

SB0066S01 compared with SB0066

~~{deleted text}~~ shows text that was in SB0066 but was deleted in SB0066S01.

inserted text shows text that was not in SB0066 but was inserted into SB0066S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator John L. Valentine proposes the following substitute bill:

ALCOHOLIC BEVERAGE CONTROL RELATED AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

~~{~~ → amends definition provision;

- ~~}~~ ▶ changes the Alcoholic Beverage Control Commission to a seven member commission and makes related changes;
- ▶ addresses removal of commission members and chair;
- ▶ creates subcommittees of the commission;
- ▶ clarifies that the commission's policy authority is to be consistent with the policy

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established by the Legislature by statute;

- ▶ provides for appointment and termination of the director;
- ▶ addresses appointment of interim director;
- ▶ imposes terms on the length of time a director serves;
- ▶ provides for the hiring and firing of upper management only with the approval of the commission;
- ▶ creates the Alcoholic Beverage Control Advisory Board;
- ▶ addresses application of Utah Procurement Code;
- ▶ addresses audits;
- ▶ provides for internal audits division;

{ ———▶ ~~modifies provisions related to markup for small manufacturers;~~

- {
- ▶ addresses requirements for package agency agreements;
 - ▶ requires a hearing by a hearing examiner of a department recommendation to not renew a license or to revoke a license;
 - ▶ modifies operational requirements for a reception center;
 - ▶ addresses provisions related to the transfer of retail licenses;
 - ▶ authorizes the director to issue or deny issuance of certain permits with the approval of the Compliance, Licensing, and Enforcement Subcommittee, and subject to revocation or issuance by the Commission;
 - ▶ addresses notification of an event to law enforcement;
 - ▶ requires the director to issue monthly reports to the commission of the director's activities relative to permits;
 - ▶ allows certain permittees to change the location of where to store, sell, offer for sale, furnish, or allow consumption with the approval of the director and the Compliance, Licensing, and Enforcement Subcommittee;
 - ▶ addresses purposes of which the commission may hold a closed meeting;
 - ▶ provides that certain records related to the department or commission are protected records; and
 - ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

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Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:

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

{ 32B-2-201, as last amended by Laws of Utah 2011, Chapters 308 and 334

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

32B-2-205, as last amended by Laws of Utah 2011, Chapter 334

32B-2-206, as last amended by Laws of Utah 2011, Chapter 336

32B-2-207, as enacted by Laws of Utah 2010, Chapter 276

32B-2-209, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-2-302, as enacted by Laws of Utah 2010, Chapter 276

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

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

32B-3-204, as enacted by Laws of Utah 2010, Chapter 276

32B-6-805, as enacted by Laws of Utah 2011, Chapter 334

32B-8a-302 (Effective 07/01/12), as enacted by Laws of Utah 2011, Chapter 334

32B-8a-303 (Effective 07/01/12), as enacted by Laws of Utah 2011, Chapter 334

32B-9-201, as enacted by Laws of Utah 2010, Chapter 276

32B-9-202, as enacted by Laws of Utah 2010, Chapter 276

32B-9-204, as last amended by Laws of Utah 2011, Chapters 307 and 334

32B-9-303, as enacted by Laws of Utah 2010, Chapter 276

32B-9-403, as enacted by Laws of Utah 2010, Chapter 276

32B-9-404, as enacted by Laws of Utah 2010, Chapter 276

52-4-205, as last amended by Laws of Utah 2011, Chapters 46 and 334

63G-2-305, as last amended by Laws of Utah 2011, Chapters 18, 46, 55, 80, 151, and

161

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

ENACTS:

32B-2-201.5, Utah Code Annotated 1953

32B-2-302.5, Utah Code Annotated 1953

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32B-2-210, Utah Code Annotated 1953

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

Section 1. Section ~~{32B-1-102}~~32B-2-201 is amended to read:

~~{~~ ~~32B-1-102. Definitions:~~

~~As used in this title:~~

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

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

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

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

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

~~(a) beer; or~~

~~(b) liquor:~~

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

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

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

~~(b) "Alcoholic product" includes an alcoholic beverage:~~

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

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

~~(ii) vinegar;~~

~~(iii) cider;~~

~~(iv) essence;~~

~~(v) tincture;~~

~~(vi) food preparation; or~~

~~(vii) an over-the-counter medicine:~~

~~(d) "Alcoholic product" includes an extract containing alcohol obtained by distillation~~

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~~when it is used as a flavoring in the manufacturing of an alcoholic product:~~

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

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

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

~~—— (6) "Banquet" means an event:~~

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

~~—— (i) hotel;~~

~~—— (ii) resort facility;~~

~~—— (iii) sports center; or~~

~~—— (iv) convention center;~~

~~—— (b) for which there is a contract:~~

~~—— (i) between a person operating a facility listed in Subsection (6)(a) and another person;~~

~~and~~

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

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

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

~~—— (i) at which an alcoholic product is:~~

~~—— (A) stored; or~~

~~—— (B) dispensed; or~~

~~—— (ii) from which an alcoholic product is served.~~

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

~~—— (i) stored; or~~

~~—— (ii) dispensed.~~

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

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

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

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

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- ~~_____ (c) "Beer" includes a product that:~~
- ~~_____ (i) contains alcohol in the percentages described in Subsection (8)(a); and~~
- ~~_____ (ii) is referred to as:~~
- ~~_____ (A) beer;~~
- ~~_____ (B) ale;~~
- ~~_____ (C) porter;~~
- ~~_____ (D) stout;~~
- ~~_____ (E) lager; or~~
- ~~_____ (F) a malt or malted beverage.~~
- ~~_____ (d) "Beer" does not include a flavored malt beverage.~~
- ~~_____ (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.~~
- ~~_____ (10) "Beer retailer" means a business:~~
- ~~_____ (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and~~
- ~~_____ (b) to whom a license is issued:~~
- ~~_____ (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or~~
- ~~_____ (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.~~
- ~~_____ (11) "Beer wholesaling license" means a license:~~
- ~~_____ (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and~~
- ~~_____ (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.~~
- ~~_____ (12) "Billboard" means a public display used to advertise, including:~~
- ~~_____ (a) a light device;~~
- ~~_____ (b) a painting;~~
- ~~_____ (c) a drawing;~~
- ~~_____ (d) a poster;~~
- ~~_____ (e) a sign;~~
- ~~_____ (f) a signboard; or~~

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- ~~—— (g) a scoreboard.~~
- ~~—— (13) "Brewer" means a person engaged in manufacturing:~~
 - ~~—— (a) beer;~~
 - ~~—— (b) heavy beer; or~~
 - ~~—— (c) a flavored malt beverage.~~
- ~~—— (14) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.~~
- ~~—— (15) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.~~
- ~~—— (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:~~
 - ~~—— (a) under a single contract;~~
 - ~~—— (b) at a fixed charge in accordance with the bus company's tariff; and~~
 - ~~—— (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.~~
- ~~—— (17) "Church" means a building:~~
 - ~~—— (a) set apart for worship;~~
 - ~~—— (b) in which religious services are held;~~
 - ~~—— (c) with which clergy is associated; and~~
 - ~~—— (d) that is tax exempt under the laws of this state.~~
- ~~—— (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.~~
 - ~~—— (b) "Club license" includes:~~
 - ~~—— (i) a dining club license;~~
 - ~~—— (ii) an equity club license;~~
 - ~~—— (iii) a fraternal club license; or~~
 - ~~—— (iv) a social club license.~~
- ~~—— (19) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.~~
- ~~—— (20) "Commissioner" means a member of the commission.~~
- ~~—— (21) "Community location" means:~~

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~~—— (a) a public or private school;~~

~~—— (b) a church;~~

~~—— (c) a public library;~~

~~—— (d) a public playground; or~~

~~—— (e) a public park.~~

~~—— (22) "Community location governing authority" means:~~

~~—— (a) the governing body of the community location; or~~

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

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

~~—— (a) a bottle;~~

~~—— (b) a vessel; or~~

~~—— (c) a similar item.~~

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

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

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

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

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

~~—— (i) stored; or~~

~~—— (ii) dispensed.~~

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

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

~~—— (a) an auditor or inspector; and~~

~~—— (b) employed by the department.~~

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

~~—— (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail~~

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~~License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a dining club license.~~

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

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

~~—— (a) against a person subject to administrative action; and~~

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

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

~~—— (i) drawing of an alcoholic product:~~

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

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

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

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

~~—— (i) a full-service restaurant license;~~

~~—— (ii) a limited-service restaurant license;~~

~~—— (iii) a reception center license; and~~

~~—— (iv) a beer-only restaurant license.~~

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

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

~~—— (35) "Educational facility" includes:~~

~~—— (a) a nursery school;~~

~~—— (b) an infant day care center; and~~

~~—— (c) a trade and technical school.~~

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

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~~equity club license:~~

~~—— (37) "Event permit" means:~~

~~—— (a) a single event permit; or~~

~~—— (b) a temporary beer event permit.~~

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

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

~~—— (i) that contains at least .5% alcohol by volume;~~

~~—— (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;~~

~~—— (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and~~

~~—— (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or~~

~~—— (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.~~

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

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

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

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

~~—— (b) "Furnish" includes to:~~

~~—— (i) serve;~~

~~—— (ii) deliver; or~~

~~—— (iii) otherwise make available.~~

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

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- ~~———— (44) "Health care practitioner" means:~~
- ~~———— (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;~~
 - ~~———— (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;~~
 - ~~———— (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;~~
 - ~~———— (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;~~
 - ~~———— (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;~~
 - ~~———— (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;~~
 - ~~———— (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;~~
 - ~~———— (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;~~
 - ~~———— (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;~~
 - ~~———— (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;~~
 - ~~———— (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;~~
 - ~~———— (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and~~
 - ~~———— (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.~~
- ~~———— (45) (a) "Heavy beer" means a product that:~~
- ~~———— (i) contains more than 4% alcohol by volume; and~~
 - ~~———— (ii) is obtained by fermentation, infusion, or decoction of malted grain.~~
- ~~———— (b) "Heavy beer" is considered liquor for the purposes of this title.~~
- ~~———— (46) "Hotel" is as defined by the commission by rule.~~
- ~~———— (47) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.~~
- ~~———— (48) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.~~

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

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

~~———— (a) law; or~~

~~———— (b) court order.~~

~~———— (51) "Intoxicated" means that a person:~~

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

~~———— (i) an alcoholic product;~~

~~———— (ii) a controlled substance;~~

~~———— (iii) a substance having the property of releasing toxic vapors; or~~

~~———— (iv) a combination of Subsections (51)(a)(i) through (iii); and~~

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

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

~~———— (a) a department compliance officer; or~~

~~———— (b) a nondepartment enforcement officer.~~

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

~~———— (54) "License" means:~~

~~———— (a) a retail license;~~

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

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

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

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

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

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

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

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

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

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

~~—— (A) is:~~

~~—— (I) alcohol;~~

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

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

~~—— (IV) other drink or drinkable liquid; and~~

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

~~—— (II) is suitable to use for beverage purposes.~~

~~—— (ii) "Liquor" includes:~~

~~—— (A) heavy beer;~~

~~—— (B) wine; and~~

~~—— (C) a flavored malt beverage.~~

~~—— (b) "Liquor" does not include beer.~~

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

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

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

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

~~—— (61) "Local authority" means:~~

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

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

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- ~~—— (62) "Lounge or bar area" is as defined by rule made by the commission.~~
- ~~—— (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.~~
- ~~—— (64) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.~~
- ~~—— (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:~~
- ~~—— (i) (A) under the control of the United States Department of Defense; or~~
- ~~—— (B) of the National Guard;~~
- ~~—— (ii) that is located within the state; and~~
- ~~—— (iii) including a leased facility.~~
- ~~—— (b) "Military installation" does not include a facility used primarily for:~~
- ~~—— (i) civil works;~~
- ~~—— (ii) a rivers and harbors project; or~~
- ~~—— (iii) a flood control project.~~
- ~~—— (66) "Minor" means an individual under the age of 21 years.~~
- ~~—— (67) "Nondepartment enforcement agency" means an agency that:~~
- ~~—— (a) (i) is a state agency other than the department; or~~
- ~~—— (ii) is an agency of a county, city, or town; and~~
- ~~—— (b) has a responsibility to enforce one or more provisions of this title.~~
- ~~—— (68) "Nondepartment enforcement officer" means an individual who is:~~
- ~~—— (a) a peace officer, examiner, or investigator; and~~
- ~~—— (b) employed by a nondepartment enforcement agency.~~
- ~~—— (69) (a) "Off-premise beer retailer" means a beer retailer who is:~~
- ~~—— (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and~~
- ~~—— (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.~~
- ~~—— (b) "Off-premise beer retailer" does not include an on-premise beer retailer.~~
- ~~—— (70) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.~~

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- ~~———— (71) "On-premise beer retailer" means a beer retailer who is:~~
- ~~———— (a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and~~
- ~~———— (b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:~~
- ~~———— (i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and~~
- ~~———— (ii) on and after March 1, 2012, operating:~~
- ~~———— (A) as a tavern; or~~
- ~~———— (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).~~
- ~~———— (72) "Opaque" means impenetrable to sight.~~
- ~~———— (73) "Package agency" means a retail liquor location operated:~~
- ~~———— (a) under an agreement with the department; and~~
- ~~———— (b) by a person:~~
- ~~———— (i) other than the state; and~~
- ~~———— (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.~~
- ~~———— (74) "Package agent" means a person who holds a package agency.~~
- ~~———— (75) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:~~
- ~~———— (a) a customer;~~
- ~~———— (b) a member;~~
- ~~———— (c) a guest;~~
- ~~———— (d) an attendee of a banquet or event;~~
- ~~———— (e) an individual who receives room service;~~
- ~~———— (f) a resident of a resort;~~
- ~~———— (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;~~
- ~~or~~
- ~~———— (h) an invitee.~~
- ~~———— (76) "Permittee" means a person issued a permit under:~~

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- ~~—— (a) Chapter 9, Event Permit Act; or~~
- ~~—— (b) Chapter 10, Special Use Permit Act.~~
- ~~—— (77) "Person subject to administrative action" means:~~
 - ~~—— (a) a licensee;~~
 - ~~—— (b) a permittee;~~
 - ~~—— (c) a manufacturer;~~
 - ~~—— (d) a supplier;~~
 - ~~—— (e) an importer;~~
 - ~~—— (f) one of the following holding a certificate of approval:~~
 - ~~—— (i) an out-of-state brewer;~~
 - ~~—— (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or~~
 - ~~—— (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or~~
 - ~~—— (g) staff of:~~
 - ~~—— (i) a person listed in Subsections (77)(a) through (f); or~~
 - ~~—— (ii) a package agent.~~
- ~~—— (78) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.~~
- ~~—— (79) "Prescription" means an order issued by a health care practitioner when:~~
 - ~~—— (a) the health care practitioner is licensed under Title 58, Occupations and Professions; to prescribe a controlled substance, other drug, or device for medicinal purposes;~~
 - ~~—— (b) the order is made in the course of that health care practitioner's professional practice; and~~
 - ~~—— (c) the order is made for obtaining an alcoholic product for medicinal purposes only.~~
- ~~—— (80) (a) "Private event" means a specific social, business, or recreational event:~~
 - ~~—— (i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and~~
 - ~~—— (ii) that is limited in attendance to people who are specifically designated and their guests.~~
 - ~~—— (b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.~~

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- ~~—— (81) (a) "Proof of age" means:~~
- ~~—— (i) an identification card;~~
- ~~—— (ii) an identification that:~~
- ~~—— (A) is substantially similar to an identification card;~~
- ~~—— (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;~~
- ~~—— (C) includes date of birth; and~~
- ~~—— (D) has a picture affixed;~~
- ~~—— (iii) a valid driver license certificate that:~~
- ~~—— (A) includes date of birth;~~
- ~~—— (B) has a picture affixed; and~~
- ~~—— (C) is issued:~~
- ~~—— (I) under Title 53, Chapter 3, Uniform Driver License Act; or~~
- ~~—— (II) in accordance with the laws of the state in which it is issued;~~
- ~~—— (iv) a military identification card that:~~
- ~~—— (A) includes date of birth; and~~
- ~~—— (B) has a picture affixed; or~~
- ~~—— (v) a valid passport.~~
- ~~—— (b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.~~
- ~~—— (82) (a) "Public building" means a building or permanent structure that is:~~
- ~~—— (i) owned or leased by:~~
- ~~—— (A) the state; or~~
- ~~—— (B) a local government entity; and~~
- ~~—— (ii) used for:~~
- ~~—— (A) public education;~~
- ~~—— (B) transacting public business; or~~
- ~~—— (C) regularly conducting government activities.~~
- ~~—— (b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.~~

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

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

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

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

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

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

~~—— (i) inscribed on a tangible medium; or~~

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

~~—— (b) "Record" includes:~~

~~—— (i) a book;~~

~~—— (ii) a book of account;~~

~~—— (iii) a paper;~~

~~—— (iv) a contract;~~

~~—— (v) an agreement;~~

~~—— (vi) a document; or~~

~~—— (vii) a recording in any medium.~~

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

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

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

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

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

~~—— (92) "Restaurant" means a business location:~~

~~—— (a) at which a variety of foods are prepared;~~

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

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

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

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- ~~—— (a) a full-service restaurant license;~~
- ~~—— (b) a limited-service restaurant license;~~
- ~~—— (c) a club license;~~
- ~~—— (d) an airport lounge license;~~
- ~~—— (e) an on-premise banquet license;~~
- ~~—— (f) an on-premise beer license;~~
- ~~—— (g) a reception center license; or~~
- ~~—— (h) a beer-only restaurant license.~~
- ~~—— (94) "Room service" means furnishing an alcoholic product to a person in a guest room of a:~~
 - ~~—— (a) hotel; or~~
 - ~~—— (b) resort facility.~~
- ~~—— (95) "Serve" means to place an alcoholic product before an individual.~~
- ~~—— (96) (a) "School" means a building used primarily for the general education of minors.~~
 - ~~—— (b) "School" does not include an educational facility.~~
- ~~—— (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.~~
- ~~—— (98) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:~~
 - ~~—— (a) for the entertainment of one or more patrons;~~
 - ~~—— (b) on the premises of:~~
 - ~~—— (i) a social club licensee; or~~
 - ~~—— (ii) a tavern;~~
 - ~~—— (c) on behalf of or at the request of the licensee described in Subsection (98)(b);~~
 - ~~—— (d) on a contractual or voluntary basis; and~~
 - ~~—— (e) whether or not the person is designated as:~~
 - ~~—— (i) an employee;~~
 - ~~—— (ii) an independent contractor;~~

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- ~~—— (iii) an agent of the licensee; or~~
- ~~—— (iv) a different type of classification.~~
- ~~—— (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.~~
- ~~—— (100) "Small brewer" means a brewer who manufactures less than [60,000] 80,000 barrels of beer, heavy beer, and flavored malt beverages per year.~~
- ~~—— (101) "Social club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a social club license.~~
- ~~—— (102) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.~~
- ~~—— (103) (a) "Spirituous liquor" means liquor that is distilled.~~
- ~~—— (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.~~
- ~~—— (104) "Sports center" is as defined by the commission by rule.~~
- ~~—— (105) (a) "Staff" means an individual who engages in activity governed by this title:~~
 - ~~—— (i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;~~
 - ~~—— (ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or~~
 - ~~—— (iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.~~
- ~~—— (b) "Staff" includes:~~
 - ~~—— (i) an officer;~~
 - ~~—— (ii) a director;~~
 - ~~—— (iii) an employee;~~
 - ~~—— (iv) personnel management;~~
 - ~~—— (v) an agent of the licensee, including a managing agent;~~
 - ~~—— (vi) an operator; or~~
 - ~~—— (vii) a representative.~~
- ~~—— (106) "State of nudity" means:~~

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~~_____ (a) the appearance of:~~

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

~~_____ (ii) a human genital;~~

~~_____ (iii) a human pubic area; or~~

~~_____ (iv) a human anus; or~~

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

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

~~_____ (ii) a human genital;~~

~~_____ (iii) a human pubic area; or~~

~~_____ (iv) a human anus.~~

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

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

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

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

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

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

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

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

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

~~_____ (ii) operated by a state employee.~~

~~_____ (b) "State store" does not include:~~

~~_____ (i) a package agency;~~

~~_____ (ii) a licensee; or~~

~~_____ (iii) a permittee.~~

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

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

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~~32B-6-905(12)(b)(ii):~~

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

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

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

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

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

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

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

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

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

~~———— (a) is unsaleable because the container is:~~

~~———— (i) unlabeled;~~

~~———— (ii) leaky;~~

~~———— (iii) damaged;~~

~~———— (iv) difficult to open; or~~

~~———— (v) partly filled;~~

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

~~———— (ii) has contents that are:~~

~~———— (A) cloudy;~~

~~———— (B) spoiled; or~~

~~———— (C) chemically determined to be impure; or~~

~~———— (iii) contains:~~

~~———— (A) sediment; or~~

~~———— (B) a foreign substance; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the governor; or

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

(b) At least 10 days before the hearing described in Subsection (6)(a), the governor

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shall provide the commissioner notice of:

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

(ii) the alleged grounds for the removal.

(c) The commissioner shall have an opportunity to:

(i) attend the hearing;

(ii) present witnesses and other evidence; and

(iii) confront and cross examine witnesses.

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

(i) the person conducting the hearing shall prepare written findings of fact and conclusions of law; and

(ii) the governor shall serve a copy of the prepared findings and conclusions upon the commissioner.

(e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing examiner shall issue a written recommendation to the governor in addition to complying with Subsection (6)(d).

(f) A commissioner has five days from the day on which the commissioner receives the findings and conclusions described in Subsection (6)(d) to file written objections to the recommendation before the governor issues a final order.

(g) The governor shall:

(i) issue the final order under this Subsection (6) in writing; and

(ii) serve the final order upon the commissioner.

(7) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

(8) (a) The governor shall annually appoint the chair of the commission. A commissioner serves as chair to the commission at the pleasure of the governor. If removed as chair, the commissioner continues to serve as a commissioner unless removed as a commissioner under Subsection (6).

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(b) The commission shall elect:

- (i) another commissioner to serve as vice chair; and
- (ii) other commission officers as the commission considers advisable.

(c) A commissioner elected under Subsection (8)(b) shall serve in the office to which the commissioner is elected at the pleasure of the commission.

(9) (a) Each commissioner has equal voting rights on a commission matter when in attendance at a commission meeting.

(b) [~~Three~~] Four commissioners is a quorum for conducting commission business.

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

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

- (i) the commission;
- (ii) the chair; or
- (iii) three commissioners upon filing a written request for a meeting with the chair.

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

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

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

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

- (a) "Compliance, Licensing, and Enforcement Subcommittee"; and
- (b) "Operations and Procurement Subcommittee."

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

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

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

- (a) the internal affairs of the department; and
- (b) subject to Section 32B-2-207, hiring and firing of upper management of the

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department.

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

Section ~~(4)~~3. Section **32B-2-202** is amended to read:

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

(1) The commission shall:

(a) consistent with the policy established by the Legislature by statute, act as a general policymaking body on the subject of alcoholic product control;

(b) adopt and issue policies, rules, and procedures;

(c) set policy by written rules that establish criteria and procedures for:

(i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, or certificate of approval; and

(ii) determining the location of a state store, package agency, or retail licensee;

(d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;

(e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:

(i) a package agency;

(ii) a full-service restaurant license;

(iii) a limited-service restaurant license;

(iv) a club license;

(v) an airport lounge license;

(vi) an on-premise banquet license;

(vii) a resort license, under which four or more sublicenses may be included;

(viii) an on-premise beer retailer license;

(ix) a reception center license;

(x) a beer-only restaurant license;

(xi) subject to Subsection (4), a single event permit;

(xii) subject to Subsection (4), a temporary beer event permit;

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- (xiii) a special use permit;
- (xiv) a manufacturing license;
- (xv) a liquor warehousing license;
- (xvi) a beer wholesaling license; and
- (xvii) one of the following that holds a certificate of approval:
 - (A) an out-of-state brewer;
 - (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
 - (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke one of the following conditional licenses for the purchase, storage, sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:
 - (i) a conditional full-service restaurant license; or
 - (ii) a conditional limited-service restaurant license;
- (g) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;
- (h) to the extent a fee is not specified in this title, establish a fee allowed under this title in accordance with Section 63J-1-504;
- (i) fix prices at which liquor is sold that are the same at all state stores, package agencies, and retail licensees;
- (j) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;
- (k)
 - (i) require the director to follow sound management principles; and
 - (ii) require periodic reporting from the director to ensure that:
 - (A) sound management principles are being followed; and
 - (B) policies established by the commission are being observed;
- (l)
 - (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and
 - (ii) do the things necessary to support the department in properly performing the department's duties;
- (m) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:

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- (i) considered expedient; and
- (ii) approved by the governor;
- (n) prescribe the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- (o) make rules governing the credit terms of beer sales within the state to retail licensees; and
- (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.

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

- (a) establish a state store;
- (b) issue authority to act as a package agent or operate a package agency; and
- (c) issue or deny a license, permit, or certificate of approval.

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

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

Section ~~5~~4. Section **32B-2-205** is amended to read:

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

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

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

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

(iii) By no later than 30 calendar days from the day on which the governor receives the

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three nominations submitted by the commission, the governor may:

(A) appoint the director; or

(B) reject the three nominations.

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

(v) The governor may reappoint the director without seeking nominations from the commission. Reappointment of a director is subject to the consent of the Senate.

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

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

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

(ii) the governor after consultation with the commission.

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

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

(i) be qualified in administration;

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

and

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

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

(3) The director shall:

(a) carry out the policies of the commission;

(b) carry out the policies of the department;

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

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

Section ~~6~~5. Section **32B-2-206** is amended to read:

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

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

(1) (a) shall prepare and propose to the commission general policies, rules, and procedures governing the administrative activities of the department; and

(b) may submit other recommendations to the commission as the director considers in the interest of the commission's or the department's business;

(2) within the general policies, rules, and procedures of the commission, shall:

(a) provide day-to-day direction, coordination, and delegation of responsibilities in the administrative activities of the department's business; and

(b) make internal department policies and procedures relating to:

(i) department personnel matters; and

(ii) the day-to-day operation of the department;

(3) subject to Section 32B-2-207, shall appoint or employ personnel as considered necessary in the administration of this title, and with regard to the personnel shall:

(a) prescribe the conditions of employment;

(b) define the respective duties and powers; and

(c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel Management Act;

(4) shall establish and secure adherence to a system of reports, controls, and performance in matters relating to personnel, security, department property management, and operation of:

(a) a department office;

(b) a warehouse;

(c) a state store; and

(d) a package agency;

(5) within the policies, rules, and procedures approved by the commission and

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provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale, furnishing, transportation, or delivery of an alcoholic product;

(6) shall prepare for commission approval:

(a) recommendations regarding the location, establishment, relocation, and closure of a state store or package agency;

(b) recommendations regarding the issuance, denial, nonrenewal, suspension, or revocation of a license, permit, or certificate of approval;

(c) an annual budget, proposed legislation, and reports as required by law and sound business principles;

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

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

(f) an inventory control system;

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

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

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

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

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

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

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

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

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

(9) (a) after consultation with the governor, shall determine whether an alcoholic

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product should not be sold, offered for sale, or otherwise furnished in an area of the state during a period of emergency that is proclaimed by the governor to exist in that area; and

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

(10) issue event permits in accordance with Chapter 9, Event Permit Act; and

~~(11)~~ (11) shall perform any other duty required by the commission or by law.

Section ~~(7)~~6. Section **32B-2-207** is amended to read:

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

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

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

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

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

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

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

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

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

~~(4)~~ (4) The following are not considered a department employee:

- (a) a package agent;
- (b) a licensee;
- (c) a staff member of a package agent; or

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(d) staff of a licensee.

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

(a) work in:

(i) a state store; or

(ii) a department warehouse; or

(b) engage in an activity involving the handling of an alcoholic product.

Section ~~(8)~~ 7. Section **32B-2-209** is amended to read:

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

(1) As used in this section:

(a) "Applicable department employee" means a department employee who is:

(i) designated as a deputy or assistant director;

(ii) a chief administrative officer of a division within the department;

(iii) a department compliance officer; or

(iv) an employee directly performing purchasing, licensing, or compliance functions of the department.

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

(i) spouse; or

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

(c) "Permit" does not include:

(i) an industrial or manufacturing use permit;

(ii) a scientific or educational use permit; or

(iii) a religious wine use permit.

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

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

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

(c) have an office, position, or relationship, or be engaged in a business or avocation

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that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) as a commissioner;
- (b) as director of the department; or
- (c) to a department staff position.

(5) (a) A commissioner shall disclose during a meeting of the commission a potential violation of this section, including the existence and nature of a professional, financial, business, or personal interest with a person who holds, or an applicant for, a package agency, license, or permit issued under this title that may result in a violation of this section.

(b) After a commissioner makes a disclosure under Subsection (5)(a):

(i) the commission may, by motion, determine whether there is a potential violation of this section;

(ii) if the commission determines that there is a potential violation of this section:

(A) the commission shall notify the governor; and

(B) the commissioner may not vote on any matter that would result in the potential violation of this section; and

(iii) if the commission determines that there is not a potential violation of this section, a commissioner may elect whether to vote on the issue that gives rise to the disclosure under Subsection (5)(a).

(c) The commission shall record any declaration of a potential violation of this section in the minutes of the meeting.

Section ~~9~~8. Section **32B-2-210** is enacted to read:

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

(1) There is created within the department an advisory board known as the "Alcoholic Beverage Control Advisory Board."

(2) The advisory board shall consist of 12 members as follows:

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(a) the following voting members appointed by the commission, a representative of:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee;

(iii) a beer-only restaurant licensee;

(iv) a social club licensee;

(v) a fraternal club licensee;

(vi) a dining club licensee;

(vii) a wholesaler licensee;

(viii) an on-premise banquet licensee;

(ix) an on-premise beer retailer licensee; and

(x) a reception center licensee;

(b) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee, who serves as a voting member; and

(c) the chair of the commission or the chair's designee from the members of the commission, who shall serve as a nonvoting member.

(3) (a) Except as required by Subsection (3)(b), as terms of current voting members of the advisory board expire, the commission shall appoint each new member or reappointed member to a four-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of voting advisory board members are staggered so that approximately half of the advisory board is appointed every two years.

(c) No two members of the board may be employed by the same company or nonprofit organization.

(4) (a) When a vacancy occurs in the membership for any reason, the commission shall appoint a replacement for the unexpired term.

(b) The commission shall terminate the term of a voting advisory board member who ceases to be representative as designated by the member's original appointment.

(5) The advisory board shall meet no more than quarterly as called by the chair for the purpose of advising the commission and the department, with discussion limited to administrative rules made under this title.

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(6) The chair of the commission or the chair's designee shall serve as the chair of the advisory board and call the necessary meetings.

(7) (a) Six members of the board constitute a quorum of the board.

(b) An action of the majority when a quorum is present is the action of the board.

(8) The department shall provide staff support to the advisory board.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

Section ~~{10}9~~. Section **32B-2-302** is amended to read:

32B-2-302. Exempt from Division of Finance -- Application of procurement --

External audits.

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

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

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

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

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

(2) The ~~{commission}~~state auditor shall ~~{annually}~~:

(a) select a private person to perform a financial audit of the department's accounts, subject to the ~~{state auditor}~~commission approving the private person selected to perform the financial audit;

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

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

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

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

(ii) ethics and statutory compliance.

(b) In addition to complying with Subsection (3)(a), the state auditor may engage in an activity related to the department or commission allowed under [Utah Constitution, Article VII, Section 15 or](#) Title 67, Chapter 3, Auditor.

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

(a) the governor;

(b) the Legislative Management Committee;

(c) the director; and

(d) the legislative auditor general.

Section ~~{11}~~10. Section **32B-2-302.5** is enacted to read:

32B-2-302.5. Internal audits.

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

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

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

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

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

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

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internal audits conducted under this section.

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

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

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

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

(i) the governor;

(ii) the legislative auditor general; and

(iii) the Legislative Management Committee.

(e) Within 120 calendar days of an internal audit being completed, the commission shall prepare a report to the governor describing steps taken to implement the recommendations of the audit or a detailed explanation of why recommendations have not been implemented.

The chair of the commission shall forward the report to:

(i) the legislative auditor general; and

(ii) the Legislative Management Committee.

(f) The chair of the commission shall make such other reports as the governor requests.

Section ~~{12}~~ 11. Section ~~{32B-2-304}~~ 32B-2-605 is amended to read:

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

~~——~~ (1) For purposes of this section:

~~——~~ (a) (i) "Landed case cost" means:

~~——~~ (A) the cost of the product; and

~~——~~ (B) inbound shipping costs incurred by the department.

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

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

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

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beverage.]

~~—— (2) Except as provided in Subsection (3):~~

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

~~—— (b) wine sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;~~

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

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

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

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

~~—— (i) the spirituous liquor is manufactured by a manufacturer producing less than [30,000] 60,000 proof gallons of spirituous liquor in a calendar year; and~~

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

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

~~—— (i) the wine is manufactured by a manufacturer producing less than [20,000] 40,000 gallons of wine in a calendar year; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the package agent; or
- (ii) an individual designated by the package agent.

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

- (i) an employee of the package agent; and
- (ii) responsible for the operation of the package agency.

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

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

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

(f) A package agent shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A package agency may not display liquor or a price list in a window or showcase

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that is visible to passersby.

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

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

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

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

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

(a) a minor;

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) on Sunday; or

(B) on a state or federal legal holiday.

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

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

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

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

- (A) a full-service restaurant license;
- (B) a limited-service restaurant license;
- (C) a beer-only restaurant license; or
- (D) dining club license;

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

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

(v) the manufacturing facility:

- (A) owns the restaurant or dining club; or
- (B) operates the restaurant or dining club;

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

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

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

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

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

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

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

- (i) ask the suspected minor for proof of age;
- (ii) ask the person who accompanies the suspected minor for proof of age; and

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(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

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

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

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

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

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

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

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

(iii) subject to:

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

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

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

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

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

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

(a) physical facilities;

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- (b) conditions of operation;
- (c) hours of operation;
- (d) inventory levels;
- (e) payment schedules;
- (f) methods of payment;
- (g) premises security; and
- (h) any other matter considered appropriate by the commission.

Section ~~{14}~~12. Section **32B-3-204** is amended to read:

32B-3-204. Disciplinary proceeding procedure.

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

- (i) the commission;
- (ii) a hearing examiner appointed by the commission to conduct a suspension, non-renewal, or revocation hearing required by law;
- (iii) the director; and
- (iv) the department.

(b) Except as provided in this section or Section 32B-2-605, a person described in Subsection (1)(a) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

(c) Except when otherwise provided by law, an adjudicative proceeding before the commission or a hearing examiner appointed by the commission shall be:

- (i) video or audio recorded; and
- (ii) subject to Subsection (3)(b), conducted in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

(d) A person listed in Subsection (1)(a) shall conduct an adjudicative proceeding concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures made by the commission, director, or department.

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(2) (a) Subject to Section 32B-3-202, a disciplinary proceeding shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on a disciplinary matter.

(b) (i) The commission may appoint a necessary officer, including a hearing examiner, from within or without the department, to administer the disciplinary proceeding process.

(ii) A hearing examiner appointed by the commission:

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

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

(I) findings of fact determined on the basis of a preponderance of the evidence presented at the hearing;

(II) conclusions of law; and

(III) recommendations.

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

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

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

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

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

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

(A) administer an oath or affirmation;

(B) take evidence;

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

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

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

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

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

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

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

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

(I) appear before the issuing party; and

(II) (Aa) produce documentary evidence if so ordered; or

(Bb) give evidence regarding the matter in question.

(C) Failure to obey an order of the court may be punished by the court as contempt.

(d) In a case heard by the commission, the commission shall issue its final decision and order in accordance with Subsection (2).

(4) (a) The commission shall:

(i) render a final decision and order on a disciplinary action; and

(ii) cause its final order to be prepared in writing, issued, and served on all parties.

(b) An order of the commission is final on the date the order is issued.

(c) The commission, after the commission renders its final decision and order, may require the director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(5) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by the commission or a hearing examiner appointed by the commission shall proceed formally in accordance with Sections 63G-4-204 through 63G-4-209 if:

(i) the alleged violation poses, or potentially poses, a grave risk to public safety, health, and welfare;

(ii) the alleged violation involves:

(A) selling or furnishing an alcoholic product to a minor;

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(B) attire, conduct, or entertainment prohibited by Chapter 1, Part 5, Attire, Conduct, and Entertainment Act;

(C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf of the respondent;

(D) interfering or refusing to cooperate with:

(I) an authorized official of the department or the state in the discharge of the official's duties in relation to the enforcement of this title; or

(II) a peace officer in the discharge of the peace officer's duties in relation to the enforcement of this title;

(E) an unlawful trade practice under Chapter 4, Part 7, Trade Practices Act;

(F) unlawful importation of an alcoholic product; or

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

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

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

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

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

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

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

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

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

Section ~~15~~13. Section **32B-6-805** is amended to read:

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

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

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

- (i) a reception center licensee;
- (ii) individual staff of a reception center licensee; or
- (iii) both a reception center licensee and staff of the reception center licensee.

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

(3) (a) For the purpose described in Subsection (3)(b), a reception center licensee shall provide the following with advance notice of a scheduled event in accordance with rules made by the commission:

- (i) the department; and
- (ii) the local law enforcement agency responsible for the enforcement of this title in the jurisdiction where the reception center is located.

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

- (i) an authorized representative of the commission or the department; or
- (ii) a law enforcement officer.

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

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

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

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

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

- (i) destroy an opened and unused alcoholic product that is not saleable, under

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conditions established by the department; and

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

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

(B) unopened container of an alcoholic product.

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

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

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

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

(7) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a reception center licensee.

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

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

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

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

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

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

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

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

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

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

(12) (a) A reception center licensee shall supervise and direct a person involved in the

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sale, offer for sale, or furnishing of an alcoholic product.

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

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

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

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

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

(i) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(A) not readily visible to a patron; and

(B) not accessible by a patron; and

(ii) apart from an area used:

(A) for staging; or

(B) as a lobby or waiting area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The commission may by rule define what constitutes a "third-party host" for purposes of this Subsection (17) so that a reception center licensee and the third-party host are not affiliated with, owned by, or operated by the same persons.

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

(a) adequate to prepare a full meal; and

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

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

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

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

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

Section ~~16~~14. Section **32B-8a-302 (Effective 07/01/12)** is amended to read:

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

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

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

(b) a statement as to whether the consideration, if any, to be paid to the transferor includes payment for any or all of the following:

(i) inventory;

(ii) fixtures; and

(iii) transfer of the retail license;

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

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- (d) (i) an application fee of \$300; and
- (ii) a transfer fee determined in accordance with Section 32B-8a-303.

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

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

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

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

(ii) determine that the transferee is eligible to hold the type of retail license that is to be transferred at the premises to which the retail license would be transferred;

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

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

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

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

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

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

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

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

(b) If after a transfer of a retail license the transferee operates the same type of retail license at the same location as did the transferor, the commission may waive or vary the

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proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the transfer under the same circumstances that the commission may waive or vary the proximity requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a retail license.

Section ~~17~~15. Section **32B-8a-303 (Effective 07/01/12)** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) a retail license transferred between partners when no new partner is being licensed;

(ix) a retail license transferred between corporations whose outstanding shares of stock are owned by the same individuals;

(x) upon compliance with Section 32B-8a-202, a retail license to a corporation whose entire stock is owned by:

(A) the transferor; or

(B) the spouse of the transferor;

(xi) upon compliance with Section 32B-8a-202, a retail license to a limited liability company whose entire membership consists of:

(A) the transferor; or

(B) the spouse of the transferor; or

(xii) a retail license transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation.

(2) If there are multiple and simultaneous transfers of retail licenses under Section 32B-8a-202, a transfer fee described in Subsection (1)(c) is required for only one of the retail licenses being transferred.

(3) (a) Except as provided in Subsection (3)(b), a transfer fee required under Subsection (1) is due for a transfer subsequent to a transfer under Subsection (1)(e)[~~(xiii)~~](xii) if the subsequent transfer is of 51% of the stock in a corporation to which a retail license is

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transferred by a retail licensee or the spouse of a retail licensee.

(b) If the transfer of stock described in Subsection (3)(a) is from a parent to the parent's adult child or adult grandchild, the transfer fee is one-half of the amount described in Subsection (1)(a).

(4) Money collected from a transfer fee shall be deposited in the Liquor Control Fund.

Section ~~118~~16. Section **32B-9-201** is amended to read:

32B-9-201. Application requirements for event permit.

(1) To obtain an event permit, a person shall submit to the department:

(a) a written application in a form that the department prescribes;

(b) an event permit fee:

(i) in the amount specified in the relevant part under this chapter for the type of event permit for which the person is applying; and

(ii) that is refundable if an event permit is not issued;

(c) written consent of the local authority;

(d) a bond as specified by Section 32B-9-203;

(e) the times, dates, location, estimated attendance, nature, and purpose of the event;

(f) a description or floor plan designating:

(i) the area in which the person proposes that an alcoholic product be stored;

(ii) the site from which the person proposes that an alcoholic product be sold, offered for sale, or furnished; and

(iii) the area in which the person proposes that an alcoholic product be allowed to be consumed;

(g) a signed consent form stating that the event permittee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises during the event;

(h) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(i) any other information as the commission or department may require.

(2) An entity applying for a permit need not meet the requirements of Subsections (1)(b), (c), and (d) if the entity is:

(a) a state agency; or

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(b) a political subdivision of the state.

(3) The [~~commission~~] director may not issue an event permit to a person who is disqualified under Section 32B-1-304.

(4) (a) The proximity requirements of Section 32B-1-202 do not apply to an event permit.

(b) Notwithstanding Subsection (4)(a), nothing in this section prevents the director, the Compliance, Licensing, and Enforcement Subcommittee, or the commission from considering the proximity of an educational, religious, or recreational facility, or any other relevant factor in deciding whether to issue an event permit.

Section ~~19~~17. Section **32B-9-202** is amended to read:

32B-9-202. Duties before issuing event permit.

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

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

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

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

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

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

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

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

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

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

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

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people; or

(i) an outdoor public event; ~~[and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(3)]~~ (4) Once the [commission] director issues an event permit, the department shall send a copy of the approved application and the event permit by written or electronic means to

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the state and local law enforcement authorities [~~before the scheduled event~~] at least three days before the event.

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

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

Section ~~{20}~~18. Section **32B-9-204** is amended to read:

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

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

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) an event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event; or

(III) any combination of the persons listed in this Subsection (1)(b);

(B) immediate revocation of the event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the event permit is revoked, disqualifies the event permittee from applying for an event permit for a period of three years from the date of revocation of the event permit.

(c) An alcoholic product seized under this Subsection (1) shall be returned to the event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) (a) If there is a conflict between this part and the relevant part under this chapter for the specific type of special use permit held by the special use permittee, the relevant part governs.

(b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the

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relevant part under this chapter for the type of event permit that is held by the event permittee.

(c) Notwithstanding that this part or the relevant part under this chapter for the type of event permit held by an event permittee refers to "event permittee," a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the event permit is issued is subject to the same requirement or prohibition.

(3) An event permittee shall display a copy of the event permit in a prominent place in the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

(4) An event permittee may not on the premises of the event:

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

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

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

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

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

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

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

(a) a beer wholesaler licensee;

(b) a beer retailer; or

(c) a small brewer.

(7) An event permittee may not store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product purchased for an event in a location other than that described in the application and designated on the event permit unless the event permittee first

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applies for and receives approval from the [~~commission~~] director, with the approval of the Compliance, Licensing, and Enforcement Subcommittee, for a change of location.

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

- (i) in an open original container; and
- (ii) in a container on draft.

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

- (i) in a size of container that exceeds two liters; or
- (ii) to an individual patron in a size of container that exceeds one liter.

(9) (a) An event permittee may not sell or offer for sale an alcoholic product at less than the cost of the alcoholic product to the event permittee.

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

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

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

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

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

- (i) the alcoholic product is served to a patron at a seated event;
- (ii) food is available whenever the alcoholic product is sold, offered for sale, or furnished; and
- (iii) no person advertises that at the event a person may be sold or furnished an indefinite or unlimited number of alcoholic products during a set period for a fixed price.

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

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

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- (a) a minor;
- (b) a person actually, apparently, or obviously intoxicated;
- (c) a known interdicted person; or
- (d) a known habitual drunkard.

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

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

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

- (a) is used primarily for drinking purposes; and
- (b) contains an alcoholic product.

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

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

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

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

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

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

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

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

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

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product at an event.

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

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

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

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

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

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

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

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

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

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

Section ~~{21}~~19. Section **32B-9-303** is amended to read:

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

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

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

(i) partnership;

(ii) corporation;

(iii) limited liability company;

(iv) religious organization;

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- (v) political organization;
- (vi) incorporated association;
- (vii) recognized subordinate lodge, chapter, or other local unit of an entity described in

this Subsection (2)(a);

- (viii) state agency; or
- (ix) political subdivision of the state.

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

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

(i) the storage, sale, offering for sale, furnishing, and consumption of liquor at an event at which the storage, sale, offering for sale, furnishing, or consumption of liquor is otherwise prohibited by this title under either:

- (A) a 120 hour single event permit; or
- (B) a 72 hour single event permit; and

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

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

- (i) a 120 hour single event permit; or
- (ii) a 72 hour single event permit.

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

- (a) four single event permits in any one calendar year to the same person listed in Subsection (2) if one or more of the single event permits is a 120 hour single event permit; or
- (b) 12 single event permits in any one calendar year to the same person listed in Subsection (2) if each of the single event permits issued to that person is a 72 hour single event permit.

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

Section ~~22~~20. Section **32B-9-403** is amended to read:

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

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

(a) a single event permit; or

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

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

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

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

(b) A temporary beer event permit authorizes, for a period not to exceed 30 days, the storage, sale, offer for sale, furnishing, and consumption of beer at an event.

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

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

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

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

Section ~~{23}~~21. Section **32B-9-404** is amended to read:

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

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

(2) Suspension or revocation of a temporary beer event permit issued ~~[by the commission]~~ under Section 32B-9-403 or a temporary permit issued by a local authority under this section prohibits the temporary beer event permittee who has a permit suspended or

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revoked by either the commission or local authority from continuing to operate under the other state or local permit.

Section ~~{24}~~22. Section **52-4-205** is amended to read:

52-4-205. Purposes of closed meetings.

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

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

(b) strategy sessions to discuss collective bargaining;

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

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

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

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

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(~~††††~~ii) an audit report and the Alcoholic Beverage Control Commission's response to the audit report until the audit report is made available under Subsection 32B-2-302(4) or

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32B-2-302.5(5)(d):

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

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

(2) The following meetings shall be closed:

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

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

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

(3) A public body may not interview a person applying to fill an elected position in a closed meeting.

Section ~~25~~23. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

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

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

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

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

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

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

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or

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commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

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

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

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

- (a) a request for bids;
- (b) a request for proposals;
- (c) a grant; or
- (d) other similar document;

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

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

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

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

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

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire

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the property as required under Section 78B-6-505;

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

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

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

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of

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legislative action or policy may not be classified as protected under this section;

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

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

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students

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admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

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the donor, provided that:

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

(41) (a) records in the custody or control of the Office of Legislative Auditor General

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that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

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

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

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

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- (i) governmental property;
- (ii) governmental programs; or
- (iii) the property of a private person who provides the Division of Emergency

Management information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

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

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

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

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4;

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(61) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or

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regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(62) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(63) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); [~~and~~]

(64) a record described in Section 63G-12-210[-]; and

(65) a record related to an ethics investigation of the Department of Alcoholic Beverage Control or Alcoholic Beverage Control Commission until a public recommendation or public sanction is issued.

Section ~~26~~24. Section **63I-5-201** is amended to read:

63I-5-201. Internal auditing programs -- State agencies.

(1) (a) The Departments of Administrative Services, Agriculture, Commerce, Community and Culture, Corrections, Workforce Services, Environmental Quality, Health, Human Services, Natural Resources, Public Safety, and Transportation; and the State Tax Commission shall conduct various types of auditing procedures as determined by the agency head or governor.

(b) The governor may, by executive order, require other state agencies to establish an internal audit program.

(c) An agency head may establish an internal audit program for the agency head's agency if the agency administers programs that:

(i) might pose a high liability risk to the state; or

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(ii) are essential to the health, safety, and welfare of the citizens of Utah.

(2) (a) The Office of the Court Administrator shall conduct various types of auditing procedures as determined by the Judicial Council, including auditing procedures for courts not of record.

(b) The Judicial Council may, by rule, require other judicial agencies to establish an internal audit program.

(c) An agency head within the judicial branch may establish an internal audit program for the agency head's agency if the agency administers programs that:

(i) might pose a high liability risk to the state; or

(ii) are essential to the health, safety, and welfare of the citizens of Utah.

(3) (a) The University of Utah, Utah State University, Salt Lake Community College, Utah Valley University, and Weber State University shall conduct various types of auditing procedures as determined by the Board of Regents.

(b) The Board of Regents may issue policies requiring other higher education entities or programs to establish an internal audit program.

(c) An agency head within higher education may establish an internal audit program for the agency head's agency if the agency administers programs that:

(i) might pose a high liability risk to the state; or

(ii) are essential to the health, safety, and welfare of the citizens of Utah.

(4) The State Office of Education shall conduct various types of auditing procedures as determined by the State Board of Education.

(5) Subject to Section 32B-2-302.5, the internal audit division of the Department of Alcoholic Beverage Control shall conduct various types of auditing procedures as determined by the Alcoholic Beverage Control Commission.

Section ~~27~~25. **Effective date.**

This bill takes effect on July 1, 2012.

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Legislative Review Note

SB0066S01 compared with SB0066

~~as of 2-21-12 1:40 PM~~

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