

H.B. 376

REVISIONS TO ALCOHOLIC BEVERAGE CONTROL ACT

HOUSE FLOOR AMENDMENTS

AMENDMENT 1

MARCH 9, 2009 3:07 PM

Representative **Gregory H. Hughes** proposes the following amendments:

1. *Page 1, Lines 16 through 18:*

- 16 ▶ makes procedural clarifications;
 ▶ **requires training of law enforcement officers in certain circumstances;**
- 17 ▶ clarifies the application of criminal procedures, principles, and penalties; and
- 18 ▶ makes technical changes.

2. *Page 1, Line 27 through Page 2, Line 28:*

- 27 32A-12-101, as renumbered and amended by Laws of Utah 1990, Chapter 23
 = **32A-12-102, as last amended by Laws of Utah 2004, Chapter 268**
- 28 32A-12-104, as last amended by Laws of Utah 2007, Chapter 322

3. *Page 22, Lines 670 through 671:*

- 670 Utah Administrative Rulemaking Act, to provide a procedure to implement this Subsection
- 671 [~~(10)~~] (11).

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

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

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

4. *Page 23, Line 679:*

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

= **Section 4. Section 32A-12-102 is amended to read:**

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

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

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

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

- (i) as an alcoholic beverage or product;
- (ii) by a name that is commonly applied to an alcoholic beverage or product; or
- (iii) as intoxicating;

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

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

- (i) prima facie evidence:
 - (A) of the facts stated in that certificate or report; and
 - (B) of the authority of the person giving or making the report; and
- (ii) admissible in evidence without any proof of appointment or signature absent proof to the contrary;

and

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

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

- (i) a transaction in the nature of a sale, disposal, gift, or purchase actually occurred; or
- (ii) any consumption of alcoholic beverages or products was about to occur.

(b) Proof of consumption or intended consumption of an alcoholic beverage or product on premises on which consumption is prohibited, by some person not authorized to consume alcoholic beverages or products on those premises, is evidence that an alcoholic beverage or product was sold or given to or purchased by the person consuming, about to consume, or carrying away the alcoholic beverage or product as against the occupant of the premises.

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

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

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

Renumber remaining sections accordingly.