

HB0136S01 compared with HB0136

~~{deleted text}~~ shows text that was in HB0136 but was deleted in HB0136S01.

inserted text shows text that was not in HB0136 but was inserted into HB0136S01.

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 bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Jack R. Draxler proposes the following substitute bill:

ALCOHOLIC BEVERAGE CONTROL RELATED AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and beer tax provisions to increase charges imposed on the sale of alcoholic products in the state and target the increase in revenue on enforcement related purposes.

Highlighted Provisions:

This bill:

- ▶ increases the markup on certain alcoholic products in the state;
- ▶ provides for the distribution of a certain percentage of the markup;
- ▶ addresses the Alcoholic Beverage Control Act Enforcement Fund;
- ▶ increases the beer tax rate;
- ▶ provides for the deposit of a certain percentage of the beer tax increase; and
- ▶ makes technical amendments.

HB0136S01 compared with HB0136

Money Appropriated in this Bill:

~~{None}~~ This bill appropriates in fiscal 2014:

- ▶ to Attorney General - Administration as an ongoing appropriation:
 - from the Markup Holding Fund, \$62,000 to pay for costs associated with enforcement of Title 32B.

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

32B-2-301, as last amended by Laws of Utah 2012, Chapter 357

32B-2-304, as last amended by Laws of Utah 2012, Chapter 357

32B-2-305, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1

59-15-101, as last amended by Laws of Utah 2010, Chapter 276

59-15-109, as last amended by Laws of Utah 2011, Chapter 281

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

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

32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.

(1) The following are property of the state:

(a) the money received in the administration of this title, except as otherwise provided;

and

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

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

(b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.

(3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.

(c) Money deposited into the Markup Holding Fund may be expended:

(i) to the extent appropriated by the Legislature; and

HB0136S01 compared with HB0136

(ii) to fund the deposits required by Subsection 32B-2-304(4), Subsection 32B-2-304(7), and Subsection 32B-2-305(4).

(4) The state treasurer shall by warrant draw from the Liquor Control Fund and, to the extent appropriated by the Legislature, from the Markup Holding Fund, the expenses, debts, and liabilities incurred by the department in connection with the administration of this title or any other expense necessary for the administration of this title, including:

- (a) salaries;
- (b) premiums, if any, on a bond for which the department pays premiums; and
- (c) an expenditure incurred in establishing, operating, or maintaining a state store or package agency.

(5) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year.

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

- (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
- (ii) report the deposit to the state treasurer.

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

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

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

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

32B-2-304. Liquor price -- School lunch program -- Remittance of markup.

(1) For purposes of this section:

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

(A) the cost of the product; and

HB0136S01 compared with HB0136

(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 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%~~] 90% 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%~~] 90% 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%~~] 90% 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%~~] 50% above the landed case cost to the department if:

(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 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%~~] 50% above the landed case cost to the department if:

(i) the wine is manufactured by a manufacturer producing less than 20,000 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,

HB0136S01 compared with HB0136

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), (c), or (d)

pursuant to a federal or other verifiable production report.

(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.

(6) (a) The department shall collect the markup and remit the markup collected by the department under this section:

(i) to the State Tax Commission monthly on or before the last day of the month immediately following the last day of the previous month; and

(ii) using a form prescribed by the State Tax Commission.

(b) For liquor provided to a package agency on consignment, the department shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department for the liquor provided to the package agency.

(c) The State Tax Commission shall deposit revenues remitted to it under Subsection (6)(a) into the Markup Holding Fund created in Section 32B-2-301.

(d) The assessment, collection, and refund of a markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

(e) The department if it fails to comply with this Subsection (6), is subject to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

(7) Beginning with fiscal year 2013-14, each fiscal year, ~~4.3%~~ ~~65%~~ 17% of the markup under this section shall be distributed as follows:

HB0136S01 compared with HB0136

(a) \$62,000 shall be distributed to the Office of the Attorney General to be used to pay costs associated with the enforcement of this title; and

(b) the amount collected in excess of the amount distributed under Subsection (7)(a) shall be deposited into the Alcoholic Beverage Control Act Enforcement Fund created in Section 32B-2-305.

Section 3. Section **32B-2-305** is amended to read:

32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.

(1) As used in this section:

(a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.

(b) "Enforcement ratio" is as defined in Section 32B-1-201.

(c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in this section.

(2) There is created a restricted special revenue fund known as the "Alcoholic Beverage Control Act Enforcement Fund."

(3) (a) The fund consists of:

(i) deposits made under Subsection (4); [~~and~~]

(ii) deposits made under Subsections 32B-2-304(7)(b) and 59-15-109(1)(b); and

~~[(ii)] (iii) interest earned on the fund.~~

(b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

(4) After the deposit made under Section 32B-2-304 for the school lunch program, the department shall deposit 1% of the total gross revenue from the sale of liquor with the state treasurer to be credited to the fund to be used by the Department of Public Safety as provided in Subsection (5).

(5) (a) The Department of Public Safety shall expend money from the fund to supplement appropriations by the Legislature so that the Department of Public Safety maintains a sufficient number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each year the enforcement ratio as of July 1 is equal to or less than the number specified in Section 32B-1-201.

(b) Beginning July 1, 2012, four alcohol-related law enforcement officers shall have as a primary focus the enforcement of this title in relationship to restaurants.

Section 4. Section **59-15-101** is amended to read:

HB0136S01 compared with HB0136

59-15-101. Tax basis -- Rate.

(1) (a) A tax is imposed at the rate specified in Subsection (1)(b) on all beer, as defined in Section 32B-1-102, that is imported or manufactured for sale, use, or distribution in this state.

(b) The tax described in Subsection (1)(a) shall be imposed at a rate of:

~~[(i) \$11 per 31-gallon barrel for beer imported or manufactured:]~~

~~[(A) before July 1, 2003; and]~~

~~[(B) for sale, use, or distribution in this state; {} and]~~

~~[(ii) \$12.80 per 31-gallon barrel for beer imported or manufactured:]~~

~~[(A) on or after July 1, 2003; and]~~

~~[(B) for sale, use, or distribution in this state {}:] {}~~

(~~iii~~) \$13.40 per 31-gallon barrel for beer that contains not more than 4% of alcohol by volume or 3.2% by weight:

(A) on or after July 1, 2013; and

(B) for sale, use, or distribution in this state; and

(~~iv~~) (ii) \$12.80 per 31-gallon barrel for beer that contains more than 4% alcohol by volume:

(A) on or after July 1, 2013; and

(B) for sale, use, or distribution in this state.

(c) The tax imposed under this Subsection (1):

(i) shall be imposed at a proportionate rate for:

(A) any quantity of beer other than a 31-gallon barrel; or

(B) the fractional parts of a 31-gallon barrel; and

(ii) may not be imposed more than once on the same beer.

(2) A tax may not be imposed on beer:

(a) sold to the United States and its agencies; or

(b) (i) manufactured or imported for sale, use, or distribution outside the state; and

(ii) exported from the state.

Section 5. Section **59-15-109** is amended to read:

59-15-109. Tax money to be paid to state treasurer.

(1) Taxes collected under this chapter shall be paid by the commission to the state

HB0136S01 compared with HB0136

treasurer daily for deposit as follows:

(a) beginning with fiscal year 2013-14, each fiscal year, 3.17% of the revenue collected under Subsection 59-15-101(1)(b)(i) shall be deposited into the Alcoholic Beverage Control Act Enforcement Fund created in Section 32B-2-305;

[(a)] (b) after making the deposit described in Subsection (1)(a), the greater of the following shall be deposited into the Alcoholic Beverage Enforcement and Treatment Restricted Account created in Section 32B-2-403:

(i) an amount calculated by:

(A) determining an amount equal to 40% of the revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made; and

(B) subtracting \$30,000 from the amount determined under Subsection (1)(a)(i)(A); or

(ii) \$4,350,000; ~~{}~~ and ~~{}~~

~~{~~ (b) beginning with fiscal year 2013-14, each fiscal year, 4.65% of the revenue collected under Subsection 59-15-101(1)(b)(iii) shall be deposited into the Alcoholic Beverage Control Act Enforcement Fund created in Section 32B-2-305; and

~~{~~ [(b)] (c) the revenue collected in excess of the amount deposited in accordance with ~~[Subsection]~~ Subsections (1)(a) and (b) shall be deposited into the General Fund.

(2) (a) The commission shall notify the entities described in Subsection (2)(b) not later than the September 1 preceding the fiscal year of the deposit of:

(i) the amount of the proceeds of the beer excise tax collected in accordance with this section for the fiscal year two years preceding the fiscal year of deposit; and

(ii) an amount equal to 40% of the amount listed in Subsection (2)(a)(i).

(b) The notification required by Subsection (2)(a) shall be sent to:

(i) the Governor's Office of Planning and Budget; and

(ii) the Legislative Fiscal Analyst.

Section 6. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for the fiscal year beginning July 1, 2013, and ending June 30, 2014, the following sums of money are appropriated from resources not otherwise appropriated, or reduced from amounts previously appropriated out of the funds or accounts indicated. These sums of money are in addition to any amounts previously appropriated for fiscal year 2014:

HB0136S01 compared with HB0136

To Attorney General - Administration

From Markup Holding Restricted Account

\$62,000

Schedule of Programs:

Administration

\$62,000

The Legislature intends that the money be used for the purposes outlined in Subsection 32B-2-304(7)(a).

Section ~~{6}~~7. **Effective date.**

This bill takes effect on July 1, 2013.

†

Legislative Review Note

~~as of 2-12-13 10:13 AM~~

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