

1 **ALCOHOLIC BEVERAGE CONTROL RELATED AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John L. Valentine**

5 House Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies the Alcoholic Beverage Control Act, the Open and Public Meetings
9 Act, and the Government Records Access and Management Act, to address the
10 regulation of alcoholic products.
11

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definition provision;
- 15 ▶ changes the Alcoholic Beverage Control Commission to a seven member
16 commission and makes related changes;
- 17 ▶ addresses removal of commission members and chair;
- 18 ▶ creates subcommittees of the commission;
- 19 ▶ clarifies that the commission's policy authority is to be consistent with the policy
20 established by the Legislature by statute;
- 21 ▶ provides for appointment and termination of the director;
- 22 ▶ addresses appointment of interim director;
- 23 ▶ imposes terms on the length of time a director serves;
- 24 ▶ provides for the hiring and firing of upper management only with the approval of
25 the commission;
- 26 ▶ creates the Alcoholic Beverage Control Advisory Board;
- 27 ▶ addresses application of Utah Procurement Code;



- 28 ▶ addresses audits;
- 29 ▶ provides for internal audits division;
- 30 ▶ modifies provisions related to markup for small manufacturers;
- 31 ▶ addresses requirements for package agency agreements;
- 32 ▶ requires a hearing by a hearing examiner of a department recommendation to not
- 33 renew a license or to revoke a license;
- 34 ▶ modifies operational requirements for a reception center;
- 35 ▶ addresses provisions related to the transfer of retail licenses;
- 36 ▶ authorizes the director to issue or deny issuance of certain permits with the approval
- 37 of the Compliance, Licensing, and Enforcement Subcommittee, and subject to
- 38 revocation or issuance by the Commission;
- 39 ▶ addresses notification of an event to law enforcement;
- 40 ▶ requires the director to issue monthly reports to the commission of the director's
- 41 activities relative to permits;
- 42 ▶ allows certain permittees to change the location of where to store, sell, offer for
- 43 sale, furnish, or allow consumption with the approval of the director and the
- 44 Compliance, Licensing, and Enforcement Subcommittee;
- 45 ▶ addresses purposes of which the commission may hold a closed meeting;
- 46 ▶ provides that certain records related to the department or commission are protected
- 47 records; and
- 48 ▶ makes technical and conforming amendments.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill takes effect on July 1, 2012.

52a **§→ This bill coordinates with H.B. 354, Alcoholic Beverage Amendments, to merge substantive**

52b **amendments.**

52c **This bill coordinates with H.B. 142, Alcohol Amendments, to merge substantive**

52d **amendments.** ←§

53 **Utah Code Sections Affected:**

54 AMENDS:

- 55 **32B-1-102**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 56 **32B-2-201**, as last amended by Laws of Utah 2011, Chapters 308 and 334
- 57 **32B-2-202**, as last amended by Laws of Utah 2011, Chapter 334
- 58 **32B-2-205**, as last amended by Laws of Utah 2011, Chapter 334

- 59 **32B-2-206**, as last amended by Laws of Utah 2011, Chapter 336
- 60 **32B-2-207**, as enacted by Laws of Utah 2010, Chapter 276
- 61 **32B-2-209**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 62 **32B-2-302**, as enacted by Laws of Utah 2010, Chapter 276
- 63 **32B-2-304**, as enacted by Laws of Utah 2010, Chapter 276
- 64 **32B-2-605**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 65 **32B-3-204**, as enacted by Laws of Utah 2010, Chapter 276
- 66 **32B-6-805**, as enacted by Laws of Utah 2011, Chapter 334
- 67 **32B-8a-302 (Effective 07/01/12)**, as enacted by Laws of Utah 2011, Chapter 334
- 68 **32B-8a-303 (Effective 07/01/12)**, as enacted by Laws of Utah 2011, Chapter 334
- 69 **32B-9-201**, as enacted by Laws of Utah 2010, Chapter 276
- 70 **32B-9-202**, as enacted by Laws of Utah 2010, Chapter 276
- 71 **32B-9-204**, as last amended by Laws of Utah 2011, Chapters 307 and 334
- 72 **32B-9-303**, as enacted by Laws of Utah 2010, Chapter 276
- 73 **32B-9-403**, as enacted by Laws of Utah 2010, Chapter 276
- 74 **32B-9-404**, as enacted by Laws of Utah 2010, Chapter 276
- 75 **52-4-205**, as last amended by Laws of Utah 2011, Chapters 46 and 334
- 76 **63G-2-305**, as last amended by Laws of Utah 2011, Chapters 18, 46, 55, 80, 151, and

77 161

78 **63I-5-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

79 ENACTS:

80 **32B-2-201.5**, Utah Code Annotated 1953

81 **32B-2-302.5**, Utah Code Annotated 1953

82 **32B-2-210**, Utah Code Annotated 1953

82a **§→ Utah Code Sections Affected by Coordination Clause:**

82b **32B-2-210, Utah Code Annotated 1953**

82c **59-15a-102, Utah Code Annotated 1953**

82d **59-15a-103, Utah Code Annotated 1953 ←§**

83

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

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

86 **32B-1-102. Definitions.**

87 As used in this title:

88 (1) "Airport lounge" means a business location:

89 (a) at which an alcoholic product is sold at retail for consumption on the premises; and

90 (b) that is located at an international airport with a United States Customs office on the
91 premises of the international airport.

92 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,
93 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

94 (3) "Alcoholic beverage" means the following:

95 (a) beer; or

96 (b) liquor.

97 (4) (a) "Alcoholic product" means a product that:

98 (i) contains at least .5% of alcohol by volume; and

99 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
100 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
101 in an amount equal to or greater than .5% of alcohol by volume.

102 (b) "Alcoholic product" includes an alcoholic beverage.

103 (c) "Alcoholic product" does not include any of the following common items that
104 otherwise come within the definition of an alcoholic product:

105 (i) except as provided in Subsection (4)(d), an extract;

106 (ii) vinegar;

107 (iii) cider;

108 (iv) essence;

109 (v) tincture;

110 (vi) food preparation; or

111 (vii) an over-the-counter medicine.

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

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

115 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

116 (b) described in Section 62A-15-401.

117 (6) "Banquet" means an event:

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

120 (i) hotel;

- 121 (ii) resort facility;
- 122 (iii) sports center; or
- 123 (iv) convention center;
- 124 (b) for which there is a contract:
- 125 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
- 126 and
- 127 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
- 128 provide an alcoholic product at the event; and
- 129 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.
- 130 (7) (a) "Bar" means a surface or structure:
- 131 (i) at which an alcoholic product is:
- 132 (A) stored; or
- 133 (B) dispensed; or
- 134 (ii) from which an alcoholic product is served.
- 135 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any
- 136 place of the surface or structure an alcoholic product is:
- 137 (i) stored; or
- 138 (ii) dispensed.
- 139 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:
- 140 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
- 141 volume or 3.2% by weight; and
- 142 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 143 (b) "Beer" may or may not contain hops or other vegetable products.
- 144 (c) "Beer" includes a product that:
- 145 (i) contains alcohol in the percentages described in Subsection (8)(a); and
- 146 (ii) is referred to as:
- 147 (A) beer;
- 148 (B) ale;
- 149 (C) porter;
- 150 (D) stout;
- 151 (E) lager; or

- 152 (F) a malt or malted beverage.
- 153 (d) "Beer" does not include a flavored malt beverage.
- 154 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,
155 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.
- 156 (10) "Beer retailer" means a business:
 - 157 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,
158 whether for consumption on or off the business premises; and
 - 159 (b) to whom a license is issued:
 - 160 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
161 Beer Retailer Local Authority; or
 - 162 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
163 and Chapter 6, Part 7, On-premise Beer Retailer License.
 - 164 (11) "Beer wholesaling license" means a license:
 - 165 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
 - 166 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
167 retail licensees or off-premise beer retailers.
 - 168 (12) "Billboard" means a public display used to advertise, including:
 - 169 (a) a light device;
 - 170 (b) a painting;
 - 171 (c) a drawing;
 - 172 (d) a poster;
 - 173 (e) a sign;
 - 174 (f) a signboard; or
 - 175 (g) a scoreboard.
 - 176 (13) "Brewer" means a person engaged in manufacturing:
 - 177 (a) beer;
 - 178 (b) heavy beer; or
 - 179 (c) a flavored malt beverage.
 - 180 (14) "Brewery manufacturing license" means a license issued in accordance with
181 Chapter 11, Part 5, Brewery Manufacturing License.
 - 182 (15) "Certificate of approval" means a certificate of approval obtained from the

183 department under Section 32B-11-201.

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

186 (a) under a single contract;

187 (b) at a fixed charge in accordance with the bus company's tariff; and

188 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
189 motor vehicle, and a driver to travel together to one or more specified destinations.

190 (17) "Church" means a building:

191 (a) set apart for worship;

192 (b) in which religious services are held;

193 (c) with which clergy is associated; and

194 (d) that is tax exempt under the laws of this state.

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

197 (b) "Club license" includes:

198 (i) a dining club license;

199 (ii) an equity club license;

200 (iii) a fraternal club license; or

201 (iv) a social club license.

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

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

205 (21) "Community location" means:

206 (a) a public or private school;

207 (b) a church;

208 (c) a public library;

209 (d) a public playground; or

210 (e) a public park.

211 (22) "Community location governing authority" means:

212 (a) the governing body of the community location; or

213 (b) if the commission does not know who is the governing body of a community

214 location, a person who appears to the commission to have been given on behalf of the
215 community location the authority to prohibit an activity at the community location.

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

217 (a) a bottle;

218 (b) a vessel; or

219 (c) a similar item.

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

221 (a) in total at least 30,000 square feet; and

222 (b) otherwise defined as a "convention center" by the commission by rule.

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

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

227 (i) stored; or

228 (ii) dispensed.

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

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

232 (a) an auditor or inspector; and

233 (b) employed by the department.

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

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

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

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

243 (a) against a person subject to administrative action; and

244 (b) that is brought on the basis of a violation of this title.

- 245 (32) (a) Subject to Subsection (32)(b), "dispense" means:
- 246 (i) drawing of an alcoholic product:
- 247 (A) from an area where it is stored; or
- 248 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),
- 249 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and
- 250 (ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of
- 251 the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the
- 252 retail licensee.
- 253 (b) The definition of "dispense" in this Subsection (32) applies only to:
- 254 (i) a full-service restaurant license;
- 255 (ii) a limited-service restaurant license;
- 256 (iii) a reception center license; and
- 257 (iv) a beer-only restaurant license.
- 258 (33) "Distillery manufacturing license" means a license issued in accordance with
- 259 Chapter 11, Part 4, Distillery Manufacturing License.
- 260 (34) "Distressed merchandise" means an alcoholic product in the possession of the
- 261 department that is saleable, but for some reason is unappealing to the public.
- 262 (35) "Educational facility" includes:
- 263 (a) a nursery school;
- 264 (b) an infant day care center; and
- 265 (c) a trade and technical school.
- 266 (36) "Equity club license" means a license issued in accordance with Chapter 5, Retail
- 267 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an
- 268 equity club license.
- 269 (37) "Event permit" means:
- 270 (a) a single event permit; or
- 271 (b) a temporary beer event permit.
- 272 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being
- 273 considered in determining the total number of a retail license that the commission may issue at
- 274 any time.
- 275 (39) (a) "Flavored malt beverage" means a beverage:

276 (i) that contains at least .5% alcohol by volume;
277 (ii) that is treated by processing, filtration, or another method of manufacture that is not
278 generally recognized as a traditional process in the production of a beer as described in 27
279 C.F.R. Sec. 25.55;
280 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop
281 extract; and
282 (iv) (A) for which the producer is required to file a formula for approval with the
283 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or
284 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
285 (b) "Flavored malt beverage" is considered liquor for purposes of this title.
286 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,
287 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
288 as a fraternal club license.
289 (41) "Full-service restaurant license" means a license issued in accordance with
290 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.
291 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
292 an alcoholic product, by sale or otherwise.
293 (b) "Furnish" includes to:
294 (i) serve;
295 (ii) deliver; or
296 (iii) otherwise make available.
297 (43) "Guest" means an individual who meets the requirements of Subsection
298 32B-6-407(9).
299 (44) "Health care practitioner" means:
300 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
301 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
302 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
303 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
304 Act;
305 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
306 Nurse Practice Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (a) law; or

337 (b) court order.

338 (51) "Intoxicated" means that a person:
339 (a) is significantly impaired as to the person's mental or physical functions as a result of
340 the use of:
341 (i) an alcoholic product;
342 (ii) a controlled substance;
343 (iii) a substance having the property of releasing toxic vapors; or
344 (iv) a combination of Subsections (51)(a)(i) through (iii); and
345 (b) exhibits plain and easily observed outward manifestations of behavior or physical
346 signs produced by the over consumption of an alcoholic product.
347 (52) "Investigator" means an individual who is:
348 (a) a department compliance officer; or
349 (b) a nondepartment enforcement officer.
350 (53) "Invitee" is as defined in Section 32B-8-102.
351 (54) "License" means:
352 (a) a retail license;
353 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
354 Licenses Act;
355 (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;
356 or
357 (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.
358 (55) "Licensee" means a person who holds a license.
359 (56) "Limited-service restaurant license" means a license issued in accordance with
360 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.
361 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other
362 than a bus or taxicab:
363 (a) in which the driver and a passenger are separated by a partition, glass, or other
364 barrier;
365 (b) that is provided by a business entity to one or more individuals at a fixed charge in
366 accordance with the business entity's tariff; and
367 (c) to give the one or more individuals the exclusive use of the limousine and a driver
368 to travel to one or more specified destinations.

- 369 (58) (a) (i) "Liquor" means a liquid that:
- 370 (A) is:
- 371 (I) alcohol;
- 372 (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- 373 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
- 374 (IV) other drink or drinkable liquid; and
- 375 (B) (I) contains at least .5% alcohol by volume; and
- 376 (II) is suitable to use for beverage purposes.
- 377 (ii) "Liquor" includes:
- 378 (A) heavy beer;
- 379 (B) wine; and
- 380 (C) a flavored malt beverage.
- 381 (b) "Liquor" does not include beer.
- 382 (59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.
- 383 (60) "Liquor warehousing license" means a license that is issued:
- 384 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- 385 (b) to a person, other than a licensed manufacturer, who engages in the importation for
- 386 storage, sale, or distribution of liquor regardless of amount.
- 387 (61) "Local authority" means:
- 388 (a) for premises that are located in an unincorporated area of a county, the governing
- 389 body of a county; or
- 390 (b) for premises that are located in an incorporated city or a town, the governing body
- 391 of the city or town.
- 392 (62) "Lounge or bar area" is as defined by rule made by the commission.
- 393 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
- 394 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 395 (64) "Member" means an individual who, after paying regular dues, has full privileges
- 396 in an equity club licensee or fraternal club licensee.
- 397 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
- 398 or homeport facility for a ship:
- 399 (i) (A) under the control of the United States Department of Defense; or

- 400 (B) of the National Guard;
- 401 (ii) that is located within the state; and
- 402 (iii) including a leased facility.
- 403 (b) "Military installation" does not include a facility used primarily for:
- 404 (i) civil works;
- 405 (ii) a rivers and harbors project; or
- 406 (iii) a flood control project.
- 407 (66) "Minor" means an individual under the age of 21 years.
- 408 (67) "Nondepartment enforcement agency" means an agency that:
- 409 (a) (i) is a state agency other than the department; or
- 410 (ii) is an agency of a county, city, or town; and
- 411 (b) has a responsibility to enforce one or more provisions of this title.
- 412 (68) "Nondepartment enforcement officer" means an individual who is:
- 413 (a) a peace officer, examiner, or investigator; and
- 414 (b) employed by a nondepartment enforcement agency.
- 415 (69) (a) "Off-premise beer retailer" means a beer retailer who is:
- 416 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local
- 417 Authority; and
- 418 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
- 419 premises.
- 420 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 421 (70) "On-premise banquet license" means a license issued in accordance with Chapter
- 422 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.
- 423 (71) "On-premise beer retailer" means a beer retailer who is:
- 424 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
- 425 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer
- 426 Retailer License; and
- 427 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
- 428 premises:
- 429 (i) regardless of whether the beer retailer sells beer for consumption off the licensed
- 430 premises; and

- 431 (ii) on and after March 1, 2012, operating:
- 432 (A) as a tavern; or
- 433 (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).
- 434 (72) "Opaque" means impenetrable to sight.
- 435 (73) "Package agency" means a retail liquor location operated:
- 436 (a) under an agreement with the department; and
- 437 (b) by a person:
- 438 (i) other than the state; and
- 439 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
- 440 Agency, to sell packaged liquor for consumption off the premises of the package agency.
- 441 (74) "Package agent" means a person who holds a package agency.
- 442 (75) "Patron" means an individual to whom food, beverages, or services are sold,
- 443 offered for sale, or furnished, or who consumes an alcoholic product including:
- 444 (a) a customer;
- 445 (b) a member;
- 446 (c) a guest;
- 447 (d) an attendee of a banquet or event;
- 448 (e) an individual who receives room service;
- 449 (f) a resident of a resort;
- 450 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;
- 451 or
- 452 (h) an invitee.
- 453 (76) "Permittee" means a person issued a permit under:
- 454 (a) Chapter 9, Event Permit Act; or
- 455 (b) Chapter 10, Special Use Permit Act.
- 456 (77) "Person subject to administrative action" means:
- 457 (a) a licensee;
- 458 (b) a permittee;
- 459 (c) a manufacturer;
- 460 (d) a supplier;
- 461 (e) an importer;

462 (f) one of the following holding a certificate of approval:

463 (i) an out-of-state brewer;

464 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

465 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

466 (g) staff of:

467 (i) a person listed in Subsections (77)(a) through (f); or

468 (ii) a package agent.

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

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

473 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
474 to prescribe a controlled substance, other drug, or device for medicinal purposes;

475 (b) the order is made in the course of that health care practitioner's professional
476 practice; and

477 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

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

479 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
480 group; and

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

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

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

486 (i) an identification card;

487 (ii) an identification that:

488 (A) is substantially similar to an identification card;

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

491 (C) includes date of birth; and

492 (D) has a picture affixed;

- 493 (iii) a valid driver license certificate that:
- 494 (A) includes date of birth;
- 495 (B) has a picture affixed; and
- 496 (C) is issued:
- 497 (I) under Title 53, Chapter 3, Uniform Driver License Act; or
- 498 (II) in accordance with the laws of the state in which it is issued;
- 499 (iv) a military identification card that:
- 500 (A) includes date of birth; and
- 501 (B) has a picture affixed; or
- 502 (v) a valid passport.
- 503 (b) "Proof of age" does not include a driving privilege card issued in accordance with
- 504 Section 53-3-207.
- 505 (82) (a) "Public building" means a building or permanent structure that is:
- 506 (i) owned or leased by:
- 507 (A) the state; or
- 508 (B) a local government entity; and
- 509 (ii) used for:
- 510 (A) public education;
- 511 (B) transacting public business; or
- 512 (C) regularly conducting government activities.
- 513 (b) "Public building" does not include a building owned by the state or a local
- 514 government entity when the building is used by a person, in whole or in part, for a proprietary
- 515 function.
- 516 (83) "Public conveyance" means a conveyance to which the public or a portion of the
- 517 public has access to and a right to use for transportation, including an airline, railroad, bus,
- 518 boat, or other public conveyance.
- 519 (84) "Reception center" means a business that:
- 520 (a) operates facilities that are at least 5,000 square feet; and
- 521 (b) has as its primary purpose the leasing of the facilities described in Subsection
- 522 (84)(a) to a third party for the third party's event.
- 523 (85) "Reception center license" means a license issued in accordance with Chapter 5,

524 Retail License Act, and Chapter 6, Part 8, Reception Center License.

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

526 (i) inscribed on a tangible medium; or

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

528 (b) "Record" includes:

529 (i) a book;

530 (ii) a book of account;

531 (iii) a paper;

532 (iv) a contract;

533 (v) an agreement;

534 (vi) a document; or

535 (vii) a recording in any medium.

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

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

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

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

540 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail

541 License Act, and Chapter 8, Resort License Act.

542 (92) "Restaurant" means a business location:

543 (a) at which a variety of foods are prepared;

544 (b) at which complete meals are served to the general public; and

545 (c) that is engaged primarily in serving meals to the general public.

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

547 (a) a full-service restaurant license;

548 (b) a limited-service restaurant license;

549 (c) a club license;

550 (d) an airport lounge license;

551 (e) an on-premise banquet license;

552 (f) an on-premise beer license;

553 (g) a reception center license; or

554 (h) a beer-only restaurant license.

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

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

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

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

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

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

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

- 569 (a) for the entertainment of one or more patrons;
- 570 (b) on the premises of:
 - 571 (i) a social club licensee; or
 - 572 (ii) a tavern;
- 573 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- 574 (d) on a contractual or voluntary basis; and
- 575 (e) whether or not the person is designated as:
 - 576 (i) an employee;
 - 577 (ii) an independent contractor;
 - 578 (iii) an agent of the licensee; or
 - 579 (iv) a different type of classification.

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

582 (100) "Small brewer" means a brewer who manufactures less than ~~80,000~~ [f] **60,000** [f]
582a [~~80,000~~] ~~←~~ \$
583 barrels of beer, heavy beer, and flavored malt beverages per year.

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

586 social club license.

587 (102) "Special use permit" means a permit issued in accordance with Chapter 10,

588 Special Use Permit Act.

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

590 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by

591 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

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

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

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

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

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

600 (b) "Staff" includes:

601 (i) an officer;

602 (ii) a director;

603 (iii) an employee;

604 (iv) personnel management;

605 (v) an agent of the licensee, including a managing agent;

606 (vi) an operator; or

607 (vii) a representative.

608 (106) "State of nudity" means:

609 (a) the appearance of:

610 (i) the nipple or areola of a female human breast;

611 (ii) a human genital;

612 (iii) a human pubic area; or

613 (iv) a human anus; or

614 (b) a state of dress that fails to opaquely cover:

615 (i) the nipple or areola of a female human breast;

616 (ii) a human genital;

617 (iii) a human pubic area; or

618 (iv) a human anus.

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

621 (a) the nipple and areola of the female human breast in a shape and color other than the
622 natural shape and color of the nipple and areola; and

623 (b) the human genitals, pubic area, and anus:

624 (i) with no less than the following at its widest point:

625 (A) four inches coverage width in the front of the human body; and

626 (B) five inches coverage width in the back of the human body; and

627 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

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

629 (i) located on premises owned or leased by the state; and

630 (ii) operated by a state employee.

631 (b) "State store" does not include:

632 (i) a package agency;

633 (ii) a licensee; or

634 (iii) a permittee.

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

637 (b) "Store" means to place or maintain in a location an alcoholic product from which a
638 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
639 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
640 32B-6-905(12)(b)(ii).

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

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

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

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

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

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

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

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

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

656 (a) is unsaleable because the container is:

657 (i) unlabeled;

658 (ii) leaky;

659 (iii) damaged;

660 (iv) difficult to open; or

661 (v) partly filled;

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

663 (ii) has contents that are:

664 (A) cloudy;

665 (B) spoiled; or

666 (C) chemically determined to be impure; or

667 (iii) contains:

668 (A) sediment; or

669 (B) a foreign substance; or

670 (c) is otherwise considered by the department as unfit for sale.

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

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

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

678 Section 2. Section **32B-2-201** is amended to read:

679 **32B-2-201. Alcoholic Beverage Control Commission created.**

680 (1) There is created the "Alcoholic Beverage Control Commission." The commission is
681 the governing board over the department.

682 (2) (a) The commission is composed of [~~five~~] seven part-time commissioners
683 appointed by the governor with the consent of the Senate.

684 (b) No more than [~~three~~] four commissioners may be of the same political party.

685 (3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the
686 governor shall appoint each new commissioner or reappointed commissioner to a four-year
687 term.

688 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
689 time of appointment or reappointment, adjust the length of terms to ensure that the terms of no
690 more than [~~two~~] three commissioners expire in a fiscal year.

691 (4) (a) When a vacancy occurs on the commission for any reason, the governor shall
692 appoint a replacement for the unexpired term with the consent of the Senate.

693 (b) Unless removed in accordance with Subsection (6), a commissioner shall remain on
694 the commission after the expiration of a term until a successor is appointed by the governor,
695 with the consent of the Senate.

696 (5) A commissioner shall take the oath of office.

697 (6) (a) The governor may remove a commissioner from the commission for cause,
698 neglect of duty, inefficiency, or malfeasance after a public hearing conducted by:

699 (i) the governor; or

700 (ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

701 (b) At least 10 days before the hearing described in Subsection (6)(a), the governor
702 shall provide the commissioner notice of:

703 (i) the date, time, and place of the hearing; and

704 (ii) the alleged grounds for the removal.

705 (c) The commissioner shall have an opportunity to:

706 (i) attend the hearing;

707 (ii) present witnesses and other evidence; and

708 (iii) confront and cross examine witnesses.

709 (d) After a hearing under this Subsection (6):

- 710 (i) the person conducting the hearing shall prepare written findings of fact and
711 conclusions of law; and
- 712 (ii) the governor shall serve a copy of the prepared findings and conclusions upon the
713 commissioner.
- 714 (e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing
715 examiner shall issue a written recommendation to the governor in addition to complying with
716 Subsection (6)(d).
- 717 (f) A commissioner has five days from the day on which the commissioner receives the
718 findings and conclusions described in Subsection (6)(d) to file written objections to the
719 recommendation before the governor issues a final order.
- 720 (g) The governor shall:
- 721 (i) issue the final order under this Subsection (6) in writing; and
722 (ii) serve the final order upon the commissioner.
- 723 (7) A commissioner may not receive compensation or benefits for the commissioner's
724 service, but may receive per diem and travel expenses in accordance with:
- 725 (a) Section 63A-3-106;
726 (b) Section 63A-3-107; and
727 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
728 63A-3-107.
- 729 (8) (a) The governor shall annually appoint the chair of the commission. A
730 commissioner serves as chair to the commission at the pleasure of the governor. If removed as
731 chair, the commissioner continues to serve as a commissioner unless removed as a
732 commissioner under Subsection (6).
- 733 (b) The commission shall elect:
- 734 (i) another commissioner to serve as vice chair; and
735 (ii) other commission officers as the commission considers advisable.
- 736 (c) A commissioner elected under Subsection (8)(b) shall serve in the office to which
737 the commissioner is elected at the pleasure of the commission.
- 738 (9) (a) Each commissioner has equal voting rights on a commission matter when in
739 attendance at a commission meeting.
- 740 (b) [~~Three~~] Four commissioners is a quorum for conducting commission business.

741 (c) A majority vote of the quorum present at a meeting is required for the commission
742 to act.

743 (10) (a) The commission shall meet at least monthly, but may hold other meetings at
744 times and places as scheduled by:

745 (i) the commission;

746 (ii) the chair; or

747 (iii) three commissioners upon filing a written request for a meeting with the chair.

748 (b) Notice of the time and place of a commission meeting shall be given to each
749 commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public
750 Meetings Act. A commission meeting is open to the public, except for a commission meeting
751 or portion of a commission meeting that is closed by the commission as authorized by Sections
752 52-4-204 and 52-4-205.

753 Section 3. Section **32B-2-201.5** is enacted to read:

754 **32B-2-201.5. Commission subcommittee -- Chair's oversight responsibilities.**

755 (1) There is created within the commission two subcommittees consisting of members
756 of the commission and known as the:

757 (a) "Compliance, Licensing, and Enforcement Subcommittee"; and

758 (b) "Operations and Procurement Subcommittee."

759 (2) A subcommittee shall have four members, including the chair of the commission.

760 The chair of the commission shall appoint the members to a subcommittee.

761 (3) The director shall consult with the chair of the commission over:

762 (a) the internal affairs of the department; and

763 (b) subject to Section 32B-2-207, hiring and firing of upper management of the
764 department.

765 (4) The commission by rule, made in accordance with Title 63G, Chapter 3, Utah
766 Administrative Rulemaking Act, shall establish the duties of the subcommittees created under
767 this section.

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

769 **32B-2-202. Powers and duties of the commission.**

770 (1) The commission shall:

771 (a) consistent with the policy established by the Legislature by statute, act as a general

- 772 policymaking body on the subject of alcoholic product control;
- 773 (b) adopt and issue policies, rules, and procedures;
- 774 (c) set policy by written rules that establish criteria and procedures for:
- 775 (i) issuing, denying, not renewing, suspending, or revoking a package agency, license,
- 776 permit, or certificate of approval; and
- 777 (ii) determining the location of a state store, package agency, or retail licensee;
- 778 (d) decide within the limits, and under the conditions imposed by this title, the number
- 779 and location of state stores, package agencies, and retail licensees in the state;
- 780 (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses,
- 781 permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing,
- 782 consumption, manufacture, and distribution of an alcoholic product:
- 783 (i) a package agency;
- 784 (ii) a full-service restaurant license;
- 785 (iii) a limited-service restaurant license;
- 786 (iv) a club license;
- 787 (v) an airport lounge license;
- 788 (vi) an on-premise banquet license;
- 789 (vii) a resort license, under which four or more sublicenses may be included;
- 790 (viii) an on-premise beer retailer license;
- 791 (ix) a reception center license;
- 792 (x) a beer-only restaurant license;
- 793 (xi) subject to Subsection (4), a single event permit;
- 794 (xii) subject to Subsection (4), a temporary beer event permit;
- 795 (xiii) a special use permit;
- 796 (xiv) a manufacturing license;
- 797 (xv) a liquor warehousing license;
- 798 (xvi) a beer wholesaling license; and
- 799 (xvii) one of the following that holds a certificate of approval:
- 800 (A) an out-of-state brewer;
- 801 (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
- 802 (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;

803 (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke one of the
804 following conditional licenses for the purchase, storage, sale, furnishing, consumption,
805 manufacture, and distribution of an alcoholic product:

- 806 (i) a conditional full-service restaurant license; or
- 807 (ii) a conditional limited-service restaurant license;
- 808 (g) prescribe the duties of the department in assisting the commission in issuing a
809 package agency, license, permit, or certificate of approval under this title;
- 810 (h) to the extent a fee is not specified in this title, establish a fee allowed under this title
811 in accordance with Section 63J-1-504;
- 812 (i) fix prices at which liquor is sold that are the same at all state stores, package
813 agencies, and retail licensees;
- 814 (j) issue and distribute price lists showing the price to be paid by a purchaser for each
815 class, variety, or brand of liquor kept for sale by the department;
- 816 (k) (i) require the director to follow sound management principles; and
817 (ii) require periodic reporting from the director to ensure that:
818 (A) sound management principles are being followed; and
819 (B) policies established by the commission are being observed;
- 820 (l) (i) receive, consider, and act in a timely manner upon the reports, recommendations,
821 and matters submitted by the director to the commission; and
822 (ii) do the things necessary to support the department in properly performing the
823 department's duties;
- 824 (m) obtain temporarily and for special purposes the services of an expert or person
825 engaged in the practice of a profession, or a person who possesses a needed skill if:
826 (i) considered expedient; and
827 (ii) approved by the governor;
- 828 (n) prescribe the conduct, management, and equipment of premises upon which an
829 alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- 830 (o) make rules governing the credit terms of beer sales within the state to retail
831 licensees; and
- 832 (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take
833 disciplinary action against a person subject to administrative action.

834 (2) [The] Consistent with the policy established by the Legislature by statute, the power
835 of the commission to do the following is plenary, except as otherwise provided by this title, and
836 not subject to review:

837 (a) establish a state store;

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

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

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

843 (4) Notwithstanding Subsections (1)(e)(xi) and (xii), the director or deputy director
844 may issue an event permit in accordance with Chapter 9, Event Permit Act.

845 Section 5. Section **32B-2-205** is amended to read:

846 **32B-2-205. Director of alcoholic beverage control.**

847 (1) (a) ~~[The commission by a vote of four of the five commissioners, with the approval~~
848 ~~of the]~~ In accordance with Subsection (1)(b), the governor, [and] with the consent of the
849 Senate, shall appoint a director of alcoholic beverage control [who] to a four-year term. The
850 director may be appointed to more than one four-year term. The director is the administrative
851 head of the department.

852 (b) (i) The governor shall appoint the director from nominations made by the
853 commission.

854 (ii) The commission shall submit the nomination of three individuals to the governor
855 for appointment of the director.

856 (iii) By no later than 30 calendar days from the day on which the governor receives the
857 three nominations submitted by the commission, the governor may:

858 (A) appoint the director; or

859 (B) reject the three nominations.

860 (iv) If the governor rejects the nominations or fails to take action within the 30-day
861 period, the commission shall nominate three different individuals from which the governor may
862 appoint the director or reject the nominations until such time as the governor appoints the
863 director.

864 (v) The governor may reappoint the director without seeking nominations from the

865 commission. Reappointment of a director is subject to the consent of the Senate.

866 (c) If there is a vacancy in the position of director, during the nomination process
 867 described in Subsection (1)(b), the governor may appoint an interim director for a period of up
 868 to 30 calendar days. If a director is not appointed within the 30-day period, the interim director
 869 may continue to serve beyond the 30-day period subject to the consent of the Senate at the next
 870 scheduled time for the Senate giving consent to appointments of the governor. Except that if
 871 the Senate does not act on the consent to the appointment of the interim director within 60 days
 872 of the end of the initial 30-day period, the interim director may continue as the interim director.

873 ~~[(b)]~~ (d) The director ~~[serves at the pleasure of the commission, except that the director~~
 874 ~~may only be removed from office by a vote of four commissioners:]~~ may be terminated by:

875 (i) the commission by a vote of four commissioners; or

876 (ii) the governor after consultation with the commission.

877 ~~[(c)]~~ (e) The director may not be a commissioner.

878 ~~[(d)]~~ (f) The director shall:

879 (i) be qualified in administration;

880 (ii) be knowledgeable by experience and training in the field of business management;

881 and

882 (iii) possess any other qualification prescribed by the commission.

883 (2) The governor shall establish the director's compensation within the salary range
 884 fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

885 (3) The director shall:

886 (a) carry out the policies of the commission;

887 (b) carry out the policies of the department;

888 (c) fully inform the commission of the operations and administrative activities of the
 889 department; and

890 (d) assist the commission in the proper discharge of the commission's duties.

891 Section 6. Section **32B-2-206** is amended to read:

892 **32B-2-206. Powers and duties of the director.**

893 Subject to the powers and responsibilities of the commission under this title, the
 894 director:

895 (1) (a) shall prepare and propose to the commission general policies, rules, and

896 procedures governing the administrative activities of the department; and
897 (b) may submit other recommendations to the commission as the director considers in
898 the interest of the commission's or the department's business;
899 (2) within the general policies, rules, and procedures of the commission, shall:
900 (a) provide day-to-day direction, coordination, and delegation of responsibilities in the
901 administrative activities of the department's business; and
902 (b) make internal department policies and procedures relating to:
903 (i) department personnel matters; and
904 (ii) the day-to-day operation of the department;
905 (3) subject to Section 32B-2-207, shall appoint or employ personnel as considered
906 necessary in the administration of this title, and with regard to the personnel shall:
907 (a) prescribe the conditions of employment;
908 (b) define the respective duties and powers; and
909 (c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel
910 Management Act;
911 (4) shall establish and secure adherence to a system of reports, controls, and
912 performance in matters relating to personnel, security, department property management, and
913 operation of:
914 (a) a department office;
915 (b) a warehouse;
916 (c) a state store; and
917 (d) a package agency;
918 (5) within the policies, rules, and procedures approved by the commission and
919 provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale,
920 furnishing, transportation, or delivery of an alcoholic product;
921 (6) shall prepare for commission approval:
922 (a) recommendations regarding the location, establishment, relocation, and closure of a
923 state store or package agency;
924 (b) recommendations regarding the issuance, denial, nonrenewal, suspension, or
925 revocation of a license, permit, or certificate of approval;
926 (c) an annual budget, proposed legislation, and reports as required by law and sound

927 business principles;

928 (d) plans for reorganizing divisions of the department and the functions of the
929 divisions;

930 (e) manuals containing commission and department policies, rules, and procedures;

931 (f) an inventory control system;

932 (g) any other report or recommendation requested by the commission;

933 (h) rules described in Subsection 32B-2-202(1)(o) governing the credit terms of the
934 sale of beer;

935 (i) rules governing the calibration, maintenance, and regulation of a calibrated metered
936 dispensing system;

937 (j) rules governing the display of a list of types and brand names of liquor furnished
938 through a calibrated metered dispensing system;

939 (k) price lists issued and distributed showing the price to be paid for each class, variety,
940 or brand of liquor kept for sale at a state store, package agency, or retail licensee;

941 (l) policies or rules prescribing the books of account maintained by the department and
942 by a state store, package agency, or retail licensee; and

943 (m) a policy prescribing the manner of giving and serving a notice required by this title
944 or rules made under this title;

945 (7) shall make available through the department to any person, upon request, a copy of
946 a policy made by the director;

947 (8) shall make and maintain a current copy of a manual that contains the rules and
948 policies of the commission and department available for public inspection;

949 (9) (a) after consultation with the governor, shall determine whether an alcoholic
950 product should not be sold, offered for sale, or otherwise furnished in an area of the state
951 during a period of emergency that is proclaimed by the governor to exist in that area; and

952 (b) shall issue a necessary public announcement or policy with respect to the
953 determination described in Subsection (9)(a); ~~and~~

954 (10) issue event permits in accordance with Chapter 9, Event Permit Act; and
955 ~~[(10)]~~ (11) shall perform any other duty required by the commission or by law.

956 Section 7. Section **32B-2-207** is amended to read:

957 **32B-2-207. Department employees -- Requirements.**

958 (1) "Upper management" means the director, a deputy director, or other ~~§~~ **[exempt]**
 958a **schedule AD, AR, or AS** ~~←§~~
 959 employee of the department, ~~§~~ **as defined in Section 67-19-15,** ~~←§~~ except for the director of
 959a internal audits and auditors hired by the
 960 director of internal audits under Section 32B-2-302.5.

961 ~~[(1)]~~ (2) (a) Subject to this title, including the requirements of Chapter 1, Part 3,
 962 Qualifications and Background, the director may prescribe the qualifications of a department
 963 employee.

964 (b) The director may hire an employee who is upper management only with the
 965 approval of four commissioners voting in an open meeting.

966 (c) Except as provided in Section 32B-1-303, the executive director may dismiss an
 967 employee who is upper management after consultation with the chair of the commission.

968 ~~[(2)]~~ (3) (a) A person who seeks employment with the department shall file with the
 969 department an application under oath or affirmation in a form prescribed by the commission.

970 (b) Upon receiving an application, the department shall determine whether the
 971 individual is:

- 972 (i) of good moral character; and
- 973 (ii) qualified for the position sought.

974 (c) The department shall select an individual for employment or advancement with the
 975 department in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

976 ~~[(3)]~~ (4) The following are not considered a department employee:

- 977 (a) a package agent;
- 978 (b) a licensee;
- 979 (c) a staff member of a package agent; or
- 980 (d) staff of a licensee.

981 ~~[(4)]~~ (5) The department may not employ a minor to:

- 982 (a) work in:
 - 983 (i) a state store; or
 - 984 (ii) a department warehouse; or
- 985 (b) engage in an activity involving the handling of an alcoholic product.

986 Section 8. Section **32B-2-209** is amended to read:

987 **32B-2-209. Prohibited interests, relationships, and actions.**

988 (1) As used in this section:

989 (a) "Applicable department employee" means a department employee who is:
990 (i) designated as a deputy or assistant director;
991 (ii) a chief administrative officer of a division within the department;
992 (iii) a department compliance officer; or
993 (iv) an employee directly performing purchasing, licensing, or compliance functions of
994 the department.

995 (b) "Immediate family" means an individual's:

996 (i) spouse; or

997 (ii) child who is younger than 18 years of age.

998 (c) "Permit" does not include:

999 (i) an industrial or manufacturing use permit;

1000 (ii) a scientific or educational use permit; or

1001 (iii) a religious wine use permit.

1002 (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and
1003 Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable
1004 department employee may not:

1005 (a) have a pecuniary interest, whether as the holder of stock or other securities other
1006 than a mutual fund, in a person who applies for or holds a package agency, license, or permit
1007 under this title;

1008 (b) otherwise have a conflict of interest with a person who applies for or holds a
1009 package agency, license, or permit under this title;

1010 (c) have an office, position, or relationship, or be engaged in a business or avocation
1011 that interferes or is incompatible with the effective and objective fulfillment of the duties of
1012 office or employment;

1013 (d) have a direct business relationship with a person subject to administrative action
1014 under this title;

1015 (e) accept a gift, gratuity, emolument, or employment from:

1016 (i) a person who applies for or holds a package agency, license, or permit under this
1017 title; or

1018 (ii) an officer, agent, or employee of a person who applies for or holds a package
1019 agency, license, or permit under this title, except that a commissioner, the director, or an

1020 applicable department employee may accept a gift from an officer, agent, or employee if the
1021 gift is equal to or less than \$50; or

1022 (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
1023 any person to any office or employment with a person who applies for or holds a package
1024 agency, license, or permit under this title.

1025 (3) An immediate family member of a commissioner, the director, or an applicable
1026 department employee may not:

1027 (a) have a pecuniary interest, whether as the holder of stock or other securities other
1028 than a mutual fund, in a person who applies for or holds a package agency, license, or permit
1029 under this title;

1030 (b) otherwise have a conflict of interest with a person who applies for or holds a
1031 package agency, license, or permit under this title;

1032 (c) have an office, position, or relationship, or be engaged in a business or avocation
1033 that interferes or is incompatible with the effective and objective fulfillment of the duties of
1034 office or employment of the commissioner, director, or applicable department employee for
1035 whom the person is immediate family;

1036 (d) accept a gift, gratuity, emolument, or employment from:

1037 (i) a person who applies for or holds a package agency, license, or permit under this
1038 title; or

1039 (ii) an officer, agent, or employee of a person who applies for or holds a package
1040 agency, license, or permit under this title, except that an immediate family member may accept
1041 a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

1042 (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
1043 any person to any office or employment with a person who applies for or holds a package
1044 agency, license, or permit under this title.

1045 (4) An officer, agent, attorney, or employee of a person who applies for or holds a
1046 package agency, license, or permit under this title may not directly or indirectly solicit, request,
1047 or recommend to the governor, any state senator, the commission, or the department the
1048 appointment of any person:

1049 (a) as a commissioner;

1050 (b) as director of the department; or

- 1051 (c) to a department staff position.
- 1052 (5) (a) A commissioner shall disclose during a meeting of the commission a potential
- 1053 violation of this section, including the existence and nature of a professional, financial,
- 1054 business, or personal interest with a person who holds, or an applicant for, a package agency,
- 1055 license, or permit issued under this title that may result in a violation of this section.
- 1056 (b) After a commissioner makes a disclosure under Subsection (5)(a):
- 1057 (i) the commission may, by motion, determine whether there is a potential violation of
- 1058 this section;
- 1059 (ii) if the commission determines that there is a potential violation of this section:
- 1060 (A) the commission shall notify the governor; and
- 1061 (B) the commissioner may not vote on any matter that would result in the potential
- 1062 violation of this section; and
- 1063 (iii) if the commission determines that there is not a potential violation of this section,
- 1064 a commissioner may elect whether to vote on the issue that gives rise to the disclosure under
- 1065 Subsection (5)(a).
- 1066 (c) The commission shall record any declaration of a potential violation of this section
- 1067 in the minutes of the meeting.

1068 Section 9. Section **32B-2-210** is enacted to read:

1069 **32B-2-210. Alcoholic Beverage Control Advisory Board.**

- 1070 (1) There is created within the department an advisory board known as the "Alcoholic
- 1071 Beverage Control Advisory Board."
- 1072 (2) The advisory board shall consist of 12 members as follows:
- 1073 (a) the following voting members appointed by the commission, a representative of:
- 1074 (i) a full-service restaurant licensee;
- 1075 (ii) a limited-service restaurant licensee;
- 1076 (iii) a beer-only restaurant licensee;
- 1077 (iv) a social club licensee;
- 1078 (v) a fraternal club licensee;
- 1079 (vi) a dining club licensee;
- 1080 (vii) a wholesaler licensee;
- 1081 (viii) an on-premise banquet licensee;

- 1082 (ix) an on-premise beer retailer licensee; and
1083 (x) a reception center licensee;
1084 (b) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee,
1085 who serves as a voting member; and
1086 (c) the chair of the commission or the chair's designee from the members of the
1087 commission, who shall serve as a nonvoting member.
1088 (3) (a) Except as required by Subsection (3)(b), as terms of current voting members of
1089 the advisory board expire, the commission shall appoint each new member or reappointed
1090 member to a four-year term beginning July 1 and ending June 30.
1091 (b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the
1092 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1093 voting advisory board members are staggered so that approximately half of the advisory board
1094 is appointed every two years.
1095 (c) No two members of the board may be employed by the same company or nonprofit
1096 organization.
1097 (4) (a) When a vacancy occurs in the membership for any reason, the commission shall
1098 appoint a replacement for the unexpired term.
1099 (b) The commission shall terminate the term of a voting advisory board member who
1100 ceases to be representative as designated by the member's original appointment.
1101 (5) The advisory board shall meet no more than quarterly as called by the chair for the
1102 purpose of advising the commission and the department, with discussion limited to
1103 administrative rules made under this title.
1104 (6) The chair of the commission or the chair's designee shall serve as the chair of the
1105 advisory board and call the necessary meetings.
1106 (7) (a) Six members of the board constitute a quorum of the board.
1107 (b) An action of the majority when a quorum is present is the action of the board.
1108 (8) The department shall provide staff support to the advisory board.
1109 (9) A member may not receive compensation or benefits for the member's service, but
1110 may receive per diem and travel expenses in accordance with:
1111 (a) Section 63A-3-106;
1112 (b) Section 63A-3-107; and

1113 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 1114 63A-3-107.

1115 Section 10. Section **32B-2-302** is amended to read:

1116 **32B-2-302. Exempt from Division of Finance -- Application of procurement --**
 1117 **External audits.**

1118 (1) (a) The laws that govern the Division of Finance are not applicable to the
 1119 department in the purchase and sale of an alcoholic product.

1120 ~~[(2) (a) The state auditor, or a person appointed by the state auditor, shall annually~~
 1121 ~~audit the department's accounts.]~~

1122 ~~[(b) If an audit is conducted by a person appointed by the state auditor, the person shall~~
 1123 ~~make the audit report to the state auditor.]~~

1124 ~~[(c) The state auditor shall submit a copy of an audit report to the Legislature by no~~
 1125 ~~later than the January 1 following the close of the fiscal year for which the audit report is~~
 1126 ~~made.]~~

1127 (b) The department is exempt from Title 63G, Chapter 6, Utah Procurement Code, for
 1128 the purchase of an alcoholic product. The department is subject to Title 63G, Chapter 6, Utah
 1129 Procurement Code, for any purchase other than for an alcoholic product.

1130 (2) The commission shall annually:

1131 (a) select a private person to perform a financial audit of the department's accounts,
 1132 subject to the state auditor approving the private person selected to perform the financial audit;

1133 (b) notify the governor of the private person selected to perform the financial audit; and

1134 (c) determine the scope and focus of the financial audit in an open meeting of the
 1135 commission before the audit commences.

1136 (3) (a) Biannually, beginning for fiscal year 2013-14, the state auditor shall conduct an
 1137 audit of the department's:

1138 (i) management operations, best practices, and efficiency; and

1139 (ii) ethics and statutory compliance.

1140 (b) In addition to complying with Subsection (3)(a), the state auditor may engage in an
 1141 activity related to the department or commission allowed under ~~§~~→ **Utah Constitution, Article**
 1141a **VII, Section 15, or** ←~~§~~ Title 67, Chapter 3, Auditor.

1142 (4) The commission shall forward an audit report issued under Subsection (2) or (3) to
 1143 the following by no later than 30 days after the day on which the audit report is made:

- 1144 (a) the governor;
- 1145 (b) the Legislative Management Committee;
- 1146 (c) the director; and
- 1147 (d) the legislative auditor general.

1148 Section 11. Section **32B-2-302.5** is enacted to read:

1149 **32B-2-302.5. Internal audits.**

1150 (1) In accordance with Title 63I, Chapter 5, Utah Internal Audit Act, the department
1151 shall conduct various types of auditing procedures determined by the commission through an
1152 internal audit division.

1153 (2) (a) The commission shall appoint an internal audit director who shall serve at the
1154 pleasure of the commission.

1155 (b) The internal audit director shall hire auditors in the division with the approval of
1156 the commission.

1157 (c) The internal audit director may dismiss an auditor with the approval of the
1158 commission.

1159 (3) Notwithstanding Section 63I-5-301, the commission shall serve as the audit
1160 committee.

1161 (4) Subject to the other provisions of this section, the internal audit director shall have
1162 the powers and duties described in Section 63I-5-401 or any other duty prescribed by the chair
1163 of the commission. The internal audit director shall oversee and materially participate in
1164 internal audits conducted under this section.

1165 (5) (a) Once an internal audit is completed, the internal audit director shall provide an
1166 internal audit report to the director, the chair of the commission, and the other commissioners.

1167 (b) Within five business days of receipt of the internal audit, the director shall prepare a
1168 written response and deliver it to the chair of the commission and the other commissioners.

1169 (c) Within five business days of receipt of the director's written response under
1170 Subsection (5)(b), the chair of the commission may prepare a separate response.

1171 (d) Within 12 business days of the internal audit being given to the director, chair of
1172 the commission, and the other commissioners under Subsection (5)(a), the chair of the
1173 commission shall forward the audit and any response to:

- 1174 (i) the governor;

1175 (ii) the legislative auditor general; and
 1176 (iii) the Legislative Management Committee.
 1177 (e) Within 120 calendar days of an internal audit being completed, the commission
 1178 shall prepare a report to the governor describing steps taken to implement the recommendations
 1179 of the audit or a detailed explanation of why recommendations have not been implemented.
 1180 The chair of the commission shall forward the report to:

1181 (i) the legislative auditor general; and
 1182 (ii) the Legislative Management Committee.
 1183 (f) The chair of the commission shall make such other reports as the governor requests.
 1184 Section 12. Section **32B-2-304** is amended to read:

1185 **32B-2-304. Liquor prices -- School lunch program.**

1186 (1) For purposes of this section:
 1187 (a) (i) "Landed case cost" means:
 1188 (A) the cost of the product; and
 1189 (B) inbound shipping costs incurred by the department.
 1190 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
 1191 of the department to a state store.
 1192 (b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

1193 **§→ [f] (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer**
 1193a **who**
1194 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored
 1194a **malt**

1195 beverage. [f] ←§

1196 (2) Except as provided in Subsection (3):
 1197 (a) spirituous liquor sold by the department within the state shall be marked up in an
 1198 amount not less than 86% above the landed case cost to the department;
 1199 (b) wine sold by the department within the state shall be marked up in an amount not
 1200 less than 86% above the landed case cost to the department;
 1201 (c) heavy beer sold by the department within the state shall be marked up in an amount
 1202 not less than 64.5% above the landed case cost to the department; and
 1203 (d) a flavored malt beverage sold by the department within the state shall be marked up
 1204 in an amount not less than 86% above the landed case cost to the department.
 1205 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked

1206 up in an amount not less than 15% above the landed case cost to the department.

1207 (b) Except for spirituous liquor sold by the department to a military installation in
1208 Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%
1209 above the landed case cost to the department if:

1210 (i) the spirituous liquor is manufactured by a manufacturer producing less than
1211 ~~60,000~~ **\$→ [f] 30,000 [f] ←\$** proof gallons of spirituous liquor in a calendar year; and

1212 (ii) the manufacturer applies to the department for a reduced markup.

1213 (c) Except for wine sold by the department to a military installation in Utah, wine that
1214 is sold by the department within the state shall be marked up 47% above the landed case cost to
1215 the department if:

1216 (i) the wine is manufactured by a manufacturer producing less than ~~40,000~~ **\$→ [f] 20,000 [f]**
1216a **[40,000] ←\$**

1217 gallons of wine in a calendar year; and

1218 (ii) the manufacturer applies to the department for a reduced markup.

1219 (d) Except for heavy beer sold by the department to a military installation in Utah,
1220 heavy beer that is sold by the department within the state shall be marked up 30% above the
1221 landed case cost to the department if:

1222 (i) a small brewer manufactures the heavy beer; and

1223 (ii) the small brewer applies to the department for a reduced markup.

1224 (e) The department shall verify an amount described in Subsection (3)(b) or (c)
1225 pursuant to a federal or other verifiable production report.

1226 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
1227 with the state treasurer to be credited to the Uniform School Fund and used to support the
1228 school lunch program administered by the State Board of Education under Section
1229 53A-19-201.

1230 (5) This section does not prohibit the department from selling discontinued items at a
1231 discount.

1232 Section 13. Section **32B-2-605** is amended to read:

1233 **32B-2-605. Operational requirements for package agency.**

1234 (1) (a) A person may not operate a package agency until a package agency agreement is
1235 entered into by the package agent and the department.

1236 (b) A package agency agreement shall state the conditions of operation by which the

1237 package agent and the department are bound.

1238 (c) (i) If a package agent or staff of the package agent violates this title, rules under this
1239 title, or the package agency agreement, the department may take any action against the package
1240 agent that is allowed by the package agency agreement.

1241 (ii) An action against a package agent is governed solely by its package agency
1242 agreement and may include suspension or revocation of the package agency.

1243 (iii) A package agency agreement shall provide procedures to be followed if a package
1244 agent fails to pay money owed to the department including a procedure for replacing the
1245 package agent or operator of the package agency.

1246 (iv) A package agency agreement shall provide that the package agency is subject to
1247 covert investigations for selling an alcoholic product to a minor.

1248 [(iii)] (v) Notwithstanding that this part refers to "package agency" or "package agent,"
1249 staff of the package agency or package agent is subject to the same requirement or prohibition.

1250 (2) (a) A package agency shall be operated by an individual who is either:

1251 (i) the package agent; or

1252 (ii) an individual designated by the package agent.

1253 (b) An individual who is a designee under this Subsection (2) shall be:

1254 (i) an employee of the package agent; and

1255 (ii) responsible for the operation of the package agency.

1256 (c) The conduct of the designee is attributable to the package agent.

1257 (d) A package agent shall submit the name of the person operating the package agency
1258 to the department for the department's approval.

1259 (e) A package agent shall state the name and title of a designee on the application for a
1260 package agency.

1261 (f) A package agent shall:

1262 (i) inform the department of a proposed change in the individual designated to operate
1263 a package agency; and

1264 (ii) receive prior approval from the department before implementing the change
1265 described in this Subsection (2)(f).

1266 (g) Failure to comply with the requirements of this Subsection (2) may result in the
1267 immediate termination of a package agency agreement.

1268 (3) (a) A package agent shall display in a prominent place in the package agency the
1269 record issued by the commission that designates the package agency.

1270 (b) A package agent that displays or stores liquor at a location visible to the public
1271 shall display in a prominent place in the package agency a sign in large letters that consists of
1272 text in the following order:

1273 (i) a header that reads: "WARNING";

1274 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
1275 can cause birth defects and permanent brain damage for the child.";

1276 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
1277 [insert most current toll-free number] with questions or for more information.";

1278 (iv) a header that reads: "WARNING"; and

1279 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
1280 serious crime that is prosecuted aggressively in Utah."

1281 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different
1282 font style than the text described in Subsections (3)(b)(iv) and (v).

1283 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
1284 same font size.

1285 (d) The Department of Health shall work with the commission and department to
1286 facilitate consistency in the format of a sign required under this section.

1287 (4) A package agency may not display liquor or a price list in a window or showcase
1288 that is visible to passersby.

1289 (5) (a) A package agency may not purchase liquor from a person except from the
1290 department.

1291 (b) At the discretion of the department, liquor may be provided by the department to a
1292 package agency for sale on consignment.

1293 (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place
1294 other than as designated in the package agent's application, unless the package agent first
1295 applies for and receives approval from the department for a change of location within the
1296 package agency premises.

1297 (7) A package agency may not sell, offer for sale, or furnish liquor except at a price
1298 fixed by the commission.

- 1299 (8) A package agency may not sell, offer for sale, or furnish liquor to:
- 1300 (a) a minor;
- 1301 (b) a person actually, apparently, or obviously intoxicated;
- 1302 (c) a known interdicted person; or
- 1303 (d) a known habitual drunkard.
- 1304 (9) (a) A package agency may not employ a minor to handle liquor.
- 1305 (b) (i) Staff of a package agency may not:
- 1306 (A) consume an alcoholic product on the premises of a package agency; or
- 1307 (B) allow any person to consume an alcoholic product on the premises of a package
- 1308 agency.
- 1309 (ii) Violation of this Subsection (9)(b) is a class B misdemeanor.
- 1310 (10) (a) A package agency may not close or cease operation for a period longer than 72
- 1311 hours, unless:
- 1312 (i) the package agency notifies the department in writing at least seven days before the
- 1313 closing; and
- 1314 (ii) the closure or cessation of operation is first approved by the department.
- 1315 (b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package
- 1316 agency shall immediately notify the department by telephone.
- 1317 (c) (i) The department may authorize a closure or cessation of operation for a period
- 1318 not to exceed 60 days.
- 1319 (ii) The department may extend the initial period an additional 30 days upon written
- 1320 request of the package agency and upon a showing of good cause.
- 1321 (iii) A closure or cessation of operation may not exceed a total of 90 days without
- 1322 commission approval.
- 1323 (d) The notice required by Subsection (10)(a) shall include:
- 1324 (i) the dates of closure or cessation of operation;
- 1325 (ii) the reason for the closure or cessation of operation; and
- 1326 (iii) the date on which the package agency will reopen or resume operation.
- 1327 (e) Failure of a package agency to provide notice and to obtain department
- 1328 authorization before closure or cessation of operation results in an automatic termination of the
- 1329 package agency agreement effective immediately.

1330 (f) Failure of a package agency to reopen or resume operation by the approved date
1331 results in an automatic termination of the package agency agreement effective on that date.

1332 (11) A package agency may not transfer its operations from one location to another
1333 location without prior written approval of the commission.

1334 (12) (a) A person, having been issued a package agency, may not sell, transfer, assign,
1335 exchange, barter, give, or attempt in any way to dispose of the package agency to another
1336 person, whether for monetary gain or not.

1337 (b) A package agency has no monetary value for any type of disposition.

1338 (13) (a) Subject to the other provisions of this Subsection (13):

1339 (i) sale or delivery of liquor may not be made on or from the premises of a package
1340 agency, and a package agency may not be kept open for the sale of liquor:

1341 (A) on Sunday; or

1342 (B) on a state or federal legal holiday.

1343 (ii) Sale or delivery of liquor may be made on or from the premises of a package
1344 agency, and a package agency may be open for the sale of liquor, only on a day and during
1345 hours that the commission directs by rule or order.

1346 (b) A package agency located at a manufacturing facility is not subject to Subsection
1347 (13)(a) if:

1348 (i) the package agency is located at a manufacturing facility licensed in accordance
1349 with Chapter 11, Manufacturing and Related Licenses Act;

1350 (ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing
1351 and Related Licenses Act, holds:

1352 (A) a full-service restaurant license;

1353 (B) a limited-service restaurant license;

1354 (C) a beer-only restaurant license; or

1355 (D) dining club license;

1356 (iii) the restaurant or dining club is located at the manufacturing facility;

1357 (iv) the restaurant or dining club sells an alcoholic product produced at the
1358 manufacturing facility;

1359 (v) the manufacturing facility:

1360 (A) owns the restaurant or dining club; or

1361 (B) operates the restaurant or dining club;
1362 (vi) the package agency only sells an alcoholic product produced at the manufacturing
1363 facility; and
1364 (vii) the package agency's days and hours of sale are the same as the days and hours of
1365 sale at the restaurant or dining club.
1366 (c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if
1367 the package agent that holds the package agency to sell liquor at the resort does not sell liquor
1368 in a manner similar to a state store.
1369 (ii) The commission may by rule define what constitutes a package agency that sells
1370 liquor "in a manner similar to a state store."
1371 (14) (a) Except to the extent authorized by commission rule, a minor may not be
1372 admitted into, or be on the premises of a package agency unless accompanied by a person who
1373 is:
1374 (i) 21 years of age or older; and
1375 (ii) the minor's parent, legal guardian, or spouse.
1376 (b) A package agent or staff of a package agency that has reason to believe that a
1377 person who is on the premises of a package agency is under the age of 21 and is not
1378 accompanied by a person described in Subsection (14)(a) may:
1379 (i) ask the suspected minor for proof of age;
1380 (ii) ask the person who accompanies the suspected minor for proof of age; and
1381 (iii) ask the suspected minor or the person who accompanies the suspected minor for
1382 proof of parental, guardianship, or spousal relationship.
1383 (c) A package agent or staff of a package agency shall refuse to sell liquor to the
1384 suspected minor and to the person who accompanies the suspected minor into the package
1385 agency if the minor or person fails to provide any information specified in Subsection (14)(b).
1386 (d) A package agent or staff of a package agency shall require the suspected minor and
1387 the person who accompanies the suspected minor into the package agency to immediately leave
1388 the premises of the package agency if the minor or person fails to provide information specified
1389 in Subsection (14)(b).
1390 (15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed
1391 container.

1392 (b) A person may not open a sealed container on the premises of a package agency.

1393 (c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or
1394 furnish liquor in other than a sealed container:

1395 (i) if the package agency is the type of package agency that authorizes the package
1396 agency to sell, offer for sale, or furnish the liquor as part of room service;

1397 (ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

1398 (iii) subject to:

1399 (A) staff of the package agency providing the liquor in person only to an adult guest in
1400 the guest room;

1401 (B) staff of the package agency not leaving the liquor outside a guest room for retrieval
1402 by a guest; and

1403 (C) the same limits on the portions in which an alcoholic product may be sold by a
1404 retail licensee under Section 32B-5-304.

1405 (16) On or after October 1, 2011, a package agency may not sell, offer for sale, or
1406 furnish heavy beer in a sealed container that exceeds two liters.

1407 (17) The department may pay or otherwise remunerate a package agent on any basis,
1408 including sales or volume of business done by the package agency.

1409 (18) The commission may prescribe by policy or rule general operational requirements
1410 of a package agency that are consistent with this title and relate to:

1411 (a) physical facilities;

1412 (b) conditions of operation;

1413 (c) hours of operation;

1414 (d) inventory levels;

1415 (e) payment schedules;

1416 (f) methods of payment;

1417 (g) premises security; and

1418 (h) any other matter considered appropriate by the commission.

1419 Section 14. Section **32B-3-204** is amended to read:

1420 **32B-3-204. Disciplinary proceeding procedure.**

1421 (1) (a) Subject to Section 32B-3-202, the following may conduct an adjudicative
1422 proceeding to inquire into a matter necessary and proper for the administration of this title and

1423 rules adopted under this title:

1424 (i) the commission;

1425 (ii) a hearing examiner appointed by the commission to conduct a suspension,

1426 non-renewal, or revocation hearing required by law;

1427 (iii) the director; and

1428 (iv) the department.

1429 (b) Except as provided in this section or Section 32B-2-605, a person described in

1430 Subsection (1)(a) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an

1431 adjudicative proceeding.

1432 (c) Except when otherwise provided by law, an adjudicative proceeding before the

1433 commission or a hearing examiner appointed by the commission shall be:

1434 (i) video or audio recorded; and

1435 (ii) subject to Subsection (3)(b), conducted in accordance with Title 52, Chapter 4,

1436 Open and Public Meetings Act.

1437 (d) A person listed in Subsection (1)(a) shall conduct an adjudicative proceeding

1438 concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State

1439 Personnel Management Act.

1440 (e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be

1441 conducted in accordance with rules, policies, and procedures made by the commission,

1442 director, or department.

1443 (2) (a) Subject to Section 32B-3-202, a disciplinary proceeding shall be conducted

1444 under the authority of the commission, which is responsible for rendering a final decision and

1445 order on a disciplinary matter.

1446 (b) (i) The commission may appoint a necessary officer, including a hearing examiner,

1447 from within or without the department, to administer the disciplinary proceeding process.

1448 (ii) A hearing examiner appointed by the commission:

1449 (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and

1450 (B) shall submit to the commission a report including:

1451 (I) findings of fact determined on the basis of a preponderance of the evidence

1452 presented at the hearing;

1453 (II) conclusions of law; and

1454 (III) recommendations.

1455 (iii) A report of a hearing examiner under this Subsection (2)(b) may not recommend a
1456 penalty more severe than that initially sought by the department in the notice of agency action.

1457 (iv) A copy of a hearing examiner report under this Subsection (2)(b) shall be served
1458 upon the respective parties.

1459 (v) Before final commission action, the commission shall give a respondent and the
1460 department reasonable opportunity to file a written objection to a hearing examiner report.

1461 (3) (a) The commission or an appointed hearing examiner shall preside over a
1462 disciplinary proceeding hearing.

1463 (b) A disciplinary proceeding hearing may be closed only after the commission or
1464 hearing examiner makes a written finding that the public interest in an open hearing is clearly
1465 outweighed by factors enumerated in the closure order.

1466 (c) (i) The commission or its hearing examiner as part of a disciplinary proceeding
1467 hearing may:

1468 (A) administer an oath or affirmation;

1469 (B) take evidence;

1470 (C) take a deposition within or without this state; and

1471 (D) require by subpoena from a place within this state:

1472 (I) the testimony of a person at a hearing; and

1473 (II) the production of a record or other evidence considered relevant to the inquiry.

1474 (ii) A person subpoenaed in accordance with this Subsection (3)(c) shall testify and
1475 produce a record or tangible thing as required in the subpoena.

1476 (iii) A witness subpoenaed, called to testify, or called to produce evidence who claims
1477 a privilege against self-incrimination may not be compelled to testify, but the commission or
1478 the hearing examiner shall file a written report with the county attorney or district attorney in
1479 the jurisdiction where the privilege is claimed or where the witness resides setting forth the
1480 circumstance of the claimed privilege.

1481 (iv) (A) A person is not excused from obeying a subpoena without just cause.

1482 (B) A district court within the judicial district in which a person alleged to be guilty of
1483 willful contempt of court or refusal to obey a subpoena is found or resides, upon application by
1484 the party issuing the subpoena, may issue an order requiring the person to:

- 1485 (I) appear before the issuing party; and
- 1486 (II) (Aa) produce documentary evidence if so ordered; or
- 1487 (Bb) give evidence regarding the matter in question.
- 1488 (C) Failure to obey an order of the court may be punished by the court as contempt.
- 1489 (d) In a case heard by the commission, the commission shall issue its final decision and
- 1490 order in accordance with Subsection (2).
- 1491 (4) (a) The commission shall:
- 1492 (i) render a final decision and order on a disciplinary action; and
- 1493 (ii) cause its final order to be prepared in writing, issued, and served on all parties.
- 1494 (b) An order of the commission is final on the date the order is issued.
- 1495 (c) The commission, after the commission renders its final decision and order, may
- 1496 require the director to prepare, issue, and cause to be served on the parties the final written
- 1497 order on behalf of the commission.
- 1498 (5) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by
- 1499 the commission or a hearing examiner appointed by the commission shall proceed formally in
- 1500 accordance with Sections 63G-4-204 through 63G-4-209 if:
- 1501 (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health,
- 1502 and welfare;
- 1503 (ii) the alleged violation involves:
- 1504 (A) selling or furnishing an alcoholic product to a minor;
- 1505 (B) attire, conduct, or entertainment prohibited by Chapter 1, Part 5, Attire, Conduct,
- 1506 and Entertainment Act;
- 1507 (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf
- 1508 of the respondent;
- 1509 (D) interfering or refusing to cooperate with:
- 1510 (I) an authorized official of the department or the state in the discharge of the official's
- 1511 duties in relation to the enforcement of this title; or
- 1512 (II) a peace officer in the discharge of the peace officer's duties in relation to the
- 1513 enforcement of this title;
- 1514 (E) an unlawful trade practice under Chapter 4, Part 7, Trade Practices Act;
- 1515 (F) unlawful importation of an alcoholic product; or

1516 (G) unlawful supply of liquor by a liquor industry member, as defined in Section
1517 32B-4-702, to a person other than the department or a military installation, except to the extent
1518 permitted by this title; or

1519 (iii) the department determines to seek in a disciplinary proceeding hearing:

1520 (A) an administrative fine exceeding \$3,000;

1521 (B) a suspension of a license, permit, or certificate of approval of more than 10 days; or

1522 (C) a revocation of a license, permit, or certificate of approval.

1523 (b) If a respondent does not request a disciplinary proceeding hearing, a hearing shall
1524 proceed informally unless it is designated as a formal proceeding pursuant to rules adopted by
1525 the commission in accordance with Subsection (5)(c).

1526 (c) The commission shall make rules to provide a procedure to implement this
1527 Subsection (5).

1528 (6) (a) If the department recommends nonrenewal of a license, the department shall
1529 notify the licensee of the recommendation at least 15 days before the commission takes action
1530 on the nonrenewal.

1531 (b) Notwithstanding Subsection (2), the commission shall appoint a hearing examiner
1532 to conduct an adjudicative hearing in accordance with this section if the licensee files a request
1533 for a hearing within 10 days of receipt of the notice under Subsection (6)(a).

1534 Section 15. Section **32B-6-805** is amended to read:

1535 **32B-6-805. Specific operational requirements for a reception center license.**

1536 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
1537 Requirements, a reception center licensee and staff of the reception center licensee shall
1538 comply with this section.

1539 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1540 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

1541 (i) a reception center licensee;

1542 (ii) individual staff of a reception center licensee; or

1543 (iii) both a reception center licensee and staff of the reception center licensee.

1544 (2) In addition to complying with Section 32B-5-303, a reception center licensee shall
1545 store an alcoholic product in a storage area described in Subsection (15)(a).

1546 (3) (a) For the purpose described in Subsection (3)(b), a reception center licensee shall

1547 provide the following with advance notice of a scheduled event in accordance with rules made
1548 by the commission:

1549 (i) the department; and

1550 (ii) the local law enforcement agency responsible for the enforcement of this title in the
1551 jurisdiction where the reception center is located.

1552 (b) Any of the following may conduct a random inspection of an event:

1553 (i) an authorized representative of the commission or the department; or

1554 (ii) a law enforcement officer.

1555 (4) (a) Except as otherwise provided in this title, a reception center licensee may sell,
1556 offer for sale, or furnish an alcoholic product at an event only for consumption at the reception
1557 center's licensed premises.

1558 (b) A host of an event, a patron, or a person other than the reception center licensee or
1559 staff of the reception center licensee, may not remove an alcoholic product from the reception
1560 center's licensed premises.

1561 (c) Notwithstanding Section 32B-5-307, a patron at an event may not bring an
1562 alcoholic product into or onto, or remove an alcoholic product from, the reception center.

1563 (5) (a) A reception center licensee may not leave an unsold alcoholic product at an
1564 event following the conclusion of the event.

1565 (b) At the conclusion of an event, a reception center licensee shall:

1566 (i) destroy an opened and unused alcoholic product that is not saleable, under
1567 conditions established by the department; and

1568 (ii) return to the reception center licensee's approved locked storage area any:

1569 (A) opened and unused alcoholic product that is saleable; and

1570 (B) unopened container of an alcoholic product.

1571 (c) Except as provided in Subsection (5)(b) with regard to an open or sealed container
1572 of an alcoholic product not sold or consumed at an event, a reception center licensee:

1573 (i) shall store the alcoholic product in accordance with Subsection (2); and

1574 (ii) may use the alcoholic product at more than one event.

1575 (6) Notwithstanding Section 32B-5-308, a reception center licensee may not employ a
1576 minor in connection with an event at the reception center at which food is not made available.

1577 (7) A person's willingness to serve an alcoholic product may not be made a condition

1578 of employment as a server with a reception center licensee.

1579 (8) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
1580 product at the licensed premises on any day during the period that:

1581 (a) begins at 1 a.m.; and

1582 (b) ends at 9:59 a.m.

1583 (9) (a) A reception center licensee may not maintain in excess of 30% of its total
1584 annual receipts from the sale of an alcoholic product, which includes:

1585 ~~[(a)]~~ (i) mix for an alcoholic product; or

1586 ~~[(b)]~~ (ii) a charge in connection with the furnishing of an alcoholic product.

1587 (b) A reception center licensee shall report the information necessary to show
1588 compliance with this Subsection (9) to the department on a quarterly basis.

1589 (10) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
1590 product at an event at which a minor is present unless the reception center licensee makes food
1591 available at all times when an alcoholic product is sold, offered for sale, furnished, or
1592 consumed during the event.

1593 (11) (a) Subject to the other provisions of this Subsection (11), a patron may not have
1594 more than two alcoholic products of any kind at a time before the patron.

1595 (b) An individual portion of wine is considered to be one alcoholic product under
1596 Subsection (11)(a).

1597 (12) (a) A reception center licensee shall supervise and direct a person involved in the
1598 sale, offer for sale, or furnishing of an alcoholic product.

1599 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product
1600 shall complete an alcohol training and education seminar.

1601 (13) A staff person of a reception center licensee shall remain at an event at all times
1602 when an alcoholic product is sold, offered for sale, furnished, or consumed at the event.

1603 (14) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
1604 product to a patron, and a patron may not consume an alcoholic product at a bar structure.

1605 (15) Except as provided in Subsection (16), a reception center licensee may dispense
1606 an alcoholic product only if:

1607 (a) the alcoholic product is dispensed from an area that is:

1608 (i) separated from an area for the consumption of food by a patron by a solid,

1609 translucent, permanent structural barrier such that the facilities for the storage or dispensing of
1610 an alcoholic product are:

1611 (A) not readily visible to a patron; and

1612 (B) not accessible by a patron; and

1613 (ii) apart from an area used:

1614 (A) for staging; or

1615 (B) as a lobby or waiting area;

1616 (b) the reception center licensee uses an alcoholic product that is:

1617 (i) stored in an area described in Subsection (15)(a); or

1618 (ii) in an area not described in Subsection (15)(a) on the licensed premises and:

1619 (A) immediately before the alcoholic product is dispensed it is in an unopened
1620 container;

1621 (B) the unopened container is taken to an area described in Subsection (15)(a) before it
1622 is opened; and

1623 (C) once opened, the container is stored in an area described in Subsection (15)(a); and

1624 (c) any instrument or equipment used to dispense an alcoholic product is located in an
1625 area described in Subsection (15)(a).

1626 (16) A reception center licensee may dispense an alcoholic product from a mobile
1627 serving area that:

1628 (a) is moved only by staff of the reception center licensee;

1629 (b) is capable of being moved by only one individual; and

1630 (c) is no larger than 6 feet long and 30 inches wide.

1631 (17) (a) A reception center licensee may not have an event on the licensed premises
1632 except pursuant to a contract between a third party host of the event and the reception center
1633 licensee under which the reception center licensee provides an alcoholic product sold, offered
1634 for sale, or furnished at an event.

1635 (b) At an event, a reception center licensee may furnish an alcoholic product:

1636 (i) without charge to a patron, except that the third party host of the event shall pay for
1637 an alcoholic product furnished at the event; or

1638 (ii) with a charge to a patron at the event.

1639 (c) The commission may by rule define what constitutes a "third-party host" for

1640 purposes of this Subsection (17) so that a reception center licensee and the third-party host are
1641 not affiliated with, owned by, or operated by the same persons.

1642 (18) A reception center licensee shall have culinary facilities that are:

1643 (a) adequate to prepare a full meal; and

1644 (b) (i) located on the licensed premises; or

1645 (ii) under the same control as the reception center licensee.

1646 (19) A reception center licensee may not operate an event:

1647 (a) that is open to the general public; and

1648 (b) at which an alcoholic product is sold or offered for sale.

1649 Section 16. Section **32B-8a-302 (Effective 07/01/12)** is amended to read:

1650 **32B-8a-302 (Effective 07/01/12). Application -- Approval process.**

1651 (1) To obtain the transfer of a retail license from a retail licensee, the transferee shall
1652 file a transfer application with the department that includes:

1653 (a) an application in the form provided by the department;

1654 (b) a statement as to whether the consideration, if any, to be paid to the transferor

1655 includes payment for any or all of the following:

1656 (i) inventory;

1657 (ii) fixtures; and

1658 (iii) transfer of the retail license;

1659 (c) a copy of the notice of intended transfer; and

1660 (d) (i) an application fee of \$300; and

1661 (ii) a transfer fee determined in accordance with Section 32B-8a-303.

1662 (2) (a) (i) Before the commission may approve the transfer of a retail license, the
1663 department shall conduct an investigation and may hold public hearings to gather information
1664 and make recommendations to the commission as to whether the transfer of the retail license
1665 should be approved.

1666 (ii) The department shall forward the information and recommendations described in
1667 this Subsection (2)(a) to the commission to aid in the commission's determination.

1668 (b) Before approving a transfer, the commission shall:

1669 (i) determine that the transferee filed a complete application;

1670 (ii) determine that the transferee is eligible to hold the type of retail license that is to be

1671 transferred at the premises to which the retail license would be transferred;

1672 (iii) determine that the transferee is not delinquent in the payment of an amount
1673 described in Subsection 32B-8a-201(3);

1674 (iv) determine that the transferee is not disqualified under Section 32B-1-304;

1675 (v) consider the locality within which the proposed licensed premises is located,
1676 including the factors listed in Section [~~32B-5-206~~] 32B-5-203 for the issuance of a retail
1677 license;

1678 (vi) consider the transferee's ability to manage and operate the retail license to be
1679 transferred, including the factors listed in Section [~~32B-5-202~~] 32B-5-203 for the issuance of a
1680 retail license;

1681 (vii) consider the nature or type of retail licensee operation of the transferee, including
1682 the factors listed in Section [~~32B-5-202~~] 32B-5-203 for the issuance of a retail license;

1683 (viii) if the transfer involves consideration, determine that the transferee and transferor
1684 have complied with Part 4, Protection of Creditors; and

1685 (ix) consider any other factor the commission considers necessary.

1686 (3) (a) Except as provided in Subsection (3)(b), the commission may not approve the
1687 transfer of a retail license to premises that do not meet the proximity requirements of Section
1688 32B-1-202.

1689 (b) If after a transfer of a retail license the transferee operates the same type of retail
1690 license at the same location as did the transferor, the commission may waive or vary the
1691 proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the
1692 transfer under the same circumstances that the commission may waive or vary the proximity
1693 requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a
1694 retail license.

1695 Section 17. Section **32B-8a-303 (Effective 07/01/12)** is amended to read:

1696 **32B-8a-303 (Effective 07/01/12). Transfer fees.**

1697 (1) Except as otherwise provided in this section, the department shall charge the
1698 following transfer fees:

1699 (a) for a transfer of a retail license from a retail licensee to another person, the transfer
1700 fee equals the initial license fee amount specified in the relevant part under Chapter 6, Specific
1701 Retail License Act, for the type of retail license that is being transferred;

1702 (b) for the transfer of a retail license from one premises to another premises of the
1703 same retail licensee, the transfer fee equals the renewal fee amount specified in the relevant
1704 part under Chapter 6, Specific Retail License Act, for the type of retail license that is being
1705 transferred;

1706 (c) subject to Subsections (1)(d) and (2), for a transfer described in Section
1707 32B-8a-202, the transfer fee equals the renewal fee amount specified in the relevant part under
1708 Chapter 6, Specific Retail License Act, for the type of retail license that is being transferred;

1709 (d) for a transfer of a retail license to include the parent or adult child of a retail
1710 licensee, when no consideration is given for the transfer, the transfer fee is one-half of the
1711 amount described in Subsection (1)(a); and

1712 (e) for one of the following transfers, the transfer fee is one-half of the amount
1713 described in Subsection (1)(a):

1714 (i) a retail license of one spouse to the other spouse when the transfer application is
1715 made before the entry of a final decree of divorce;

1716 (ii) a retail license of a deceased retail licensee to:

1717 (A) the one or more surviving partners of the deceased retail licensee;

1718 (B) the executor, administrator, or conservator of the estate of the deceased retail
1719 licensee; or

1720 (C) the surviving spouse of the deceased retail licensee, if the deceased retail licensee
1721 leaves no estate to be administered;

1722 (iii) a retail license of [~~a minor ward,~~] an incompetent person[;] or conservatee by or to
1723 the conservator or guardian for the [~~minor ward,~~] incompetent person[;] or conservatee who is
1724 the retail licensee;

1725 (iv) a retail license of a debtor in a bankruptcy case by or to the trustee of a bankrupt
1726 estate of the retail licensee;

1727 (v) a retail license of a person for whose estate a receiver is appointed may be
1728 transferred by or to a receiver of the estate of the retail licensee;

1729 (vi) a retail license of an assignor for the benefit of creditors by or to an assignee for
1730 the benefit of creditors of a licensee with the consent of the assignor;

1731 (vii) a retail license transferred to a revocable living trust if the retail licensee is the
1732 trustee of the revocable living trust;

- 1733 (viii) a retail license transferred between partners when no new partner is being
1734 licensed;
- 1735 (ix) a retail license transferred between corporations whose outstanding shares of stock
1736 are owned by the same individuals;
- 1737 (x) upon compliance with Section 32B-8a-202, a retail license to a corporation whose
1738 entire stock is owned by:
- 1739 (A) the transferor; or
1740 (B) the spouse of the transferor;
- 1741 (xi) upon compliance with Section 32B-8a-202, a retail license to a limited liability
1742 company whose entire membership consists of:
- 1743 (A) the transferor; or
1744 (B) the spouse of the transferor; or
- 1745 (xii) a retail license transferred from a corporation to a person who owns, or whose
1746 spouse owns, the entire stock of the corporation.
- 1747 (2) If there are multiple and simultaneous transfers of retail licenses under Section
1748 32B-8a-202, a transfer fee described in Subsection (1)(c) is required for only one of the retail
1749 licenses being transferred.
- 1750 (3) (a) Except as provided in Subsection (3)(b), a transfer fee required under
1751 Subsection (1) is due for a transfer subsequent to a transfer under Subsection (1)(e)[~~(xiii)~~](xii)
1752 if the subsequent transfer is of 51% of the stock in a corporation to which a retail license is
1753 transferred by a retail licensee or the spouse of a retail licensee.
- 1754 (b) If the transfer of stock described in Subsection (3)(a) is from a parent to the parent's
1755 adult child or adult grandchild, the transfer fee is one-half of the amount described in
1756 Subsection (1)(a).
- 1757 (4) Money collected from a transfer fee shall be deposited in the Liquor Control Fund.
1758 Section 18. Section **32B-9-201** is amended to read:
- 1759 **32B-9-201. Application requirements for event permit.**
- 1760 (1) To obtain an event permit, a person shall submit to the department:
- 1761 (a) a written application in a form that the department prescribes;
1762 (b) an event permit fee:
- 1763 (i) in the amount specified in the relevant part under this chapter for the type of event

1764 permit for which the person is applying; and
1765 (ii) that is refundable if an event permit is not issued;
1766 (c) written consent of the local authority;
1767 (d) a bond as specified by Section 32B-9-203;
1768 (e) the times, dates, location, estimated attendance, nature, and purpose of the event;
1769 (f) a description or floor plan designating:
1770 (i) the area in which the person proposes that an alcoholic product be stored;
1771 (ii) the site from which the person proposes that an alcoholic product be sold, offered
1772 for sale, or furnished; and
1773 (iii) the area in which the person proposes that an alcoholic product be allowed to be
1774 consumed;
1775 (g) a signed consent form stating that the event permittee will permit any authorized
1776 representative of the commission, department, or any law enforcement officer to have
1777 unrestricted right to enter the premises during the event;
1778 (h) if the person is an entity, proper verification evidencing that a person who signs the
1779 application is authorized to sign on behalf of the entity; and
1780 (i) any other information as the commission or department may require.
1781 (2) An entity applying for a permit need not meet the requirements of Subsections
1782 (1)(b), (c), and (d) if the entity is:
1783 (a) a state agency; or
1784 (b) a political subdivision of the state.
1785 (3) The [~~commission~~] director may not issue an event permit to a person who is
1786 disqualified under Section 32B-1-304.
1787 (4) (a) The proximity requirements of Section 32B-1-202 do not apply to an event
1788 permit.
1789 (b) Notwithstanding Subsection (4)(a), nothing in this section prevents the director, the
1790 Compliance, Licensing, and Enforcement Subcommittee, or the commission from considering
1791 the proximity of an educational, religious, or recreational facility, or any other relevant factor in
1792 deciding whether to issue an event permit.
1793 Section 19. Section **32B-9-202** is amended to read:
1794 **32B-9-202. Duties before issuing event permit.**

1795 (1) (a) Before the ~~[commission]~~ director may issue an event permit, the department
1796 shall conduct an investigation and may hold public hearings to gather information and make
1797 recommendations to the ~~[commission]~~ director as to whether the ~~[commission]~~ director should
1798 issue an event permit.

1799 (b) The department shall forward the information and recommendations described in
1800 Subsection (1)(a) to the ~~[commission]~~ director and the Compliance, Licensing, and
1801 Enforcement Subcommittee to aid in the ~~[commission's]~~ determination.

1802 (2) Before issuing an event permit, the ~~[commission]~~ director shall:

1803 (a) determine that the person filed a complete application and is in compliance with:

1804 (i) Section 32B-9-201; and

1805 (ii) the relevant part under this chapter for the type of event permit for which the
1806 person is applying;

1807 (b) determine that the person is not disqualified under Section 32B-1-304;

1808 (c) consider the purpose of the organization or its local lodge, chapter, or other local
1809 unit;

1810 (d) consider the times, dates, location, estimated attendance, nature, and purpose of the
1811 event;

1812 (e) to minimize the risk of minors being sold or furnished alcohol or adults being
1813 overserved alcohol at the event, assess the adequacy of control measures for:

1814 (i) a large-scale public event when the estimated attendance is in excess of 1,000
1815 people; or

1816 (ii) an outdoor public event; ~~[and]~~

1817 (f) obtain the approval of the Compliance, Licensing, and Enforcement Subcommittee
1818 before issuing an event permit;

1819 (g) notify each commissioner at least three business days before the director issues the
1820 event permit in accordance with Subsection (3); and

1821 ~~[(f)]~~ (h) consider any other factor the ~~[commission]~~ director considers necessary.

1822 (3) (a) The director shall inform each commissioner of the director's preliminary
1823 decision to issue or deny the issuance of an event permit three business days before the
1824 decision is to be final.

1825 (b) The preliminary decision becomes a final decision of the director:

1826 (i) unless within three business days of receipt of the notice at least three of the
1827 commissioners request a meeting to discuss whether the event permit should be issued; or

1828 (ii) the director modifies or revokes the preliminary decision to issue or deny issuance
1829 of the event permit.

1830 (c) If three or more of the commissioners request a meeting, the applicant for the event
1831 permit shall be notified and the commission:

1832 (i) shall hold a meeting on the application for an event permit no later than the next
1833 regularly scheduled meeting of the commission; and

1834 (ii) may issue or deny issuance of the event permit if the applicant meets the
1835 requirements of this chapter.

1836 (d) Notwithstanding the other provisions of this Subsection (3), the director may at any
1837 time refer an application for an event permit directly to the commission for a determination as
1838 to whether an event permit should be issued or denied.

1839 (e) For purposes of this title, an event permit issued by the commission is to be treated
1840 the same as an event permit issued by the director.

1841 (f) If the commission finds that an event permit was improperly issued or that the
1842 permittee has violated this chapter, the commission may take any action permitted under this
1843 title.

1844 ~~[(3)]~~ (4) Once the ~~[commission]~~ director issues an event permit, the department shall
1845 send a copy of the approved application and the event permit by written or electronic means to
1846 the state and local law enforcement authorities ~~[before the scheduled event]~~ at least three days
1847 before the event.

1848 (5) The director shall provide the commission a monthly report of the actions taken by
1849 the director under this part.

1850 (6) If authorized by the director, the deputy director may act on behalf of the director
1851 for purposes of issuing an event permit under this chapter.

1852 Section 20. Section **32B-9-204** is amended to read:

1853 **32B-9-204. General operational requirements for an event permit.**

1854 (1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or
1855 furnishing of an alcoholic product at an event for which an event permit is issued, shall comply
1856 with this title and rules of the commission.

- 1857 (b) Failure to comply as provided in Subsection (1)(a):
1858 (i) may result in:
1859 (A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
1860 Enforcement Act, against:
1861 (I) an event permittee;
1862 (II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic
1863 product at the event; or
1864 (III) any combination of the persons listed in this Subsection (1)(b);
1865 (B) immediate revocation of the event permit;
1866 (C) forfeiture of a bond; or
1867 (D) immediate seizure of an alcoholic product present at the event; and
1868 (ii) if the event permit is revoked, disqualifies the event permittee from applying for an
1869 event permit for a period of three years from the date of revocation of the event permit.
1870 (c) An alcoholic product seized under this Subsection (1) shall be returned to the event
1871 permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.
1872 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
1873 the specific type of special use permit held by the special use permittee, the relevant part
1874 governs.
1875 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an
1876 event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the
1877 relevant part under this chapter for the type of event permit that is held by the event permittee.
1878 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
1879 event permit held by an event permittee refers to "event permittee," a person involved in the
1880 storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the
1881 event permit is issued is subject to the same requirement or prohibition.
1882 (3) An event permittee shall display a copy of the event permit in a prominent place in
1883 the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.
1884 (4) An event permittee may not on the premises of the event:
1885 (a) engage in or allow any form of gambling, as defined and proscribed in Title 76,
1886 Chapter 10, Part 11, Gambling;
1887 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,

1888 Part 11, Gambling; or

1889 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
1890 the risking of something of value for a return or for an outcome when the return or outcome is
1891 based upon an element of chance, excluding the playing of an amusement device that confers
1892 only an immediate and unrecorded right of replay not exchangeable for value.

1893 (5) An event permittee may not knowingly allow a person at an event to, in violation of
1894 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
1895 Paraphernalia Act:

1896 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
1897 58-37-2; or

1898 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
1899 Section 58-37a-3.

1900 (6) An event permittee may not sell, offer for sale, or furnish beer except beer
1901 purchases from:

1902 (a) a beer wholesaler licensee;

1903 (b) a beer retailer; or

1904 (c) a small brewer.

1905 (7) An event permittee may not store, sell, offer for sale, furnish, or allow the
1906 consumption of an alcoholic product purchased for an event in a location other than that
1907 described in the application and designated on the event permit unless the event permittee first
1908 applies for and receives approval from the ~~[commission]~~ director, with the approval of the
1909 Compliance, Licensing, and Enforcement Subcommittee, for a change of location.

1910 (8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or
1911 furnish beer for on-premise consumption:

1912 (i) in an open original container; and

1913 (ii) in a container on draft.

1914 (b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to
1915 Subsection (8)(a):

1916 (i) in a size of container that exceeds two liters; or

1917 (ii) to an individual patron in a size of container that exceeds one liter.

1918 (9) (a) An event permittee may not sell or offer for sale an alcoholic product at less

1919 than the cost of the alcoholic product to the event permittee.

1920 (b) An event permittee may not sell an alcoholic product at a discount price on any date
1921 or at any time.

1922 (c) An event permittee may not sell or offer for sale an alcoholic product at a price that
1923 encourages over consumption or intoxication.

1924 (d) An event permittee may not sell or offer for sale an alcoholic product at a special or
1925 reduced price for only certain hours of the day of an event.

1926 (e) An event permittee may not sell, offer for sale, or furnish more than one alcoholic
1927 product at the price of a single alcoholic product.

1928 (f) An event permittee, or a person operating, selling, offering, or furnishing an
1929 alcoholic product under an event permit, may not sell, offer for sale, or furnish an indefinite or
1930 unlimited number of alcoholic products during a set period for a fixed price, unless:

1931 (i) the alcoholic product is served to a patron at a seated event;

1932 (ii) food is available whenever the alcoholic product is sold, offered for sale, or
1933 furnished; and

1934 (iii) no person advertises that at the event a person may be sold or furnished an
1935 indefinite or unlimited number of alcoholic products during a set period for a fixed price.

1936 (g) An event permittee may not engage in a public promotion involving or offering a
1937 free alcoholic product to the general public.

1938 (10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

1939 (a) a minor;

1940 (b) a person actually, apparently, or obviously intoxicated;

1941 (c) a known interdicted person; or

1942 (d) a known habitual drunkard.

1943 (11) (a) An alcoholic product is considered under the control of the event permittee
1944 during an event.

1945 (b) A patron at an event may not bring an alcoholic product onto the premises of the
1946 event.

1947 (12) An event permittee may not permit a patron to carry from the premises an open
1948 container that:

1949 (a) is used primarily for drinking purposes; and

1950 (b) contains an alcoholic product.

1951 (13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at
1952 an event is considered under the supervision and direction of the event permittee.

1953 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at
1954 an event may not, while on duty:

1955 (i) consume an alcoholic product; or
1956 (ii) be intoxicated.

1957 (14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an
1958 event.

1959 (15) The location specified in an event permit may not be changed without prior
1960 written approval of the commission.

1961 (16) An event permittee may not sell, transfer, assign, exchange, barter, give, or
1962 attempt in any way to dispose of the event permit to another person whether for monetary gain
1963 or not.

1964 (17) (a) An event permittee may not sell, offer for sale, furnish, or allow the
1965 consumption of an alcoholic product during a period that:

1966 (i) begins at 1 a.m.; and
1967 (ii) ends at 9:59 a.m.

1968 (b) This Subsection (17) does not preclude a local authority from being more restrictive
1969 with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic
1970 product at an event.

1971 (18) A patron may have no more than one alcoholic product of any kind at a time
1972 before the patron.

1973 (19) (a) An event permittee shall display, in a prominent place, a sign in large letters
1974 that consists of text in the following order:

1975 (i) a header that reads: "WARNING";
1976 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
1977 can cause birth defects and permanent brain damage for the child.";

1978 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
1979 [insert most current toll-free number] with questions or for more information.";

1980 (iv) a header that reads: "WARNING"; and

1981 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
1982 serious crime that is prosecuted aggressively in Utah."

1983 (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different
1984 font style than the text described in Subsections (19)(a)(iv) and (v).

1985 (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the
1986 same font size.

1987 (c) The Department of Health shall work with the commission and department to
1988 facilitate consistency in the format of a sign required under this section.

1989 Section 21. Section **32B-9-303** is amended to read:

1990 **32B-9-303. Director's power to issue single event permit.**

1991 (1) Before a person may sell, offer for sale, or furnish liquor at retail for on-premise
1992 consumption at an event, the person shall first obtain a single event permit from the
1993 ~~[commission]~~ director in accordance with this part.

1994 (2) (a) ~~[The commission]~~ Subject to Subsection (5), the director may issue a single
1995 event permit to any of the following that is conducting a convention, civic, or community
1996 enterprise, a bona fide:

1997 (i) partnership;

1998 (ii) corporation;

1999 (iii) limited liability company;

2000 (iv) religious organization;

2001 (v) political organization;

2002 (vi) incorporated association;

2003 (vii) recognized subordinate lodge, chapter, or other local unit of an entity described in
2004 this Subsection (2)(a);

2005 (viii) state agency; or

2006 (ix) political subdivision of the state.

2007 (b) The ~~[commission]~~ director may not issue a single event permit to an entity that has
2008 not been in existence as a bona fide entity for at least one year before the day on which the
2009 entity applies for a single event permit.

2010 (3) (a) A single event permit may authorize:

2011 (i) the storage, sale, offering for sale, furnishing, and consumption of liquor at an event

2012 at which the storage, sale, offering for sale, furnishing, or consumption of liquor is otherwise
2013 prohibited by this title under either:

2014 (A) a 120 hour single event permit; or

2015 (B) a 72 hour single event permit; and

2016 (ii) the storage, sale, offer for sale, furnishing, and consumption of beer at the same
2017 event for the period that the storage, sale, offer for sale, furnishing, or consumption of liquor is
2018 authorized under Subsection (3)(a)(i) for the single event permit.

2019 (b) The single event permit shall state in writing whether it is:

2020 (i) a 120 hour single event permit; or

2021 (ii) a 72 hour single event permit.

2022 (4) The ~~commission~~ director may not issue more than:

2023 (a) four single event permits in any one calendar year to the same person listed in
2024 Subsection (2) if one or more of the single event permits is a 120 hour single event permit; or

2025 (b) 12 single event permits in any one calendar year to the same person listed in
2026 Subsection (2) if each of the single event permits issued to that person is a 72 hour single event
2027 permit.

2028 (5) Before the director issues or denies the issuance of a single event permit under this
2029 section, the director shall comply with Section 32B-9-202.

2030 Section 22. Section **32B-9-403** is amended to read:

2031 **32B-9-403. Director's power to issue temporary beer event permit.**

2032 (1) Before a person may sell, offer for sale, or furnish beer at retail for on-premise
2033 consumption at an event, the person shall obtain in accordance with this part:

2034 (a) a single event permit; or

2035 (b) (i) a temporary beer event permit; and

2036 (ii) (A) a beer permit issued by the local authority as provided in Section 32B-9-404; or

2037 (B) written consent of the local authority to sell beer at retail for on-premise

2038 consumption at the event.

2039 (2) (a) ~~[The commission]~~ Subject to Subsection (4), the director may issue a temporary
2040 beer event permit to allow the sale, offering for sale, or furnishing of beer for on-premise
2041 consumption only at an event that does not last longer than 30 days.

2042 (b) A temporary beer event permit authorizes, for a period not to exceed 30 days, the

2043 storage, sale, offer for sale, furnishing, and consumption of beer at an event.

2044 (c) If a person obtains a temporary beer event permit for an event that lasts no longer
2045 than 30 days, an on-premise beer retailer license is not required for the sale of beer at the event.

2046 (3) (a) The [~~commission~~] director may not issue a temporary beer event permit to a
2047 person if the aggregate of the days that the person is authorized to store, sell, offer for sale, or
2048 furnish an alcoholic product under a temporary beer event permit will exceed a total of 90 days
2049 in any one calendar year.

2050 (b) The [~~commission~~] director may not issue, and a person may not obtain, a temporary
2051 beer event permit to avoid or attempt to avoid the requirement to be licensed under Chapter 6,
2052 Part 7, On-premise Beer Retailer License.

2053 (4) Before the director issues or denies the issuance of a temporary beer event permit
2054 under this section, the director shall comply with Section 32B-9-202.

2055 Section 23. Section **32B-9-404** is amended to read:

2056 **32B-9-404. Local authority's power to issue temporary beer event permit.**

2057 (1) A local authority may issue, suspend, and revoke a temporary permit to sell, offer
2058 for sale, or furnish beer for on-premise consumption at an event, except that the local authority
2059 may not issue a temporary permit if the event lasts longer than 30 days.

2060 (2) Suspension or revocation of a temporary beer event permit issued [~~by the~~
2061 ~~commission~~] under Section 32B-9-403 or a temporary permit issued by a local authority under
2062 this section prohibits the temporary beer event permittee who has a permit suspended or
2063 revoked by either the commission or local authority from continuing to operate under the other
2064 state or local permit.

2065 Section 24. Section **52-4-205** is amended to read:

2066 **52-4-205. Purposes of closed meetings.**

2067 (1) A closed meeting described under Section 52-4-204 may only be held for:

2068 (a) discussion of the character, professional competence, or physical or mental health
2069 of an individual;

2070 (b) strategy sessions to discuss collective bargaining;

2071 (c) strategy sessions to discuss pending or reasonably imminent litigation;

2072 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
2073 including any form of a water right or water shares, if public discussion of the transaction

2074 would:

- 2075 (i) disclose the appraisal or estimated value of the property under consideration; or
- 2076 (ii) prevent the public body from completing the transaction on the best possible terms;
- 2077 (e) strategy sessions to discuss the sale of real property, including any form of a water

2078 right or water shares, if:

- 2079 (i) public discussion of the transaction would:
 - 2080 (A) disclose the appraisal or estimated value of the property under consideration; or
 - 2081 (B) prevent the public body from completing the transaction on the best possible terms;
- 2082 (ii) the public body previously gave public notice that the property would be offered for
- 2083 sale; and

- 2084 (iii) the terms of the sale are publicly disclosed before the public body approves the
- 2085 sale;

- 2086 (f) discussion regarding deployment of security personnel, devices, or systems;
- 2087 (g) investigative proceedings regarding allegations of criminal misconduct;
- 2088 (h) as relates to the Independent Legislative Ethics Commission, conducting business
- 2089 relating to the receipt or review of ethics complaints;

- 2090 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
- 2091 Subsection 52-4-204(1)(a)(iii)(B);

- 2092 (j) as relates to a county legislative body, discussing commercial information as
- 2093 defined in Section 59-1-404;

- 2094 (k) as relates to the Alcoholic Beverage Control Commission [~~issuing a retail license~~
- 2095 ~~under Title 32B, Alcoholic Beverage Control Act, after receiving public input in a public~~
- 2096 ~~meeting in support or opposition to the commission issuing the retail license, discussing one or~~
- 2097 ~~more of the following factors], discussing in a closed meeting:~~

- 2098 [~~(i) a factor the commission is required to consider under Section 32B-5-203 or that is~~
- 2099 ~~specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail~~
- 2100 ~~license at issue;]~~

- 2101 [~~(ii) the availability of a retail license under a quota;]~~

- 2102 [~~(iii) the length of time the applicant has waited for a retail license;]~~

- 2103 [~~(iv) an opening date for the applicant;]~~

- 2104 [~~(v) whether the applicant is a seasonal business;]~~

2105 ~~[(vi) whether the location of the applicant has been previously licensed or is a new~~
 2106 ~~location;]~~

2107 ~~[(vii) whether the application involves a change of ownership of an existing location;]~~

2108 ~~[(viii) whether the applicant holds other alcohol licenses at any location;]~~

2109 ~~[(ix) whether the applicant has a violation history or a pending violation;]~~

2110 ~~[(x) projected alcohol sales for the applicant as it relates to the extent to which the~~
 2111 ~~retail license will be used;]~~

2112 ~~[(xi) whether the applicant is a small or entrepreneurial business that would benefit the~~
 2113 ~~community in which it would be located;]~~

2114 ~~[(xii) the nature of entertainment the applicant proposes; or]~~

2115 ~~[(xiii) public input in support or opposition to granting the retail license;]~~

2116 (i) commercial information or financial information obtained from a person if
 2117 disclosure of the information could reasonably be expected to result in unfair competitive
 2118 injury to the person submitting the information or would impair the ability of the Alcoholic
 2119 Beverage Control Commission from obtaining necessary information in the future; ~~§~~ → **and**

2120 ~~[(ii) ethics investigations of the Department of Alcoholic Beverage Control or the~~
 2121 ~~Alcoholic Beverage Control Commission until a public recommendation or public sanction is~~
 2122 ~~issued; and~~

2123 ~~——~~ ~~[(iii)] (ii) ←~~ ~~§~~ an audit report and the Alcoholic Beverage Control Commission's response to
 2123a the

2124 audit report until the audit report is made available under Subsection 32B-2-302(4) or
 2125 32B-2-302.5(5)(d);

2126 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
 2127 board of directors, discussing fiduciary or commercial information as defined in Section
 2128 53B-12-102; or

2129 (m) a purpose for which a meeting is required to be closed under Subsection (2).

2130 (2) The following meetings shall be closed:

2131 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
 2132 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
 2133 described in Subsections 62A-16-301(2) and (4); and

2134 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

2135 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the

2136 responses to the report described in Subsections 62A-16-301(2) and (4); or
2137 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).
2138 (3) A public body may not interview a person applying to fill an elected position in a
2139 closed meeting.

2140 Section 25. Section **63G-2-305** is amended to read:

2141 **63G-2-305. Protected records.**

2142 The following records are protected if properly classified by a governmental entity:

2143 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
2144 has provided the governmental entity with the information specified in Section 63G-2-309;

2145 (2) commercial information or nonindividual financial information obtained from a
2146 person if:

2147 (a) disclosure of the information could reasonably be expected to result in unfair
2148 competitive injury to the person submitting the information or would impair the ability of the
2149 governmental entity to obtain necessary information in the future;

2150 (b) the person submitting the information has a greater interest in prohibiting access
2151 than the public in obtaining access; and

2152 (c) the person submitting the information has provided the governmental entity with
2153 the information specified in Section 63G-2-309;

2154 (3) commercial or financial information acquired or prepared by a governmental entity
2155 to the extent that disclosure would lead to financial speculations in currencies, securities, or
2156 commodities that will interfere with a planned transaction by the governmental entity or cause
2157 substantial financial injury to the governmental entity or state economy;

2158 (4) records the disclosure of which could cause commercial injury to, or confer a
2159 competitive advantage upon a potential or actual competitor of, a commercial project entity as
2160 defined in Subsection 11-13-103(4);

2161 (5) test questions and answers to be used in future license, certification, registration,
2162 employment, or academic examinations;

2163 (6) records the disclosure of which would impair governmental procurement
2164 proceedings or give an unfair advantage to any person proposing to enter into a contract or
2165 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
2166 Subsection (6) does not restrict the right of a person to have access to, once the contract or

2167 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
2168 entity in response to:

2169 (a) a request for bids;

2170 (b) a request for proposals;

2171 (c) a grant; or

2172 (d) other similar document;

2173 (7) records that would identify real property or the appraisal or estimated value of real
2174 or personal property, including intellectual property, under consideration for public acquisition
2175 before any rights to the property are acquired unless:

2176 (a) public interest in obtaining access to the information outweighs the governmental
2177 entity's need to acquire the property on the best terms possible;

2178 (b) the information has already been disclosed to persons not employed by or under a
2179 duty of confidentiality to the entity;

2180 (c) in the case of records that would identify property, potential sellers of the described
2181 property have already learned of the governmental entity's plans to acquire the property;

2182 (d) in the case of records that would identify the appraisal or estimated value of
2183 property, the potential sellers have already learned of the governmental entity's estimated value
2184 of the property; or

2185 (e) the property under consideration for public acquisition is a single family residence
2186 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
2187 the property as required under Section 78B-6-505;

2188 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
2189 compensated transaction of real or personal property including intellectual property, which, if
2190 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
2191 of the subject property, unless:

2192 (a) the public interest in access outweighs the interests in restricting access, including
2193 the governmental entity's interest in maximizing the financial benefit of the transaction; or

2194 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
2195 the value of the subject property have already been disclosed to persons not employed by or
2196 under a duty of confidentiality to the entity;

2197 (9) records created or maintained for civil, criminal, or administrative enforcement

2198 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
2199 release of the records:

2200 (a) reasonably could be expected to interfere with investigations undertaken for
2201 enforcement, discipline, licensing, certification, or registration purposes;

2202 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
2203 proceedings;

2204 (c) would create a danger of depriving a person of a right to a fair trial or impartial
2205 hearing;

2206 (d) reasonably could be expected to disclose the identity of a source who is not
2207 generally known outside of government and, in the case of a record compiled in the course of
2208 an investigation, disclose information furnished by a source not generally known outside of
2209 government if disclosure would compromise the source; or

2210 (e) reasonably could be expected to disclose investigative or audit techniques,
2211 procedures, policies, or orders not generally known outside of government if disclosure would
2212 interfere with enforcement or audit efforts;

2213 (10) records the disclosure of which would jeopardize the life or safety of an
2214 individual;

2215 (11) records the disclosure of which would jeopardize the security of governmental
2216 property, governmental programs, or governmental recordkeeping systems from damage, theft,
2217 or other appropriation or use contrary to law or public policy;

2218 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
2219 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
2220 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

2221 (13) records that, if disclosed, would reveal recommendations made to the Board of
2222 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
2223 Board of Pardons and Parole, or the Department of Human Services that are based on the
2224 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
2225 jurisdiction;

2226 (14) records and audit workpapers that identify audit, collection, and operational
2227 procedures and methods used by the State Tax Commission, if disclosure would interfere with
2228 audits or collections;

2229 (15) records of a governmental audit agency relating to an ongoing or planned audit
2230 until the final audit is released;

2231 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
2232 litigation that are not available under the rules of discovery;

2233 (17) records disclosing an attorney's work product, including the mental impressions or
2234 legal theories of an attorney or other representative of a governmental entity concerning
2235 litigation;

2236 (18) records of communications between a governmental entity and an attorney
2237 representing, retained, or employed by the governmental entity if the communications would be
2238 privileged as provided in Section 78B-1-137;

2239 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
2240 from a member of the Legislature; and

2241 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
2242 legislative action or policy may not be classified as protected under this section; and

2243 (b) (i) an internal communication that is part of the deliberative process in connection
2244 with the preparation of legislation between:

2245 (A) members of a legislative body;

2246 (B) a member of a legislative body and a member of the legislative body's staff; or

2247 (C) members of a legislative body's staff; and

2248 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
2249 legislative action or policy may not be classified as protected under this section;

2250 (20) (a) records in the custody or control of the Office of Legislative Research and
2251 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
2252 legislation or contemplated course of action before the legislator has elected to support the
2253 legislation or course of action, or made the legislation or course of action public; and

2254 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
2255 Office of Legislative Research and General Counsel is a public document unless a legislator
2256 asks that the records requesting the legislation be maintained as protected records until such
2257 time as the legislator elects to make the legislation or course of action public;

2258 (21) research requests from legislators to the Office of Legislative Research and
2259 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

2260 in response to these requests;

2261 (22) drafts, unless otherwise classified as public;

2262 (23) records concerning a governmental entity's strategy about collective bargaining or
2263 pending litigation;

2264 (24) records of investigations of loss occurrences and analyses of loss occurrences that
2265 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
2266 Uninsured Employers' Fund, or similar divisions in other governmental entities;

2267 (25) records, other than personnel evaluations, that contain a personal recommendation
2268 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
2269 personal privacy, or disclosure is not in the public interest;

2270 (26) records that reveal the location of historic, prehistoric, paleontological, or
2271 biological resources that if known would jeopardize the security of those resources or of
2272 valuable historic, scientific, educational, or cultural information;

2273 (27) records of independent state agencies if the disclosure of the records would
2274 conflict with the fiduciary obligations of the agency;

2275 (28) records of an institution within the state system of higher education defined in
2276 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
2277 retention decisions, and promotions, which could be properly discussed in a meeting closed in
2278 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
2279 the final decisions about tenure, appointments, retention, promotions, or those students
2280 admitted, may not be classified as protected under this section;

2281 (29) records of the governor's office, including budget recommendations, legislative
2282 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
2283 policies or contemplated courses of action before the governor has implemented or rejected
2284 those policies or courses of action or made them public;

2285 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
2286 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
2287 recommendations in these areas;

2288 (31) records provided by the United States or by a government entity outside the state
2289 that are given to the governmental entity with a requirement that they be managed as protected
2290 records if the providing entity certifies that the record would not be subject to public disclosure

2291 if retained by it;

2292 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
2293 except as provided in Section 52-4-206;

2294 (33) records that would reveal the contents of settlement negotiations but not including
2295 final settlements or empirical data to the extent that they are not otherwise exempt from
2296 disclosure;

2297 (34) memoranda prepared by staff and used in the decision-making process by an
2298 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
2299 other body charged by law with performing a quasi-judicial function;

2300 (35) records that would reveal negotiations regarding assistance or incentives offered
2301 by or requested from a governmental entity for the purpose of encouraging a person to expand
2302 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
2303 person or place the governmental entity at a competitive disadvantage, but this section may not
2304 be used to restrict access to a record evidencing a final contract;

2305 (36) materials to which access must be limited for purposes of securing or maintaining
2306 the governmental entity's proprietary protection of intellectual property rights including patents,
2307 copyrights, and trade secrets;

2308 (37) the name of a donor or a prospective donor to a governmental entity, including an
2309 institution within the state system of higher education defined in Section 53B-1-102, and other
2310 information concerning the donation that could reasonably be expected to reveal the identity of
2311 the donor, provided that:

2312 (a) the donor requests anonymity in writing;

2313 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
2314 classified protected by the governmental entity under this Subsection (37); and

2315 (c) except for an institution within the state system of higher education defined in
2316 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
2317 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
2318 over the donor, a member of the donor's immediate family, or any entity owned or controlled
2319 by the donor or the donor's immediate family;

2320 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
2321 73-18-13;

2322 (39) a notification of workers' compensation insurance coverage described in Section
2323 34A-2-205;

2324 (40) (a) the following records of an institution within the state system of higher
2325 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
2326 or received by or on behalf of faculty, staff, employees, or students of the institution:

2327 (i) unpublished lecture notes;

2328 (ii) unpublished notes, data, and information:

2329 (A) relating to research; and

2330 (B) of:

2331 (I) the institution within the state system of higher education defined in Section
2332 53B-1-102; or

2333 (II) a sponsor of sponsored research;

2334 (iii) unpublished manuscripts;

2335 (iv) creative works in process;

2336 (v) scholarly correspondence; and

2337 (vi) confidential information contained in research proposals;

2338 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
2339 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

2340 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

2341 (41) (a) records in the custody or control of the Office of Legislative Auditor General
2342 that would reveal the name of a particular legislator who requests a legislative audit prior to the
2343 date that audit is completed and made public; and

2344 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
2345 Office of the Legislative Auditor General is a public document unless the legislator asks that
2346 the records in the custody or control of the Office of Legislative Auditor General that would
2347 reveal the name of a particular legislator who requests a legislative audit be maintained as
2348 protected records until the audit is completed and made public;

2349 (42) records that provide detail as to the location of an explosive, including a map or
2350 other document that indicates the location of:

2351 (a) a production facility; or

2352 (b) a magazine;

- 2353 (43) information:
- 2354 (a) contained in the statewide database of the Division of Aging and Adult Services
- 2355 created by Section 62A-3-311.1; or
- 2356 (b) received or maintained in relation to the Identity Theft Reporting Information
- 2357 System (IRIS) established under Section 67-5-22;
- 2358 (44) information contained in the Management Information System and Licensing
- 2359 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 2360 (45) information regarding National Guard operations or activities in support of the
- 2361 National Guard's federal mission;
- 2362 (46) records provided by any pawn or secondhand business to a law enforcement
- 2363 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 2364 Secondhand Merchandise Transaction Information Act;
- 2365 (47) information regarding food security, risk, and vulnerability assessments performed
- 2366 by the Department of Agriculture and Food;
- 2367 (48) except to the extent that the record is exempt from this chapter pursuant to Section
- 2368 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
- 2369 prepared or maintained by the Division of Emergency Management, and the disclosure of
- 2370 which would jeopardize:
 - 2371 (a) the safety of the general public; or
 - 2372 (b) the security of:
 - 2373 (i) governmental property;
 - 2374 (ii) governmental programs; or
 - 2375 (iii) the property of a private person who provides the Division of Emergency
 - 2376 Management information;
- 2377 (49) records of the Department of Agriculture and Food relating to the National
- 2378 Animal Identification System or any other program that provides for the identification, tracing,
- 2379 or control of livestock diseases, including any program established under Title 4, Chapter 24,
- 2380 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
- 2381 Quarantine;
- 2382 (50) as provided in Section 26-39-501:
- 2383 (a) information or records held by the Department of Health related to a complaint

2384 regarding a child care program or residential child care which the department is unable to
2385 substantiate; and

2386 (b) information or records related to a complaint received by the Department of Health
2387 from an anonymous complainant regarding a child care program or residential child care;

2388 (51) unless otherwise classified as public under Section 63G-2-301 and except as
2389 provided under Section 41-1a-116, an individual's home address, home telephone number, or
2390 personal mobile phone number, if:

2391 (a) the individual is required to provide the information in order to comply with a law,
2392 ordinance, rule, or order of a government entity; and

2393 (b) the subject of the record has a reasonable expectation that this information will be
2394 kept confidential due to:

2395 (i) the nature of the law, ordinance, rule, or order; and

2396 (ii) the individual complying with the law, ordinance, rule, or order;

2397 (52) the name, home address, work addresses, and telephone numbers of an individual
2398 that is engaged in, or that provides goods or services for, medical or scientific research that is:

2399 (a) conducted within the state system of higher education, as defined in Section
2400 53B-1-102; and

2401 (b) conducted using animals;

2402 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
2403 Private Proposal Program, to the extent not made public by rules made under that chapter;

2404 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
2405 Evaluation Commission concerning an individual commissioner's vote on whether or not to
2406 recommend that the voters retain a judge;

2407 (55) information collected and a report prepared by the Judicial Performance
2408 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
2409 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
2410 the information or report;

2411 (56) records contained in the Management Information System created in Section
2412 62A-4a-1003;

2413 (57) records provided or received by the Public Lands Policy Coordinating Office in
2414 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

- 2415 (58) information requested by and provided to the Utah State 911 Committee under
2416 Section 53-10-602;
- 2417 (59) recorded Children's Justice Center investigative interviews, both video and audio,
2418 the release of which are governed by Section 77-37-4;
- 2419 (60) in accordance with Section 73-10-33:
- 2420 (a) a management plan for a water conveyance facility in the possession of the Division
2421 of Water Resources or the Board of Water Resources; or
- 2422 (b) an outline of an emergency response plan in possession of the state or a county or
2423 municipality;
- 2424 (61) the following records in the custody or control of the Office of Inspector General
2425 of Medicaid Services, created in Section 63J-4a-201:
- 2426 (a) records that would disclose information relating to allegations of personal
2427 misconduct, gross mismanagement, or illegal activity of a person if the information or
2428 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
2429 through other documents or evidence, and the records relating to the allegation are not relied
2430 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
2431 report or final audit report;
- 2432 (b) records and audit workpapers to the extent they would disclose the identity of a
2433 person who, during the course of an investigation or audit, communicated the existence of any
2434 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
2435 regulation adopted under the laws of this state, a political subdivision of the state, or any
2436 recognized entity of the United States, if the information was disclosed on the condition that
2437 the identity of the person be protected;
- 2438 (c) before the time that an investigation or audit is completed and the final
2439 investigation or final audit report is released, records or drafts circulated to a person who is not
2440 an employee or head of a governmental entity for the person's response or information;
- 2441 (d) records that would disclose an outline or part of any investigation, audit survey
2442 plan, or audit program; or
- 2443 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
2444 investigation or audit;
- 2445 (62) records that reveal methods used by the Office of Inspector General of Medicaid

2446 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
2447 abuse;

2448 (63) information provided to the Department of Health or the Division of Occupational
2449 and Professional Licensing under Subsection 58-68-304(3) or (4); [~~and~~]

2450 (64) a record described in Section 63G-12-210[-]; and

2451 (65) a record related to an ethics investigation of the Department of Alcoholic
2452 Beverage Control or Alcoholic Beverage Control Commission until a public recommendation
2453 or public sanction is issued.

2454 Section 26. Section **63I-5-201** is amended to read:

2455 **63I-5-201. Internal auditing programs -- State agencies.**

2456 (1) (a) The Departments of Administrative Services, Agriculture, Commerce,
2457 Community and Culture, Corrections, Workforce Services, Environmental Quality, Health,
2458 Human Services, Natural Resources, Public Safety, and Transportation; and the State Tax
2459 Commission shall conduct various types of auditing procedures as determined by the agency
2460 head or governor.

2461 (b) The governor may, by executive order, require other state agencies to establish an
2462 internal audit program.

2463 (c) An agency head may establish an internal audit program for the agency head's
2464 agency if the agency administers programs that:

2465 (i) might pose a high liability risk to the state; or

2466 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

2467 (2) (a) The Office of the Court Administrator shall conduct various types of auditing
2468 procedures as determined by the Judicial Council, including auditing procedures for courts not
2469 of record.

2470 (b) The Judicial Council may, by rule, require other judicial agencies to establish an
2471 internal audit program.

2472 (c) An agency head within the judicial branch may establish an internal audit program
2473 for the agency head's agency if the agency administers programs that:

2474 (i) might pose a high liability risk to the state; or

2475 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

2476 (3) (a) The University of Utah, Utah State University, Salt Lake Community College,

2477 Utah Valley University, and Weber State University shall conduct various types of auditing
2478 procedures as determined by the Board of Regents.

2479 (b) The Board of Regents may issue policies requiring other higher education entities
2480 or programs to establish an internal audit program.

2481 (c) An agency head within higher education may establish an internal audit program for
2482 the agency head's agency if the agency administers programs that:

2483 (i) might pose a high liability risk to the state; or

2484 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

2485 (4) The State Office of Education shall conduct various types of auditing procedures as
2486 determined by the State Board of Education.

2487 (5) Subject to Section 32B-2-302.5, the internal audit division of the Department of
2488 Alcoholic Beverage Control shall conduct various types of auditing procedures as determined
2489 by the Alcoholic Beverage Control Commission.

2490 Section 27. **Effective date.**

2491 This bill takes effect on July 1, 2012.

Legislative Review Note
as of 2-21-12 1:40 PM

Office of Legislative Research and General Counsel