

ALCOHOL AND DRUG RELATED OFFENSE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to alcohol and drug related offenses.

Highlighted Provisions:

This bill:

- ▶ amends the definition of premises for purposes of alcohol beverage control to include a parking area used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution of an alcoholic product;

- ▶ provides that beginning on July 1, 2013, no plea may be held in abeyance in any case involving certain alcohol or drug related offenses; and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

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

77-2a-3, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382

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



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

29 **32B-1-102. Definitions.**

30 As used in this title:

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

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

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

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

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

38 (a) beer; or

39 (b) liquor.

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

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

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

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

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

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

49 (ii) vinegar;

50 (iii) cider;

51 (iv) essence;

52 (v) tincture;

53 (vi) food preparation; or

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

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

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

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

- 59 (b) described in Section 62A-15-401.
- 60 (6) "Banquet" means an event:
- 61 (a) that is held at one or more designated locations approved by the commission in or
- 62 on the premises of a:
 - 63 (i) hotel;
 - 64 (ii) resort facility;
 - 65 (iii) sports center; or
 - 66 (iv) convention center;
- 67 (b) for which there is a contract:
 - 68 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
 - 69 and
 - 70 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
 - 71 provide an alcoholic product at the event; and
 - 72 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.
- 73 (7) (a) "Bar" means a surface or structure:
 - 74 (i) at which an alcoholic product is:
 - 75 (A) stored; or
 - 76 (B) dispensed; or
 - 77 (ii) from which an alcoholic product is served.
- 78 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any
- 79 place of the surface or structure an alcoholic product is:
 - 80 (i) stored; or
 - 81 (ii) dispensed.
- 82 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:
 - 83 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
 - 84 volume or 3.2% by weight; and
 - 85 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 86 (b) "Beer" may or may not contain hops or other vegetable products.
- 87 (c) "Beer" includes a product that:
 - 88 (i) contains alcohol in the percentages described in Subsection (8)(a); and
 - 89 (ii) is referred to as:

- 90 (A) beer;
- 91 (B) ale;
- 92 (C) porter;
- 93 (D) stout;
- 94 (E) lager; or
- 95 (F) a malt or malted beverage.
- 96 (d) "Beer" does not include a flavored malt beverage.
- 97 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,
- 98 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.
- 99 (10) "Beer retailer" means a business:
- 100 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,
- 101 whether for consumption on or off the business premises; and
- 102 (b) to whom a license is issued:
- 103 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
- 104 Beer Retailer Local Authority; or
- 105 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
- 106 and Chapter 6, Part 7, On-premise Beer Retailer License.
- 107 (11) "Beer wholesaling license" means a license:
- 108 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
- 109 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
- 110 retail licensees or off-premise beer retailers.
- 111 (12) "Billboard" means a public display used to advertise, including:
- 112 (a) a light device;
- 113 (b) a painting;
- 114 (c) a drawing;
- 115 (d) a poster;
- 116 (e) a sign;
- 117 (f) a signboard; or
- 118 (g) a scoreboard.
- 119 (13) "Brewer" means a person engaged in manufacturing:
- 120 (a) beer;

- 121 (b) heavy beer; or
- 122 (c) a flavored malt beverage.
- 123 (14) "Brewery manufacturing license" means a license issued in accordance with
- 124 Chapter 11, Part 5, Brewery Manufacturing License.
- 125 (15) "Certificate of approval" means a certificate of approval obtained from the
- 126 department under Section 32B-11-201.
- 127 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
- 128 a bus company to a group of persons pursuant to a common purpose:
- 129 (a) under a single contract;
- 130 (b) at a fixed charge in accordance with the bus company's tariff; and
- 131 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
- 132 motor vehicle, and a driver to travel together to one or more specified destinations.
- 133 (17) "Church" means a building:
- 134 (a) set apart for worship;
- 135 (b) in which religious services are held;
- 136 (c) with which clergy is associated; and
- 137 (d) that is tax exempt under the laws of this state.
- 138 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail
- 139 License Act, and Chapter 6, Part 4, Club License.
- 140 (b) "Club license" includes:
- 141 (i) a dining club license;
- 142 (ii) an equity club license;
- 143 (iii) a fraternal club license; or
- 144 (iv) a social club license.
- 145 (19) "Commission" means the Alcoholic Beverage Control Commission created in
- 146 Section 32B-2-201.
- 147 (20) "Commissioner" means a member of the commission.
- 148 (21) "Community location" means:
- 149 (a) a public or private school;
- 150 (b) a church;
- 151 (c) a public library;

152 (d) a public playground; or

153 (e) a public park.

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

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

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

157 location, a person who appears to the commission to have been given on behalf of the

158 community location the authority to prohibit an activity at the community location.

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

160 (a) a bottle;

161 (b) a vessel; or

162 (c) a similar item.

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

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

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

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

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

170 (i) stored; or

171 (ii) dispensed.

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

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

175 (a) an auditor or inspector; and

176 (b) employed by the department.

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

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

182 (30) "Director," unless the context requires otherwise, means the director of the

183 department.

184 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
185 title:

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

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

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

189 (i) drawing of an alcoholic product:

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

191 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),

192 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

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

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

197 (i) a full-service restaurant license;

198 (ii) a limited-service restaurant license;

199 (iii) a reception center license; and

200 (iv) a beer-only restaurant license.

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

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

205 (35) "Educational facility" includes:

206 (a) a nursery school;

207 (b) an infant day care center; and

208 (c) a trade and technical school.

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

212 (37) "Event permit" means:

213 (a) a single event permit; or

214 (b) a temporary beer event permit.

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

218 (39) (a) "Flavored malt beverage" means a beverage:

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

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

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

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

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

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

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

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

234 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
235 an alcoholic product, by sale or otherwise.

236 (b) "Furnish" includes to:

237 (i) serve;

238 (ii) deliver; or

239 (iii) otherwise make available.

240 (43) "Guest" means an individual who meets the requirements of Subsection
241 32B-6-407(9).

242 (44) "Health care practitioner" means:

243 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

244 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

- 245 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- 246 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
247 Act;
- 248 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
249 Nurse Practice Act;
- 250 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
251 Practice Act;
- 252 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
253 Therapy Practice Act;
- 254 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 255 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
256 Professional Practice Act;
- 257 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- 258 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
259 Practice Act;
- 260 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
261 Hygienist Practice Act; and
- 262 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.
- 263 (45) (a) "Heavy beer" means a product that:
264 (i) contains more than 4% alcohol by volume; and
265 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 266 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 267 (46) "Hotel" is as defined by the commission by rule.
- 268 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,
269 Part 8, Identification Card Act.
- 270 (48) "Industry representative" means an individual who is compensated by salary,
271 commission, or other means for representing and selling an alcoholic product of a
272 manufacturer, supplier, or importer of liquor.
- 273 (49) "Industry representative sample" means liquor that is placed in the possession of
274 the department for testing, analysis, and sampling by a local industry representative on the
275 premises of the department to educate the local industry representative of the quality and

276 characteristics of the product.

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

279 (a) law; or

280 (b) court order.

281 (51) "Intoxicated" means that a person:

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

284 (i) an alcoholic product;

285 (ii) a controlled substance;

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

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

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

290 (52) "Investigator" means an individual who is:

291 (a) a department compliance officer; or

292 (b) a nondepartment enforcement officer.

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

294 (54) "License" means:

295 (a) a retail license;

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

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

299 or

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

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

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

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

306 (a) in which the driver and a passenger are separated by a partition, glass, or other

307 barrier;

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

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

312 (58) (a) (i) "Liquor" means a liquid that:

313 (A) is:

314 (I) alcohol;

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

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

317 (IV) other drink or drinkable liquid; and

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

319 (II) is suitable to use for beverage purposes.

320 (ii) "Liquor" includes:

321 (A) heavy beer;

322 (B) wine; and

323 (C) a flavored malt beverage.

324 (b) "Liquor" does not include beer.

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

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

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

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

330 (61) "Local authority" means:

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

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

335 (62) "Lounge or bar area" is as defined by rule made by the commission.

336 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
337 otherwise make an alcoholic product for personal use or for sale or distribution to others.

338 (64) "Member" means an individual who, after paying regular dues, has full privileges
339 in an equity club licensee or fraternal club licensee.

340 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
341 or homeport facility for a ship:

342 (i) (A) under the control of the United States Department of Defense; or

343 (B) of the National Guard;

344 (ii) that is located within the state; and

345 (iii) including a leased facility.

346 (b) "Military installation" does not include a facility used primarily for:

347 (i) civil works;

348 (ii) a rivers and harbors project; or

349 (iii) a flood control project.

350 (66) "Minor" means an individual under the age of 21 years.

351 (67) "Nondepartment enforcement agency" means an agency that:

352 (a) (i) is a state agency other than the department; or

353 (ii) is an agency of a county, city, or town; and

354 (b) has a responsibility to enforce one or more provisions of this title.

355 (68) "Nondepartment enforcement officer" means an individual who is:

356 (a) a peace officer, examiner, or investigator; and

357 (b) employed by a nondepartment enforcement agency.

358 (69) (a) "Off-premise beer retailer" means a beer retailer who is:

359 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local
360 Authority; and

361 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
362 premises.

363 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.

364 (70) "On-premise banquet license" means a license issued in accordance with Chapter
365 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

366 (71) "On-premise beer retailer" means a beer retailer who is:

367 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
368 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer

369 Retailer License; and
370 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
371 premises:
372 (i) regardless of whether the beer retailer sells beer for consumption off the licensed
373 premises; and
374 (ii) on and after March 1, 2012, operating:
375 (A) as a tavern; or
376 (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).
377 (72) "Opaque" means impenetrable to sight.
378 (73) "Package agency" means a retail liquor location operated:
379 (a) under an agreement with the department; and
380 (b) by a person:
381 (i) other than the state; and
382 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
383 Agency, to sell packaged liquor for consumption off the premises of the package agency.
384 (74) "Package agent" means a person who holds a package agency.
385 (75) "Patron" means an individual to whom food, beverages, or services are sold,
386 offered for sale, or furnished, or who consumes an alcoholic product including:
387 (a) a customer;
388 (b) a member;
389 (c) a guest;
390 (d) an attendee of a banquet or event;
391 (e) an individual who receives room service;
392 (f) a resident of a resort;
393 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;
394 or
395 (h) an invitee.
396 (76) "Permittee" means a person issued a permit under:
397 (a) Chapter 9, Event Permit Act; or
398 (b) Chapter 10, Special Use Permit Act.
399 (77) "Person subject to administrative action" means:

- 400 (a) a licensee;
- 401 (b) a permittee;
- 402 (c) a manufacturer;
- 403 (d) a supplier;
- 404 (e) an importer;
- 405 (f) one of the following holding a certificate of approval:
 - 406 (i) an out-of-state brewer;
 - 407 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
 - 408 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- 409 (g) staff of:
 - 410 (i) a person listed in Subsections (77)(a) through (f); or
 - 411 (ii) a package agent.
- 412 (78) "Premises" means a building, enclosure, parking area, or room used in connection
- 413 with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic
- 414 product, unless otherwise defined in this title or rules made by the commission.
- 415 (79) "Prescription" means an order issued by a health care practitioner when:
 - 416 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
 - 417 to prescribe a controlled substance, other drug, or device for medicinal purposes;
 - 418 (b) the order is made in the course of that health care practitioner's professional
 - 419 practice; and
 - 420 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.
- 421 (80) (a) "Private event" means a specific social, business, or recreational event:
 - 422 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
 - 423 group; and
 - 424 (ii) that is limited in attendance to people who are specifically designated and their
 - 425 guests.
 - 426 (b) "Private event" does not include an event to which the general public is invited,
 - 427 whether for an admission fee or not.
- 428 (81) (a) "Proof of age" means:
 - 429 (i) an identification card;
 - 430 (ii) an identification that:

- 431 (A) is substantially similar to an identification card;
- 432 (B) is issued in accordance with the laws of a state other than Utah in which the
- 433 identification is issued;
- 434 (C) includes date of birth; and
- 435 (D) has a picture affixed;
- 436 (iii) a valid driver license certificate that:
- 437 (A) includes date of birth;
- 438 (B) has a picture affixed; and
- 439 (C) is issued:
- 440 (I) under Title 53, Chapter 3, Uniform Driver License Act; or
- 441 (II) in accordance with the laws of the state in which it is issued;
- 442 (iv) a military identification card that:
- 443 (A) includes date of birth; and
- 444 (B) has a picture affixed; or
- 445 (v) a valid passport.
- 446 (b) "Proof of age" does not include a driving privilege card issued in accordance with
- 447 Section 53-3-207.
- 448 (82) (a) "Public building" means a building or permanent structure that is:
- 449 (i) owned or leased by:
- 450 (A) the state; or
- 451 (B) a local government entity; and
- 452 (ii) used for:
- 453 (A) public education;
- 454 (B) transacting public business; or
- 455 (C) regularly conducting government activities.
- 456 (b) "Public building" does not include a building owned by the state or a local
- 457 government entity when the building is used by a person, in whole or in part, for a proprietary
- 458 function.
- 459 (83) "Public conveyance" means a conveyance to which the public or a portion of the
- 460 public has access to and a right to use for transportation, including an airline, railroad, bus,
- 461 boat, or other public conveyance.

- 462 (84) "Reception center" means a business that:
- 463 (a) operates facilities that are at least 5,000 square feet; and
- 464 (b) has as its primary purpose the leasing of the facilities described in Subsection
- 465 (84)(a) to a third party for the third party's event.
- 466 (85) "Reception center license" means a license issued in accordance with Chapter 5,
- 467 Retail License Act, and Chapter 6, Part 8, Reception Center License.
- 468 (86) (a) "Record" means information that is:
- 469 (i) inscribed on a tangible medium; or
- 470 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.
- 471 (b) "Record" includes:
- 472 (i) a book;
- 473 (ii) a book of account;
- 474 (iii) a paper;
- 475 (iv) a contract;
- 476 (v) an agreement;
- 477 (vi) a document; or
- 478 (vii) a recording in any medium.
- 479 (87) "Residence" means a person's principal place of abode within Utah.
- 480 (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.
- 481 (89) "Resort" is as defined in Section 32B-8-102.
- 482 (90) "Resort facility" is as defined by the commission by rule.
- 483 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail
- 484 License Act, and Chapter 8, Resort License Act.
- 485 (92) "Restaurant" means a business location:
- 486 (a) at which a variety of foods are prepared;
- 487 (b) at which complete meals are served to the general public; and
- 488 (c) that is engaged primarily in serving meals to the general public.
- 489 (93) "Retail license" means one of the following licenses issued under this title:
- 490 (a) a full-service restaurant license;
- 491 (b) a limited-service restaurant license;
- 492 (c) a club license;

- 493 (d) an airport lounge license;
- 494 (e) an on-premise banquet license;
- 495 (f) an on-premise beer license;
- 496 (g) a reception center license; or
- 497 (h) a beer-only restaurant license.
- 498 (94) "Room service" means furnishing an alcoholic product to a person in a guest room
- 499 of a:
 - 500 (a) hotel; or
 - 501 (b) resort facility.
- 502 (95) "Serve" means to place an alcoholic product before an individual.
- 503 (96) (a) "School" means a building used primarily for the general education of minors.
- 504 (b) "School" does not include an educational facility.
- 505 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for
- 506 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,
- 507 delivered for value, or by a means or under a pretext is promised or obtained, whether done by
- 508 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules
- 509 made by the commission.
- 510 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity
- 511 appears at or performs:
 - 512 (a) for the entertainment of one or more patrons;
 - 513 (b) on the premises of:
 - 514 (i) a social club licensee; or
 - 515 (ii) a tavern;
 - 516 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
 - 517 (d) on a contractual or voluntary basis; and
 - 518 (e) whether or not the person is designated as:
 - 519 (i) an employee;
 - 520 (ii) an independent contractor;
 - 521 (iii) an agent of the licensee; or
 - 522 (iv) a different type of classification.
 - 523 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,

524 Single Event Permit.

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

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

530 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
531 Special Use Permit Act.

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

533 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
534 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

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

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

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

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

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

543 (b) "Staff" includes:

544 (i) an officer;

545 (ii) a director;

546 (iii) an employee;

547 (iv) personnel management;

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

549 (vi) an operator; or

550 (vii) a representative.

551 (106) "State of nudity" means:

552 (a) the appearance of:

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

554 (ii) a human genital;

- 555 (iii) a human pubic area; or
- 556 (iv) a human anus; or
- 557 (b) a state of dress that fails to opaquely cover:
 - 558 (i) the nipple or areola of a female human breast;
 - 559 (ii) a human genital;
 - 560 (iii) a human pubic area; or
 - 561 (iv) a human anus.
- 562 (107) "State of seminudity" means a state of dress in which opaque clothing covers no
- 563 more than:
 - 564 (a) the nipple and areola of the female human breast in a shape and color other than the
 - 565 natural shape and color of the nipple and areola; and
 - 566 (b) the human genitals, pubic area, and anus:
 - 567 (i) with no less than the following at its widest point:
 - 568 (A) four inches coverage width in the front of the human body; and
 - 569 (B) five inches coverage width in the back of the human body; and
 - 570 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.
- 571 (108) (a) "State store" means a facility for the sale of packaged liquor:
 - 572 (i) located on premises owned or leased by the state; and
 - 573 (ii) operated by a state employee.
- 574 (b) "State store" does not include:
 - 575 (i) a package agency;
 - 576 (ii) a licensee; or
 - 577 (iii) a permittee.
- 578 (109) (a) "Storage area" means an area on licensed premises where the licensee stores
- 579 an alcoholic product.
 - 580 (b) "Store" means to place or maintain in a location an alcoholic product from which a
 - 581 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
 - 582 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
 - 583 32B-6-905(12)(b)(ii).
- 584 (110) "Sublicense" is as defined in Section 32B-8-102.
- 585 (111) "Supplier" means a person who sells an alcoholic product to the department.

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

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

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

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

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

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

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

599 (a) is unsaleable because the container is:

600 (i) unlabeled;

601 (ii) leaky;

602 (iii) damaged;

603 (iv) difficult to open; or

604 (v) partly filled;

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

606 (ii) has contents that are:

607 (A) cloudy;

608 (B) spoiled; or

609 (C) chemically determined to be impure; or

610 (iii) contains:

611 (A) sediment; or

612 (B) a foreign substance; or

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

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

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

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

621 Section 2. Section **77-2a-3** is amended to read:

622 **77-2a-3. Manner of entry of plea -- Powers of court.**

623 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
624 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

625 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
626 agreement may be entered into without a personal appearance before a magistrate.

627 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
628 defendant has successfully completed the terms of the agreement:

629 (a) reduce the degree of the offense and enter judgment of conviction and impose
630 sentence for a lower degree of offense; or

631 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

632 (3) Upon finding that a defendant has successfully completed the terms of a plea in
633 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
634 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
635 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
636 invoke Section 76-3-402 to further reduce the degree of the offense.

637 (4) The court may require the Department of Corrections to assist in the administration
638 of the plea in abeyance agreement as if the defendant were on probation to the court under
639 Section 77-18-1.

640 (5) The terms of a plea in abeyance agreement may include:

641 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
642 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
643 the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a
644 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and
645 which may not exceed in amount the maximum fine and surcharge which could have been
646 imposed upon conviction and sentencing for the same offense;

647 (b) an order that the defendant pay restitution to the victims of the defendant's actions

648 as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

649 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
650 required by the terms of the agreement; and

651 (d) an order that the defendant comply with any other conditions which could have
652 been imposed as conditions of probation upon conviction and sentencing for the same offense.

653 (6) A court may not hold a plea in abeyance without the consent of both the
654 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
655 plea in abeyance is final.

656 (7) No plea may be held in abeyance in any case involving a sexual offense against a
657 victim who is under the age of 14.

658 (8) Beginning on July 1, [2008] 2013, no plea may be held in abeyance in any case
659 involving a [~~driving under the influence violation under Section 41-6a-502~~] violation
660 described in Subsection 41-6a-501(2)(a).

661 **Section 3. Effective date.**

662 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 1-28-13 5:08 PM

Office of Legislative Research and General Counsel