

ALCOHOLIC BEVERAGE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act, the Public Safety Code, and revenue and taxation provisions to address the tracking of the effects of the abuse of alcoholic products and collection of certain taxes and mark ups.

Highlighted Provisions:

This bill:

- ▶ addresses price at which the department sells liquor;
- ▶ creates a committee to establish a process to collect information related to abuse of alcoholic products;
- ▶ addresses certain reporting requirements related to the beer tax;
- ▶ provides for the collection of a mark up by the State Tax Commission; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

32B-2-301, as enacted by Laws of Utah 2010, Chapter 276

32B-2-304, as enacted by Laws of Utah 2010, Chapter 276



28 59-15-106, as last amended by Laws of Utah 1998, Chapter 270

29 ENACTS:

30 53-1-119, Utah Code Annotated 1953

31 59-15a-101, Utah Code Annotated 1953

32 59-15a-102, Utah Code Annotated 1953

33 59-15a-103, Utah Code Annotated 1953

34 59-15a-104, Utah Code Annotated 1953

35 59-15a-105, Utah Code Annotated 1953

36 59-15a-106, Utah Code Annotated 1953

37 59-15a-107, Utah Code Annotated 1953

38 59-15a-108, Utah Code Annotated 1953

39 59-15a-109, Utah Code Annotated 1953



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

42 Section 1. Section 32B-2-301 is amended to read:

43 **32B-2-301. State property -- Liquor Control Fund.**

44 (1) The following are property of the state:

45 (a) the money received [~~by the department~~] in the administration of this title, except as
46 otherwise provided; and

47 (b) property acquired, administered, possessed, or received by the department.

48 (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

49 (b) Except as provided in Section 32B-3-205, money received in the administration of
50 this title shall be [~~paid to the department and~~] transferred to the Liquor Control Fund.

51 (c) The state treasurer shall by warrant draw from the Liquor Control Fund the
52 expenses, debts, and liabilities incurred by the department in connection with the
53 administration of this title or any other expense necessary for the administration of this title,
54 including:

55 (i) salaries;

56 (ii) premiums, if any, on a bond for which the department pays premiums; and

57 (iii) an expenditure incurred in establishing, operating, or maintaining a state store or
58 package agency.

59 (d) The department shall transfer annually from the Liquor Control Fund to the General
60 Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding
61 transfer of money under this Subsection (2)(d). The transfer shall be made by no later than
62 September 30 after a fiscal year.

63 (3) (a) By the end of each day, the department shall:

64 (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and

65 (ii) report the deposit to the state treasurer.

66 (b) A commissioner or department employee is not personally liable for a loss caused
67 by the default or failure of a qualified depository.

68 (c) Money deposited in a qualified depository is entitled to the same priority of
69 payment as other public funds of the state.

70 (4) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant
71 drawn against the Liquor Control Fund by the state treasurer, the cash resources of the General
72 Fund may be used to the extent necessary. At no time may the fund equity of the Liquor
73 Control Fund fall below zero.

74 Section 2. Section **32B-2-304** is amended to read:

75 **32B-2-304. Liquor price -- School lunch program.**

76 [~~(1) For purposes of this section:~~]

77 [~~(a) (i) "Landed case cost" means:~~]

78 [~~(A) the cost of the product; and~~]

79 [~~(B) inbound shipping costs incurred by the department.~~]

80 [~~(ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
81 of the department to a state store.]~~]

82 [~~(b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.]~~]

83 [~~(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who
84 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt
85 beverage.]~~]

86 [~~(2) Except as provided in Subsection (3):~~]

87 [~~(a) spirituous liquor sold by the department within the state shall be marked up in an
88 amount not less than 86% above the landed case cost to the department;]~~]

89 [~~(b) wine sold by the department within the state shall be marked up in an amount not~~]

90 ~~less than 86% above the landed case cost to the department;]~~

91 ~~[(c) heavy beer sold by the department within the state shall be marked up in an~~
92 ~~amount not less than 64.5% above the landed case cost to the department; and]~~

93 ~~[(d) a flavored malt beverage sold by the department within the state shall be marked~~
94 ~~up in an amount not less than 86% above the landed case cost to the department.]~~

95 ~~[(3)(a) Liquor sold by the department to a military installation in Utah shall be marked~~
96 ~~up in an amount not less than 15% above the landed case cost to the department.]~~

97 ~~[(b) Except for spirituous liquor sold by the department to a military installation in~~
98 ~~Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%~~
99 ~~above the landed case cost to the department if:]~~

100 ~~[(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000~~
101 ~~proof gallons of spirituous liquor in a calendar year; and]~~

102 ~~[(ii) the manufacturer applies to the department for a reduced markup.]~~

103 ~~[(c) Except for wine sold by the department to a military installation in Utah, wine that~~
104 ~~is sold by the department within the state shall be marked up 47% above the landed case cost to~~
105 ~~the department if:]~~

106 ~~[(i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of~~
107 ~~wine in a calendar year; and]~~

108 ~~[(ii) the manufacturer applies to the department for a reduced markup.]~~

109 ~~[(d) Except for heavy beer sold by the department to a military installation in Utah,~~
110 ~~heavy beer that is sold by the department within the state shall be marked up 30% above the~~
111 ~~landed case cost to the department if:]~~

112 ~~[(i) a small brewer manufactures the heavy beer; and]~~

113 ~~[(ii) the small brewer applies to the department for a reduced markup.]~~

114 ~~[(e) The department shall verify an amount described in Subsection (3)(b) or (c)~~
115 ~~pursuant to a federal or other verifiable production report.]~~

116 (1) Except as provided in Subsection (3), the price of liquor sold by the department
117 may not exceed the sum of:

118 (a) the amount paid by the department to purchase the liquor;

119 (b) the mark up collected under Title 59, Chapter 15a, Liquor Mark Up Act, if the
120 department is required to pay the mark up to the State Tax Commission under Subsection

121 59-15a-103(5);

122 (c) applicable inbound shipping costs incurred by the department; and

123 (d) any other cost incurred by the department directly related to the purchase or sale of
124 the liquor that is not paid for by an appropriation of the Legislature.

125 ~~[(4)]~~ (2) The department shall deposit 10% of the total gross revenue from sales of
126 liquor with the state treasurer to be credited to the Uniform School Fund and used to support
127 the school lunch program administered by the State Board of Education under Section
128 53A-19-201.

129 ~~[(5)]~~ (3) This section does not prohibit the department from selling discontinued items
130 at a discount.

131 Section 3. Section **53-1-119** is enacted to read:

132 **53-1-119. Tracking effects of abuse of alcoholic products.**

133 (1) There is created a committee within the department known as the "Alcohol Abuse
134 Tracking Committee" that consists of:

135 (a) the commissioner, or the commissioner's designee;

136 (b) the executive director of the Department of Health, or the executive director's
137 designee;

138 (c) the executive director of the Department of Human Services, or the executive
139 director's designee;

140 (d) the director of the Department of Alcoholic Beverage Control, or the director's
141 designee;

142 (e) the executive director of the Department of Workforce Services, or the executive
143 director's designee;

144 (f) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee;

145 (g) the state court administrator or the state court administrator's designee; and

146 (h) the executive director of the Department of Technology Services, or the executive
147 director's designee.

148 (2) The commissioner, or the commissioner's designee, shall chair the committee.

149 (3) (a) Four members of the committee constitutes a quorum.

150 (b) A vote of the majority of the committee members present when a quorum is present
151 is an action of the committee.

152 (4) The committee shall meet at the call of the chair, except that the chair shall call a
153 meeting at least quarterly.

154 (5) The committee may adopt additional procedures or requirements for:

155 (a) voting, when there is a tie of the committee members;

156 (b) how meetings are to be called; and

157 (c) the frequency of meetings.

158 (6) The committee shall establish a process to collect for each fiscal year the following
159 information:

160 (a) the number of individuals statewide who are convicted of, plead guilty to, plead no
161 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
162 violation related to underage drinking of alcohol;

163 (b) the number of individuals statewide who are convicted of, plead guilty to, plead no
164 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
165 violation related to driving under the influence of alcohol;

166 (c) the number of violations statewide of Title 32B, Alcoholic Beverage Control Act,
167 related to over-serving or over-consumption of an alcoholic product;

168 (d) the cost of social services provided by the state related to abuse of alcohol,
169 including services provided by the Division of Child and Family Services within the
170 Department of Human Services;

171 (e) where the alcoholic products are obtained that results in the violations or costs
172 described in Subsections (6)(a) through (d); and

173 (f) any information the committee determines can be collected and relates to the abuse
174 of alcoholic products.

175 (7) (a) The committee shall begin to collect the information described in Subsection (6)
176 by January 1, 2013. For fiscal year 2012-13, the committee is required only to report the
177 information collected between January 1, 2013 and June 30, 2013.

178 (b) Beginning December 31, 2013, the committee shall report the information collected
179 under Subsection (6) annually to the governor and Legislature by no later than the December
180 31 immediately following the fiscal year for which the information is collected.

181 (8) Prior to the October 2012 Interim meeting of the Business and Labor Interim
182 Committee, the committee shall report to the Business and Labor Interim Committee:

- 183 (a) a list of information to be collected;
- 184 (b) standards to be used in collecting the information;
- 185 (c) criteria to be used in determining the level and extent that alcohol is related or
- 186 contributed to the activities for which data is to be collected; and
- 187 (d) how the collection of data will verify the presence of alcohol, blood alcohol levels,
- 188 and differentiate between persons using other substances of impairment and persons consuming
- 189 alcoholic beverages.

190 Section 4. Section **59-15-106** is amended to read:

191 **59-15-106. Reports by brewers, wholesalers, and distributors outside the state.**

192 [~~(1) Every motor carrier as defined under Section 72-9-102 delivering any beer that has~~
193 ~~been shipped from outside of this state to a point within this state shall, before the last day of~~
194 ~~each month, report in writing all deliveries during the preceding month to the commission.~~
195 ~~The report shall be on forms prescribed by, and contain any information required by, the~~
196 ~~commission.]~~

197 [(2)] Every brewer, wholesaler, or distributor outside the state, shipping beer into the
198 state, for sale, use, or consumption within the state shall, before the last day of each month,
199 [report in writing upon forms prescribed by the commission] file with the commission a return
200 prescribed by the commission for the preceding calendar month and containing any information
201 required by the commission.

202 Section 5. Section **59-15a-101** is enacted to read:

203 **CHAPTER 15a. LIQUOR MARK UP ACT**

204 **59-15a-101. Title.**

205 This chapter is known as the "Liquor Mark Up Act."

206 Section 6. Section **59-15a-102** is enacted to read:

207 **59-15a-102. Definitions.**

208 As used in this chapter:

- 209 (1) "Department" means the Department of Alcoholic Beverage Control.
- 210 (2) "Liquor" is as defined in Section 32B-1-102.
- 211 (3) "Military installation" is as defined in Section 32B-1-102.
- 212 (4) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.
- 213 (5) "Sales price of the product" means the price at which the department purchases an

214 alcoholic product excluding any shipping costs.

215 (6) "Small brewer" means a brewer who manufactures in a calendar year less than
216 40,000 barrels of beer, heavy beer, and flavored malt beverage.

217 Section 7. Section **59-15a-103** is enacted to read:

218 **59-15a-103. Mark up basis -- Rate -- Access to department records.**

219 (1) A mark up is imposed at the rate specified in Subsection (2) on all liquor that is
220 imported or manufactured for sale, use, or distribution in this state.

221 (2) Except as provided in Subsection (3), the mark up imposed under Subsection (1)
222 shall be imposed at the following rates:

223 (a) spirituous liquor purchased by the department to be sold by the department within
224 the state shall be marked up in an amount of 86.7% above the sales price of the product to the
225 department;

226 (b) wine purchased by the department to be sold by the department within the state
227 shall be marked up in an amount of 86.7% above the sales price of the product to the
228 department;

229 (c) heavy beer purchased by the department to be sold by the department within the
230 state shall be marked up in an amount of 65% above the sales price of the product to the
231 department; and

232 (d) a flavored malt beverage purchased by the department to be sold by the department
233 within the state shall be marked up in an amount of 86.7% above the sales price of the product
234 to the department.

235 (3) (a) Liquor purchased by the department to be sold by the department to a military
236 installation in Utah shall be marked up in an amount of 15.1% above the sales price of the
237 product to the department.

238 (b) Except for spirituous liquor purchased by the department to be sold by the
239 department to a military installation in Utah, spirituous liquor that is sold by the department
240 within the state shall be marked up 47.4% above the sales price of the product to the
241 department if:

242 (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000
243 proof gallons of spirituous liquor in a calendar year; and

244 (ii) the manufacturer applies to the department for a reduced mark up.

245 (c) Except for wine purchased by the department to be sold by the department to a
246 military installation in Utah, wine that is purchased by the department to be sold by the
247 department within the state shall be marked up 47.4% above the sales price of the product to
248 the department if:

249 (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of
250 wine in a calendar year; and

251 (ii) the manufacturer applies to the department for a reduced mark up.

252 (d) Except for heavy beer purchased by the department to be sold by the department to
253 a military installation in Utah, heavy beer that is purchased by the department to be sold by the
254 department within the state shall be marked up 30.2% above the sales price of the product to
255 the department if:

256 (i) a small brewer manufactures the heavy beer; and

257 (ii) the small brewer applies to the department for a reduced mark up.

258 (e) The department shall verify an amount described in Subsection (3)(b), (c), or (d)
259 pursuant to a federal or other verifiable production report.

260 (f) The department shall provide a manufacturer that applies for a reduced mark up
261 under this Subsection (3) with a record approving the reduced mark up. The manufacturer
262 shall maintain the record in accordance with Section 59-15a-106.

263 (g) If the department intends to sell liquor to a military installation, the department
264 shall provide a manufacturer, wholesaler, or distributor required to pay a mark up under this
265 chapter a record indicating that the department intends to sell the liquor being purchased by the
266 department to a military installation. The manufacturer, wholesaler, or distributor shall
267 maintain the record in accordance with Section 59-15a-106.

268 (4) A mark up may not be imposed on liquor:

269 (a) manufactured or imported for sale, use, or distribution outside the state; and

270 (b) exported from the state.

271 (5) (a) The mark up is imposed on the manufacturer, wholesaler, or distributor that
272 sells the liquor to the department when the liquor is ready for retail sale.

273 (b) If in the case of a special order there is no manufacturer, wholesaler, or distributor
274 required to pay the mark up under this chapter, the department shall pay the mark up to the
275 commission.

276 (c) The department shall provide the commission access to the records of the
277 department that are necessary to identify a manufacturer, wholesaler, or distributor subject to
278 the payment of a mark up under this chapter.

279 (6) (a) If the department sells liquor to a military installation at a 15.1% mark up, but
280 for which a mark up higher than 15.1% was collected, the department may seek a refund from
281 the commission of the excess mark up collected.

282 (b) The department may apply for a refund by filing a form with the commission:

283 (i) that is prescribed by the commission; and

284 (ii) no more frequently than once a month.

285 (c) The commission may by rule made in accordance with Title 63G, Chapter 3, Utah
286 Administrative Rulemaking Act, establish a procedure for the department to obtain a refund
287 under this Subsection (6).

288 Section 8. Section **59-15a-104** is enacted to read:

289 **59-15a-104. Mark up delinquency -- Penalty.**

290 If any person fails to pay the amount of any mark up at the time it is due, a penalty as
291 provided under Section 59-1-401 shall be imposed, and the mark up shall bear interest at the
292 rate and in the manner prescribed in Section 59-1-402.

293 Section 9. Section **59-15a-105** is enacted to read:

294 **59-15a-105. Procedure for contesting assessment.**

295 If a person, after filing a return and paying the mark up provided by this chapter, is
296 aggrieved by the assessment made by the commission, the person may file a request for agency
297 action.

298 Section 10. Section **59-15a-106** is enacted to read:

299 **59-15a-106. Reports -- Credit -- Records.**

300 (1) A manufacturer, wholesaler, or distributor manufacturing or importing liquor for
301 purchase by the department or the department if required to pay the mark up under Subsection
302 59-15a-103(5) shall, before the last day of each month, file with the commission a return for
303 the preceding calendar month:

304 (a) showing the total quantity and sales price of liquor manufactured or imported
305 during the preceding monthly period with deductions made for the quantity and sales price of
306 liquor exempt under this chapter; and

307 (b) containing other information required by the commission.

308 (2) The manufacturer, wholesaler, distributor, or the department if required to pay the
309 mark up under Subsection 59-15a-103(5) shall, at the time of filing the report, pay to the
310 commission the amount of mark up due at the rate fixed in accordance with this chapter.

311 Credit is allowed for mark up already paid on liquor, as provided under this chapter.

312 (3) For purposes of this chapter:

313 (a) liquor is considered manufactured when it is placed in containers for use, sale, or
314 distribution; and

315 (b) liquor is considered imported when it is first received in the state for retail sale or
316 distribution.

317 (4) A person manufacturing or importing liquor for sale in this state shall keep and
318 preserve adequate records for a period of three years showing the amount of liquor sold. These
319 records are open to inspection by the commission, or its authorized representative during
320 reasonable business hours.

321 Section 11. Section **59-15a-107** is enacted to read:

322 **59-15a-107. Reports by manufacturers, wholesalers, and distributors outside the**
323 **state.**

324 A manufacturer, wholesaler, or distributor outside the state, shipping liquor into the
325 state, for sale, use, or consumption within the state shall, before the last day of each month, file
326 with the commission a return prescribed by the commission for the preceding calendar month
327 and containing any information required by the commission.

328 Section 12. Section **59-15a-108** is enacted to read:

329 **59-15a-108. Report -- Effect of failure to file.**

330 If a person who is liable for the mark up and is required by this chapter or by the rules
331 of the commission to file a report with respect to the mark up or to file a report which contains
332 information required to determine the amount of mark up, fails, neglects, or refuses to file the
333 report, the commission shall estimate the amount of liquor upon which the mark up is payable,
334 and assess the mark up.

335 Section 13. Section **59-15a-109** is enacted to read:

336 **59-15a-109. Mark up money to be paid to state treasurer.**

337 Mark up collected under this chapter shall be paid by the commission to the state

338 treasurer daily for deposit in the Liquor Control Fund.

339 Section 14. **Effective date.**

340 Except for Section 53-1-119 which takes effect May 8, 2012, this bill takes effect on

341 July 1, 2012.

Legislative Review Note
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Office of Legislative Research and General Counsel