

Representative James A. Dunnigan proposes the following substitute bill:

ALCOHOLIC BEVERAGE RELATED

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address licensing, penalties, and investigations.

Highlighted Provisions:

This bill:

- provides for conditional licenses for certain retail licenses;
- addresses access to information related to a private club licensee or tavern by an investigator; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32A-1-107, as last amended by Laws of Utah 2006, Chapter 162

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



ENACTS:

32A-5-109, Utah Code Annotated 1953

32A-10-207, Utah Code Annotated 1953

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

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

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

(1) The commission shall:

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

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

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

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

(ii) controlling liquor merchandise inventory including:

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

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

(C) purchasing policy;

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

and

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

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

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

(e) issue, grant, deny, suspend, revoke, or not renew the following permits, licenses, certificates of approval, and package agencies for the purchase, sale, storage, service, manufacture, distribution, and consumption of an alcoholic ~~[products]~~ product:

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

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

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

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

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

(vi) a private club [~~licenses~~] license;

(vii) an on-premise beer retailer [~~licenses~~] license;

(viii) a temporary special event beer [~~permits~~] permit;

(ix) a special use [~~permits~~] permit;

(x) a single event [~~permits~~] permit;

(xi) a manufacturing [~~licenses~~] license;

(xii) a liquor warehousing [~~licenses~~] license;

(xiii) a beer wholesaling [~~licenses~~] license; and

(xiv) an out-of-state brewer [~~certificates~~] certificate of approval;

(f) in accordance with Subsection (5), issue, grant, deny, suspend, or revoke one of the

following conditional licenses for the purchase, sale, storage, service, manufacture,

distribution, and consumption of an alcoholic product:

(i) a conditional restaurant license; or

(ii) a conditional limited restaurant license;

~~[(f)]~~ (g) fix prices at which [~~liquors are~~] liquor is sold that are the same at all state

stores, package agencies, and outlets;

~~[(g)]~~ (h) issue and distribute price lists showing the price to be paid by [~~purchasers~~] a

purchaser for each class, variety, or brand of liquor kept for sale by the department;

~~[(h)]~~ (i) (i) require the director to follow sound management principles; and

(ii) require periodic reporting from the director to ensure that:

(A) sound management principles are being followed; and

(B) policies established by the commission are being observed;

~~[(i)]~~ (j) (i) receive, consider, and act in a timely manner upon [~~all~~] the reports,

recommendations, and matters submitted by the director to the commission; and

(ii) do [~~all~~] the things necessary to support the department in properly performing the

department's duties and responsibilities;

~~[(j)]~~ (k) obtain temporarily and for special purposes the services of [~~experts and~~

~~persons~~] an expert or person engaged in the practice of a profession or who possess any needed

skills, talents, or abilities if:

(i) considered expedient; and

(ii) approved by the governor;

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

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

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

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

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

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

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

(i) a state store;

(ii) a permittee;

(iii) a licensee; and

(iv) a package agency; and

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

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

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

(2) The power of the commission to do the following is plenary, except as otherwise provided by this title, and not subject to review:

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

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

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

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

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

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

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

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

(ii) a single action against a package agency.

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

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

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

(A) is for one of the following:

(I) a restaurant license; or

(II) a limited restaurant license; and

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

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

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

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

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

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

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

150 (ii) For a conditional license to become a valid license, a person who holds the
151 conditional license shall:
152 (A) submit to the department a copy of the person's current business license; and
153 (B) provide to the department evidence satisfactory to the department that:
154 (I) there has been no change in the information provided to the commission as part of
155 the person's application for a license; and
156 (II) the person continues to qualify for the license.
157 (d) A conditional license expires six months after the day on which the commission
158 issues or grants the license, unless it becomes a valid license before that day.

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

160 **32A-1-119. Disciplinary proceedings -- Procedure.**

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

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

- 166 (i) the commission;
- 167 (ii) a hearing examiner appointed by the commission for the purposes provided in
168 Subsection 32A-1-107(3);
- 169 (iii) the director; and
- 170 (iv) the department.

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

- 174 (i) the commission;
- 175 (ii) a hearing examiner appointed by the commission;
- 176 (iii) the director; and
- 177 (iv) the department.
- 178 (c) Except where otherwise provided by law, an adjudicative proceeding before the
179 commission or a hearing examiner appointed by the commission shall be:
180 (i) video or audio recorded; and

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

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

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

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

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

(ii) A hearing examiner appointed by the commission:

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

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

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

(II) conclusions of law; and

(III) recommendations.

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

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

(a) The department may initiate a disciplinary proceeding described in Subsection (4)(b) if the department receives:

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

(ii) a final adjudication of criminal liability against a person listed in Subsections

32A-1-105(17)(a)(i) through (vii) based on an alleged violation of this title; or

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

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

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

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

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

(i) if required by law;

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

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

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

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

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

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

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

(A) administer oaths or affirmations;

(B) take evidence;

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

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

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

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

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

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

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

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

(I) appear before the issuing party; and

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

(Bb) give evidence regarding the matter in question.

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

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

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

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

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

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

(6) (a) The commission shall:

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

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

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

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

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

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

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

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

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

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

(A) during the suspension; and

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

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

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

(B) include the dates of the suspension period.

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

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

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

(h) The commission shall transfer all costs assessed into the General Fund in

305 accordance with Section 32A-1-113.

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

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

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

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

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

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

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

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

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

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

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

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

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

331 (I) directly commits the violation; or

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

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

335 (a) The department may initiate a disciplinary proceeding against a brewer holding a

certificate of approval under Section 32A-8-101 for an alleged violation of this title or the rules of the commission.

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

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

(ii) imposition of a fine.

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

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

(ii) the alleged violation involves:

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

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

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

(D) interfering or refusing to cooperate with:

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

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

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

(F) unlawful importation of an alcoholic product; or

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

(B) employed by the department; or

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

(ii) employed by a nondepartment enforcement agency.

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

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

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

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

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

(A) inscribed on a tangible medium; or

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

(ii) "Record" includes:

(A) book;

(B) book of account;

(C) paper;

(D) contract;

(E) agreement;

(F) document; or

(G) recording in any medium.

(2) If an investigator is permitted by another provision of this chapter to inspect a book or record of a private club licensee, in addition to any other rights under this title, the

investigator may inspect, have a copy of, or otherwise review any record of the private club licensee that is a visual recording of the operations of the private club licensee.

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

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

(1) As used in this section:

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

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

(B) employed by the department; or

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

(ii) employed by a nondepartment enforcement agency.

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

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

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

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

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

(A) inscribed on a tangible medium; or

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

(ii) "Record" includes:

(A) book;

(B) book of account;

(C) paper;

(D) contract;

(E) agreement;

(F) document; or

(G) recording in any medium.

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

H.B. 352 1st Sub. (Buff) - Alcoholic Beverage Related Amendments

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.
