (i) "Record" means information that is:

418 (A) inscribed on a tangible medium; or

419 (B) stored in an electronic or other medium and is retrievable in perceivable form.

420 (ii) "Record" includes:

421 (A) book;

422 (B) book of account;

423 (C) paper;

424 (D) contract;

425 (E) agreement;

426 (F) document; or

427 (G) recording in any medium.

428 (2) (a) Subject to Subsection (2)(b), if an investigator is permitted by another
429 provision of this chapter to inspect a book or record of an on-premise beer retailer licensee that
430 is a tavern, in addition to any other rights under this title, the investigator may inspect, have a
431 copy of, or otherwise review any record of the tavern that is a visual recording of the
432 operations of the tavern.

433 (b) An investigator who is a peace officer may not inspect, have a copy of, or
434 otherwise review a visual recording described in Subsection (2)(a) without probable cause.