

## HB0142S01 compared with HB0142

~~{deleted text}~~ shows text that was in HB0142 but was deleted in HB0142S01.

inserted text shows text that was not in HB0142 but was inserted into HB0142S01.

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Representative Gage Froerer proposes the following substitute bill:

### ALCOHOL AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies the Alcoholic Beverage Control Act to ~~{modify}~~convert the ~~{number of available licenses for certain retail licenses}~~dining club license to a dining license and to make related changes.

##### Highlighted Provisions:

This bill:

- ▶ ~~{modifies the enforcement ratio}~~
- ~~modifies the number of available full-service restaurant licenses;~~
- ~~modifies the number of available club licenses that are not}~~removes references to dining club {licenses};
- ~~establishes the number of available dining club}~~license and replaces the references with dining license when appropriate;

## HB0142S01 compared with HB0142

- ▶ addresses quota numbers for club licenses and dining licenses;
- ▶ enacts provisions creating a dining license, including:
  - addressing commission's power to issue a dining license;
  - addressing specific licensing requirements for a dining license;
  - addressing specific operational requirements for a dining license; and
  - addressing conversion of dining licenses to other types of retail licenses; and
- ▶ makes technical and conforming amendments.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill takes effect on July 1, 2012.

### Utah Code Sections Affected:

AMENDS:

32B-1-102, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-1-201, as last amended by Laws of Utah 2011, Chapter 334

~~{32B-6-203}~~ 32B-1-407, as last amended by Laws of Utah 2011, ~~{Chapter 334~~

~~†~~ Chapters 297 and 334

32B-2-202, as last amended by Laws of Utah 2011, Chapter 334

32B-2-605, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-6-202, as last amended by Laws of Utah 2011, Chapter 334

32B-6-302, as last amended by Laws of Utah 2011, Chapter 334

32B-6-403, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-6-404, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-6-405, as last amended by Laws of Utah 2011, Chapters 307 and 334

32B-6-406, as last amended by Laws of Utah 2011, Chapter 334

32B-6-407, as last amended by Laws of Utah 2011, Chapter 297

32B-6-902 (Effective 03/01/12), as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

ENACTS:

32B-6-1001, Utah Code Annotated 1953

32B-6-1002, Utah Code Annotated 1953

## HB0142S01 compared with HB0142

[32B-6-1003, Utah Code Annotated 1953](#)

[32B-6-1004, Utah Code Annotated 1953](#)

[32B-6-1005, Utah Code Annotated 1953](#)

[32B-6-1006, Utah Code Annotated 1953](#)

### REPEALS:

[32B-6-409, as enacted by Laws of Utah 2011, Chapter 334](#)

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

Section 1. Section 32B-1-102 is amended to read:

#### **32B-1-102. Definitions.**

As used in this title:

- (1) "Airport lounge" means a business location:
  - (a) at which an alcoholic product is sold at retail for consumption on the premises; and
  - (b) that is located at an international airport with a United States Customs office on the premises of the international airport.
- (2) "Airport lounge license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.
- (3) "Alcoholic beverage" means the following:
  - (a) beer; or
  - (b) liquor.
- (4) (a) "Alcoholic product" means a product that:
  - (i) contains at least .5% of alcohol by volume; and
  - (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.
  - (b) "Alcoholic product" includes an alcoholic beverage.
  - (c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:
    - (i) except as provided in Subsection (4)(d), an extract;
    - (ii) vinegar;
    - (iii) cider;

## HB0142S01 compared with HB0142

- (iv) essence;
- (v) tincture;
- (vi) food preparation; or
- (vii) an over-the-counter medicine.

(d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.

(5) "Alcohol training and education seminar" means a seminar that is:

- (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
- (b) described in Section 62A-15-401.

(6) "Banquet" means an event:

(a) that is held at one or more designated locations approved by the commission in or on the premises of a:

- (i) hotel;
- (ii) resort facility;
- (iii) sports center; or
- (iv) convention center;
- (b) for which there is a contract:
  - (i) between a person operating a facility listed in Subsection (6)(a) and another person;

and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

(7) (a) "Bar" means a surface or structure:

- (i) at which an alcoholic product is:
  - (A) stored; or
  - (B) dispensed; or
- (ii) from which an alcoholic product is served.

(b) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:

- (i) stored; or
- (ii) dispensed.

## HB0142S01 compared with HB0142

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (8)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

(10) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(11) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

(12) "Billboard" means a public display used to advertise, including:

(a) a light device;

## HB0142S01 compared with HB0142

- (b) a painting;
- (c) a drawing;
- (d) a poster;
- (e) a sign;
- (f) a signboard; or
- (g) a scoreboard.

(13) "Brewer" means a person engaged in manufacturing:

- (a) beer;
- (b) heavy beer; or
- (c) a flavored malt beverage.

(14) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.

(15) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.

(16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:

- (a) under a single contract;
- (b) at a fixed charge in accordance with the bus company's tariff; and
- (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.

(17) "Church" means a building:

- (a) set apart for worship;
- (b) in which religious services are held;
- (c) with which clergy is associated; and
- (d) that is tax exempt under the laws of this state.

(18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.

(b) "Club license" includes:

~~[(i) a dining club license;]~~

~~[(ii)]~~ (i) an equity club license;

~~[(iii)]~~ (ii) a fraternal club license; or

## HB0142S01 compared with HB0142

~~(iv)~~ (iii) a social club license.

(19) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.

(20) "Commissioner" means a member of the commission.

(21) "Community location" means:

- (a) a public or private school;
- (b) a church;
- (c) a public library;
- (d) a public playground; or
- (e) a public park.

(22) "Community location governing authority" means:

- (a) the governing body of the community location; or
- (b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.

(23) "Container" means a receptacle that contains an alcoholic product, including:

- (a) a bottle;
- (b) a vessel; or
- (c) a similar item.

(24) "Convention center" means a facility that is:

- (a) in total at least 30,000 square feet; and
- (b) otherwise defined as a "convention center" by the commission by rule.

(25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) "Counter" does not include a surface or structure if on or at any point of the surface or structure an alcoholic product is:

- (i) stored; or
- (ii) dispensed.

(26) "Department" means the Department of Alcoholic Beverage Control created in Section 32B-2-203.

(27) "Department compliance officer" means an individual who is:

## HB0142S01 compared with HB0142

- (a) an auditor or inspector; and
- (b) employed by the department.

(28) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

(29) "Dining ~~club~~ license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part ~~4~~ 10, ~~Club~~ Dining License, ~~that is designated by the commission as a dining club license~~.

(30) "Director," unless the context requires otherwise, means the director of the department.

(31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

- (a) against a person subject to administrative action; and
- (b) that is brought on the basis of a violation of this title.

(32) (a) Subject to Subsection (32)(b), "dispense" means:

(i) drawing of an alcoholic product:

(A) from an area where it is stored; or

(B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

(ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (32) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license; and
- (iv) a beer-only restaurant license.

(33) "Distillery manufacturing license" means a license issued in accordance with Chapter 11, Part 4, Distillery Manufacturing License.

(34) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

(35) "Educational facility" includes:



## HB0142S01 compared with HB0142

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

(36) "Equity club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an equity club license.

(37) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

(38) "Exempt license" means a license exempt under Section 32B-1-201 from being considered in determining the total number of a retail license that the commission may issue at any time.

(39) (a) "Flavored malt beverage" means a beverage:

- (i) that contains at least .5% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or  
(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(40) "Fraternal club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a fraternal club license.

(41) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

(42) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

## HB0142S01 compared with HB0142

(i) serve;

(ii) deliver; or

(iii) otherwise make available.

(43) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

(44) "Health care practitioner" means:

(a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and

(m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

(45) (a) "Heavy beer" means a product that:

(i) contains more than 4% alcohol by volume; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Heavy beer" is considered liquor for the purposes of this title.

(46) "Hotel" is as defined by the commission by rule.

## HB0142S01 compared with HB0142

(47) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

(48) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

(49) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

(50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

- (a) law; or
- (b) court order.

(51) "Intoxicated" means that a person:

(a) is significantly impaired as to the person's mental or physical functions as a result of the use of:

- (i) an alcoholic product;
- (ii) a controlled substance;
- (iii) a substance having the property of releasing toxic vapors; or
- (iv) a combination of Subsections (51)(a)(i) through (iii); and

(b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic product.

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

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

(53) "Invitee" is as defined in Section 32B-8-102.

(54) "License" means:

(a) a retail license;

(b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;

## HB0142S01 compared with HB0142

or

(d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

(55) "Licensee" means a person who holds a license.

(56) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

(57) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

(a) in which the driver and a passenger are separated by a partition, glass, or other barrier;

(b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and

(c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

(58) (a) (i) "Liquor" means a liquid that:

(A) is:

(I) alcohol;

(II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;

(III) a combination of liquids a part of which is spirituous, vinous, or fermented; or

(IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

(A) heavy beer;

(B) wine; and

(C) a flavored malt beverage.

(b) "Liquor" does not include beer.

(59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

(60) "Liquor warehousing license" means a license that is issued:

(a) in accordance with Chapter 12, Liquor Warehousing License Act; and

(b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

## HB0142S01 compared with HB0142

(61) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county; or

(b) for premises that are located in an incorporated city or a town, the governing body of the city or town.

(62) "Lounge or bar area" is as defined by rule made by the commission.

(63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(64) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

(65) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

(i) civil works;

(ii) a rivers and harbors project; or

(iii) a flood control project.

(66) "Minor" means an individual under the age of 21 years.

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

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

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

(b) has a responsibility to enforce one or more provisions of this title.

(68) "Nondepartment enforcement officer" means an individual who is:

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

(b) employed by a nondepartment enforcement agency.

(69) (a) "Off-premise beer retailer" means a beer retailer who is:

(i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and

## HB0142S01 compared with HB0142

(ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(70) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

(71) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(72) "Opaque" means impenetrable to sight.

(73) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

(74) "Package agent" means a person who holds a package agency.

(75) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

(a) a customer;

(b) a member;

(c) a guest;

(d) an attendee of a banquet or event;

(e) an individual who receives room service;

## HB0142S01 compared with HB0142

- (f) a resident of a resort;
- (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;

or

(h) an invitee.

(76) "Permittee" means a person issued a permit under:

- (a) Chapter 9, Event Permit Act; or
- (b) Chapter 10, Special Use Permit Act.

(77) "Person subject to administrative action" means:

- (a) a licensee;
- (b) a permittee;
- (c) a manufacturer;
- (d) a supplier;
- (e) an importer;
- (f) one of the following holding a certificate of approval:
  - (i) an out-of-state brewer;
  - (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
  - (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- (g) staff of:
  - (i) a person listed in Subsections (77)(a) through (f); or
  - (ii) a package agent.

(78) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

(79) "Prescription" means an order issued by a health care practitioner when:

- (a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;
- (b) the order is made in the course of that health care practitioner's professional practice; and
- (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(80) (a) "Private event" means a specific social, business, or recreational event:

- (i) for which an entire room, area, or hall is leased or rented in advance by an identified

## HB0142S01 compared with HB0142

group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(81) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(82) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;



## HB0142S01 compared with HB0142

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

(83) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

(84) "Reception center" means a business that:

(a) operates facilities that are at least 5,000 square feet; and

(b) has as its primary purpose the leasing of the facilities described in Subsection (84)(a) to a third party for the third party's event.

(85) "Reception center license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

(86) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or

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

(b) "Record" includes:

(i) a book;

(ii) a book of account;

(iii) a paper;

(iv) a contract;

(v) an agreement;

(vi) a document; or

(vii) a recording in any medium.

(87) "Residence" means a person's principal place of abode within Utah.

(88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

(89) "Resort" is as defined in Section 32B-8-102.

(90) "Resort facility" is as defined by the commission by rule.

(91) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

## HB0142S01 compared with HB0142

(92) "Restaurant" means a business location:

- (a) at which a variety of foods are prepared;
- (b) at which complete meals are served to the general public; and
- (c) that is engaged primarily in serving meals to the general public.

(93) "Retail license" means one of the following licenses issued under this title:

- (a) a full-service restaurant license;
- (b) a limited-service restaurant license;
- (c) a club license;
- (d) an airport lounge license;
- (e) an on-premise banquet license;
- (f) an on-premise beer license;
- (g) a reception center license; ~~[or]~~
- (h) a beer-only restaurant license~~[-]; or~~

(i) a dining license.

(94) "Room service" means furnishing an alcoholic product to a person in a guest room of a:

- (a) hotel; or
- (b) resort facility.

(95) "Serve" means to place an alcoholic product before an individual.

(96) (a) "School" means a building used primarily for the general education of minors.

(b) "School" does not include an educational facility.

(97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(98) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:

- (a) for the entertainment of one or more patrons;
- (b) on the premises of:
  - (i) a social club licensee; or

## HB0142S01 compared with HB0142

- (ii) a tavern;
- (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- (d) on a contractual or voluntary basis; and
- (e) whether or not the person is designated as:
  - (i) an employee;
  - (ii) an independent contractor;
  - (iii) an agent of the licensee; or
  - (iv) a different type of classification.

(99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

(100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

(101) "Social club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a social club license.

(102) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

(103) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

(104) "Sports center" is as defined by the commission by rule.

(105) (a) "Staff" means an individual who engages in activity governed by this title:

(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;

(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or

(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

(i) an officer;

(ii) a director;

## HB0142S01 compared with HB0142

- (iii) an employee;
- (iv) personnel management;
- (v) an agent of the licensee, including a managing agent;
- (vi) an operator; or
- (vii) a representative.

(106) "State of nudity" means:

- (a) the appearance of:
  - (i) the nipple or areola of a female human breast;
  - (ii) a human genital;
  - (iii) a human pubic area; or
  - (iv) a human anus; or
- (b) a state of dress that fails to opaquely cover:
  - (i) the nipple or areola of a female human breast;
  - (ii) a human genital;
  - (iii) a human pubic area; or
  - (iv) a human anus.

(107) "State of seminudity" means a state of dress in which opaque clothing covers no more than:

- (a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and
- (b) the human genitals, pubic area, and anus:
  - (i) with no less than the following at its widest point:
    - (A) four inches coverage width in the front of the human body; and
    - (B) five inches coverage width in the back of the human body; and
  - (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

(108) (a) "State store" means a facility for the sale of packaged liquor:

- (i) located on premises owned or leased by the state; and
  - (ii) operated by a state employee.
- (b) "State store" does not include:
- (i) a package agency;
  - (ii) a licensee; or

## HB0142S01 compared with HB0142

(iii) a permittee.

(109) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

(b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron, except as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).

(110) "Sublicense" is as defined in Section 32B-8-102.

(111) "Supplier" means a person who sells an alcoholic product to the department.

(112) "Tavern" means an on-premise beer retailer who is:

(a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-premise Beer Retailer License.

(113) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

(114) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(115) "Translucent" means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.

(116) "Unsaleable liquor merchandise" means a container that:

(a) is unsaleable because the container is:

(i) unlabeled;

(ii) leaky;

(iii) damaged;

(iv) difficult to open; or

(v) partly filled;

(b) (i) has faded labels or defective caps or corks;

(ii) has contents that are:

(A) cloudy;

## HB0142S01 compared with HB0142

- (B) spoiled; or
- (C) chemically determined to be impure; or
- (iii) contains:
  - (A) sediment; or
  - (B) a foreign substance; or
- (c) is otherwise considered by the department as unfit for sale.

(117) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.

(118) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section ~~11~~2. Section **32B-1-201** is amended to read:

**32B-1-201. Restrictions on number of retail licenses that may be issued -- Determining population -- Exempt licenses.**

- (1) As used in this section:
  - (a) "Alcohol-related law enforcement officer" means a law enforcement officer employed by the Department of Public Safety that has as a primary responsibility ~~for~~:
    - (i) the enforcement of this title; or
    - (ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.
  - (b) "Enforcement ratio" is the number calculated as follows:
    - (i) determine the quotient equal to the total number of quota retail licenses available divided by the total number of alcohol-related law enforcement officers; and
    - (ii) round the number determined in accordance with Subsection (1)(b) ~~(i)~~ ~~(ii)~~ ~~(i)~~ up to the nearest whole number.
  - (c) "Quota retail license" means:
    - (i) a full-service restaurant license;
    - (ii) a limited-service restaurant license;
    - (iii) a club license;

## HB0142S01 compared with HB0142

- (iv) an on-premise banquet license;
- (v) an on-premise beer retailer operating as a tavern; ~~and~~
- (vi) a reception center license~~[-]; and~~
- (vii) a dining license.

(d) "Total number of alcohol-related law enforcement officers" means the total number of positions designated as alcohol-related law enforcement officers that are funded as of a specified date as certified by the Department of Public Safety to the department.

(e) "Total number of quota retail licenses available" means the number calculated by:

(i) determining as of a specified date for each quota retail license the number of licenses that the commission may not exceed calculated by dividing the population of the state by the number specified in the relevant provision for the quota retail license; and

(ii) adding together the numbers determined under Subsection (1)~~(d)~~(~~(e)~~)~~(i)~~.

(2) (a) Beginning on July 1, 2012, the department shall annually determine the enforcement ratio as of July 1 of that year.

(b) If, beginning on July 1, 2012, the enforcement ratio is greater than ~~(1)52(1)55~~, the commission may not issue a quota retail license for the 12-month period beginning on the July 1 for which the enforcement ratio is greater than ~~(1)52(1)55~~.

(c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license during the 12-month period described in Subsection (2)(b) beginning on the day on which a sufficient number of alcohol-related law enforcement officers are employed so that if the enforcement ratio is calculated, the enforcement ratio would be equal to or less than ~~(1)52(1)55~~.

(d) Once the Department of Public Safety certifies under Subsection (1)(d) the total number of positions designated as alcohol-related law enforcement officers that are funded as of July 1, the Department of Public Safety may not use the funding for the designated alcohol-related law enforcement officers for a purpose other than funding those positions.

(3) For purposes of determining the number of state stores that the commission may establish or the number of package agencies or retail licenses that the commission may issue, the commission shall determine population by:

- (a) the most recent United States decennial or special census; or
- (b) another population determination made by the United States or state governments.

## HB0142S01 compared with HB0142

(4) The commission may not consider a retail license that meets the following conditions in determining the total number of licenses available for that type of retail license that the commission may issue at any time:

(a) the retail license was issued to a club licensee designated as a dining club as of July 1, 2011; and

(b) the dining ~~[club]~~ license is converted to another type of retail license in accordance with Section ~~[32B-6-409]~~ 32B-6-1006.

### Section 3. Section 32B-1-407 is amended to read:

#### **32B-1-407. Verification of proof of age by applicable licensees.**

(1) As used in this section, "applicable licensee" means:

(a) a dining ~~[club]~~ license;

(b) a social club; or

(c) a tavern.

(2) Notwithstanding any other provision of this part, an applicable licensee shall require that an authorized person for the applicable licensee verify proof of age as provided in this section.

(3) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

(a) gains admittance to the premises of a social club licensee or tavern; or

(b) procures an alcoholic product on the premises of a dining ~~[club]~~ licensee.

(4) To comply with Subsection (3), an authorized person shall:

(a) request the individual present proof of age; and

(b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (5); or

(ii) if the proof of age cannot be electronically verified as provided in Subsection (4)(b)(i), request that the individual comply with a process established by the commission by rule.

(5) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described



## HB0142S01 compared with HB0142

in Subsection (2) no more than the following for the individual who presents the proof of age:

- (i) the name;
- (ii) the age;
- (iii) the number assigned to the individual's proof of age by the issuing authority;
- (iv) the birth date;
- (v) the gender; and
- (vi) the status and expiration date of the individual's proof of age; and
- (b) the security measures that shall be used by an applicable licensee to ensure that

information obtained under this section is:

(i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and

(ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(6) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

### Section 4. Section 32B-2-202 is amended to read:

#### **32B-2-202. Powers and duties of the commission.**

- (1) The commission shall:
  - (a) act as a general policymaking body on the subject of alcoholic product control;
  - (b) adopt and issue policies, rules, and procedures;
  - (c) set policy by written rules that establish criteria and procedures for:
    - (i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, or certificate of approval; and
    - (ii) determining the location of a state store, package agency, or retail licensee;
  - (d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;
  - (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:

## HB0142S01 compared with HB0142

- (i) a package agency;
- (ii) a full-service restaurant license;
- (iii) a limited-service restaurant license;
- (iv) a club license;
- (v) an airport lounge license;
- (vi) an on-premise banquet license;
- (vii) a resort license, under which four or more sublicenses may be included;
- (viii) an on-premise beer retailer license;
- (ix) a reception center license;
- (x) a beer-only restaurant license;
- (xi) dining license;
- ~~[(xi)]~~ (xii) a single event permit;
- ~~[(xii)]~~ (xiii) a temporary beer event permit;
- ~~[(xiii)]~~ (xiv) a special use permit;
- ~~[(xiv)]~~ (xv) a manufacturing license;
- ~~[(xv)]~~ (xvi) a liquor warehousing license;
- ~~[(xvi)]~~ (xvii) a beer wholesaling license; and
- ~~[(xvii)]~~ (xviii) one of the following that holds a certificate of approval:
  - (A) an out-of-state brewer;
  - (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
  - (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke one of the following conditional licenses for the purchase, storage, sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:
  - (i) a conditional full-service restaurant license; or
  - (ii) a conditional limited-service restaurant license;
- (g) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;
- (h) to the extent a fee is not specified in this title, establish a fee allowed under this title in accordance with Section 63J-1-504;
- (i) fix prices at which liquor is sold that are the same at all state stores, package

## HB0142S01 compared with HB0142

agencies, and retail licensees;

(j) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;

(k) (i) require the director to follow sound management principles; and

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

(A) sound management principles are being followed; and

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

(l) (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and

(ii) do the things necessary to support the department in properly performing the department's duties;

(m) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:

(i) considered expedient; and

(ii) approved by the governor;

(n) prescribe the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;

(o) make rules governing the credit terms of beer sales within the state to retail licensees; and

(p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.

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

(a) establish a state store;

(b) issue authority to act as a package agent or operate a package agency; and

(c) issue or deny a license, permit, or certificate of approval.

(3) If the commission is authorized or required to make a rule under this title, the commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 5. Section 32B-2-605 is amended to read:

**32B-2-605. Operational requirements for package agency.**

## **HB0142S01 compared with HB0142**

(1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.

(b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

(ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.

(iii) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or prohibition.

(2) (a) A package agency shall be operated by an individual who is either:

(i) the package agent; or

(ii) an individual designated by the package agent.

(b) An individual who is a designee under this Subsection (2) shall be:

(i) an employee of the package agent; and

(ii) responsible for the operation of the package agency.

(c) The conduct of the designee is attributable to the package agent.

(d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.

(e) A package agent shall state the name and title of a designee on the application for a package agency.

(f) A package agent shall:

(i) inform the department of a proposed change in the individual designated to operate a package agency; and

(ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).

(g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.

(3) (a) A package agent shall display in a prominent place in the package agency the record issued by the commission that designates the package agency.

## HB0142S01 compared with HB0142

(b) A package agent that displays or stores liquor at a location visible to the public shall display in a prominent place in the package agency a sign in large letters that consists of text in the following order:

(i) a header that reads: "WARNING";

(ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";

(iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";

(iv) a header that reads: "WARNING"; and

(v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).

(ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.

(d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

(4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.

(5) (a) A package agency may not purchase liquor from a person except from the department.

(b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.

(6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(7) A package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(8) A package agency may not sell, offer for sale, or furnish liquor to:

(a) a minor;

## HB0142S01 compared with HB0142

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

(9) (a) A package agency may not employ a minor to handle liquor.

(b) (i) Staff of a package agency may not:

(A) consume an alcoholic product on the premises of a package agency; or

(B) allow any person to consume an alcoholic product on the premises of a package agency.

(ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

(10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.

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

(ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.

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

(d) The notice required by Subsection (10)(a) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the package agency will reopen or resume operation.

(e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.

(f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.

## HB0142S01 compared with HB0142

(11) A package agency may not transfer its operations from one location to another location without prior written approval of the commission.

(12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.

(b) A package agency has no monetary value for any type of disposition.

(13) (a) Subject to the other provisions of this Subsection (13):

(i) sale or delivery of liquor may not be made on or from the premises of a package agency, and a package agency may not be kept open for the sale of liquor:

(A) on Sunday; or

(B) on a state or federal legal holiday.

(ii) Sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(b) A package agency located at a manufacturing facility is not subject to Subsection (13)(a) if:

(i) the package agency is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:

(A) a full-service restaurant license;

(B) a limited-service restaurant license;

(C) a beer-only restaurant license; or

(D) dining ~~club~~ license;

(iii) the restaurant or dining ~~club~~ license premises is located at the manufacturing facility;

(iv) the restaurant or dining ~~club~~ license premises sells an alcoholic product produced at the manufacturing facility;

(v) the manufacturing facility:

(A) owns the restaurant or dining ~~club~~ license premises; or

(B) operates the restaurant or dining ~~club~~ license premises;

## HB0142S01 compared with HB0142

(vi) the package agency only sells an alcoholic product produced at the manufacturing facility; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant or dining ~~club~~ license premises.

(c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if the package agent that holds the package agency to sell liquor at the resort does not sell liquor in a manner similar to a state store.

(ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

- (i) 21 years of age or older; and
- (ii) the minor's parent, legal guardian, or spouse.

(b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:

- (i) ask the suspected minor for proof of age;
- (ii) ask the person who accompanies the suspected minor for proof of age; and
- (iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.

- (b) A person may not open a sealed container on the premises of a package agency.



## HB0142S01 compared with HB0142

(c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:

(i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;

(ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

(iii) subject to:

(A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;

(B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; and

(C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.

(16) On or after October 1, 2011, a package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

(17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

(a) physical facilities;

(b) conditions of operation;

(c) hours of operation;

(d) inventory levels;

(e) payment schedules;

(f) methods of payment;

(g) premises security; and

(h) any other matter considered appropriate by the commission.

Section 6. Section 32B-6-202 is amended to read:

### **32B-6-202. Definitions.**

As used in this part:

(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a full-service restaurant licensee that:

## HB0142S01 compared with HB0142

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in

Subsection (1)(a)(i)(B); or

(II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

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

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the full-service restaurant license by no later than December 31, 2009;

and

(B) once constructed, the licensed premises has a bar structure described in Subsection (1)(a)(i);

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

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

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

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued a full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered

## HB0142S01 compared with HB0142

bar structure notwithstanding whether a restaurant undergoes a change of ownership.

(2) "Seating grandfathered bar structure" means:

(a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section ~~[32B-6-409]~~ 32B-6-1006.

Section ~~{2}7~~. Section ~~{32B-6-203}~~ 32B-6-302 is amended to read:

~~{~~ **32B-6-203. Commission's power to issue full-service restaurant license:**

~~———— (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a full-service restaurant license from the commission in accordance with this part.~~

~~———— (2) The commission may issue a full-service restaurant license to establish full-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated as a full-service restaurant.~~

~~———— (3) Subject to Section 32B-1-201:~~

~~———— (a) The commission may not issue a total number of full-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by [4,925] 4,839.~~

~~———— (b) The commission may issue a seasonal full-service restaurant license in accordance with Section 32B-5-206.~~

~~———— (c) (i) If the location, design, and construction of a hotel may require more than one full-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as many as three full-service restaurant locations within the hotel under one full-service restaurant license if:~~

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

~~———— (B) the locations under the full-service restaurant license are:~~

~~———— (I) within the same hotel; and~~

~~———— (II) on premises that are managed or operated, and owned or leased, by the full-service restaurant licensee.~~

~~———— (ii) A facility other than a hotel shall have a separate full-service restaurant license for each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.~~

## HB0142S01 compared with HB0142

~~—— (4) (a) Except as provided in Subsection (4)(b), the commission may not issue a full-service restaurant license for premises that do not meet the proximity requirements of Section 32B-1-202.~~

~~—— (b) With respect to the premises of a full-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a full-service restaurant license to the new owner of the premises if:~~

~~—— (i) when a full-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);~~

~~—— (ii) the premises has had a full-service restaurant license at all times since the full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance; and~~

~~—— (iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in Subsection (4)(b)(i) was issued.~~

### ‡ **32B-6-302. Definitions.**

As used in this part:

(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a limited-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection (1)(a)(i)(B); or

(II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

## HB0142S01 compared with HB0142

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

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection (1)(a)(i);

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

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

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

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued a limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

(2) "Seating grandfathered bar structure" means:

(a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section ~~[32B-6-409]~~ 32B-6-1006.

(3) "Wine" includes an alcoholic beverage defined as wine under 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 4.10, including the following alcoholic beverages made in the manner of wine containing not less than 7% and not more than 24% of alcohol by volume:

(a) sparkling and carbonated wine;

(b) wine made from condensed grape must;

(c) wine made from other agricultural products than the juice of sound, ripe grapes;

(d) imitation wine;

## HB0142S01 compared with HB0142

- (e) compounds sold as wine;
- (f) vermouth;
- (g) cider;
- (h) perry; and
- (i) sake.

Section ~~33~~8. Section **32B-6-403** is amended to read:

### **32B-6-403. Commission's power to issue club license.**

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a club licensee, the person shall first obtain a club license from the commission in accordance with this part.

(2) The commission may issue a club license to establish club licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated by a club licensee.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of ~~4~~

~~(i) } club licenses { that are not dining club licenses } that at any time exceeds the number determined by dividing the population of the state by [7,850 { } 9,580; or~~

~~(ii) dining club licenses that at any time exceed the number determined by dividing the population of the state by 22,658; } 9,650.~~

(b) The commission may issue a seasonal club license in accordance with Section 32B-5-206 to ~~1~~ {

~~} (i) a dining club licensee; or {~~

~~} (ii) { } ] a social club licensee.~~

(c) (i) If the location, design, and construction of a hotel may require more than one  ~~] dining club license or ]~~ social club license location within the hotel to serve the public convenience, the commission may authorize as many as three club license locations within the hotel under one club license if:

- (A) the hotel has a minimum of 150 guest rooms; and
- (B) all locations under the club license are:
  - (I) within the same hotel; and
  - (II) on premises that are managed or operated, and owned or leased, by the club

## HB0142S01 compared with HB0142

licensee.

(ii) A facility other than a hotel shall have a separate club license for each club license location where an alcoholic product is sold, offered for sale, or furnished.

(d) When a business establishment undergoes a change of ownership, the commission may issue a club license to the new owner of the business establishment notwithstanding that there is no club license available under Subsection (3)(a) if:

(i) the primary business activity at the business establishment before and after the change of ownership is not the sale, offer for sale, or furnishing of an alcoholic product;

(ii) before the change of ownership there are two or more licensed premises on the business establishment that operate under a retail license, with at least one of the retail licenses being a club license;

(iii) subject to Subsection (3)(e), the licensed premises of the club license issued under this Subsection (3)(d) is at the same location where the club license licensed premises was located before the change of ownership; and

(iv) the person who is the new owner of the business establishment qualifies for the club license, except for there being no club license available under Subsection (3)(a).

(e) If a club licensee of a club license issued under Subsection (3)(d) requests a change of location, the club licensee may retain the club license after the change of location only if on the day on which the club licensee seeks a change of location a club license is available under Subsection (3)(a).

Section ~~{4}~~9. Section 32B-6-404 is amended to read:

### 32B-6-404. Types of club license.

(1) To obtain an equity club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member; and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

## HB0142S01 compared with HB0142

(b) own, maintain, or operate a substantial recreational facility in conjunction with a club house such as:

(i) a golf course; or

(ii) a tennis facility;

(c) have at least 50% of the total membership having:

(i) full voting rights; and

(ii) an equal share of the equity of the club; and

(d) if there is more than one class of membership, have at least one class of

membership that entitles each member in that class to:

(i) full voting rights; and

(ii) an equal share of the equity of the club.

(2) To obtain a fraternal club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member; and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

(b) have no capital stock;

(c) exist solely for:

(i) the benefit of its members and their beneficiaries; and

(ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purpose for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges;

(d) have a representative form of government;

(e) have a lodge system in which:

(i) there is a supreme governing body;

(ii) subordinate to the supreme governing body are local lodges, however designated, into which individuals are admitted as members in accordance with the laws of the fraternal;



## HB0142S01 compared with HB0142

(iii) the local lodges are required by the laws of the fraternal to hold regular meetings at least monthly; and

(iv) the local lodges regularly engage in one or more programs involving member participation to implement the purposes of Subsection (2)(c); and

(f) own or lease a building or space in a building used for lodge activities.

[(3) To obtain a dining club license, in addition to meeting the other requirements of this part, a person shall:]

[(a) maintain at least the following percentages of its total club business from the sale of food, not including mix for alcoholic products, or service charges:]

[(i) for a dining club license that is issued an original license on or after July 1, 2011, 60%; and]

[(ii) for a dining club license that is issued on or before June 30, 2011:]

[(A) 50% on or before June 30, 2012; and]

[(B) 60% on and after July 1, 2012; and]

[(b) obtain a determination by the commission that the person will operate as a dining club licensee, as part of which the commission may consider:]

[(i) the square footage and seating capacity of the premises;]

[(ii) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;]

[(iii) whether full meals including appetizers, main courses, and desserts are served;]

[(iv) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person who is located on the premise of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;]

[(v) whether the entertainment provided at the club is suitable for minors; and]

[(vi) the club management's ability to manage and operate a dining club license including:]

[(A) management experience;]

[(B) past dining club licensee or restaurant management experience; and]

[(C) the type of management scheme used by the dining club license.]

[(4)] (3) To obtain a social club license, a person is required to meet the requirements of this part except those listed in Subsection (1)[;] or (2)[; or (3)].

## HB0142S01 compared with HB0142

~~[(5)]~~ (4) (a) At the time that the commission issues a club license, the commission shall designate the type of club license for which the person qualifies.

(b) If requested by a club licensee, the commission may approve a change in the type of club license in accordance with rules made by the commission.

(6) To the extent not prohibited by law, this part does not prevent a ~~[dining club licensee or]~~ social club licensee from restricting access to the club's licensed premises on the basis of an individual:

(a) paying a fee; or

(b) agreeing to being on a list of individuals who have access to the club's licensed premises.

Section 10. Section **32B-6-405** is amended to read:

### **32B-6-405. Specific licensing requirements for club license.**

(1) To obtain a club license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) (i) a statement as to whether the person is seeking to qualify as:

(A) an equity club licensee;

(B) a fraternal club licensee; or

~~[(C) a dining club licensee; or]~~

~~[(D)]~~ (C) a social club licensee; and

(ii) evidence that the person meets the requirements for the type of club license for which the person is applying;

(b) evidence that the person operates club premises where a variety of food is prepared and served in connection with dining accommodations; and

(c) if the person is applying for an equity club license or fraternal club license, a copy of the club's bylaws or house rules, and an amendment to those records.

(2) The commission may refuse to issue a club license to a person for an equity club license or fraternal club license if the commission determines that a provision of the person's bylaws or house rules, or amendments to those records is not:

(a) reasonable; and

(b) consistent with:

(i) the declared nature and purpose of the club licensee; and

## HB0142S01 compared with HB0142

(ii) the purposes of this part.

(3) (a) A club license expires on June 30 of each year.

(b) To renew a club license, a person shall comply with the requirements of Chapter 5,

Part 2, Retail Licensing Process, by no later than May 31.

(4) (a) The nonrefundable application fee for a club license is \$300.

(b) The initial license fee for a club license is \$2,750.

(c) The renewal fee for a club license is \$2,000.

(5) The bond amount required for a club license is the penal sum of \$10,000.

Section 11. Section 32B-6-406 is amended to read:

**32B-6-406. Specific operational requirements for a club license.**

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a club licensee and staff of the club licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a club licensee;

(ii) individual staff of a club licensee; or

(iii) both a club licensee and staff of the club licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a club licensee shall display in a prominent place in the club licensed premises a list of the types and brand names of liquor being furnished through the club licensee's calibrated metered dispensing system.

(3) (a) In addition to complying with Section 32B-5-302, a club licensee shall maintain for a minimum of three years:

(i) a record required by Section 32B-5-302; and

(ii) a record maintained or used by the club licensee, as the department requires.

(b) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(c) The department shall audit the records of a club licensee at least once annually.

(4) (a) A club licensee may not sell, offer for sale, or furnish liquor on the licensed premises on any day during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

## HB0142S01 compared with HB0142

(b) A club licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer license.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a club licensee shall keep its licensed premises open for one hour after the club licensee ceases the sale and furnishing of an alcoholic product during which time a patron of the club licensee may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A club licensee is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(5) (a) A minor may not be admitted into, use, or be in:

(i) a lounge or bar area of the premises of:

(A) an equity club licensee; or

(B) a fraternal club licensee; or

~~[(C) a dining club licensee; or]~~

(ii) the premises of: ~~(A) a dining club licensee unless accompanied by an individual who is 21 years of age or older; or (B)] a social club licensee, except to the extent provided for under Section 32B-6-406.1.~~

(b) Notwithstanding Section 32B-5-308, a club licensee may not employ a minor to:

(i) work in a lounge or bar area of an equity club licensee~~[-] or fraternal club licensee[-] or dining club licensee]; or~~

(ii) handle an alcoholic product.

(c) Notwithstanding Section 32B-5-308, a minor may not be employed on the licensed premises of a social club licensee.

(d) Nothing in this part or Section 32B-5-308 precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the licensed premises of a club licensee.

(6) A club licensee shall have food available at all times when an alcoholic product is

## HB0142S01 compared with HB0142

sold, offered for sale, furnished, or consumed on the licensed premises.

(7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have two spirituous liquor drinks before the club licensee patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (7)(a).

(8) A club licensee shall have available on the premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold, offered for sale, or furnished by the club licensee including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(9) Subject to Section 32B-5-309, a club licensee may not temporarily rent or otherwise temporarily lease its premises to a person unless:

(a) the person to whom the club licensee rents or leases the premises agrees in writing to comply with this title as if the person is the club licensee, except for a requirement related to making or maintaining a record; and

(b) the club licensee takes reasonable steps to ensure that the person complies with this section as provided in Subsection (9)(a).

(10) If a club licensee is an equity club licensee or fraternal club licensee, the club licensee shall comply with Section 32B-6-407.

(11) If a club licensee is a ~~dining club licensee or~~ social club licensee, the club licensee shall comply with Section 32B-1-407.

(12) (a) A club licensee shall own or lease premises suitable for the club licensee's activities.

(b) A club licensee may not maintain licensed premises in a manner that barricades or conceals the club licensee's operation.

Section 12. Section 32B-6-407 is amended to read:

32B-6-407. Specific operational requirements for equity club license or fraternal

## HB0142S01 compared with HB0142

### club license.

(1) For purposes of this section only:

(a) "Club licensee" means an equity club licensee or fraternal club licensee.

(b) "Club licensee" does not include a ~~dining club licensee or~~ social club licensee.

(2) (a) A club licensee shall have a governing body that:

(i) consists of three or more members of the club; and

(ii) holds regular meetings to:

(A) review membership applications; and

(B) conduct other business as required by the bylaws or house rules of the club.

(b) (i) A club licensee shall maintain a minute book that is posted currently by the club

licensee.

(ii) The minute book required by this Subsection (2) shall contain the minutes of a regular or special meeting of the governing body.

(3) A club licensee may admit an individual as a member only on written application signed by the person, subject to:

(a) the person paying an application fee; and

(b) investigation, vote, and approval of a quorum of the governing body.

(4) A club licensee shall:

(a) record an admission of a member in the official minutes of a regular meeting of the governing body; and

(b) whether approved or disapproved, file an application as a part of the official records of the club licensee.

(5) The spouse of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(6) A minor child of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(7) A club licensee shall maintain:

## HB0142S01 compared with HB0142

(a) a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member;

(b) a membership list; and

(c) a current record indicating when a member is removed as a member or resigns.

(8) (a) A club licensee shall have bylaws or house rules that include provisions

respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the club;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for removing a member from the club membership for the nonpayment

of dues or other cause;

(v) provisions for guests; and

(vi) application fees and membership dues.

(b) A club licensee shall maintain a current copy of the club licensee's current bylaws and current house rules.

(c) A club licensee shall maintain its bylaws or house rules, and any amendments to those records, on file with the department at all times.

(9) A club licensee may, in its discretion, allow an individual to be admitted to or use the club licensed premises as a guest subject to the following conditions:

(a) the individual is allowed to use the club licensee premises only to the extent permitted by the club licensee's bylaws or house rules;

(b) the individual shall be previously authorized by a member of the club who agrees to host the individual as a guest into the club;

(c) the individual has only those privileges derived from the individual's host for the duration of the individual's visit to the club licensee premises; and

(d) a club licensee or staff of the club licensee may not enter into an agreement or arrangement with a club member to indiscriminately host a member of the general public into

## HB0142S01 compared with HB0142

the club licensee premises as a guest.

(10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club licensed premises without a host if:

(a) (i) the club licensee is an equity club licensee; and

(ii) the individual is a member of an equity club licensee that has reciprocal guest privileges with the equity club licensee for which the individual is a guest; or

(b) (i) the club licensee is a fraternal club licensee; and

(ii) the individual is a member of the same fraternal organization as the fraternal club licensee for which the individual is a guest.

(11) Unless the patron is a member or guest, a club licensee may not:

(a) sell, offer for sale, or furnish an alcoholic product to the patron; or

(b) allow the patron to be admitted to or use the licensed premises.

(12) A minor may not be a member, officer, director, or trustee of a club licensee.

(13) Public advertising related to a club licensee by the following shall clearly identify a club as being "a club for members":

(a) the club licensee;

(b) staff of the club licensee; or

(c) a person under a contract or agreement with the club licensee.

Section 13. Section 32B-6-902 (Effective 03/01/12) is amended to read:

**32B-6-902 (Effective 03/01/12). Definitions.**

(1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a licensed premises of a beer-only restaurant licensee that:

(i) was licensed as an on-premise beer retailer as of August 1, 2011, and as of August 1, 2011:

(A) is operational;

(B) has facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii); and

(C) in accordance with Subsection 32B-6-703(2)(e), notifies the department that effective March 1, 2012, the on-premise beer retailer licensee will seek to be licensed as a beer-only restaurant; or

(ii) is a bar structure grandfathered under Section [~~32B-6-409~~] 32B-6-1006.



## **HB0142S01 compared with HB0142**

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

Section 14. Section 32B-6-1001 is enacted to read:

### **Part 10. Dining License**

#### **32B-6-1001. Title.**

This part is known as "Dining License."

Section 15. Section 32B-6-1002 is enacted to read:

#### **32B-6-1002. Definitions.**

Reserved.

Section 16. Section 32B-6-1003 is enacted to read:

#### **32B-6-1003. Commission's power to issue dining licenses.**

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a dining licensee, the person shall first obtain a dining license from the commission in accordance with this part.

(2) The commission may issue a dining license to establish dining-licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated as a dining establishment.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of dining licenses that at any time exceeds the number determined by dividing the population of the state by 37,500.

(b) The commission may issue a seasonal dining license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than one dining license sales location within the hotel to serve the public convenience, the commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as many as three dining establishments within the hotel under one dining license if:

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

## HB0142S01 compared with HB0142

(B) the locations under the dining license are within the same hotel, and on premises that are managed or operated, and owned or leased, by the dining licensee.

(ii) A facility other than a hotel shall have a separate dining license for each dining establishment where an alcoholic product is sold, offered for sale, or furnished.

(d) When a business establishment undergoes a change of ownership, the commission may issue a dining license to the new owner of the business establishment notwithstanding that there is no dining license available under Subsection (3)(a) if:

(i) the primary business activity at the business establishment before and after the change of ownership is not the sale, offer for sale, or furnishing of an alcoholic product;

(ii) before the change of ownership there are two or more licensed premises on the business establishment that operate under a retail license, with at least one of the retail licenses being a dining license;

(iii) subject to Subsection (3)(e), the licensed premises of the dining license issued under this Subsection (3)(d) is at the same location where the dining license licensed premises was located before the change of ownership; and

(iv) the person who is the new owner of the business establishment qualifies for the dining license, except for there being no dining license available under Subsection (3)(a).

(e) If a dining licensee of a dining license issued under Subsection (3)(d) requests a change of location, the dining licensee may retain the dining license after the change of location only if on the day on which the dining licensee seeks a change of location a dining license is available under Subsection (3)(a).

(4) The commission may not issue a dining license for premises that do not meet the proximity requirements of Section 32B-1-202.

(5) To obtain a dining license, in addition to meeting the other requirements of this part, a person shall:

(a) maintain at least 60% of its total dining establishment from the sale of food, not including mix for alcoholic products, or service charges; and

(b) obtain a determination by the commission that the person will operate as a dining licensee, as part of which the commission may consider:

(i) the square footage and seating capacity of the premises;

(ii) what portion of the square footage and seating capacity will be used for a dining

## **HB0142S01 compared with HB0142**

area in comparison to the portion that will be used as a lounge or bar area:

(iii) whether full meals including appetizers, main courses, and desserts are served;

(iv) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person who is located on the premise of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(v) whether the entertainment provided at the establishment is suitable for minors; and

(vi) the establishment's management's ability to manage and operate a dining license including:

(A) management experience;

(B) past dining licensee or restaurant management experience; and

(C) the type of management scheme used by the dining license.

(6) A dining club license issued as of June, 2012, is automatically converted to a dining license under this part, effective July 1, 2012.

Section 17. Section **32B-6-1004** is enacted to read:

### **32B-6-1004. Specific licensing requirements for dining license.**

(1) To obtain a dining license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) (i) a statement that the person is seeking to qualify as a dining licensee; and

(ii) evidence that the person meets the requirements for the dining license;

(b) evidence that the person operates a dining establishment where a variety of food is prepared and served in connection with dining accommodations.

(2) (a) A dining license expires on June 30 of each year.

(b) To renew a dining license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than May 31.

(3) (a) The nonrefundable application fee for a dining license is \$300.

(b) The initial license fee for a dining license is \$2,750.

(c) The renewal fee for a dining license is \$2,000.

(4) The bond amount required for a dining license is the penal sum of \$10,000.

Section 18. Section **32B-6-1005** is enacted to read:

### **32B-6-1005. Specific operational requirements for a dining license.**

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational

## HB0142S01 compared with HB0142

Requirements, a dining licensee and staff of the dining licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a dining licensee;

(ii) individual staff of a dining licensee; or

(iii) both a dining licensee and staff of the dining licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a dining licensee shall display in a prominent place in the dining establishment a list of the types and brand names of liquor being furnished through the dining licensee's calibrated metered dispensing system.

(3) (a) In addition to complying with Section 32B-5-302, a dining licensee shall maintain for a minimum of three years:

(i) a record required by Section 32B-5-302; and

(ii) a record maintained or used by the dining licensee, as the department requires.

(b) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(c) The department shall audit the records of a dining licensee at least once annually.

(4) (a) A dining licensee may not sell, offer for sale, or furnish liquor on the licensed premises on any day during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) A dining licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer license.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a dining licensee shall keep its licensed premises open for one hour after the dining licensee ceases the sale and furnishing of an alcoholic product during which time a patron of the club licensee may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A dining licensee is not required to remain open:

## HB0142S01 compared with HB0142

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(5) (a) A minor may not be admitted into, use, or be in a lounge or bar area of the premises of a dining licensee. A minor may not be admitted into, use, or be on the premises of a dining licensee unless accompanied by an individual who is 21 years of age or older.

(b) Notwithstanding Section 32B-5-308, a dining licensee may not employ a minor to:

(i) work in a lounge or bar area of a dining licensee; or

(ii) handle an alcoholic product.

(c) Nothing in this part or Section 32B-5-308 precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the licensed premises of a dining licensee.

(6) A dining licensee shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the licensed premises.

(7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have two spirituous liquor drinks before the dining licensee patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (7)(a).

(8) A dining licensee shall have available on the premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold, offered for sale, or furnished by the dining licensee including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(9) Subject to Section 32B-5-309, a dining licensee may not temporarily rent or otherwise temporarily lease its premises to a person unless:

(a) the person to whom the dining licensee rents or leases the premises agrees in writing to comply with this title as if the person is the dining licensee, except for a requirement

## **HB0142S01 compared with HB0142**

related to making or maintaining a record; and

(b) the dining licensee takes reasonable steps to ensure that the person complies with this section as provided in Subsection (9)(a).

(10) A dining licensee shall comply with Section 32B-1-407.

(11) (a) A dining licensee shall own or lease premises suitable for the dining licensee's activities.

(b) A dining licensee may not maintain licensed premises in a manner that barricades or conceals the dining licensee's operation.

Section 19. Section **32B-6-1006** is enacted to read:

**32B-6-1006. Conversion from dining club license to different type of retail license.**

(1) In accordance with this section, a dining club licensee may convert its dining license to a different type of retail license during the time period:

(a) beginning on July 1, 2012; and

(b) ending on June 30, 2013.

(2) A dining licensee may convert its dining license only to a retail license for which the dining club licensee qualifies.

(3) The commission shall provide a procedure for a dining licensee to convert to a different type of retail license as provided in this section by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) After a dining license is converted to another type of retail license, the retail licensee shall operate under the provisions relevant to the type of retail license held by the retail licensee, except that, in accordance with Section 32B-1-201, the retail license is not considered in determining the total number of licenses available for that type of retail license.

(5) If a dining license is converted to full-service restaurant license, limited-service restaurant license, or beer-only restaurant license, the bar structure of the dining club is considered:

(a) a seating grandfathered bar structure for purposes of a full-service restaurant license or a limited-service restaurant license; or

(b) a grandfathered bar structure for purposes of a beer-only restaurant license.

Section 20. **Repealer.**

This bill repeals:

**HB0142S01 compared with HB0142**

**Section 32B-6-409, Conversion from dining club license to different type of retail license.**

**Section 21. Effective date.**

This bill takes effect on July 1, 2012.

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**Legislative Review Note**

~~as of 2-3-12 12:08 PM~~

~~Office of Legislative Research and General Counsel}~~