

**Representative Gage Froerer** proposes the following substitute bill:

**ALCOHOLIC BEVERAGE CONTROL ACT AND  
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 certain licenses the Alcoholic Beverage Control Commission may issue.

**Highlighted Provisions:**

This bill:

- ▶ modifies the restriction on the number of restaurant liquor licenses that may be issued;
- ▶ modifies the restriction on the number of limited restaurant licenses that may be issued;
- ▶ modifies the restriction on the number of tavern on-premise beer licenses that may be issued; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **32A-4-101**, as last amended by Laws of Utah 2009, Chapter 383

28 **32A-4-302**, as last amended by Laws of Utah 2009, Chapter 383

29 **32A-10-201**, as last amended by Laws of Utah 2009, Chapter 383



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

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

33 **32A-4-101. Commission's power to grant licenses -- Limitations.**

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

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

39 (3) (a) Subject to the other provisions of this Subsection (3) and Subsection  
40 32A-4a-201(2), the total number of restaurant liquor licenses may not at any time aggregate  
41 more than that number determined by dividing the population of the state by [~~5,200~~] 5,000.

42 (b) For purposes of this Subsection (3), population shall be determined by:

- 43 (i) the most recent United States decennial or special census; or
- 44 (ii) another population determination made by the United States or state governments.

45 (c) (i) The commission may grant seasonal restaurant liquor licenses established in  
46 areas the commission considers necessary.

47 (ii) A seasonal restaurant liquor license shall be for a period of six consecutive months.

48 (iii) A restaurant liquor license granted for operation during a summer time period is  
49 known as a "Seasonal A" restaurant liquor license. The period of operation for a "Seasonal A"  
50 restaurant liquor license shall:

51 (A) begin on May 1; and

52 (B) end on October 31.

53 (iv) A restaurant liquor license granted for operation during a winter time period is  
54 known as a "Seasonal B" restaurant liquor license. The period of operation for a "Seasonal B"  
55 restaurant liquor license shall:

56 (A) begin on November 1; and

57 (B) end on April 30.

58 (v) In determining the number of restaurant liquor licenses that the commission may  
59 issue under this section:

60 (A) a seasonal license is counted as one-half of one restaurant liquor license; and

61 (B) each "Seasonal A" license shall be paired with a "Seasonal B" license.

62 (d) (i) If the location, design, and construction of a hotel may require more than one  
63 restaurant liquor sales location within the hotel to serve the public convenience, the  
64 commission may authorize the sale of liquor at as many as three restaurant locations within the  
65 hotel under one restaurant liquor license if:

66 (A) the hotel has a minimum of 150 guest rooms; and

67 (B) all locations under the restaurant liquor license are:

68 (I) within the same hotel facility; and

69 (II) on premises that are managed or operated and owned or leased by the licensee.

70 (ii) A facility other than a hotel shall have a separate restaurant liquor license for each  
71 restaurant where liquor is sold.

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

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

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

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

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

82 (ii) the commission finds that alternative locations for establishing a restaurant liquor  
83 license in the community are limited;

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

86 (iv) after giving full consideration to all of the attending circumstances and the policies  
87 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the

88 restaurant liquor license would not be detrimental to the public health, peace, safety, and  
89 welfare of the community; and

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

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

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

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

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

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

104 (i) the community location at issue is:

105 (A) a public library; or

106 (B) a public park;

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

108 (iii) the commission finds that alternative locations for establishing a restaurant liquor  
109 license in the community are limited;

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

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

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

118 (B) when written consent is not given by the community location governing authority,

119 the commission finds that the applicant has established that:

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

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

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

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

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

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

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

137 (e) With respect to the premises of a restaurant liquor license granted by the  
138 commission that undergoes a change of ownership, the commission shall 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) when a restaurant liquor license was granted to a previous owner, the premises met  
142 the proximity requirements of Subsection (4)(a);

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

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

148 (f) The 600 foot limitation described in Subsection (4)(a)(i) is measured from the  
149 nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the

150 community location.

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

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

155 (i) a nursery school;

156 (ii) an infant day care center; and

157 (iii) a trade and technical school.

158 Section 2. Section **32A-4-302** is amended to read:

159 **32A-4-302. Commission's power to grant licenses -- Limitations.**

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

164 (2) (a) Subject to the other provisions of this section and Subsection 32A-4a-201(2),  
165 the commission may grant limited restaurant licenses for the purpose of establishing limited  
166 restaurant outlets at places and in numbers the commission considers proper for the storage,  
167 sale, and consumption of wine, heavy beer, and beer on premises operated as public  
168 restaurants.

169 (b) The total number of limited restaurant licenses granted under this part may not at  
170 any time aggregate more than that number determined by dividing the population of the state  
171 by [~~9,300~~] 8,700.

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

173 (i) the most recent United States decennial or special census; or

174 (ii) another population determination made by the United States or state governments.

175 (3) (a) (i) The commission may grant seasonal limited restaurant licenses established in  
176 areas the commission considers necessary.

177 (ii) A seasonal limited restaurant license shall be for a period of six consecutive  
178 months.

179 (b) (i) A limited restaurant license granted for operation during a summer time period  
180 is known as a "Seasonal A" limited restaurant license. The period of operation for a "Seasonal

181 A" limited restaurant license shall:

182 (A) begin on May 1; and

183 (B) end on October 31.

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

185 known as a "Seasonal B" limited restaurant license. The period of operation for a "Seasonal B"  
186 limited restaurant license shall:

187 (A) begin on November 1; and

188 (B) end on April 30.

189 (iii) In determining the number of limited restaurant licenses that the commission may  
190 grant under this section:

191 (A) a seasonal limited restaurant license is counted as one-half of one limited  
192 restaurant license; and

193 (B) each "Seasonal A" limited restaurant license shall be paired with a "Seasonal B"  
194 limited restaurant license.

195 (c) If the location, design, and construction of a hotel may require more than one  
196 limited restaurant sales location within the hotel to serve the public convenience, the  
197 commission may authorize the sale of wine, heavy beer, and beer at as many as three limited  
198 restaurant locations within the hotel under one limited restaurant license if:

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

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

201 (A) within the same hotel facility; and

202 (B) on premises that are:

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

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

205 (d) A facility other than a hotel shall have a separate limited restaurant license for each  
206 restaurant where wine, heavy beer, and beer are sold.

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

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

211 (ii) within 200 feet of a community location, measured in a straight line from the

212 nearest entrance of the proposed outlet to the nearest property boundary of the community  
213 location.

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

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

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

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

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

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

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

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

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

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

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

240 (i) the community location at issue is:

241 (A) a public library; or

242 (B) a public park;



- 243 (ii) the local authority grants its written consent to the variance;
- 244 (iii) the commission finds that alternative locations for establishing a limited restaurant  
245 license in the community are limited;
- 246 (iv) a public hearing is held in the city, town, or county, and where practical in the  
247 neighborhood concerned;
- 248 (v) after giving full consideration to all of the attending circumstances and the policies  
249 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the  
250 limited restaurant license would not be detrimental to the public health, peace, safety, and  
251 welfare of the community; and
- 252 (vi) (A) the community location governing authority gives its written consent to the  
253 variance; or
- 254 (B) when written consent is not given by the community location governing authority,  
255 the commission finds that the applicant has established that:
- 256 (I) there is substantial unmet public demand to consume alcohol in a public setting  
257 within the geographic boundary of the local authority in which the limited restaurant licensee is  
258 to be located;
- 259 (II) there is no reasonably viable alternative for satisfying substantial unmet demand  
260 described in Subsection (4)(c)(vi)(B)(I) other than through the establishment of a limited  
261 restaurant license; and
- 262 (III) there is no reasonably viable alternative location within the geographic boundary  
263 of the local authority in which the limited restaurant licensee is to be located for establishing a  
264 limited restaurant license to satisfy the unmet demand described in Subsection (4)(c)(vi)(B)(I).
- 265 (d) With respect to the premises of a limited restaurant license granted by the  
266 commission that undergoes a change of ownership, the commission may waive or vary the  
267 proximity requirements of Subsection (4)(a) in considering whether to grant a limited  
268 restaurant license to the new owner of the premises if:
- 269 (i) (A) the premises previously received a variance reducing the proximity requirement  
270 of Subsection (4)(a)(i); or
- 271 (B) the premises received a variance reducing the proximity requirement of Subsection  
272 (4)(a)(ii) on or before May 4, 2008; or
- 273 (ii) a variance from proximity requirements was otherwise allowed under this title.

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

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

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

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

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

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

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

292 (i) a nursery school;

293 (ii) an infant day care center; and

294 (iii) a trade and technical school.

295 Section 3. Section **32A-10-201** is amended to read:

296 **32A-10-201. Commission's power to grant licenses -- Limitations.**

297 (1) Before an establishment may sell beer at retail for on-premise consumption, it shall  
298 first obtain:

299 (a) an on-premise beer retailer license from the commission as provided in this part;

300 and

301 (b) (i) a license issued by the local authority, as provided in Section 32A-10-101, to  
302 sell beer at retail for on-premise consumption; or

303 (ii) other written consent of the local authority to sell beer at retail for on-premise  
304 consumption.

305 (2) (a) Subject to the requirements of this section and Subsection 32A-4a-201(2), the  
306 commission may grant on-premise beer retailer licenses for the purpose of establishing  
307 on-premise beer retailer outlets at places and in numbers as it considers proper for the storage,  
308 sale, and consumption of beer on premises operated as on-premise beer retailer outlets.

309 (b) Notwithstanding Subsection (2)(a), the total number of on-premise beer retailer  
310 licenses that are taverns may not at any time aggregate more than that number determined by  
311 dividing the population of the state by [~~30,500~~] 53,400.

312 (c) For purposes of this Subsection (2), the population of the state shall be determined  
313 by:

314 (i) the most recent United States decennial special census; or

315 (ii) another population determination made by the United States or state governments.

316 (d) (i) The commission may issue seasonal licenses for taverns established in areas the  
317 commission considers necessary.

318 (ii) A seasonal license for taverns shall be for a period of six consecutive months.

319 (iii) An on-premise beer retailer license for a tavern issued for operation during a  
320 summer time period is known as a "Seasonal A" on-premise beer retailer license for a tavern.

321 The period of operation for a "Seasonal A" on-premise beer retailer license for a tavern shall:

322 (A) begin on May 1; and

323 (B) end on October 31.

324 (iv) An on-premise beer retailer license for a tavern granted for operation during a  
325 winter time period is known as a "Seasonal B" on-premise beer retailer license for a tavern.

326 The period of operation for a "Seasonal B" on-premise beer retailer license for a tavern shall:

327 (A) begin on November 1; and

328 (B) end on April 30.

329 (v) In determining the number of tavern licenses that the commission may grant under  
330 this section:

331 (A) a seasonal on-premise beer retailer license for a tavern is counted as one-half of  
332 one on-premise beer retailer license for a tavern; and

333 (B) each "Seasonal A" on-premise beer retailer license for a tavern shall be paired with  
334 a "Seasonal B" on-premise beer retailer license for a tavern.

335 (3) (a) Except as provided in Subsection (3)(b), (c), or (d), the premises of an

336 on-premise beer retailer license may not be established:

337 (i) within 600 feet of a community location, as measured by the method in Subsection  
338 (3)(e); or

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

342 (b) With respect to the establishment of an on-premise beer retailer license, the  
343 commission may authorize a variance to reduce the proximity requirement of Subsection  
344 (3)(a)(i) if:

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

346 (ii) the commission finds that alternative locations for establishing an on-premise beer  
347 retailer license in the community are limited;

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

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

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

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

358 (I) there is substantial unmet public demand to consume alcohol in a public setting  
359 within the geographic boundary of the local authority in which the on-premise beer retailer  
360 licensee is to be located;

361 (II) there is no reasonably viable alternative for satisfying substantial unmet demand  
362 described in Subsection (3)(b)(v)(B)(I) other than through the establishment of an on-premise  
363 beer retailer license; and

364 (III) there is no reasonably viable alternative location within the geographic boundary  
365 of the local authority in which the on-premise beer retailer licensee is to be located for  
366 establishing an on-premise beer retailer license to satisfy the unmet demand described in

367 Subsection (3)(b)(v)(B)(I).

368 (c) With respect to the establishment of an on-premise beer retailer license, the  
369 commission may authorize a variance that reduces the proximity requirement of Subsection  
370 (3)(a)(ii) if:

371 (i) the community location at issue is:

372 (A) a public library; or

373 (B) a public park;

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

375 (iii) the commission finds that alternative locations for establishing an on-premise beer  
376 retailer license in the community are limited;

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

379 (v) after giving full consideration to all of the attending circumstances and the policies  
380 stated in Subsections 32A-1-104(3) and (4), the commission determines that establishing the  
381 on-premise beer retailer license would not be detrimental to the public health, peace, safety,  
382 and welfare of the community; and

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

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

387 (I) there is substantial unmet public demand to consume alcohol in a public setting  
388 within the geographic boundary of the local authority in which the on-premise beer retailer  
389 licensee is to be located;

390 (II) there is no reasonably viable alternative for satisfying substantial unmet demand  
391 described in Subsection (3)(c)(vi)(B)(I) other than through the establishment of an on-premise  
392 beer retailer license; and

393 (III) there is no reasonably viable alternative location within the geographic boundary  
394 of the local authority in which the on-premise beer retailer licensee is to be located for  
395 establishing an on-premise beer retailer license to satisfy the unmet demand described in  
396 Subsection (3)(c)(vi)(B)(I).

397 (d) (i) With respect to an on-premise beer retailer license granted by the commission

398 before July 1, 1991, to an establishment that undergoes a change in ownership after that date,  
399 the commission may waive or vary the proximity requirements of this Subsection (3) in  
400 considering whether to grant an on-premise retailer beer license to the new owner.

401 (ii) With respect to the premises of an on-premise beer retailer license granted by the  
402 commission that undergoes a change of ownership, the commission may waive or vary the  
403 proximity requirements of Subsection (3)(a) in considering whether to grant an on-premise beer  
404 retailer license to the new owner of the premises if:

405 (A) (I) the premises previously received a variance from the proximity requirement of  
406 Subsection (3)(a)(i); or

407 (II) the premises received a variance from the proximity requirement of Subsection  
408 (3)(a)(ii) on or before May 4, 2008; or

409 (B) a variance from proximity requirements was otherwise allowed under this title.

410 (e) The 600 foot limitation described in Subsection (3)(a)(i) is measured from the  
411 nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the  
412 property boundary of the community location.

413 (4) (a) Nothing in this section prevents the commission from considering the proximity  
414 of any educational, religious, and recreational facility, or any other relevant factor in reaching a  
415 decision on a proposed location.

416 (b) For purposes of this Subsection (4), "educational facility" includes:

417 (i) a nursery school;

418 (ii) an infant day care center; and

419 (iii) a trade and technical school.

---

---

**H.B. 223 1st Sub. (Buff) - Alcoholic Beverage Control Act and Licenses**

**Fiscal Note**

2010 General Session

State of Utah

---

---

**State Impact**

Enacting this bill increases cap on the number of full-service licenses by about 22, limited-service restaurant liquor licenses issued by about 20 and reduces the cap on the number of taverns by about 39. 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**

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

---