

HB0228S01 compared with HB0228

~~text~~ shows text that was in HB0228 but was deleted in HB0228S01.

text shows text that was not in HB0228 but was inserted into HB0228S01.

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Representative Ryan D. Wilcox proposes the following substitute bill:

ALCOHOLIC BEVERAGE CONTROL ACT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address issues related to the regulation of alcoholic products.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires ~~that~~ money be appropriated by the Legislature or provided by statute for the department to draw from the Liquor Control Fund or the Markup Holding Fund with limited exceptions;
- ▶ clarifies who makes warrants on the funds;
- ▶ provides for Division of Finance to make ~~year-end~~year-end closing entries;
- ▶ removes certain restrictions on the dispensing and storage of alcoholic products;

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- ▶ repeals credit for grandfathered bar structures; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

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

32B-6-205, as last amended by Laws of Utah 2011, Chapters 307 and 334

32B-6-305, as last amended by Laws of Utah 2011, Chapters 307 and 334

32B-6-703, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-6-805, as last amended by Laws of Utah 2012, Chapter 365

32B-6-902, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

32B-6-905, as enacted by Laws of Utah 2011, Chapter 334

REPEALS:

32B-6-205.1, as enacted by Laws of Utah 2010, Chapter 276

32B-6-305.1, as enacted by Laws of Utah 2010, Chapter 276

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:

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(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 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;

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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.

(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:

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(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

(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

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(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:

- (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

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(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 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]~~

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~~[(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)]~~ (32) "Distillery manufacturing license" means a license issued in accordance with Chapter 11, Part 4, Distillery Manufacturing License.

~~[(34)]~~ (33) "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)]~~ (34) "Educational facility" includes:

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

~~[(36)]~~ (35) "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)]~~ (36) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

~~[(38)]~~ (37) "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)]~~ (38) (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

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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)]~~ (39) "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)]~~ (40) "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)]~~ (41) (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)]~~ (42) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

~~[(44)]~~ (43) "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;

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(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)]~~ (44) (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)]~~ (45) "Hotel" is as defined by the commission by rule.

~~[(47)]~~ (46) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

~~[(48)]~~ (47) "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)]~~ (48) "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)]~~ (49) "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)]~~ (50) "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;

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

(iv) a combination of Subsections ~~[(51)]~~ [(50)](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)]~~ [(51)] "Investigator" means an individual who is:

(a) a department compliance officer; or

(b) a nondepartment enforcement officer.

~~[(53)]~~ [(52)] "Invitee" is as defined in Section 32B-8-102.

~~[(54)]~~ [(53)] "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)]~~ [(54)] "Licensee" means a person who holds a license.

~~[(56)]~~ [(55)] "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)]~~ [(56)] "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)]~~ [(57)] (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

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- (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)]~~ [(58)] "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

~~[(60)]~~ [(59)] "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)]~~ [(60)] "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)]~~ [(61)] "Lounge or bar area" is as defined by rule made by the commission.

~~[(63)]~~ [(62)] "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)]~~ [(63)] "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

~~[(65)]~~ [(64)] (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.

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(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)]~~ (65) "Minor" means an individual under the age of 21 years.

~~[(67)]~~ (66) "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)]~~ (67) "Nondepartment enforcement officer" means an individual who is:

- (a) a peace officer, examiner, or investigator; and
- (b) employed by a nondepartment enforcement agency.

~~[(69)]~~ (68) (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)]~~ (69) "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)]~~ (70) "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).

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~~[(72)]~~[(71)] "Opaque" means impenetrable to sight.

~~[(73)]~~[(72)] "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)]~~[(73)] "Package agent" means a person who holds a package agency.

~~[(75)]~~[(74)] "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)]~~[(75)] "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

~~[(77)]~~[(76)] "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

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- (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)]~~[(76)](a) through (f); or
- (ii) a package agent.

~~[(78)]~~[(77)] "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)]~~[(78)] "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)]~~[(79)] (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)]~~[(80)] (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

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(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)]~~ (81) (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.

~~[(83)]~~ (82) "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)]~~ (83) "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)]~~

(83)(a) to a third party for the third party's event.

~~[(85)]~~ (84) "Reception center license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

~~[(86)]~~ (85) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or

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- (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)]~~ [(86)] "Residence" means a person's principal place of abode within Utah.

~~[(88)]~~ [(87)] "Resident," in relation to a resort, is as defined in Section 32B-8-102.

~~[(89)]~~ [(88)] "Resort" is as defined in Section 32B-8-102.

~~[(90)]~~ [(89)] "Resort facility" is as defined by the commission by rule.

~~[(91)]~~ [(90)] "Resort license" means a license issued in accordance with Chapter 5,

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

~~[(92)]~~ [(91)] "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)]~~ [(92)] "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)]~~ [(93)] "Room service" means furnishing an alcoholic product to a person in a guest room of a:

- (a) hotel; or

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(b) resort facility.

~~[(95)]~~ (94) "Serve" means to place an alcoholic product before an individual.

~~[(96)]~~ (95) (a) "School" means a building used primarily for the general education of minors.

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

~~[(97)]~~ (96) "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)]~~ (97) "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)]~~ (97)(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)]~~ (98) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

~~[(100)]~~ (99) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

~~[(101)]~~ (100) "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)]~~ (101) "Special use permit" means a permit issued in accordance with Chapter

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10, Special Use Permit Act.

~~[(103)]~~ (102) (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)]~~ (103) "Sports center" is as defined by the commission by rule.

~~[(105)]~~ (104) (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)]~~ (105) "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

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(iv) a human anus.

~~[(107)]~~ (106) "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)]~~ (107) (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)]~~ (108) (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)]~~ (109) "Sublicense" is as defined in Section 32B-8-102.

~~[(111)]~~ (110) "Supplier" means a person who sells an alcoholic product to the department.

~~[(112)]~~ (111) "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.

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~~[(113)]~~ 1(112) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

~~[(114)]~~ 1(113) "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)]~~ 1(114) "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)]~~ 1(115) (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)]~~ 1(116) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section ~~11~~2. Section **32B-2-301** is amended to read:

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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

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

(4) (a) ~~[The state treasurer]~~ Subject to Subsection (4)(b), the department 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.]~~

(b) The department may draw from the Liquor Control Fund or the Markup Holding Fund, only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund or Markup Holding Fund for an expenditure that is directly incurred by the department:

(i) to purchase an alcoholic product;

(ii) to transport an alcoholic product from the supplier to a warehouse of the

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department; and

(iii) for variances related to an alcoholic product.

(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. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).

(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~~] department, 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.

†

Legislative Review Note

~~as of 2-5-13 5:19 PM~~

~~Office of Legislative Research and General Counsel;~~ Section 3. Section 32B-6-205 is amended to read:

32B-6-205. Specific operational requirements for a full-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational

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Requirements, a full-service restaurant licensee and staff of the full-service restaurant 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 full-service restaurant licensee;

(ii) individual staff of a full-service restaurant licensee; or

(iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system.

~~[(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).]~~

~~[(4)] (3) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.~~

~~(b) A beverage tab required by this Subsection ~~[(4)] (3)~~ shall list the type and amount of an alcoholic product ordered or consumed.~~

~~[(5)] (4) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.~~

~~[(6)] (5) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at the licensed premises on any day during the period that:~~

~~(i) begins at midnight; and~~

~~(ii) ends at 11:29 a.m.~~

~~(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a full-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.~~

~~[(7)] (6) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:~~

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(a) mix for an alcoholic product; or

(b) a service charge.

[(8)] (7) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

[(9)] (8) (a) Subject to the other provisions of this Subsection [(9)] (8), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection [(9)] (8)(a).

[(10)] (9) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

[(11)] (10) (a) A full-service restaurant 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 that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection [(11)] (10)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

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(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee;

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

[(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:]

[(a) the alcoholic product is dispensed from:]

[(i) a grandfathered bar structure:]

[(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or]

[(iii) an area that is:]

[(A) 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:]

[(I) not readily visible to a patron; and]

[(II) not accessible by a patron; and]

[(B) apart from an area used:]

[(I) for dining;]

[(II) for staging; or]

[(III) as a lobby or waiting area;]

[(b) the full-service restaurant licensee uses an alcoholic product that is:]

[(i) stored in an area described in Subsection (12)(a); or]

[(ii) in an area not described in Subsection (12)(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 (12)(a) before

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it is opened, and]

[(C) once opened, the container is stored in an area described in Subsection (12)(a);

and]

[(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).]

[(13)] (11) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

Section 4. Section **32B-6-305** is amended to read:

32B-6-305. Specific operational requirements for a limited-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant 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 limited-service restaurant licensee;

(ii) individual staff of a limited-service restaurant licensee; or

(iii) both a limited-service restaurant licensee and staff of the limited-service restaurant

licensee.

(2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(b) A product listed in Subsection (2)(a) may not be on the premises of a limited-service restaurant licensee except for use:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert.

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~~[(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).]~~

~~[(4)] (3) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.~~

~~(b) A beverage tab required by this Subsection [(4)] (3) shall list the type and amount of an alcoholic product ordered or consumed.~~

~~[(5)] (4) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a limited-service restaurant licensee.~~

~~[(6)] (5) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish wine or heavy beer at the licensed premises on any day during the period that:~~

~~(i) begins at midnight; and~~

~~(ii) ends at 11:29 a.m.~~

~~(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a limited-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.~~

~~[(7)] (6) A limited-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.~~

~~[(8)] (7) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.~~

~~(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.~~

~~[(9)] (8) (a) Subject to the other provisions of this Subsection [(9)] (8), 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 [(9)] (8)(a).~~

~~[(10)] (9) A patron may consume an alcoholic product only:~~

~~(a) at:~~

~~(i) the patron's table;~~

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(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

[(H)] (10) (a) A limited-service restaurant 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 that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection [(H)] (10)(d), at a seating grandfathered bar structure a limited-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a limited-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the limited-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a limited-service restaurant licensee's premises in which the minor is permitted to be.

[(12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant licensee may dispense an alcoholic product only if:]

[(a) the alcoholic product is dispensed from:]

[(i) a grandfathered bar structure;]

[(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or]

[(iii) an area that is:]

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~~[(A) 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:]~~

~~[(f) not readily visible to a patron; and]~~

~~[(H) not accessible by a patron; and]~~

~~[(B) apart from an area used:]~~

~~[(f) for dining;]~~

~~[(H) for staging; or]~~

~~[(HH) as a lobby or waiting area:]~~

~~[(b) the limited-service restaurant licensee uses an alcoholic product that is:]~~

~~[(i) stored in an area described in Subsection (12)(a); or]~~

~~[(ii) in an area not described in Subsection (12)(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 (12)(a) before it is opened; and]~~

~~[(C) once opened, the container is stored in an area described in Subsection (12)(a); and]~~

~~[(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).]~~

~~[(13)] (11) A limited-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of wine or heavy beer including:~~

~~(a) a set-up charge;~~

~~(b) a service charge; or~~

~~(c) a chilling fee.~~

Section 5. Section 32B-6-703 is amended to read:

32B-6-703. Commission's power to issue on-premise beer retailer license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.

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(2) (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.

(b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.

(c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.

(d) (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.

(ii) In making a determination under this Subsection (2)(d), the commission shall consider:

(A) whether the on-premise beer retailer will operate as one of the following:

(I) a beer bar;

(II) a parlor;

(III) a lounge;

(IV) a cabaret; or

(V) a nightclub;

(B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

(I) whether the on-premise beer retailer will sell food in the establishment; and

(II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;

(C) whether full meals including appetizers, main courses, and desserts will be served;

(D) the square footage and seating capacity of the premises;

(E) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;

(F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(G) whether the entertainment provided on the premises of the beer retailer will be

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suitable for minors; and

(H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:

(I) management experience;

(II) past beer retailer management experience; and

(III) the type of management scheme that will be used by the beer retailer.

(e) On or after March 1, 2012:

(i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

(A) maintain at least 70% of the person's total gross revenues from business directly related to a recreational amenity on or directly adjoining the licensed premises of the beer retailer; or

(B) have a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food.

(ii) The commission may not license a person as an on-premise beer retailer if the person does not:

(A) meet the requirements of Subsection (2)(e)(i); or

(B) operate as a tavern.

(iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1, 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

(B) If an on-premise beer retailer fails to notify the department as required by Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).

[(iv) A person who, after August 1, 2011, applies for an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product that do not

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meet the requirements of Subsection 32B-6-905(12)(a)(ii):]

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 54,147.

(b) The commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.

(4) (a) Unless otherwise provided in Subsection (4)(b):

(i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and

(ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.

(b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.

(ii) If each retail beer dispensing location does not operate in the same manner:

(A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and

(B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.

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

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

(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):]

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~~[(3)]~~ (2) (a) For the purpose described in Subsection ~~[(3)]~~ (2)(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)]~~ (3) (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)]~~ (4) (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 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)]~~ (4)(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)]~~ (5) 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

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available.

~~[(7)]~~ (6) 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)]~~ (7) 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)]~~ (8) (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:

(i) mix for an alcoholic product; or

(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)]~~ (8) to the department on an annual basis.

~~[(10)]~~ (9) 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)]~~ (10) (a) Subject to the other provisions of this Subsection ~~[(11)]~~ (10), 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)]~~ (10)(a).

~~[(12)]~~ (11) (a) A reception center licensee shall supervise and direct a person involved in the 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)]~~ (12) 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)]~~ (13) 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

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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)] (14) 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;

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

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

[(17)] (15) (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:

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(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)] (15) so that a reception center licensee and the third-party host are not owned by or operated by the same persons, except that the rule shall permit a reception center licensee to host an event for an immediate family member of the reception center licensee.

[(18)] (16) 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)] (17) (a) Except as provided in Subsection [(19)] (17)(b), a reception center licensee may not operate an event:

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

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

(b) A reception center licensee may operate an event described in Subsection [(19)]

(17)(a) if the event is hosted:

(i) at the reception center no more frequently than once a calendar year; and

(ii) by a nonprofit organization that is organized and qualified under Section 501(c),

Internal Revenue Code.

Section 7. Section 32B-6-902 is amended to read:

32B-6-902. Definitions.

(1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a licensed premises of a beer-only restaurant licensee that ~~[(i) was licensed as an on-premise beer retailer as of August 1, 2011, and as of August 1, 2011: (A) is operational; (B) has facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii); and (C) in accordance with Subsection 32B-6-703(2)(c), notifies the department that effective March 1, 2012, the on-premise beer retailer licensee will seek to be licensed as a beer-only restaurant; or (ii)] is a bar structure grandfathered under Section 32B-6-409.~~

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(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

Section 8. Section 32B-6-905 is amended to read:

32B-6-905. Specific operational requirements for a beer-only restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant 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 beer-only restaurant licensee;

(ii) individual staff of a beer-only restaurant licensee; or

(iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

(2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of liquor.

(b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert.

[3] In addition to complying with Section 32B-5-303, a beer-only restaurant licensee shall store beer in a storage area described in Subsection (12)(a).]

[4] (3) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection [4] (3) shall list the type and amount of beer ordered or consumed.

[5] (4) A person's willingness to serve beer may not be made a condition of employment as a server with a beer-only restaurant licensee.

[6] (5) A beer-only restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

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except that a beer-only restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.

~~[(7)]~~ (6) A beer-only restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

~~[(8)]~~ (7) (a) A beer-only restaurant may not sell, offer for sale, or furnish beer except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A beer-only restaurant shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

~~[(9)]~~ (8) A patron may not have more than two beers at a time before the patron.

~~[(10)]~~ (9) A patron may consume a beer only:

(a) at:

(i) the patron's table;

(ii) a grandfathered bar structure; or

(iii) a counter; and

(b) where food is served.

~~[(11)]~~ (10) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish a beer to a patron, and a patron may not consume an alcoholic product at a bar structure.

(b) Notwithstanding Subsection ~~[(11)]~~ (10)(a), at a grandfathered bar structure, a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished a beer; and

(iii) consume a beer.

(c) Except as provided in Subsection ~~[(11)]~~ (10)(d), at a grandfathered bar structure, a beer-only restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a grandfathered bar structure if the minor is employed by a beer-only restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the beer-only restaurant licensee is not open for business.

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(ii) A minor may momentarily pass by a grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a beer-only restaurant licensee's premises in which the minor is permitted to be.

[(12) A beer-only restaurant licensee may dispense a beer only if:]

[(a) the beer is dispensed from an area that is:]

[(i) a grandfathered bar structure; or]

[(ii) 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 not readily visible to a patron, not accessible by a patron, and apart from an area used for dining, for staging, or as a lobby or waiting area;]

[(b) the beer-only restaurant licensee uses a beer that is:]

[(i) stored in an area described in Subsection (12)(a); or]

[(ii) in an area not described in Subsection (12)(a) on the licensed premises and:]

[(A) immediately before the beer is dispensed it is in an unopened container;]

[(B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and]

[(C) once opened, the container is stored in an area described in Subsection (12)(a); and]

[(c) any instrument or equipment used to dispense the beer is located in an area described in Subsection (12)(a).]

Section 9. Repealer.

This bill repeals:

Section 32B-6-205.1, Credit for grandfathered bar structures of full-service restaurant licensee.

Section 32B-6-305.1, Credit for grandfathered bar structures for limited-service restaurant licensee.