

## SB0119S01 compared with SB0119

~~deleted text~~ shows text that was in SB0119 but was deleted in SB0119S01.

inserted text shows text that was not in SB0119 but was inserted into SB0119S01.

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Senator Ross I. Romero proposes the following substitute bill:

### ALCOHOLIC BEVERAGE CONTROL ACT SAMPLING

#### AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ross I. Romero**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies the Alcoholic Beverage Control Act to address sampling of liquor.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows sampling of liquor by retail licensees under certain circumstances;
- ▶ addresses authority of local representatives;
- ▶ addresses giving away of a product except for testing, analysis, and sampling; and
- ▶ makes technical and conforming amendments.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

**32B-4-705**, as last amended by Laws of Utah 2011, Chapters 307 and 334

**32B-4-708**, as enacted by Laws of Utah 2010, Chapter 276

**32B-11-608**, as last amended by Laws of Utah 2011, Chapters 307 and 334

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

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

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

As used in this title:

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

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

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

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

(3) "Alcoholic beverage" means the following:

(a) beer; or

(b) liquor.

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

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

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

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

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

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- (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 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

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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.

(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

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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
- (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:

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- (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:

- (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.

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(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 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.

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(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 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.

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(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).

(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

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(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.

(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;

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(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.

(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:

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(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.

(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.

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(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.

(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;

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- (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:

- (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

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(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.

(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

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(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.

(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.

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(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:

- (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) "Retail licensee sample" means liquor that is used for testing, analysis, and sampling by a retail licensee in accordance with Subsection 32B-4-705(7).

~~[(94)]~~ (95) "Room service" means furnishing an alcoholic product to a person in a guest room of a:

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

~~[(95)]~~ (96) "Serve" means to place an alcoholic product before an individual.

~~[(96)]~~ (97) (a) "School" means a building used primarily for the general education of minors.

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

~~[(97)]~~ (98) "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.

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~~[(98)]~~ (99) "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)]~~ (99)(b);
- (d) on a contractual or voluntary basis; and
- (e) whether or not the person is designated as:
  - (i) an employee;
  - (ii) an independent contractor;
  - (iii) an agent of the licensee; or
  - (iv) a different type of classification.

~~[(99)]~~ (100) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

~~[(100)]~~ (101) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

~~[(101)]~~ (102) "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)]~~ (103) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

~~[(103)]~~ (104) (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)]~~ (105) "Sports center" is as defined by the commission by rule.

~~[(105)]~~ (106) (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

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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)]~~ (107) "State of nudity" means:

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

~~[(107)]~~ (108) "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.

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~~[(108)]~~ (109) (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)]~~ (110) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

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

~~[(110)]~~ (111) "Sublicense" is as defined in Section 32B-8-102.

~~[(111)]~~ (112) "Supplier" means a person who sells an alcoholic product to the department.

~~[(112)]~~ (113) "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)]~~ (114) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

~~[(114)]~~ (115) "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.

(116) "Trade show" means a private event that is:

(a) hosted by one or more industry representatives for the purpose of sampling and analyzing retail licensee samples of liquor furnished by the industry representatives in accordance with Subsection 32B-4-705(7);

(b) attended by the department and retail licensees; and

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### (c) overseen by the department.

~~[(115)]~~ ~~(~~116~~;117)~~ "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)]~~ ~~(~~117~~;118)~~ "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.

~~[(117)]~~ ~~(~~118~~;119)~~ (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)]~~ ~~(~~119~~;120)~~ "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section 2. Section **32B-4-705** is amended to read:

### **32B-4-705. Exclusions from tied house prohibitions.**

(1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an industry member to a retailer under the conditions and within the limitations prescribed in:

(a) this section; and

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- (b) the applicable federal laws cited in this section.
- (2) The following may be furnished by an industry member:
  - (a) a product display as provided in 27 C.F.R. Sec. 6.83;
  - (b) point of sale advertising material or a consumer advertising specialty as provided in 27 C.F.R. Sec. 6.84;
  - (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;
  - (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;
  - (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;
  - (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;
  - (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;
  - (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;
  - (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
  - (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and
  - (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.
- (3) The following exceptions provided in federal law are not applicable:
  - (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
  - (b) the exception for a consumer tasting or sampling at a retail establishment as provided in 27 C.F.R. Sec. 6.95; and
  - (c) the exception for participation in a retailer association activity provided in 27 C.F.R. Sec. 6.100.
- (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain a record:
  - (a) of an item furnished to a retailer;
  - (b) on the premises of the industry member; and
  - (c) for a three-year period.
- (5) A sample of liquor may be provided to the department under the following conditions:
  - (a) With the department's permission, an industry member may submit a department sample to the department for product testing, analysis, and sampling.
  - (b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing,

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analysis, and sampling within a consecutive 120-day period.

(c) (i) A department sample may not exceed 1 liter.

(ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(d) A department sample submitted to the department:

(i) shall be shipped prepaid by the industry member by common carrier; and

(ii) may not be shipped by United States mail directly to the department's central administrative warehouse office.

(e) A department sample may not be shipped to any other location within the state.

(f) The industry member shall submit with a department sample submitted to the department a letter from the industry member that clearly:

(i) identifies the product as a "department sample"; and

(ii) states the FOB case price of the product.

(g) (i) The department may transfer a listed item from current stock:

(A) for use as a comparison control sample; or

(B) to verify product spoilage as considered appropriate.

(ii) The department shall charge back a sample transferred under this Subsection (5)(g) to the respective industry member.

(h) The department shall:

(i) account for, label, and record a department sample received or transferred;

(ii) account for the department sample's disposition; and

(iii) maintain a record of the sample and its disposition for a two-year period.

(i) The department shall affix to each container of a department sample a label clearly identifying the product as a "department sample."

(j) The department shall dispose of a department sample delivered to the department or transferred from the department's current stock in one of the following ways as chosen by the department:

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(i) test and analyze the department sample, with the remaining contents destroyed under controlled and audited conditions established by the department;

(ii) destroy the entire contents of the department sample under controlled and audited conditions established by the department; or

(iii) add the department sample to the inventory of the department for sale to the public.

(k) A person other than an authorized department official may not be in possession of a department sample except as otherwise provided.

(l) The department shall handle a liquor item received by the department from a supplier that is not designated as a sample by the supplier, but that is an item not specifically listed on a department purchase order, in accordance with this Subsection (5).

(m) The department may not use its money to pay freight or charges on a sample or a liquor item:

(i) shipped to the department by a supplier; and

(ii) not listed on a department purchase order.

(6) A sample of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (6).

(a) A sample of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.

(b) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation, an industry member may furnish the next largest size.

(7) (a) A retail licensee may taste and analyze a retail licensee sample under the conditions listed in this Subsection (7).

(b) (i) Only an industry representative may purchase a retail licensee sample.

(ii) An industry representative shall purchase a retail licensee sample from the department from a particular type, vintage, and production lot:

(A) listed on the department's sales list; or

(B) special ordered by the department.

(iii) An industry representative may not purchase more than six retail licensee samples of a particular type, vintage, and production lot of a particular branded product within a

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consecutive 120-day period.

(c) (i) An industry representative shall ensure that before a retail licensee sample is used for tasting and analysis, the department affixes to the retail licensee sample a label clearly identifying the product as a "retail licensee sample."

(ii) The department may assess the actual cost of labeling for a retail licensee sample.

(d) (i) A retail licensee sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (7)(d)(i), a retail licensee sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(e) (i) ~~An industry representative of the manufacturer, supplier, or importer whose product is being tasted and analyzed shall oversee a tasting~~ **The sampling** and analysis of a retail licensee sample by a retail licensee ~~at the licensed premises of the retail licensee~~ **under this Subsection (7) may only occur at:**

(A) a state store;

(B) a package agency; or

(C) a trade show.

(ii) An industry representative described in Subsection (7)(e)(i) may participate in the tasting and analysis of a retail licensee sample ~~at the licensed premises of a retail licensee~~.

(iii) Only an owner, manager, or other individual who purchases an alcoholic product for a retail licensee may on behalf of the retail licensee taste and analyze one or more retail licensee samples ~~on the licensed premises of the retail licensee~~.

(f) (i) An alcoholic product may not be consumed during the time that an individual tastes and analyzes liquor.

(ii) An individual described in Subsection (7)(e) may taste and analyze no more than the following of a retail licensee sample:

(A) 1.5 ounces of a particular type, vintage, and production lot of a particular branded product of wine, heavy beer, or flavored malt beverage; or

(B) .5 ounces of a particular type, vintage, and production lot of a particular branded

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product of spirituous liquor.

(g) An industry representative may bring food to taste with a retail licensee sample being tasted and analyzed under this Subsection (7).

(h) An industry representative may add another alcoholic product to the amount of a retail licensee sample being tasted and analyzed under this Subsection (7) if:

(i) the other alcoholic product is:

(A) used as a secondary flavoring ingredient;

(B) used in conjunction with the primary liquor;

(C) not the only liquor in the beverage; and

(D) purchased from the department; and

(ii) an individual has no more than 2.5 ounces of spirituous liquor at a time before the individual.

(i) An industry representative shall:

(i) account for and record each retail licensee sample received;

(ii) account for each retail licensee sample's disposition; and

(iii) maintain a record of the retail licensee sample and its disposition for a one-year period.

(j) After a tasting and analysis under this Subsection (7) is completed, an industry representative shall remove from the ~~retail licensee's licensed premises~~ location at which the tasting and analysis occurred the retail licensee samples brought by the industry representative, including the unused contents of an opened product remaining after a product is tasted and analyzed.

[~~(7)~~] (8) An educational seminar may involve an industry member under the conditions listed in this Subsection [~~(7)~~] (8).

(a) An industry member may provide or participate in an educational seminar:

(i) involving:

(A) the department;

(B) a retailer;

(C) a holder of a scientific or educational special use permit;

(D) another industry member; or

(E) an employee of a person listed in Subsections [~~(7)~~] (8)(a)(i)(A) through (D); and

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(ii) regarding a topic such as:

(A) merchandising and product knowledge;

(B) use of equipment; and

(C) a tour of an alcoholic product manufacturing facility.

(b) An industry member may not pay the expenses of or compensate a person who is a department employee, a retailer, or a permittee for attending a seminar or tour described in Subsection ~~(7)~~ (8)(a).

~~(8)~~ (9) (a) A liquor industry member may conduct a tasting of a liquor product of the industry member:

(i) for the department, at the department's request; ~~and~~

(ii) for a licensed industry representative, but only at the department's central administrative warehouse office~~[-]; and~~

(iii) for a retail licensee, through an industry representative in accordance with Subsection (7).

(b) A liquor industry member may only use a department sample or industry representative sample when conducting a tasting of the industry member's liquor product under this Subsection (9).

(c) A beer industry member may conduct a tasting of a beer product for a beer retailer either at:

(i) the industry member's premises; or

(ii) a retail establishment.

(d) Except to the extent authorized by this section or commission rule, an alcoholic product industry member may not conduct tasting or sampling activities with:

(i) a retailer; or

(ii) a member of the general public.

~~(9)~~ (10) A beer industry member may participate in a beer retailer association activity to the extent authorized by 27 C.F.R. Sec. 6.100.

~~(10)~~ (11) (a) An industry member may contribute to a charitable, civic, religious, fraternal, educational, or community activity, except the contribution may not be given to influence a retailer in the selection of a product that may be sold at the activity.

(b) An industry member or retailer violates this Subsection ~~(10)~~ (11) if:

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(i) the industry member's contribution influences, directly or indirectly, the retailer in the selection of a product; and

(ii) a competitor's product is excluded in whole or in part from sale at the activity.

~~[(11)]~~ (12) (a) An industry member may lease or furnish equipment listed in Subsection ~~[(11)]~~ (12)(b) to a retailer if:

(i) the equipment is leased or furnished for a special event;

(ii) a reasonable rental or service fee is charged for the equipment; and

(iii) the period for which the equipment is leased or furnished does not exceed 30 days.

(b) This Subsection ~~[(11)]~~ (12) applies to the following equipment:

(i) a picnic pump;

(ii) a cold plate;

(iii) a tub;

(iv) a keg box;

(v) a refrigerated trailer;

(vi) a refrigerated van; or

(vii) a refrigerated draft system.

~~[(12)]~~ (13) (a) A liquor industry member may assist the department in:

(i) ordering, shipping, and delivering merchandise;

(ii) new product notification;

(iii) listing and delisting information;

(iv) price quotations;

(v) product sales analysis;

(vi) shelf management; and

(vii) an educational seminar.

(b) (i) A liquor industry member may, to acquire a new listing:

(A) solicit an order from the department; and

(B) submit to the department a sample of the liquor industry member's products under Subsection (5) and price lists.

(ii) (A) An industry member is confined to the customer areas when the industry member visits a state store or package agency unless otherwise approved.

(B) An industry member is confined to the office area of a state warehouse when the

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industry member visits a state warehouse unless otherwise approved.

~~[(13)]~~ (14) A beer industry member may assist a beer retailer in:

- (a) ordering, shipping, and delivering beer merchandise;
- (b) new product notification;
- (c) listing and delisting information;
- (d) price quotations;
- (e) product sales analysis;
- (f) shelf management; and
- (g) an educational seminar.

~~[(14)]~~ (15) A beer industry member may, to acquire a new listing:

- (a) solicit an order from a beer retailer; and
- (b) submit to a beer retailer a sample of the beer industry member's beer products under

Subsection (5) and price lists.

Section 3. Section **32B-4-708** is amended to read:

### **32B-4-708. Unlawful act involving consumers.**

(1) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to give away any of its product to a person except for testing, analysis, and sampling purposes by the ~~[department or local industry representative licensee]~~ following to the extent authorized by this title~~[-]~~:

- (i) the department;
- (ii) a retail licensee;
- (iii) a beer retailer; or
- (iv) a local industry representative licensee.

(b) This Subsection (1) does not preclude an industry member from serving its product to others at a private event hosted by the industry member in the industry member's home or elsewhere so long as the product is not served:

- (i) as part of a promotion of the industry member's product; or
- (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or sampling purposes.

(2) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or

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sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a promotion, program, or other activity.

(3) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an alcoholic product.

(4) It is unlawful for an industry member or retailer to sponsor or underwrite an athletic, theatrical, scholastic, artistic, or scientific event that:

- (a) overtly promotes the consumption of a product;
- (b) offers a product to the general public without charge; or
- (c) takes place on the premises of a school, college, university, or other educational institution.

Section 4. Section **32B-11-608** is amended to read:

### **32B-11-608. Operational requirements for local industry representative license.**

(1) (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state, shall comply with this title and rules of the commission.

(b) If a person knowingly violates Subsection (1)(a):

(i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (A) a local industry representative licensee;
- (B) individual staff of a local industry representative licensee; or
- (C) both a local industry representative licensee and staff of the local industry representative licensee; and

(ii) if the conditions of Subsection (1)(c) are met, the commission may order:

(A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and

(B) a suspension of the department's purchase of those products for a period determined by the commission.

(c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

- (i) directly commits the violation; or

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(ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.

(2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.

(b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

- (i) acquires the account of a manufacturer, supplier, or importer; or
- (ii) loses the account of a manufacturer, supplier, or importer.

(4) (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) Staff of a local industry representative licensee may not be:

- (a) a retail licensee that sells, offers for sale, or furnishes liquor;
- (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
- (c) a minor.

(6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for any type of disposition.

(7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:

(a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:

- (i) assist the department in:

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- (A) ordering, shipping, and delivering merchandise;
  - (B) providing new product notification;
  - (C) obtaining listing and delisting information;
  - (D) receiving price quotations;
  - (E) providing product sales analysis;
  - (F) conducting shelf management; and
  - (G) conducting educational seminars; and
  - (ii) to acquire new listings:
    - (A) solicit orders from the department; and
    - (B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;
      - (b) may not sell liquor within the state except to:
        - (i) the department; and
        - (ii) a military installation;
      - (c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;
        - (d) may not sell or furnish any liquor to any person within this state other than to:
          - (i) the department; or
          - (ii) a military installation;
        - (e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;
        - (f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and
        - (g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 [~~by the department~~].
- (8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).
  - (a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

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(b) (i) An industry representative sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(c) An industry representative sample may only be of a product not presently listed on the department's sales list.

(d) (i) An industry representative sample shall be shipped:

(A) prepaid by the manufacturer, supplier, or importer;

(B) by common carrier and not via United States mail; and

(C) directly to the department's central administrative warehouse office.

(ii) An industry representative sample may not be shipped to any other location within the state.

(e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"; and

(ii) clearly stating:

(A) the FOB case price of the product; and

(B) the name of the local industry representative for whom it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to a container a label clearly identifying the product as an "industry representative sample."

(h) The department shall:

(i) account for and record each industry representative sample received;

(ii) account for the industry representative sample's disposition; and

(iii) maintain a record of the industry representative sample and its disposition for a two-year period.

(i) An industry representative sample may not leave the premises of the department's

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central administrative warehouse office.

(j) A local industry representative licensee's and a local industry representative licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.

(k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.

(l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) the contents destroyed under controlled and audited conditions established by the department; or

(ii) added to the inventory of the department for sale to the public.

†

**Legislative Review Note**

~~as of 1-18-12 11:03 AM~~

~~Office of Legislative Research and General Counsel~~