

**ALCOHOLIC BEVERAGE CONTROL ACT AND
RESTAURANT LICENSES**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address the number of restaurant related licenses the Alcoholic Beverage Control Commission may issue.

Highlighted Provisions:

This bill:

- ▶ repeals the restriction on the number of restaurant liquor licenses that may be issued;
 - ▶ repeals provisions related to a seasonal restaurant liquor license;
 - ▶ repeals provisions related to closure of a restaurant liquor licensee's operations;
 - ▶ repeals the restriction on the number of limited restaurant licenses that may be issued;
 - ▶ repeals provisions related to a seasonal limited restaurant license;
 - ▶ repeals provisions related to closure of a limited restaurant licensee's operations;
- and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **32A-4-101**, as last amended by Laws of Utah 2009, Chapter 383

31 **32A-4-102**, as last amended by Laws of Utah 2009, Chapter 383

32 **32A-4-106**, as last amended by Laws of Utah 2009, Chapter 383

33 **32A-4-302**, as last amended by Laws of Utah 2009, Chapter 383

34 **32A-4-303**, as last amended by Laws of Utah 2009, Chapter 383

35 **32A-4-307**, as last amended by Laws of Utah 2009, Chapter 383



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

38 Section 1. Section **32A-4-101** is amended to read:

39 **32A-4-101. Commission's power to grant licenses -- Limitations.**

40 (1) Before a restaurant may sell or allow the consumption of liquor on its premises, it
41 shall first obtain a license from the commission as provided in this part.

42 (2) The commission may grant restaurant liquor licenses for the purpose of establishing
43 restaurant liquor outlets at places and in numbers it considers proper for the storage, sale, and
44 consumption of liquor on premises operated as public restaurants.

45 ~~[(3)(a) Subject to the other provisions of this Subsection (3) and Subsection~~
46 ~~32A-4a-201(2), the total number of restaurant liquor licenses may not at any time aggregate~~
47 ~~more than that number determined by dividing the population of the state by 5,200.]~~

48 ~~[(b) For purposes of this Subsection (3), population shall be determined by:]~~

49 ~~[(i) the most recent United States decennial or special census; or]~~

50 ~~[(ii) another population determination made by the United States or state~~
51 ~~governments.]~~

52 ~~[(c)(i) The commission may grant seasonal restaurant liquor licenses established in~~
53 ~~areas the commission considers necessary.]~~

54 ~~[(ii) A seasonal restaurant liquor license shall be for a period of six consecutive~~
55 ~~months.]~~

56 ~~[(iii) A restaurant liquor license granted for operation during a summer time period is~~
57 ~~known as a "Seasonal A" restaurant liquor license. The period of operation for a "Seasonal A"~~
58 ~~restaurant liquor license shall:]~~

59 ~~[(A) begin on May 1; and]~~

60 ~~[(B) end on October 31.]~~

61 ~~[(iv) A restaurant liquor license granted for operation during a winter time period is~~
62 ~~known as a "Seasonal B" restaurant liquor license. The period of operation for a "Seasonal B"~~
63 ~~restaurant liquor license shall:]~~

64 ~~[(A) begin on November 1; and]~~

65 ~~[(B) end on April 30.]~~

66 ~~[(v) In determining the number of restaurant liquor licenses that the commission may~~
67 ~~issue under this section:]~~

68 ~~[(A) a seasonal license is counted as one-half of one restaurant liquor license; and]~~

69 ~~[(B) each "Seasonal A" license shall be paired with a "Seasonal B" license.]~~

70 ~~[(d)(i) (3) (a) If the location, design, and construction of a hotel may require more~~
71 ~~than one restaurant liquor sales location within the hotel to serve the public convenience, the~~
72 ~~commission may authorize the sale of liquor at as many as three restaurant locations within the~~
73 ~~hotel under one restaurant liquor license if:~~

74 ~~[(A)] (i) the hotel has a minimum of 150 guest rooms; and~~

75 ~~[(B)] (ii) all locations under the restaurant liquor license are:~~

76 ~~[(H)] (A) within the same hotel facility; and~~

77 ~~[(H)] (B) on premises that are managed or operated and owned or leased by the~~
78 ~~restaurant liquor licensee.~~

79 ~~[(i)] (b) A facility other than a hotel shall have a separate restaurant liquor license for~~
80 ~~each restaurant where liquor is sold.~~

81 (4) (a) Except as otherwise provided in this Subsection (4), the premises of a restaurant
82 liquor license may not be established:

83 (i) within 600 feet of a community location, as measured by the method in Subsection
84 (4)(f); or

85 (ii) within 200 feet of a community location, measured in a straight line from the
86 nearest entrance of the proposed outlet to the nearest property boundary of the community
87 location.

88 (b) With respect to the establishment of a restaurant liquor license, the commission
89 may authorize a variance to reduce the proximity requirement of Subsection (4)(a)(i) if:

- 90 (i) the local authority grants its written consent to the variance;
- 91 (ii) the commission finds that alternative locations for establishing a restaurant liquor
92 license in the community are limited;
- 93 (iii) a public hearing is held in the city, town, or county, and where practical in the
94 neighborhood concerned;
- 95 (iv) after giving full consideration to all of the attending circumstances and the policies
96 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the
97 restaurant liquor license would not be detrimental to the public health, peace, safety, and
98 welfare of the community; and
- 99 (v) (A) the community location governing authority gives its written consent to the
100 variance; or
101 (B) when written consent is not given by the community location governing authority,
102 the commission finds that the applicant has established that:
 - 103 (I) there is substantial unmet public demand to consume alcohol in a public setting
104 within the geographic boundary of the local authority in which the restaurant is to be located;
 - 105 (II) there is no reasonably viable alternative for satisfying substantial unmet demand
106 described in Subsection (4)(b)(v)(B)(I) other than through the establishment of a restaurant
107 liquor license; and
 - 108 (III) there is no reasonably viable alternative location within the geographic boundary
109 of the local authority in which the restaurant is to be located for establishing a restaurant liquor
110 license to satisfy the unmet demand described in Subsection (4)(b)(v)(B)(I).
- 111 (c) With respect to the establishment of a restaurant liquor license, the commission
112 may authorize a variance that reduces the proximity requirement of Subsection (4)(a)(ii) if:
 - 113 (i) the community location at issue is:
 - 114 (A) a public library; or
 - 115 (B) a public park;
 - 116 (ii) the local authority grants its written consent to the variance;
 - 117 (iii) the commission finds that alternative locations for establishing a restaurant liquor
118 license in the community are limited;
 - 119 (iv) a public hearing is held in the city, town, or county, and where practical in the
120 neighborhood concerned;

121 (v) after giving full consideration to all of the attending circumstances and the policies
122 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the
123 restaurant liquor license would not be detrimental to the public health, peace, safety, and
124 welfare of the community; and

125 (vi) (A) the community location governing authority gives its written consent to the
126 variance; or

127 (B) when written consent is not given by the community location governing authority,
128 the commission finds that the applicant has established that:

129 (I) there is substantial unmet public demand to consume alcohol in a public setting
130 within the geographic boundary of the local authority in which the restaurant is to be located;

131 (II) there is no reasonably viable alternative for satisfying substantial unmet demand
132 described in Subsection (4)(c)(vi)(B)(I) other than through the establishment of a restaurant
133 liquor license; and

134 (III) there is no reasonably viable alternative location within the geographic boundary
135 of the local authority in which the restaurant is to be located for establishing a restaurant liquor
136 license to satisfy the unmet demand described in Subsection (4)(c)(vi)(B)(I).

137 (d) With respect to the premises of a restaurant liquor license granted by the
138 commission that undergoes a change of ownership, the commission may waive or vary the
139 proximity requirements of Subsection (4)(a) in considering whether to grant a restaurant liquor
140 license to the new owner of the premises if:

141 (i) (A) the premises previously received a variance reducing the proximity requirement
142 of Subsection (4)(a)(i); or

143 (B) the premises received a variance reducing the proximity requirement of Subsection
144 (4)(a)(ii) on or before May 4, 2008; or

145 (ii) a variance from proximity requirements was otherwise allowed under this title.

146 (e) With respect to the premises of a restaurant liquor license granted by the
147 commission that undergoes a change of ownership, the commission shall waive or vary the
148 proximity requirements of Subsection (4)(a) in considering whether to grant a restaurant liquor
149 license to the new owner of the premises if:

150 (i) when a restaurant liquor license was granted to a previous owner, the premises met
151 the proximity requirements of Subsection (4)(a);

152 (ii) the premises has had a restaurant liquor license at all times since the restaurant
153 liquor license described in Subsection (4)(e)(i) was granted without a variance; and

154 (iii) the community location located within the proximity requirements of Subsection
155 (4)(a) after the day on which the restaurant liquor license described in Subsection (4)(e)(i) was
156 granted.

157 (f) The 600 foot limitation described in Subsection (4)(a)(i) is measured from the
158 nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the
159 community location.

160 (5) (a) Nothing in this section prevents the commission from considering the proximity
161 of any educational, religious, and recreational facility, or any other relevant factor in reaching a
162 decision on a proposed location.

163 (b) For purposes of this Subsection (5), "educational facility" includes:

164 (i) a nursery school;

165 (ii) an infant day care center; and

166 (iii) a trade and technical school.

167 Section 2. Section **32A-4-102** is amended to read:

168 **32A-4-102. Application and renewal requirements.**

169 (1) A person seeking a restaurant liquor license under this part shall file a written
170 application with the department, in a form prescribed by the department. It shall be
171 accompanied by:

172 (a) a nonrefundable \$250 application fee;

173 (b) an initial license fee of \$1,750, which is refundable if a license is not granted;

174 (c) written consent of the local authority;

175 (d) a copy of the applicant's current business license;

176 (e) evidence of proximity to any community location, with proximity requirements
177 being governed by Section 32A-4-101;

178 (f) a bond as specified by Section 32A-4-105;

179 (g) a floor plan of the restaurant, including consumption areas and the area where the
180 applicant proposes to keep, store, and sell liquor;

181 (h) evidence that the restaurant is carrying public liability insurance in an amount and
182 form satisfactory to the department;

183 (i) evidence that the restaurant is carrying dramshop insurance coverage of at least
184 \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

185 (j) a signed consent form stating that the restaurant will permit any authorized
186 representative of the commission, department, or any law enforcement officer unrestricted right
187 to enter the restaurant;

188 (k) in the case of an applicant that is a partnership, corporation, or limited liability
189 company, proper verification evidencing that the person or persons signing the restaurant
190 application are authorized to so act on behalf of the partnership, corporation, or limited liability
191 company; and

192 (l) any other information the commission or department may require.

193 (2) (a) A restaurant liquor license expires on October 31 of each year.

194 (b) A person desiring to renew the person's restaurant liquor license shall by no later
195 than September 30 submit:

196 (i) a completed renewal application to the department; and

197 (ii) a renewal fee in the following amount:

198 Gross Cost of Liquor in Previous License Year for the Licensee	Renewal Fee
199 under \$5,000	\$750
200 equals or exceeds \$5,000 but less than \$10,000	\$900
201 equals or exceeds \$10,000 but less than \$25,000	\$1,250
202 equals or exceeds \$25,000	\$1,500

203 (c) Failure to meet the renewal requirements shall result in an automatic forfeiture of
204 the license effective on the date the existing license expires.

205 (d) A renewal application shall be in a form as prescribed by the department.

206 (3) [~~To ensure compliance with Subsection 32A-4-106(25), the~~] The commission may
207 suspend or revoke a restaurant liquor license if the restaurant liquor licensee does not
208 immediately notify the department of any change in:

209 (a) ownership of the restaurant;

210 (b) for a corporate owner, the:

211 (i) corporate officers or directors; or

212 (ii) shareholders holding at least 20% of the total issued and outstanding stock of the
213 corporation; or

- 214 (c) for a limited liability company:
- 215 (i) managers; or
- 216 (ii) members owning at least 20% of the limited liability company.

217 Section 3. Section **32A-4-106** is amended to read:

218 **32A-4-106. Operational restrictions.**

219 A person granted a restaurant liquor license and the employees and management
220 personnel of the restaurant shall comply with the following conditions and requirements.
221 Failure to comply may result in a suspension or revocation of the restaurant liquor license or
222 other disciplinary action taken against individual employees or management personnel.

223 (1) (a) Liquor may not be purchased by a restaurant liquor licensee except from a state
224 store or package agency.

225 (b) Liquor purchased from a state store or package agency may be transported by the
226 restaurant liquor licensee from the place of purchase to the licensed premises.

227 (c) Payment for liquor shall be made in accordance with rules established by the
228 commission.

229 (2) A restaurant liquor licensee may sell or provide a primary spirituous liquor only in
230 a quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered
231 dispensing system approved by the department in accordance with commission rules adopted
232 under this title, except that:

233 (a) spirituous liquor need not be dispensed through a calibrated metered dispensing
234 system if used as a secondary flavoring ingredient in a beverage subject to the following
235 restrictions:

236 (i) the secondary ingredient may be dispensed only in conjunction with the purchase of
237 a primary spirituous liquor;

238 (ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

239 (iii) the restaurant liquor licensee shall designate a location where flavorings are stored
240 on the floor plan provided to the department; and

241 (iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

242 (b) spirituous liquor need not be dispensed through a calibrated metered dispensing
243 system if used:

244 (i) as a flavoring on a dessert; and

245 (ii) in the preparation of a flaming food dish, drink, or dessert;
246 (c) a restaurant patron may have no more than 2.5 ounces of spirituous liquor at a time;
247 and

248 (d) a restaurant patron may have no more than one spirituous liquor drink at a time
249 before the patron.

250 (3) (a) (i) Wine may be sold and served by the glass or in an individual portion not to
251 exceed five ounces per glass or individual portion.

252 (ii) An individual portion of wine may be served to a patron in more than one glass as
253 long as the total amount of wine does not exceed five ounces.

254 (iii) An individual portion of wine is considered to be one alcoholic beverage under
255 Subsection (7)(g).

256 (b) (i) Wine may be sold and served in a container not exceeding 1.5 liters at a price
257 fixed by the commission to a table of four or more persons.

258 (ii) Wine may be sold and served in a container not exceeding 750 milliliters at a price
259 fixed by the commission to a table of less than four persons.

260 (c) A wine service may be performed and a service charge assessed by a restaurant
261 liquor licensee as authorized by commission rule for wine purchased at the restaurant.

262 (4) (a) Heavy beer may be served in an original container not exceeding one liter at a
263 price fixed by the commission.

264 (b) A flavored malt beverage may be served in an original container not exceeding one
265 liter at a price fixed by the commission.

266 (c) A service charge may be assessed by a restaurant liquor licensee as authorized by
267 commission rule for heavy beer or a flavored malt beverage purchased at the restaurant.

268 (5) (a) (i) Subject to Subsection (5)(a)(ii), a restaurant liquor licensee may sell beer for
269 on-premise consumption:

270 (A) in an open container; and

271 (B) on draft.

272 (ii) Beer sold pursuant to Subsection (5)(a)(i) shall be in a size of container that does
273 not exceed two liters, except that beer may not be sold to an individual patron in a size of
274 container that exceeds one liter.

275 (b) A restaurant liquor licensee that sells beer pursuant to Subsection (5)(a):

276 (i) may do so without obtaining a separate on-premise beer retailer license from the
277 commission; and

278 (ii) shall comply with all appropriate operational restrictions under Chapter 10, Beer
279 Retailer Licenses, that apply to an on-premise beer retailer except when those restrictions are
280 inconsistent with or less restrictive than the operational restrictions under this part.

281 (c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer
282 Licenses, required by Subsection (5)(b) may result in a suspension or revocation of the
283 restaurant's:

284 (i) state liquor license; and

285 (ii) alcoholic beverage license issued by the local authority.

286 (6) An alcoholic beverage may not be stored, served, or sold in a place other than as
287 designated in the restaurant liquor licensee's application, unless the restaurant liquor licensee
288 first applies for and receives approval from the department for a change of location within the
289 restaurant.

290 (7) (a) (i) As used in this Subsection (7), and subject to Subsection (7)(a)(ii),
291 "grandfathered bar structure" means a bar structure in a restaurant that:

292 (A) as of May 11, 2009 has:

293 (I) (Aa) patron seating at the bar structure;

294 (Bb) a partition at one or more locations on the bar structure that is along the width of
295 the bar structure; and

296 (Cc) facilities for the dispensing or storage of an alcoholic beverage on the portion of
297 the bar structure that is separated by the partition described in Subsection (7)(a)(i)(A)(I)(Bb); or

298 (II) (Aa) patron seating at the bar structure;

299 (Bb) a partition at one or more locations on the bar structure that is along the length of
300 the bar structure; and

301 (Cc) facilities for the dispensing or storage of an alcoholic beverage:

302 (Ii) on the portion of the bar structure that is separated by a partition described in
303 Subsection (7)(a)(i)(A)(II)(Bb); or

304 (Iiii) adjacent to the bar structure in a manner visible to a patron sitting at the bar
305 structure;

306 (B) is not operational as of May 12, 2009, and:

307 (I) an applicant for a restaurant liquor license under this chapter:
308 (Aa) has as of May 12, 2009, a building permit to construct the restaurant;
309 (Bb) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
310 defined by rule made by the commission in accordance with Title 63G, Chapter 3, Utah
311 Administrative Rulemaking Act; and

312 (Cc) is granted a restaurant liquor license by the commission under this chapter by no
313 later than December 31, 2009; and

314 (II) the restaurant described in Subsection (7)(a)(i)~~(C)~~(B)(I) has a bar structure
315 described in Subsection (7)(a)(i)(A);

316 (C) as of May 12, 2009, has no patron seating at the bar structure; or

317 (D) is not operational as of May 12, 2009, and:

318 (I) an applicant for a restaurant liquor license under this chapter:

319 (Aa) has as of May 12, 2009, a building permit to construct the restaurant;

320 (Bb) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
321 defined by rule made by the commission in accordance with Title 63G, Chapter 3, Utah
322 Administrative Rulemaking Act; and

323 (Cc) is granted a restaurant liquor license by the commission under this chapter by no
324 later than December 31, 2009; and

325 (II) the restaurant described in Subsection (7)(a)(i)(D)(I) has a bar structure described
326 in Subsection (7)(a)(i)(C).

327 (ii) "Grandfathered bar structure" does not include a grandfathered bar structure
328 described in Subsection (7)(a)(i) on or after the day on which a restaurant remodels the
329 grandfathered bar structure, as defined by rule made by the commission in accordance with
330 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

331 (iii) Subject to Subsection (7)(a)(ii), a grandfathered bar structure remains a
332 grandfathered bar structure notwithstanding whether the restaurant undergoes a change of
333 ownership.

334 (b) (i) A patron may only make an alcoholic beverage purchase in the restaurant from
335 and be served by a person employed, designated, and trained by the restaurant liquor licensee to
336 sell and serve an alcoholic beverage.

337 (ii) Only a person employed, designated, and trained by a restaurant liquor licensee

338 may sell, serve, or deliver an alcoholic beverage to a patron of a restaurant.

339 (iii) Notwithstanding Subsection (7)(b)(i) or (ii), a patron who purchases bottled wine
340 from an employee of the restaurant or carries bottled wine onto the premises of the restaurant
341 pursuant to Subsection (14) may thereafter serve wine from the bottle to the patron or others at
342 the patron's table.

343 (c) A patron may consume an alcoholic beverage only:

344 (i) at:

345 (A) the patron's table;

346 (B) a counter; or

347 (C) a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B); and

348 (ii) where food is served.

349 (d) (i) An alcoholic beverage may not be served to or consumed by a patron at a bar
350 structure that is not a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B).

351 (ii) A patron who is 21 years of age or older may:

352 (A) sit at a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B);

353 (B) be served an alcoholic beverage at a grandfathered bar structure described in
354 Subsection (7)(a)(i)(A) or (B); and

355 (C) consume an alcoholic beverage at a grandfathered bar structure described in
356 Subsection (7)(a)(i)(A) or (B).

357 (iii) Except as provided in Subsection (7)(d)(iv), a restaurant liquor licensee may not
358 permit a minor to, and a minor may not:

359 (A) sit at a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B); or

360 (B) consume food or beverages at a bar structure described in Subsection (7)(a)(i)(A)
361 or (B).

362 (iv) (A) A minor may be at a grandfathered bar structure described in Subsection
363 (7)(a)(i)(A) or (B) if the minor is employed by a restaurant liquor licensee:

364 (I) as provided in Subsection (16)(b); or

365 (II) to perform maintenance and cleaning services during an hour when the restaurant
366 liquor licensee is not open for business.

367 (B) A minor may momentarily pass by a grandfathered bar structure described in
368 Subsection (7)(a)(i)(A) or (B) without remaining or sitting at the bar structure en route to an

369 area of a restaurant liquor licensee's premises in which the minor is permitted to be.

370 (e) Except as provided in Subsection (14), a restaurant liquor licensee may dispense an
371 alcoholic beverage only:

372 (i) from:

373 (A) a grandfathered bar structure;

374 (B) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at
375 the grandfathered bar structure if that area is used to dispense an alcoholic beverage or
376 alcoholic product as of May 12, 2009; or

377 (C) an area that is:

378 (I) separated from an area for the consumption of food by a restaurant patron by a solid,
379 opaque, permanent structural barrier such that the facilities for the dispensing or storage of an
380 alcoholic beverage or alcoholic product are:

381 (Aa) not readily visible to a restaurant patron; and

382 (Bb) not accessible by a restaurant patron; and

383 (II) apart from an area used:

384 (Aa) for dining;

385 (Bb) for staging; or

386 (Cc) as a lobby or waiting area;

387 (ii) if the restaurant liquor licensee uses an alcoholic beverage or alcoholic product that
388 is:

389 (A) stored in an area described in Subsection (7)(e)(i); or

390 (B) on the premises of the restaurant liquor licensee in an area not described in
391 Subsection (7)(e)(i) if:

392 (I) immediately before the alcoholic beverage or alcoholic product is dispensed it is in
393 an unopened package;

394 (II) the unopened package is taken to an area described in Subsection (7)(e)(i) before it
395 is opened; and

396 (III) once opened, the package is kept in an area described in Subsection (7)(e)(i); and

397 (iii) if any instrument or equipment used to dispense an alcoholic beverage or alcoholic
398 product is located in an area described in Subsection (7)(e)(i).

399 (f) (i) A restaurant liquor licensee that has a grandfathered bar structure may receive a

400 credit for purchases from a state store or package agency if:

401 (A) the restaurant liquor licensee completes a remodel of the grandfathered bar
402 structure by no later than December 31, 2011;

403 (B) the remodeling described in Subsection (7)(f)(i)(A) results in the restaurant
404 engaging in an activity described in Subsection (7)(e) only in an area described in Subsection
405 (7)(e)(i)(C);

406 (C) the restaurant liquor licensee requests the credit by no later than April 1, 2012;

407 (D) the department determines that the restaurant liquor licensee has completed a
408 remodel described in Subsections (7)(f)(i)(A) and (B); and

409 (E) the department authorizes the credit, including the amount of the credit under
410 Subsection (7)(f)(ii), on the basis that:

411 (I) the restaurant liquor licensee complied with this Subsection (7); and

412 (II) the aggregate of credits authorized under this Subsection (7)(f) and Subsection
413 32A-4-307(7)(f) before the current authorization does not exceed the amount described in
414 Subsection (7)(f)(v)(A).

415 (ii) The amount of the credit described in this Subsection (7)(f) is the lesser of:

416 (A) the actual costs of the remodel as evidenced by receipts, copies of which are
417 provided to the department as part of the request for the credit; or

418 (B) \$30,000.

419 (iii) For a restaurant liquor licensee, a credit under this Subsection (7)(f):

420 (A) begins on the day on which the department authorizes the credit under Subsection
421 (7)(f)(i); and

422 (B) ends the day on which the restaurant liquor licensee uses all of the credit.

423 (iv) The department shall by contract provide for how a package agency accounts for a
424 credit purchase made at the package agency by a restaurant liquor licensee under this
425 Subsection (7)(f).

426 (v) (A) Notwithstanding the other provisions of this Subsection (7)(f), the department
427 may not authorize a credit if the aggregate of credits authorized under this Subsection (7)(f)
428 and Subsection 32A-4-307(7)(f) before the department authorizes the credit exceeds:

429 (I) \$1,000,000, for the aggregate of credits under this Subsection (7)(f) and Subsection
430 32A-4-307(7)(f), if the credit could be used on or before June 30, 2010; and

431 (II) subject to Subsection (7)(f)(v)(A)(I), \$1,090,000 for the aggregate of all credits that
432 can be authorized under this Subsection (7)(f) and Subsection 32A-4-307(7)(f).

433 (B) The department shall authorize credits in the order that the department receives a
434 request described in Subsection (7)(f)(i)(C) from a restaurant liquor licensee requesting a credit
435 under this Subsection (7)(f).

436 (g) A restaurant patron may have no more than two alcoholic beverages of any kind at
437 a time before the patron, subject to the limitation in Subsection (2)(d).

438 (8) (a) A liquor storage area shall remain locked at all times other than those hours and
439 days when liquor sales are authorized by law.

440 (b) A restaurant liquor licensee shall store an alcoholic beverage or alcoholic product
441 in a storage area described in Subsection (7)(e)(i).

442 (9) (a) Liquor may not be sold, offered for sale, served, or otherwise furnished at a
443 restaurant of a restaurant liquor licensee on any day after 12 midnight or before 12 noon.

444 (b) The hours of beer sales and service are those specified in Chapter 10, Beer Retailer
445 Licenses, for on-premise beer licensees.

446 (10) An alcoholic beverage may not be sold except in connection with an order for
447 food prepared, sold, and served at the restaurant.

448 (11) An alcoholic beverage may not be sold, served, or otherwise furnished to a:

449 (a) minor;

450 (b) person actually, apparently, or obviously intoxicated;

451 (c) known habitual drunkard; or

452 (d) known interdicted person.

453 (12) (a) (i) Liquor may be sold only at a price fixed by the commission.

454 (ii) Liquor may not be sold at a discount price on any date or at any time.

455 (b) An alcoholic beverage may not be sold at less than the cost of the alcoholic
456 beverage to the restaurant liquor licensee.

457 (c) An alcoholic beverage may not be sold at a special or reduced price that encourages
458 over consumption or intoxication.

459 (d) An alcoholic beverage may not be sold at a special or reduced price for only certain
460 hours of a restaurant liquor licensee's business day such as a "happy hour."

461 (e) More than one alcoholic beverage may not be sold or served for the price of a single

462 alcoholic beverage.

463 (f) An indefinite or unlimited number of alcoholic beverages during a set period may
464 not be sold or served for a fixed price.

465 (g) A restaurant liquor licensee may not engage in a public promotion involving or
466 offering free an alcoholic beverage to the general public.

467 (13) An alcoholic beverage may not be purchased for a patron of a restaurant by:

468 (a) the restaurant liquor licensee; or

469 (b) an employee or agent of the restaurant liquor licensee.

470 (14) (a) A person may not bring onto the premises of a restaurant liquor licensee an
471 alcoholic beverage for on-premise consumption, except a person may bring, subject to the
472 discretion of the restaurant liquor licensee, bottled wine onto the premises of a restaurant liquor
473 licensee for on-premise consumption.

474 (b) Except bottled wine under Subsection (14)(a), a restaurant liquor licensee or an
475 officer, manager, employee, or agent of the restaurant liquor licensee may not allow:

476 (i) a person to bring onto the restaurant premises an alcoholic beverage for on-premise
477 consumption; or

478 (ii) consumption of an alcoholic beverage described in this Subsection (14) on the
479 restaurant liquor licensee's premises.

480 (c) If bottled wine is carried in by a patron, the patron shall deliver the wine to a server
481 or other representative of the restaurant liquor licensee upon entering the restaurant.

482 (d) A wine service may be performed and a service charge assessed by a restaurant
483 liquor licensee as authorized by commission rule for wine carried in by a patron.

484 (15) (a) Except as provided in Subsection (15)(b), a restaurant liquor licensee or an
485 employee of the restaurant liquor licensee may not permit a restaurant patron to carry from the
486 restaurant premises an open container that:

487 (i) is used primarily for drinking purposes; and

488 (ii) contains an alcoholic beverage.

489 (b) Notwithstanding Subsection (15)(a), a restaurant patron may remove from the
490 restaurant the unconsumed contents of a bottle of wine purchased in the restaurant, or brought
491 onto the premises of the restaurant in accordance with Subsection (14), only if the bottle is
492 recorked or recapped before removal.

493 (16) (a) A restaurant liquor licensee may not employ a minor to sell or dispense an
494 alcoholic beverage.

495 (b) Notwithstanding Subsection (16)(a), a minor who is at least 16 years of age may be
496 employed to enter the sale at a cash register or other sales recording device.

497 (17) An employee of a restaurant liquor licensee, while on duty, may not:

498 (a) consume an alcoholic beverage; or

499 (b) be intoxicated.

500 (18) A charge or fee made in connection with the sale, service, or consumption of liquor
501 may be stated in food or alcoholic beverage menus including:

502 (a) a set-up charge;

503 (b) a service charge; or

504 (c) a chilling fee.

505 (19) A restaurant liquor licensee shall display in a prominent place in the restaurant:

506 (a) the liquor license that is granted by the department;

507 (b) a list of the types and brand names of liquor being served through its calibrated
508 metered dispensing system; and

509 (c) a sign in large letters stating: "Warning: Driving under the influence of alcohol or
510 drugs is a serious crime that is prosecuted aggressively in Utah."

511 (20) A restaurant liquor licensee may not on the premises of the restaurant liquor
512 licensee:

513 (a) engage in or permit any form of gambling, as defined and proscribed in Title 76,
514 Chapter 10, Part 11, Gambling;

515 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
516 Part 11, Gambling; or

517 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
518 the risking of something of value for a return or for an outcome when the return or outcome is
519 based upon an element of chance, excluding the playing of an amusement device that confers
520 only an immediate and unrecorded right of replay not exchangeable for value.

521 (21) (a) A restaurant liquor licensee shall maintain an expense ledger or record showing
522 in detail:

523 (i) quarterly expenditures made separately for:

- 524 (A) malt or brewed beverages;
- 525 (B) set-ups;
- 526 (C) liquor;
- 527 (D) food; and
- 528 (E) all other items required by the department; and
- 529 (ii) sales made separately for:
 - 530 (A) malt or brewed beverages;
 - 531 (B) set-ups;
 - 532 (C) food; and
 - 533 (D) all other items required by the department.
- 534 (b) A restaurant liquor licensee shall keep a record required by Subsection (21)(a):
 - 535 (i) in a form approved by the department; and
 - 536 (ii) current for each three-month period.
- 537 (c) An expenditure shall be supported by:
 - 538 (i) a delivery ticket;
 - 539 (ii) an invoice;
 - 540 (iii) a receipted bill;
 - 541 (iv) a canceled check;
 - 542 (v) a petty cash voucher; or
 - 543 (vi) other sustaining datum or memorandum.
- 544 (d) In addition to a ledger or record required under Subsection (21)(a), a restaurant
- 545 liquor licensee shall maintain accounting and other records and documents as the department
- 546 may require.
- 547 (e) A restaurant liquor licensee or person acting for the restaurant, who knowingly
- 548 forges, falsifies, alters, cancels, destroys, conceals, or removes an entry in a book of account or
- 549 other document of the restaurant that is required to be made, maintained, or preserved by this
- 550 title or the rules of the commission for the purpose of deceiving the commission or the
- 551 department, or an official or employee of the commission or department, is subject to:
 - 552 (i) the suspension or revocation of the restaurant's liquor license; and
 - 553 (ii) possible criminal prosecution under Chapter 12, Criminal Offenses.
- 554 [~~22~~](a) A restaurant liquor licensee may not close or cease operation for a period

555 longer than 240 hours, unless:]

556 ~~[(i) the restaurant liquor licensee notifies the department in writing at least seven days~~
557 ~~before the day on which the restaurant liquor licensee closes or ceases operation; and]~~

558 ~~[(ii) the closure or cessation of operation is first approved by the department.]~~

559 ~~[(b) Notwithstanding Subsection (22)(a), in the case of emergency closure, the~~
560 ~~restaurant liquor licensee shall immediately notify the department by telephone.]~~

561 ~~[(c) (i) The department may authorize a closure or cessation of operation for a period~~
562 ~~not to exceed 60 days.]~~

563 ~~[(ii) The department may extend the initial period an additional 30 days upon:]~~

564 ~~[(A) written request of the restaurant liquor licensee; and]~~

565 ~~[(B) a showing of good cause.]~~

566 ~~[(iii) A closure or cessation of operation may not exceed a total of 90 days without~~
567 ~~commission approval.]~~

568 ~~[(d) A notice shall include:]~~

569 ~~[(i) the dates of closure or cessation of operation;]~~

570 ~~[(ii) the reason for the closure or cessation of operation; and]~~

571 ~~[(iii) the date on which the restaurant liquor licensee will reopen or resume operation.]~~

572 ~~[(e) Failure of the restaurant liquor licensee to provide notice and to obtain department~~
573 ~~authorization before closure or cessation of operation results in an automatic forfeiture of:]~~

574 ~~[(i) the license; and]~~

575 ~~[(ii) the unused portion of the license fee for the remainder of the license year effective~~
576 ~~immediately.]~~

577 ~~[(f) Failure of the restaurant liquor licensee to reopen or resume operation by the~~
578 ~~approved date results in an automatic forfeiture of:]~~

579 ~~[(i) the license; and]~~

580 ~~[(ii) the unused portion of the license fee for the remainder of the license year.]~~

581 ~~[(23)]~~ (22) A restaurant liquor licensee shall maintain at least 70% of its total
582 restaurant business from the sale of food, which does not include mix for an alcoholic beverage
583 or service charges.

584 ~~[(24)]~~ (23) A restaurant liquor license may not be transferred from one location to
585 another, without prior written approval of the commission.

586 [~~25~~] (24) (a) A person, having been granted a restaurant liquor license may not sell,
587 transfer, assign, exchange, barter, give, or attempt in any way to dispose of the restaurant liquor
588 license to another person whether for monetary gain or not.

589 (b) A restaurant liquor license has no monetary value for the purpose of any type of
590 disposition.

591 [~~26~~] (25) A server of an alcoholic beverage in a restaurant liquor licensee's
592 establishment shall keep a written beverage tab for each table or group that orders or consumes
593 an alcoholic beverage on the premises. The beverage tab shall list the type and amount of an
594 alcoholic beverage ordered or consumed.

595 [~~27~~] (26) A person's willingness to serve an alcoholic beverage may not be made a
596 condition of employment as a server with a restaurant that has a restaurant liquor license.

597 [~~28~~] (27) A restaurant liquor licensee or an employee of the restaurant liquor licensee
598 may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter
599 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

600 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
601 58-37-2; or

602 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
603 Section 58-37a-3.

604 Section 4. Section **32A-4-302** is amended to read:

605 **32A-4-302. Commission's power to grant licenses -- Limitations.**

606 (1) A restaurant wanting to sell and allow the consumption of only wine, heavy beer,
607 and beer on its premises, but not spirituous liquor or a flavored malt beverage, shall obtain a
608 limited restaurant license from the commission as provided in this part before selling or
609 allowing the consumption of wine, heavy beer, or beer on its premises.

610 (2) [~~(a) Subject to the other provisions of this section and Subsection 32A-4a-201(2);~~
611 ~~the~~] The commission may grant limited restaurant licenses for the purpose of establishing
612 limited restaurant outlets at places and in numbers the commission considers proper for the
613 storage, sale, and consumption of wine, heavy beer, and beer on premises operated as public
614 restaurants.

615 [~~(b) The total number of limited restaurant licenses granted under this part may not at~~
616 ~~any time aggregate more than that number determined by dividing the population of the state~~

617 by 9,300;]

618 [~~(c) For purposes of this Subsection (2), population shall be determined by:~~

619 [~~(i) the most recent United States decennial or special census; or]~~

620 [~~(ii) another population determination made by the United States or state~~

621 ~~governments.]~~

622 [~~(3) (a) (i) The commission may grant seasonal limited restaurant licenses established~~

623 ~~in areas the commission considers necessary.]~~

624 [~~(ii) A seasonal limited restaurant license shall be for a period of six consecutive~~

625 ~~months:]~~

626 [~~(b) (i) A limited restaurant license granted for operation during a summer time period~~

627 ~~is known as a "Seasonal A" limited restaurant license. The period of operation for a "Seasonal~~

628 ~~A" limited restaurant license shall:]~~

629 [~~(A) begin on May 1; and]~~

630 [~~(B) end on October 31.]~~

631 [~~(ii) A limited restaurant license granted for operation during a winter time period is~~

632 ~~known as a "Seasonal B" limited restaurant license. The period of operation for a "Seasonal B"~~

633 ~~limited restaurant license shall:]~~

634 [~~(A) begin on November 1; and]~~

635 [~~(B) end on April 30.]~~

636 [~~(iii) In determining the number of limited restaurant licenses that the commission may~~

637 ~~grant under this section:]~~

638 [~~(A) a seasonal limited restaurant license is counted as one-half of one limited~~

639 ~~restaurant license; and]~~

640 [~~(B) each "Seasonal A" limited restaurant license shall be paired with a "Seasonal B"~~

641 ~~limited restaurant license.]~~

642 [~~(c)~~ (3) (a) If the location, design, and construction of a hotel may require more than

643 one limited restaurant sales location within the hotel to serve the public convenience, the

644 commission may authorize the sale of wine, heavy beer, and beer at as many as three limited

645 restaurant locations within the hotel under one limited restaurant license if:

646 (i) the hotel has a minimum of 150 guest rooms; and

647 (ii) all locations under the limited restaurant license are:

648 (A) within the same hotel facility; and

649 (B) on premises that are:

650 (I) managed or operated by the limited restaurant licensee; and

651 (II) owned or leased by the limited restaurant licensee.

652 [~~(d)~~] (b) A facility other than a hotel shall have a separate limited restaurant license for
653 each restaurant where wine, heavy beer, and beer are sold.

654 (4) (a) Except as otherwise provided in this Subsection (4), the premises of a limited
655 restaurant license may not be established:

656 (i) within 600 feet of a community location, as measured by the method in Subsection
657 (4)(f); or

658 (ii) within 200 feet of a community location, measured in a straight line from the
659 nearest entrance of the proposed outlet to the nearest property boundary of the community
660 location.

661 (b) With respect to the establishment of a limited restaurant license, the commission
662 may authorize a variance to reduce the proximity requirement of Subsection (4)(a)(i) if:

663 (i) the local authority grants its written consent to the variance;

664 (ii) the commission finds that alternative locations for establishing a limited restaurant
665 license in the community are limited;

666 (iii) a public hearing is held in the city, town, or county, and where practical in the
667 neighborhood concerned;

668 (iv) after giving full consideration to all of the attending circumstances and the policies
669 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the
670 license would not be detrimental to the public health, peace, safety, and welfare of the
671 community; and

672 (v) (A) the community location governing authority gives its written consent to the
673 variance; or

674 (B) when written consent is not given by the community location governing authority,
675 the commission finds that the applicant has established that:

676 (I) there is substantial unmet public demand to consume alcohol in a public setting
677 within the geographic boundary of the local authority in which the limited restaurant licensee is
678 to be located;

679 (II) there is no reasonably viable alternative for satisfying substantial unmet demand
680 described in Subsection (4)(b)(v)(B)(I) other than through the establishment of a limited
681 restaurant license; and

682 (III) there is no reasonably viable alternative location within the geographic boundary
683 of the local authority in which the limited restaurant licensee is to be located for establishing a
684 limited restaurant license to satisfy the unmet demand described in Subsection (4)(b)(v)(B)(I).

685 (c) With respect to the establishment of a limited restaurant license, the commission
686 may authorize a variance that reduces the proximity requirement of Subsection (4)(a)(ii) if:

687 (i) the community location at issue is:

688 (A) a public library; or

689 (B) a public park;

690 (ii) the local authority grants its written consent to the variance;

691 (iii) the commission finds that alternative locations for establishing a limited restaurant
692 license in the community are limited;

693 (iv) a public hearing is held in the city, town, or county, and where practical in the
694 neighborhood concerned;

695 (v) after giving full consideration to all of the attending circumstances and the policies
696 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the
697 limited restaurant license would not be detrimental to the public health, peace, safety, and
698 welfare of the community; and

699 (vi) (A) the community location governing authority gives its written consent to the
700 variance; or

701 (B) when written consent is not given by the community location governing authority,
702 the commission finds that the applicant has established that:

703 (I) there is substantial unmet public demand to consume alcohol in a public setting
704 within the geographic boundary of the local authority in which the limited restaurant licensee is
705 to be located;

706 (II) there is no reasonably viable alternative for satisfying substantial unmet demand
707 described in Subsection (4)(c)(vi)(B)(I) other than through the establishment of a limited
708 restaurant license; and

709 (III) there is no reasonably viable alternative location within the geographic boundary

710 of the local authority in which the limited restaurant licensee is to be located for establishing a
711 limited restaurant license to satisfy the unmet demand described in Subsection (4)(c)(vi)(B)(I).

712 (d) With respect to the premises of a limited restaurant license granted by the
713 commission that undergoes a change of ownership, the commission may waive or vary the
714 proximity requirements of Subsection (4)(a) in considering whether to grant a limited
715 restaurant license to the new owner of the premises if:

716 (i) (A) the premises previously received a variance reducing the proximity requirement
717 of Subsection (4)(a)(i); or

718 (B) the premises received a variance reducing the proximity requirement of Subsection
719 (4)(a)(ii) on or before May 4, 2008; or

720 (ii) a variance from proximity requirements was otherwise allowed under this title.

721 (e) With respect to the premises of a limited restaurant license granted by the
722 commission that undergoes a change of ownership, the commission shall waive or vary the
723 proximity requirements of Subsection (4)(a) in considering whether to grant a limited
724 restaurant license to the new owner of the premises if:

725 (i) when a limited restaurant license was granted to a previous owner, the premises met
726 the proximity requirements of Subsection (4)(a);

727 (ii) the premises has had a limited restaurant license at all times since the limited
728 restaurant license described in Subsection (4)(e)(i) was granted without a variance; and

729 (iii) the community location located within the proximity requirements of Subsection
730 (4)(a) after the day on which the limited restaurant license described in Subsection (4)(e)(i) was
731 granted.

732 (f) The 600 foot limitation as described in Subsection (4)(a)(i) is measured from the
733 nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the
734 property boundary of the community location.

735 (5) (a) Nothing in this section prevents the commission from considering the proximity
736 of any educational, religious, and recreational facility, or any other relevant factor in reaching a
737 decision on a proposed location.

738 (b) For purposes of this Subsection (5), "educational facility" includes:

739 (i) a nursery school;

740 (ii) an infant day care center; and

741 (iii) a trade and technical school.

742 Section 5. Section **32A-4-303** is amended to read:

743 **32A-4-303. Application and renewal requirements.**

744 (1) A person seeking a limited restaurant license under this part shall file a written
745 application with the department, in a form prescribed by the department. The application shall
746 be accompanied by:

747 (a) a nonrefundable \$250 application fee;

748 (b) an initial license fee of \$500, which is refundable if a license is not granted;

749 (c) written consent of the local authority;

750 (d) a copy of the applicant's current business license;

751 (e) evidence of proximity to any community location, with proximity requirements
752 being governed by Section 32A-4-302;

753 (f) a bond as specified by Section 32A-4-306;

754 (g) a floor plan of the restaurant, including:

755 (i) consumption areas; and

756 (ii) the area where the applicant proposes to keep, store, and sell wine, heavy beer, and
757 beer;

758 (h) evidence that the restaurant is carrying public liability insurance in an amount and
759 form satisfactory to the department;

760 (i) evidence that the restaurant is carrying dramshop insurance coverage of at least
761 \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

762 (j) a signed consent form stating that the restaurant will permit any authorized
763 representative of the commission, department, or any law enforcement officer unrestricted right
764 to enter the restaurant;

765 (k) in the case of an applicant that is a partnership, corporation, or limited liability
766 company, proper verification evidencing that the person or persons signing the restaurant
767 application are authorized to so act on behalf of the partnership, corporation, or limited liability
768 company; and

769 (l) any other information the commission or department may require.

770 (2) (a) A limited restaurant license expires on October 31 of each year.

771 (b) A person desiring to renew that person's limited restaurant license shall submit:

772 (i) a renewal fee of \$300; and
773 (ii) a renewal application to the department no later than September 30.
774 (c) Failure to meet the renewal requirements shall result in an automatic forfeiture of
775 the license effective on the date the existing license expires.

776 (d) A renewal application shall be in a form as prescribed by the department.

777 (3) [~~To ensure compliance with Subsection 32A-4-307(25), the~~] The commission may
778 suspend or revoke a limited restaurant license if the limited restaurant licensee does not
779 immediately notify the department of any change in:

780 (a) ownership of the restaurant;

781 (b) for a corporate owner, the:

782 (i) corporate officer or directors; or

783 (ii) shareholders holding at least 20% of the total issued and outstanding stock of the
784 corporation; or

785 (c) for a limited liability company:

786 (i) managers; or

787 (ii) members owning at least 20% of the limited liability company.

788 Section 6. Section **32A-4-307** is amended to read:

789 **32A-4-307. Operational restrictions.**

790 A person granted a limited restaurant license and the employees and management
791 personnel of the limited restaurant shall comply with the following conditions and
792 requirements. Failure to comply may result in a suspension or revocation of the license or
793 other disciplinary action taken against individual employees or management personnel.

794 (1) (a) Wine and heavy beer may not be purchased by a limited restaurant licensee
795 except from a state store or package agency.

796 (b) Wine and heavy beer purchased from a state store or package agency may be
797 transported by the limited restaurant licensee from the place of purchase to the licensed
798 premises.

799 (c) Payment for wine and heavy beer shall be made in accordance with rules
800 established by the commission.

801 (2) (a) A limited restaurant licensee may not sell, serve, or allow consumption of the
802 products listed in Subsection (2)(c) on the premises of the limited restaurant.

803 (b) A product listed in Subsection (2)(c) may not be on the premises of the limited
804 restaurant except for use:

805 (i) as a flavoring on a dessert; and

806 (ii) in the preparation of a flaming food dish, drink, or dessert.

807 (c) This Subsection (2) applies to:

808 (i) spirituous liquor; and

809 (ii) a flavored malt beverage.

810 (3) (a) (i) Wine may be sold and served by the glass or an individual portion not to
811 exceed five ounces per glass or individual portion.

812 (ii) An individual portion may be served to a patron in more than one glass as long as
813 the total amount of wine does not exceed five ounces.

814 (iii) An individual portion of wine is considered to be one alcoholic beverage under
815 Subsection (7)(g).

816 (b) (i) Wine may be sold and served in a container not exceeding 1.5 liters at a price
817 fixed by the commission to a table of four or more persons.

818 (ii) Wine may be sold and served in a container not exceeding 750 milliliters at a price
819 fixed by the commission to a table of less than four persons.

820 (c) A wine service may be performed and a service charge assessed by the limited
821 restaurant licensee as authorized by commission rule for wine purchased at the limited
822 restaurant.

823 (4) (a) Heavy beer may be served in an original container not exceeding one liter at a
824 price fixed by the commission.

825 (b) A service charge may be assessed by the limited restaurant licensee as authorized
826 by commission rule for heavy beer purchased at the limited restaurant.

827 (5) (a) (i) Subject to Subsection (5)(a)(ii), a limited restaurant licensee may sell beer for
828 on-premise consumption:

829 (A) in an open container; and

830 (B) on draft.

831 (ii) Beer sold pursuant to Subsection (5)(a)(i) shall be in a size of container that does
832 not exceed two liters, except that beer may not be sold to an individual patron in a size of
833 container that exceeds one liter.

834 (b) A limited restaurant licensee that sells beer pursuant to Subsection (5)(a):
835 (i) may do so without obtaining a separate on-premise beer retailer license from the
836 commission; and
837 (ii) shall comply with all appropriate operational restrictions under Chapter 10, Beer
838 Retailer Licenses, that apply to an on-premise beer retailer except when those restrictions are
839 inconsistent with or less restrictive than the operational restrictions under this part.
840 (c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer
841 Licenses, required by Subsection (5)(b) may result in a suspension or revocation of the limited
842 restaurant's:
843 (i) limited restaurant license; and
844 (ii) alcoholic beverage license issued by the local authority.
845 (6) Wine, heavy beer, and beer may not be stored, served, or sold in a place other than
846 as designated in the limited restaurant licensee's application, unless the limited restaurant
847 licensee first applies for and receives approval from the department for a change of location
848 within the limited restaurant.
849 (7) (a) (i) As used in this Subsection (7), and subject to Subsection (7)(a)(ii),
850 "grandfathered bar structure" means a bar structure in a restaurant that:
851 (A) as of May 11, 2009 has:
852 (I) (Aa) patron seating at the bar structure;
853 (Bb) a partition at one or more locations on the bar structure that is along the width of
854 the bar structure; and
855 (Cc) facilities for the dispensing or storage of an alcoholic beverage on the portion of
856 the bar structure that is separated by the partition described in Subsection (7)(a)(i)(A)(I)(Bb); or
857 (II) (Aa) patron seating at the bar structure;
858 (Bb) a partition at one or more locations on the bar structure that is along the length of
859 the bar structure; and
860 (Cc) facilities for the dispensing or storage of an alcoholic beverage:
861 (Ii) on the portion of the bar structure that is separated by a partition described in
862 Subsection (7)(a)(i)(A)(II)(Bb); or
863 (Iii) adjacent to the bar structure in a manner visible to a patron sitting at the bar
864 structure;

865 (B) is not operational as of May 12, 2009, and:
866 (I) an applicant for a limited restaurant license under this chapter:
867 (Aa) has as of May 12, 2009, a building permit to construct the restaurant;
868 (Bb) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
869 defined by rule made by the commission in accordance with Title 63G, Chapter 3, Utah
870 Administrative Rulemaking Act; and
871 (Cc) is granted a limited restaurant license by the commission under this chapter by no
872 later than December 31, 2009; and
873 (II) the restaurant described in Subsection (7)(a)(i)~~(C)~~(I) has a bar structure
874 described in Subsection (7)(a)(i)(A);
875 (C) as of May 12, 2009, has no patron seating at the bar structure; or
876 (D) is not operational as of May 12, 2009, and:
877 (I) an applicant for a limited restaurant license under this chapter:
878 (Aa) has as of May 12, 2009, a building permit to construct the restaurant;
879 (Bb) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
880 defined by rule made by the commission in accordance with Title 63G, Chapter 3, Utah
881 Administrative Rulemaking Act; and
882 (Cc) is granted a limited restaurant license by the commission under this chapter by no
883 later than December 31, 2009; and
884 (II) the restaurant described in Subsection (7)(a)(i)(D)(I) has a bar structure described
885 in Subsection (7)(a)(i)(C).
886 (ii) "Grandfathered bar structure" does not include a grandfathered bar structure
887 described in Subsection (7)(a)(i) on or after the day on which a restaurant remodels the
888 grandfathered bar structure, as defined by rule made by the commission in accordance with
889 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
890 (iii) Subject to Subsection (7)(a)(ii), a grandfathered bar structure remains a
891 grandfathered bar structure notwithstanding whether the restaurant undergoes a change of
892 ownership.
893 (b) (i) A patron may only make an alcoholic beverage purchase in a limited restaurant
894 from and be served by a person employed, designated, and trained by the limited restaurant
895 licensee to sell and serve an alcoholic beverage.

896 (ii) Only a person employed, designated, and trained by a limited restaurant licensee
897 may sell, serve, or deliver an alcoholic beverage to a patron of a restaurant.

898 (iii) Notwithstanding Subsection (7)(b)(i) or (ii), a patron who purchases bottled wine
899 from an employee of the limited restaurant licensee or carries bottled wine onto the premises of
900 the limited restaurant pursuant to Subsection (14) may thereafter serve wine from the bottle to
901 the patron or others at the patron's table.

902 (c) A patron may consume an alcoholic beverage only:

903 (i) at:

904 (A) the patron's table;

905 (B) a counter; or

906 (C) a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B); and

907 (ii) where food is served.

908 (d) (i) An alcoholic beverage may not be served to or consumed by a patron at a bar
909 structure that is not a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B).

910 (ii) A patron who is 21 years of age or older may:

911 (A) sit at a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B);

912 (B) be served an alcoholic beverage at a grandfathered bar structure described in
913 Subsection (7)(a)(i)(A) or (B); and

914 (C) consume an alcoholic beverage at a grandfathered bar structure described in
915 Subsection (7)(a)(i)(A) or (B).

916 (iii) Except as provided in Subsection (7)(d)(iv), a limited restaurant licensee may not
917 permit a minor to, and a minor may not:

918 (A) sit at a grandfathered bar structure described in Subsection (7)(a)(i)(A) or (B); or

919 (B) consume food or beverages at a bar structure described in Subsection (7)(a)(i)(A)
920 or (B).

921 (iv) (A) A minor may be at a grandfathered bar structure described in Subsection
922 (7)(a)(i)(A) or (B) if the minor is employed by a limited restaurant licensee:

923 (I) as provided in Subsection (16)(b); or

924 (II) to perform maintenance and cleaning services during an hour when the limited
925 restaurant licensee is not open for business.

926 (B) A minor may momentarily pass by a grandfathered bar structure described in

927 Subsection (7)(a)(i)(A) or (B) without remaining or sitting at the bar structure en route to an
928 area of a limited restaurant licensee's premises in which the minor is permitted to be.

929 (e) Except as provided in Subsection (14), a limited restaurant licensee may dispense
930 an alcoholic beverage only:

931 (i) from:

932 (A) a grandfathered bar structure;

933 (B) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at
934 the grandfathered bar structure if that area is used to dispense an alcoholic beverage or

935 alcoholic product as of May 12, 2009; or

936 (C) an area that is:

937 (I) separated from an area for the consumption of food by a restaurant patron by a solid,
938 opaque, permanent structural barrier such that the facilities for the dispensing or storage of an

939 alcoholic beverage or alcoholic product are:

940 (Aa) not readily visible to a restaurant patron; and

941 (Bb) not accessible by a restaurant patron; and

942 (II) apart from an area used for:

943 (Aa) dining;

944 (Bb) staging; or

945 (Cc) as a lobby or waiting area;

946 (ii) if the limited restaurant licensee uses an alcoholic beverage or alcoholic product

947 that is:

948 (A) stored in an area described in Subsection (7)(e)(i); or

949 (B) on the premises of the limited restaurant licensee in an area not described in

950 Subsection (7)(e)(i) if:

951 (I) immediately before the alcoholic beverage or alcoholic product is dispensed it is in
952 an unopened package;

953 (II) the unopened package is taken to an area described in Subsection (7)(e)(i) before it
954 is opened; and

955 (III) once opened, the package is kept in an area described in Subsection (7)(e)(i); and

956 (iii) if any instrument or equipment used to dispense an alcoholic beverage is located in
957 an area described in Subsection (7)(e)(i).

958 (f) (i) A limited restaurant licensee that has a grandfathered bar structure may receive a
959 credit for purchases from a state store or package agency if:

960 (A) the limited restaurant licensee completes a remodel of the grandfathered bar
961 structure by no later than December 31, 2011;

962 (B) the remodeling described in Subsection (7)(f)(i)(A) results in the restaurant
963 engaging in an activity described in Subsection (7)(e) only in an area described in Subsection
964 (7)(e)(i)(C);

965 (C) the limited restaurant licensee requests the credit by no later than April 1, 2012;

966 (D) the department determines that the limited restaurant licensee has completed a
967 remodel described in Subsections (7)(f)(i)(A) and (B); and

968 (E) the department authorizes the credit, including the amount of the credit under
969 Subsection (7)(f)(ii), on the basis that:

970 (I) the limited restaurant licensee complied with this Subsection (7); and

971 (II) the aggregate of credits authorized under this Subsection (7)(f) and Subsection
972 32A-4-106(7)(f) before the current authorization does not exceed the amount described in
973 Subsection (7)(f)(v)(A).

974 (ii) The amount of the credit described in this Subsection (7)(f) is the lesser of:

975 (A) the actual costs of the remodel as evidenced by receipts, copies of which are
976 provided to the department as part of the request for the credit; or

977 (B) \$30,000.

978 (iii) For a limited restaurant licensee, a credit under this Subsection (7)(f):

979 (A) begins on the day on which the department authorizes the credit under Subsection
980 (7)(f)(i); and

981 (B) ends the day on which the limited restaurant licensee uses all of the credit.

982 (iv) The department shall by contract provide for how a package agency accounts for a
983 credit purchase made at the package agency by a limited restaurant licensee under this
984 Subsection (7)(f).

985 (v) (A) Notwithstanding the other provisions of this Subsection (7)(f), the department
986 may not authorize a credit if the aggregate of credits authorized under this Subsection (7)(f)
987 and Subsection 32A-4-106(7)(f) before the department authorizes the credit exceeds:

988 (I) \$1,000,000, for the aggregate of credits under this Subsection (7)(f) and Subsection

989 32A-4-106(7)(f), if the credit could be used on or before June 30, 2010; and

990 (II) subject to Subsection (7)(f)(v)(A)(I), \$1,090,000 for the aggregate of all credits that
991 can be authorized under this Subsection (7)(f) and Subsection 32A-4-106(7)(f).

992 (B) The department shall authorize credits in the order that the department receives a
993 request described in Subsection (7)(f)(i)(C) from a limited restaurant licensee requesting a
994 credit under this Subsection (7)(f).

995 (g) A limited restaurant patron may have no more than two alcoholic beverages of any
996 kind at a time before the patron.

997 (8) (a) An alcoholic beverage storage area shall remain locked at all times other than
998 those hours and days when alcoholic beverage sales are authorized by law.

999 (b) A limited restaurant licensee shall store an alcoholic beverage or alcoholic product
1000 in a storage area described in Subsection (7)(e)(i).

1001 (9) (a) Wine and heavy beer may not be sold, offered for sale, served, or otherwise
1002 furnished at a limited restaurant on any day after 12 midnight or before 12 noon.

1003 (b) The hours of beer sales and service are those specified in Chapter 10, Beer Retailer
1004 Licenses, for on-premise beer licensees.

1005 (10) An alcoholic beverage may not be sold except in connection with an order of food
1006 prepared, sold, and served at the limited restaurant.

1007 (11) Wine, heavy beer, and beer may not be sold, served, or otherwise furnished to a:

1008 (a) minor;

1009 (b) person actually, apparently, or obviously intoxicated;

1010 (c) known habitual drunkard; or

1011 (d) known interdicted person.

1012 (12) (a) (i) Wine and heavy beer may be sold only at a price fixed by the commission.

1013 (ii) Wine and heavy beer may not be sold at a discount price on any date or at any time.

1014 (b) An alcoholic beverage may not be sold at less than the cost of the alcoholic
1015 beverage to the limited restaurant licensee.

1016 (c) An alcoholic beverage may not be sold at a special or reduced price that encourages
1017 over consumption or intoxication.

1018 (d) An alcoholic beverage may not be sold at a special or reduced price for only certain
1019 hours of the limited restaurant licensee's business day such as a "happy hour."

1020 (e) More than one alcoholic beverage may not be sold or served for the price of a single
1021 alcoholic beverage.

1022 (f) An indefinite or unlimited number of alcoholic beverages during a set period may
1023 not be sold or served for a fixed price.

1024 (g) A limited restaurant licensee may not engage in a public promotion involving or
1025 offering free alcoholic beverages to the general public.

1026 (13) An alcoholic beverage may not be purchased for a patron of the limited restaurant
1027 by:

1028 (a) the limited restaurant licensee; or

1029 (b) an employee or agent of the limited restaurant licensee.

1030 (14) (a) A person may not bring onto the premises of a limited restaurant licensee an
1031 alcoholic beverage for on-premise consumption, except a person may bring, subject to the
1032 discretion of the limited restaurant licensee, bottled wine onto the premises of a limited
1033 restaurant licensee for on-premise consumption.

1034 (b) Except bottled wine under Subsection (14)(a), a limited restaurant licensee or an
1035 officer, manager, employee, or agent of a limited restaurant licensee may not allow:

1036 (i) a person to bring onto the limited restaurant premises an alcoholic beverage for
1037 on-premise consumption; or

1038 (ii) consumption of an alcoholic beverage described in Subsection (14)(b)(i) on the
1039 limited restaurant licensee's premises.

1040 (c) If bottled wine is carried in by a patron, the patron shall deliver the wine to a server
1041 or other representative of the limited restaurant licensee upon entering the limited restaurant.

1042 (d) A wine service may be performed and a service charge assessed by the limited
1043 restaurant licensee as authorized by commission rule for wine carried in by a patron.

1044 (15) (a) Except as provided in Subsection (15)(b), a limited restaurant licensee and an
1045 employee of the limited restaurant licensee may not permit a restaurant patron to carry from the
1046 limited restaurant premises an open container that:

1047 (i) is used primarily for drinking purposes; and

1048 (ii) contains an alcoholic beverage.

1049 (b) Notwithstanding Subsection (15)(a), a patron may remove the unconsumed
1050 contents of a bottle of wine if before removal, the bottle is recorked or recapped.

1051 (16) (a) A limited restaurant licensee may not employ a minor to sell or dispense an
1052 alcoholic beverage.

1053 (b) Notwithstanding Subsection (16)(a), a minor who is at least 16 years of age may be
1054 employed to enter the sale at a cash register or other sales recording device.

1055 (17) An employee of a limited restaurant licensee, while on duty, may not:

1056 (a) consume an alcoholic beverage; or

1057 (b) be intoxicated.

1058 (18) A charge or fee made in connection with the sale, service, or consumption of wine
1059 or heavy beer may be stated in food or alcoholic beverage menus including:

1060 (a) a service charge; or

1061 (b) a chilling fee.

1062 (19) A limited restaurant licensee shall display in a prominent place in the restaurant:

1063 (a) the limited restaurant license that is granted by the department; and

1064 (b) a sign in large letters stating: "Warning: Driving under the influence of alcohol or
1065 drugs is a serious crime that is prosecuted aggressively in Utah."

1066 (20) A limited restaurant licensee may not on the premises of the restaurant:

1067 (a) engage in or permit any form of gambling, as defined and proscribed in Title 76,
1068 Chapter 10, Part 11, Gambling;

1069 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
1070 Part 11, Gambling; or

1071 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
1072 the risking of something of value for a return or for an outcome when the return or outcome is
1073 based upon an element of chance, excluding the playing of an amusement device that confers
1074 only an immediate and unrecorded right of replay not exchangeable for value.

1075 (21) (a) A limited restaurant licensee shall maintain an expense ledger or record
1076 showing in detail:

1077 (i) quarterly expenditures made separately for:

1078 (A) wine;

1079 (B) heavy beer;

1080 (C) beer;

1081 (D) food; and

- 1082 (E) all other items required by the department; and
- 1083 (ii) sales made separately for:
- 1084 (A) wine;
- 1085 (B) heavy beer;
- 1086 (C) beer;
- 1087 (D) food; and
- 1088 (E) all other items required by the department.
- 1089 (b) A limited restaurant licensee shall keep a record required by Subsection (21)(a):
- 1090 (i) in a form approved by the department; and
- 1091 (ii) current for each three-month period.
- 1092 (c) An expenditure shall be supported by:
- 1093 (i) a delivery ticket;
- 1094 (ii) an invoice;
- 1095 (iii) a receipted bill;
- 1096 (iv) a canceled check;
- 1097 (v) a petty cash voucher; or
- 1098 (vi) other sustaining datum or memorandum.
- 1099 (d) In addition to the ledger or record maintained under Subsections (21)(a) through
- 1100 (c), a limited restaurant licensee shall maintain accounting and other records and documents as
- 1101 the department may require.
- 1102 (e) Any limited restaurant licensee or person acting for the restaurant, who knowingly
- 1103 forges, falsifies, alters, cancels, destroys, conceals, or removes an entry in a book of account or
- 1104 other document of the limited restaurant that is required to be made, maintained, or preserved
- 1105 by this title or the rules of the commission for the purpose of deceiving the commission, the
- 1106 department, or an official or employee of the commission or department, is subject to:
- 1107 (i) the suspension or revocation of the limited restaurant's license; and
- 1108 (ii) possible criminal prosecution under Chapter 12, Criminal Offenses.
- 1109 [~~(22)(a) A limited restaurant licensee may not close or cease operation for a period~~
- 1110 ~~longer than 240 hours, unless:]~~
- 1111 ~~[(i) the limited restaurant licensee notifies the department in writing at least seven days~~
- 1112 ~~before the day on which the limited restaurant licensee closes or ceases operation; and]~~

1113 [~~(ii) the closure or cessation of operation is first approved by the department.~~]
1114 [~~(b) Notwithstanding Subsection (22)(a), in the case of emergency closure, the limited~~
1115 ~~restaurant licensee shall immediately notify the department by telephone.~~]
1116 [~~(c) (i) Subject to Subsection (22)(c)(iii), the department may authorize a closure or~~
1117 ~~cessation of operation for a period not to exceed 60 days.~~]
1118 [~~(ii) The department may extend the initial period an additional 30 days upon:~~
1119 [~~(A) written request of the limited restaurant licensee; and~~
1120 [~~(B) a showing of good cause.~~]
1121 [~~(iii) A closure or cessation of operation may not exceed a total of 90 days without~~
1122 ~~commission approval.~~]
1123 [~~(d) A notice required by Subsection (22)(a) shall include:~~
1124 [~~(i) the dates of closure or cessation of operation;~~
1125 [~~(ii) the reason for the closure or cessation of operation; and~~
1126 [~~(iii) the date on which the limited restaurant licensee will reopen or resume operation.~~]
1127 [~~(e) Failure of the limited restaurant licensee to provide notice and to obtain~~
1128 ~~department authorization before closure or cessation of operation results in an automatic~~
1129 ~~forfeiture of:~~
1130 [~~(i) the limited restaurant license; and~~
1131 [~~(ii) the unused portion of the license fee for the remainder of the license year effective~~
1132 ~~immediately.~~]
1133 [~~(f) Failure of the limited restaurant licensee to reopen or resume operation by the~~
1134 ~~approved date results in an automatic forfeiture of:~~
1135 [~~(i) the limited restaurant license; and~~
1136 [~~(ii) the unused portion of the license fee for the remainder of the license year.~~]
1137 [~~(23)~~ (22) A limited restaurant licensee shall maintain at least 70% of its total
1138 restaurant business from the sale of food, which does not include service charges.
1139 [~~(24)~~ (23) A limited restaurant license may not be transferred from one location to
1140 another, without prior written approval of the commission.
1141 [~~(25)~~ (24) (a) A limited restaurant licensee may not sell, transfer, assign, exchange,
1142 barter, give, or attempt in any way to dispose of the limited restaurant license to another person
1143 whether for monetary gain or not.

1144 (b) A limited restaurant license has no monetary value for the purpose of any type of
1145 disposition.

1146 [~~26~~] (25) (a) A server of wine, heavy beer, and beer in a limited restaurant licensee's
1147 establishment shall keep a written beverage tab for each table or group that orders or consumes
1148 an alcoholic beverage on the premises.

1149 (b) The beverage tab required by Subsection [~~26~~] (25)(a) shall list the type and
1150 amount of an alcoholic beverage ordered or consumed.

1151 [~~27~~] (26) A limited restaurant licensee may not make a person's willingness to serve
1152 an alcoholic beverage a condition of employment as a server with the limited restaurant.

1153 [~~28~~] (27) A limited restaurant licensee or an employee of the limited restaurant
1154 licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58,
1155 Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

1156 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
1157 58-37-2; or

1158 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
1159 Section 58-37a-3.

Legislative Review Note
as of 11-20-09 9:29 AM

Office of Legislative Research and General Counsel

H.B. 223 - Alcoholic Beverage Control Act and Restaurant Licenses

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill may increase the number of full-service and limited-service restaurant liquor licenses issued by the Department of Alcoholic Beverage Control. Additional revenue may be generated from fees and increased sales, but the number of licenses and associated sales could not be reliably determined at this time.

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.