

1 **ALCOHOLIC BEVERAGE CONTROL ACT SAMPLING**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: John L. Valentine**

6 House Sponsor: Ryan D. Wilcox

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**8 LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 **AMENDS:**

24 **32B-1-102**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

25 **32B-4-705**, as last amended by Laws of Utah 2011, Chapters 307 and 334

26 **32B-4-708**, as enacted by Laws of Utah 2010, Chapter 276

27 **32B-11-608**, as last amended by Laws of Utah 2011, Chapters 307 and 334



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

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

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

As used in this title:

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

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

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

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

(3) "Alcoholic beverage" means the following:

(a) beer; or

(b) liquor.

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

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

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

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

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

(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.

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

- 90 (i) contains alcohol in the percentages described in Subsection (8)(a); and
- 91 (ii) is referred to as:
  - 92 (A) beer;
  - 93 (B) ale;
  - 94 (C) porter;
  - 95 (D) stout;
  - 96 (E) lager; or
  - 97 (F) a malt or malted beverage.
- 98 (d) "Beer" does not include a flavored malt beverage.
- 99 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,  
100 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.
- 101 (10) "Beer retailer" means a business:
  - 102 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,  
103 whether for consumption on or off the business premises; and
  - 104 (b) to whom a license is issued:
    - 105 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise  
106 Beer Retailer Local Authority; or
    - 107 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,  
108 and Chapter 6, Part 7, On-premise Beer Retailer License.
- 109 (11) "Beer wholesaling license" means a license:
  - 110 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
  - 111 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more  
112 retail licensees or off-premise beer retailers.
- 113 (12) "Billboard" means a public display used to advertise, including:
  - 114 (a) a light device;
  - 115 (b) a painting;
  - 116 (c) a drawing;
  - 117 (d) a poster;
  - 118 (e) a sign;
  - 119 (f) a signboard; or
  - 120 (g) a scoreboard.

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

- 152 (b) a church;
- 153 (c) a public library;
- 154 (d) a public playground; or
- 155 (e) a public park.

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

- 157 (a) the governing body of the community location; or
- 158 (b) if the commission does not know who is the governing body of a community

159 location, a person who appears to the commission to have been given on behalf of the  
160 community location the authority to prohibit an activity at the community location.

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

- 162 (a) a bottle;
- 163 (b) a vessel; or
- 164 (c) a similar item.

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

- 166 (a) in total at least 30,000 square feet; and
- 167 (b) otherwise defined as a "convention center" by the commission by rule.

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

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

- 172 (i) stored; or
- 173 (ii) dispensed.

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

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

- 177 (a) an auditor or inspector; and
- 178 (b) employed by the department.

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

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

183 dining club license.

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

186 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this  
187 title:

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

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

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

191 (i) drawing of an alcoholic product:

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

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

194 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

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

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

199 (i) a full-service restaurant license;

200 (ii) a limited-service restaurant license;

201 (iii) a reception center license; and

202 (iv) a beer-only restaurant license.

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

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

207 (35) "Educational facility" includes:

208 (a) a nursery school;

209 (b) an infant day care center; and

210 (c) a trade and technical school.

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

- 214 (37) "Event permit" means:
- 215 (a) a single event permit; or
- 216 (b) a temporary beer event permit.
- 217 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being
- 218 considered in determining the total number of a retail license that the commission may issue at
- 219 any time.
- 220 (39) (a) "Flavored malt beverage" means a beverage:
- 221 (i) that contains at least .5% alcohol by volume;
- 222 (ii) that is treated by processing, filtration, or another method of manufacture that is not
- 223 generally recognized as a traditional process in the production of a beer as described in 27
- 224 C.F.R. Sec. 25.55;
- 225 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop
- 226 extract; and
- 227 (iv) (A) for which the producer is required to file a formula for approval with the
- 228 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or
- 229 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
- 230 (b) "Flavored malt beverage" is considered liquor for purposes of this title.
- 231 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,
- 232 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
- 233 as a fraternal club license.
- 234 (41) "Full-service restaurant license" means a license issued in accordance with
- 235 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.
- 236 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
- 237 an alcoholic product, by sale or otherwise.
- 238 (b) "Furnish" includes to:
- 239 (i) serve;
- 240 (ii) deliver; or
- 241 (iii) otherwise make available.
- 242 (43) "Guest" means an individual who meets the requirements of Subsection
- 243 32B-6-407(9).
- 244 (44) "Health care practitioner" means:



- 245 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 246 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
- 247 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- 248 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
- 249 Act;
- 250 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
- 251 Nurse Practice Act;
- 252 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
- 253 Practice Act;
- 254 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
- 255 Therapy Practice Act;
- 256 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 257 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
- 258 Professional Practice Act;
- 259 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- 260 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
- 261 Practice Act;
- 262 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
- 263 Hygienist Practice Act; and
- 264 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.
- 265 (45) (a) "Heavy beer" means a product that:
- 266 (i) contains more than 4% alcohol by volume; and
- 267 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 268 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 269 (46) "Hotel" is as defined by the commission by rule.
- 270 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,
- 271 Part 8, Identification Card Act.
- 272 (48) "Industry representative" means an individual who is compensated by salary,
- 273 commission, or other means for representing and selling an alcoholic product of a
- 274 manufacturer, supplier, or importer of liquor.
- 275 (49) "Industry representative sample" means liquor that is placed in the possession of

276 the department for testing, analysis, and sampling by a local industry representative on the  
277 premises of the department to educate the local industry representative of the quality and  
278 characteristics of the product.

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

- 281 (a) law; or
- 282 (b) court order.

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

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

- 286 (i) an alcoholic product;
- 287 (ii) a controlled substance;
- 288 (iii) a substance having the property of releasing toxic vapors; or
- 289 (iv) a combination of Subsections (51)(a)(i) through (iii); and

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

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

- 293 (a) a department compliance officer; or
- 294 (b) a nondepartment enforcement officer.

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

296 (54) "License" means:

- 297 (a) a retail license;
- 298 (b) a license issued in accordance with Chapter 11, Manufacturing and Related  
299 Licenses Act;

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

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

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

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

306 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other

307 than a bus or taxicab:

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

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

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

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

315 (A) is:

316 (I) alcohol;

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

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

319 (IV) other drink or drinkable liquid; and

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

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

322 (ii) "Liquor" includes:

323 (A) heavy beer;

324 (B) wine; and

325 (C) a flavored malt beverage.

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

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

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

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

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

332 (61) "Local authority" means:

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

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

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

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

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

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

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

345 (B) of the National Guard;

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

347 (iii) including a leased facility.

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

349 (i) civil works;

350 (ii) a rivers and harbors project; or

351 (iii) a flood control project.

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

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

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

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

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

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

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

359 (b) employed by a nondepartment enforcement agency.

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

361 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local

362 Authority; and

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

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

366 (70) "On-premise banquet license" means a license issued in accordance with Chapter  
367 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

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

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

372 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's  
373 premises:

374 (i) regardless of whether the beer retailer sells beer for consumption off the licensed  
375 premises; and

376 (ii) on and after March 1, 2012, operating:

377 (A) as a tavern; or

378 (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

379 (72) "Opaque" means impenetrable to sight.

380 (73) "Package agency" means a retail liquor location operated:

381 (a) under an agreement with the department; and

382 (b) by a person:

383 (i) other than the state; and

384 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package  
385 Agency, to sell packaged liquor for consumption off the premises of the package agency.

386 (74) "Package agent" means a person who holds a package agency.

387 (75) "Patron" means an individual to whom food, beverages, or services are sold,  
388 offered for sale, or furnished, or who consumes an alcoholic product including:

389 (a) a customer;

390 (b) a member;

391 (c) a guest;

392 (d) an attendee of a banquet or event;

393 (e) an individual who receives room service;

394 (f) a resident of a resort;

395 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;

396 or

397 (h) an invitee.

398 (76) "Permittee" means a person issued a permit under:

399 (a) Chapter 9, Event Permit Act; or

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

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

462 public has access to and a right to use for transportation, including an airline, railroad, bus,  
463 boat, or other public conveyance.

464 (84) "Reception center" means a business that:

465 (a) operates facilities that are at least 5,000 square feet; and

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

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

470 (86) (a) "Record" means information that is:

471 (i) inscribed on a tangible medium; or

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

473 (b) "Record" includes:

474 (i) a book;

475 (ii) a book of account;

476 (iii) a paper;

477 (iv) a contract;

478 (v) an agreement;

479 (vi) a document; or

480 (vii) a recording in any medium.

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

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

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

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

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

487 (92) "Restaurant" means a business location:

488 (a) at which a variety of foods are prepared;

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

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

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

492 (a) a full-service restaurant license;



- 493 (b) a limited-service restaurant license;
- 494 (c) a club license;
- 495 (d) an airport lounge license;
- 496 (e) an on-premise banquet license;
- 497 (f) an on-premise beer license;
- 498 (g) a reception center license; or
- 499 (h) a beer-only restaurant license.

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

502 [~~94~~] (95) "Room service" means furnishing an alcoholic product to a person in a  
 503 guest room of a:

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

506 [~~95~~] (96) "Serve" means to place an alcoholic product before an individual.

507 [~~96~~] (97) (a) "School" means a building used primarily for the general education of  
 508 minors.

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

510 [~~97~~] (98) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby,  
 511 for consideration, an alcoholic product is either directly or indirectly transferred, solicited,  
 512 ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether  
 513 done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or  
 514 the rules made by the commission.

515 [~~98~~] (99) "Sexually oriented entertainer" means a person who while in a state of  
 516 seminudity appears at or performs:

- 517 (a) for the entertainment of one or more patrons;
- 518 (b) on the premises of:
  - 519 (i) a social club licensee; or
  - 520 (ii) a tavern;
- 521 (c) on behalf of or at the request of the licensee described in Subsection [~~98~~] (99)(b);
- 522 (d) on a contractual or voluntary basis; and
- 523 (e) whether or not the person is designated as:

- 524 (i) an employee;
- 525 (ii) an independent contractor;
- 526 (iii) an agent of the licensee; or
- 527 (iv) a different type of classification.
- 528 [~~99~~] (100) "Single event permit" means a permit issued in accordance with Chapter 9,
- 529 Part 3, Single Event Permit.
- 530 [~~100~~] (101) "Small brewer" means a brewer who manufactures less than 60,000
- 531 barrels of beer, heavy beer, and flavored malt beverages per year.
- 532 [~~101~~] (102) "Social club license" means a license issued in accordance with Chapter
- 533 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the
- 534 commission as a social club license.
- 535 [~~102~~] (103) "Special use permit" means a permit issued in accordance with Chapter
- 536 10, Special Use Permit Act.
- 537 [~~103~~] (104) (a) "Spirituous liquor" means liquor that is distilled.
- 538 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
- 539 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.
- 540 [~~104~~] (105) "Sports center" is as defined by the commission by rule.
- 541 [~~105~~] (106) (a) "Staff" means an individual who engages in activity governed by this
- 542 title:
- 543 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
- 544 holder;
- 545 (ii) at the request of the business, including a package agent, licensee, permittee, or
- 546 certificate holder; or
- 547 (iii) under the authority of the business, including a package agent, licensee, permittee,
- 548 or certificate holder.
- 549 (b) "Staff" includes:
- 550 (i) an officer;
- 551 (ii) a director;
- 552 (iii) an employee;
- 553 (iv) personnel management;
- 554 (v) an agent of the licensee, including a managing agent;

555 (vi) an operator; or

556 (vii) a representative.

557 [~~(106)~~] (107) "State of nudity" means:

558 (a) the appearance of:

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

560 (ii) a human genital;

561 (iii) a human pubic area; or

562 (iv) a human anus; or

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

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

565 (ii) a human genital;

566 (iii) a human pubic area; or

567 (iv) a human anus.

568 [~~(107)~~] (108) "State of seminudity" means a state of dress in which opaque clothing  
569 covers no more than:

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

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

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

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

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

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

577 [~~(108)~~] (109) (a) "State store" means a facility for the sale of packaged liquor:

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

579 (ii) operated by a state employee.

580 (b) "State store" does not include:

581 (i) a package agency;

582 (ii) a licensee; or

583 (iii) a permittee.

584 [~~(109)~~] (110) (a) "Storage area" means an area on licensed premises where the licensee  
585 stores an alcoholic product.

586 (b) "Store" means to place or maintain in a location an alcoholic product from which a  
587 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in  
588 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or  
589 32B-6-905(12)(b)(ii).

590 [~~(H0)~~] (111) "Sublicense" is as defined in Section 32B-8-102.

591 [~~(H1)~~] (112) "Supplier" means a person who sells an alcoholic product to the  
592 department.

593 [~~(H2)~~] (113) "Tavern" means an on-premise beer retailer who is:

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

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

598 [~~(H3)~~] (114) "Temporary beer event permit" means a permit issued in accordance with  
599 Chapter 9, Part 4, Temporary Beer Event Permit.

600 [~~(H4)~~] (115) "Temporary domicile" means the principal place of abode within Utah of  
601 a person who does not have a present intention to continue residency within Utah permanently  
602 or indefinitely.

603 [~~(H5)~~] (116) "Translucent" means a substance that allows light to pass through, but  
604 does not allow an object or person to be seen through the substance.

605 [~~(H6)~~] (117) "Unsaleable liquor merchandise" means a container that:

606 (a) is unsaleable because the container is:

607 (i) unlabeled;

608 (ii) leaky;

609 (iii) damaged;

610 (iv) difficult to open; or

611 (v) partly filled;

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

613 (ii) has contents that are:

614 (A) cloudy;

615 (B) spoiled; or

616 (C) chemically determined to be impure; or

617 (iii) contains:

618 (A) sediment; or

619 (B) a foreign substance; or

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

621 [~~(H7)~~] (118) (a) "Wine" means an alcoholic product obtained by the fermentation of  
622 the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or  
623 not another ingredient is added.

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

626 [~~(H8)~~] (119) "Winery manufacturing license" means a license issued in accordance  
627 with Chapter 11, Part 3, Winery Manufacturing License.

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

629 **32B-4-705. Exclusions from tied house prohibitions.**

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

632 (a) this section; and

633 (b) the applicable federal laws cited in this section.

634 (2) [~~The~~] Subject to Subsection (7), the following may be furnished by an industry  
635 member:

636 (a) a product display as provided in 27 C.F.R. Sec. 6.83;

637 (b) point of sale advertising material or a consumer advertising specialty as provided in  
638 27 C.F.R. Sec. 6.84;

639 (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;

640 (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;

641 (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;

642 (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;

643 (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;

644 (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;

645 (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;

646 (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and

647 (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.

- 648 (3) The following exceptions provided in federal law are not applicable:
- 649 (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
- 650 (b) the exception for a consumer tasting or sampling at a retail establishment as
- 651 provided in 27 C.F.R. Sec. 6.95; and
- 652 (c) the exception for participation in a retailer association activity provided in 27
- 653 C.F.R. Sec. 6.100.
- 654 (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain
- 655 a record:
- 656 (a) of an item furnished to a retailer;
- 657 (b) on the premises of the industry member; and
- 658 (c) for a three-year period.
- 659 (5) A sample of liquor may be provided to the department under the following
- 660 conditions:
- 661 (a) With the department's permission, an industry member may submit a department
- 662 sample to the department for product testing, analysis, and sampling.
- 663 (b) No more than two department samples of a particular type, vintage, and production
- 664 lot of a particular branded product may be submitted to the department for department testing,
- 665 analysis, and sampling within a consecutive 120-day period.
- 666 (c) (i) A department sample may not exceed 1 liter.
- 667 (ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may
- 668 not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a
- 669 larger size, not to exceed 5 liters:
- 670 (A) wine;
- 671 (B) heavy beer; or
- 672 (C) a flavored malt beverage.
- 673 (d) A department sample submitted to the department:
- 674 (i) shall be shipped prepaid by the industry member by common carrier; and
- 675 (ii) may not be shipped by United States mail directly to the department's central
- 676 administrative warehouse office.
- 677 (e) A department sample may not be shipped to any other location within the state.
- 678 (f) The industry member shall submit with a department sample submitted to the

679 department a letter from the industry member that clearly:

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

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

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

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

684 (B) to verify product spoilage as considered appropriate.

685 (ii) The department shall charge back a sample transferred under this Subsection (5)(g)

686 to the respective industry member.

687 (h) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

710 (ii) not listed on a department purchase order.

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

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

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

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

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

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

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

724 (B) special ordered by the department.

725 (iii) An industry representative may not purchase more than six retail licensee samples  
726 of a particular type, vintage, and production lot of a particular branded product within a  
727 consecutive 120-day period.

728 (c) (i) The department representative shall ensure that before a retail licensee sample or  
729 flavoring is used for tasting and analysis, the department representative affixes to the retail  
730 licensee sample or flavoring a label clearly identifying the product as a "retail licensee sample".

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

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

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

737 (A) wine;

738 (B) heavy beer; or

739 (C) a flavored malt beverage.

740 (e) (i) The sampling and analysis of a retail licensee sample by a retail licensee under



741 this Subsection (7) may only occur at a state store, notwithstanding Subsection  
742 32B-2-503(7)(b).

743 (ii) A representative of the department, who is a compliance officer with an  
744 understanding of the relevant law, shall supervise a tasting and analysis held at a location  
745 described in Subsection (7)(e)(i) and be present throughout the entire tasting and analysis. The  
746 representative of the department who supervises a tasting and analysis is responsible for  
747 transporting a retail licensee sample or flavoring used in a tasting and analysis to the location at  
748 which the tasting and analysis occurs.

749 (iii) The department shall assess an industry representative conducting a tasting and  
750 analysis under this Subsection (7) the actual cost to the department incurred because of the  
751 tasting and analysis, including the cost of the department attending and supervising the tasting  
752 and analysis. An industry representative shall pay the cost assessed by the department as a  
753 condition to conducting the tasting and analysis.

754 (iv) An industry representative may participate in the tasting and analysis of a retail  
755 licensee sample.

756 (v) Only an owner, manager, or other individual who purchases an alcoholic product  
757 for a retail licensee may, on behalf of the retail licensee, taste and analyze one or more retail  
758 licensee samples.

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

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

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

765 (B) 1.5 ounces of a particular type, vintage, and production lot of a particular branded  
766 product of spirituous liquor.

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

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

771 (i) the other alcoholic product is:

772 (A) used as a secondary flavoring ingredient;  
773 (B) used in conjunction with the primary liquor;  
774 (C) not the only liquor in the beverage;  
775 (D) purchased from the department;  
776 (E) labeled as a retail licensee sample in accordance with Subsection (7)(c); and  
777 (F) brought by the representative of the department to the tasting and analysis; and  
778 (ii) an individual has no more than 2.5 ounces of spirituous liquor at a time before the  
779 individual.

780 (i) An industry representative shall:  
781 (i) account for and record each retail licensee sample received;  
782 (ii) account for each retail licensee sample's disposition; and  
783 (iii) maintain a record of the retail licensee sample and its disposition for a one-year  
784 period.

785 (j) After a tasting and analysis under this Subsection (7) is completed, the  
786 representative of the department who supervises the testing and analysis shall remove from the  
787 location at which the tasting and analysis occurred the retail licensee samples and flavorings  
788 brought to the tasting and analysis, including the unused contents of an opened alcoholic  
789 product remaining after an alcoholic product is tasted and analyzed. The department shall  
790 destroy the entire contents of the retail licensee sample and flavorings under controlled and  
791 audited conditions established by the department.

792 (k) (i) An industry representative, manufacturer, supplier, or importer may not, in  
793 connection with the tasting and analysis, give or otherwise furnish any item used during the  
794 tasting and analysis, including point of sale advertising material, to a person who participates in  
795 a tasting and analysis under this Subsection (7) or take any action that would constitute a  
796 violation of Section 32B-4-706.

797 (ii) A person who participates in a tasting and analysis under this Subsection (7) in  
798 connection with the tasting and analysis may not accept from an industry representative,  
799 manufacturer, supplier, or importer any item used during the tasting and analysis, including  
800 point of sale advertising material.

801 (iii) This Subsection (7)(k) does not prohibit the giving of educational material, as  
802 defined by rule made by the commission in accordance with Title 63G, Chapter 3, Utah

803 Administrative Rulemaking Act.

804 (l) (i) Subject to Subsection 32B-3-204(5), if a licensee or staff of the licensee violates  
 805 this Subsection (7), the licensee is subject to the penalties established by rule made in  
 806 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including fines,  
 807 suspension of the license, or revocation of the license.

808 (ii) If a licensee, staff of the licensee, or a manufacturer, supplier, or importer or staff  
 809 of a manufacturer, supplier, or importer violates this Subsection (7), the commission may  
 810 order:

811 (A) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's  
 812 from the department's sales list; and

813 (B) a suspension of the department's purchase of an alcoholic product described in  
 814 Subsection (7)(l)(ii)(A) for a period determined by the commission.

815 ~~[(7)]~~ (8) An educational seminar may involve an industry member under the conditions  
 816 listed in this Subsection ~~[(7)]~~ (8).

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

818 (i) involving:

819 (A) the department;

820 (B) a retailer;

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

822 (D) another industry member; or

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

824 (ii) regarding a topic such as:

825 (A) merchandising and product knowledge;

826 (B) use of equipment; and

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

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

831 ~~[(8)]~~ (9) (a) A liquor industry member may conduct a tasting of a liquor product of the  
 832 industry member:

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

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

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

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

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

843 (i) the industry member's premises; or

844 (ii) a retail establishment.

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

847 (i) a retailer; or

848 (ii) a member of the general public.

849 [~~(9)~~] (10) A beer industry member may participate in a beer retailer association activity  
850 to the extent authorized by 27 C.F.R. Sec. 6.100.

851 [~~(10)~~] (11) (a) An industry member may contribute to a charitable, civic, religious,  
852 fraternal, educational, or community activity, except the contribution may not be given to  
853 influence a retailer in the selection of a product that may be sold at the activity.

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

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

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

858 [~~(11)~~] (12) (a) An industry member may lease or furnish equipment listed in  
859 Subsection [~~(11)~~] (12)(b) to a retailer if:

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

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

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

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

864 (i) a picnic pump;

- 865 (ii) a cold plate;
- 866 (iii) a tub;
- 867 (iv) a keg box;
- 868 (v) a refrigerated trailer;
- 869 (vi) a refrigerated van; or
- 870 (vii) a refrigerated draft system.
- 871 ~~[(12)]~~ (13) (a) A liquor industry member may assist the department in:
- 872 (i) ordering, shipping, and delivering merchandise;
- 873 (ii) new product notification;
- 874 (iii) listing and delisting information;
- 875 (iv) price quotations;
- 876 (v) product sales analysis;
- 877 (vi) shelf management; and
- 878 (vii) an educational seminar.
- 879 (b) (i) A liquor industry member may, to acquire a new listing:
- 880 (A) solicit an order from the department; and
- 881 (B) submit to the department a sample of the liquor industry member's products under
- 882 Subsection (5) and price lists.
- 883 (ii) (A) An industry member is confined to the customer areas when the industry
- 884 member visits a state store or package agency unless otherwise approved.
- 885 (B) An industry member is confined to the office area of a state warehouse when the
- 886 industry member visits a state warehouse unless otherwise approved.
- 887 ~~[(13)]~~ (14) A beer industry member may assist a beer retailer in:
- 888 (a) ordering, shipping, and delivering beer merchandise;
- 889 (b) new product notification;
- 890 (c) listing and delisting information;
- 891 (d) price quotations;
- 892 (e) product sales analysis;
- 893 (f) shelf management; and
- 894 (g) an educational seminar.
- 895 ~~[(14)]~~ (15) A beer industry member may, to acquire a new listing:

- 896 (a) solicit an order from a beer retailer; and  
897 (b) submit to a beer retailer a sample of the beer industry member's beer products under  
898 Subsection (5) and price lists.

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

900 **32B-4-708. Unlawful act involving consumers.**

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

905 (i) the department;

906 (ii) a retail licensee;

907 (iii) a beer retailer; or

908 (iv) a local industry representative licensee.

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

912 (i) as part of a promotion of the industry member's product; or

913 (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or  
914 sampling purposes.

915 (2) It is unlawful for an industry member or retailer, directly or indirectly, or through  
916 an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or  
917 sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a  
918 promotion, program, or other activity.

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

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

925 (a) overtly promotes the consumption of a product;

926 (b) offers a product to the general public without charge; or

927 (c) takes place on the premises of a school, college, university, or other educational  
928 institution.

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

930 **32B-11-608. Operational requirements for local industry representative license.**

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

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

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

937 (A) a local industry representative licensee;

938 (B) individual staff of a local industry representative licensee; or

939 (C) both a local industry representative licensee and staff of the local industry  
940 representative licensee; and

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

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

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

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

947 (i) directly commits the violation; or

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

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

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

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

- 958 (i) acquires the account of a manufacturer, supplier, or importer; or
- 959 (ii) loses the account of a manufacturer, supplier, or importer.
- 960 (4) (a) A local industry representative licensee shall make and maintain the records the
- 961 department requires for at least three years.
- 962 (b) Section 32B-1-205 applies to a record required to be made or maintained in
- 963 accordance with this Subsection (4).
- 964 (5) Staff of a local industry representative licensee may not be:
- 965 (a) a retail licensee that sells, offers for sale, or furnishes liquor;
- 966 (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
- 967 (c) a minor.
- 968 (6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter,
- 969 give, or attempt in any way to dispose of the license to another person, whether for monetary
- 970 gain or not.
- 971 (b) A local industry representative license has no monetary value for any type of
- 972 disposition.
- 973 (7) A local industry representative licensee, staff of the local industry representative
- 974 licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the
- 975 state:
- 976 (a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act,
- 977 may:
- 978 (i) assist the department in:
- 979 (A) ordering, shipping, and delivering merchandise;
- 980 (B) providing new product notification;
- 981 (C) obtaining listing and delisting information;
- 982 (D) receiving price quotations;
- 983 (E) providing product sales analysis;
- 984 (F) conducting shelf management; and
- 985 (G) conducting educational seminars; and
- 986 (ii) to acquire new listings:
- 987 (A) solicit orders from the department; and
- 988 (B) submit to the department price lists and samples of the products of the



989 manufacturer, supplier, or importer;

990 (b) may not sell liquor within the state except to:

991 (i) the department; and

992 (ii) a military installation;

993 (c) may not ship or transport, or cause to be shipped or transported, liquor into this  
994 state or from one place to another within this state;

995 (d) may not sell or furnish any liquor to any person within this state other than to:

996 (i) the department; or

997 (ii) a military installation;

998 (e) except as otherwise provided, may not advertise a product the local industry  
999 representative licensee represents in violation of this title or any other federal or state law;

1000 (f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices  
1001 Act; and

1002 (g) may only provide a sample of a product of the manufacturer, supplier, or importer  
1003 for tasting and sampling purposes as provided in Section 32B-4-705 [~~by the department~~].

1004 (8) A local industry representative licensee may, to become educated as to the quality  
1005 and characteristics of a liquor that the licensee represents, taste and analyze an industry  
1006 representative sample under the conditions listed in this Subsection (8).

1007 (a) A local industry representative licensee may not receive more than two industry  
1008 representative samples of a particular type, vintage, and production lot of a particular branded  
1009 product within a consecutive 120-day period.

1010 (b) (i) An industry representative sample of liquor may not exceed one liter.

1011 (ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the  
1012 following may not exceed 1.5 liters unless that exact product is only commercially packaged in  
1013 a larger size, not to exceed 5 liters:

1014 (A) wine;

1015 (B) heavy beer; or

1016 (C) a flavored malt beverage.

1017 (c) An industry representative sample may only be of a product not presently listed on  
1018 the department's sales list.

1019 (d) (i) An industry representative sample shall be shipped:

- 1020 (A) prepaid by the manufacturer, supplier, or importer;
- 1021 (B) by common carrier and not via United States mail; and
- 1022 (C) directly to the department's central administrative warehouse office.
- 1023 (ii) An industry representative sample may not be shipped to any other location within
- 1024 the state.
- 1025 (e) An industry representative sample shall be accompanied by a letter from the
- 1026 manufacturer, supplier, or importer:
- 1027 (i) clearly identifying the product as an "industry representative sample"; and
- 1028 (ii) clearly stating:
- 1029 (A) the FOB case price of the product; and
- 1030 (B) the name of the local industry representative for whom it is intended.
- 1031 (f) The department shall assess a reasonable handling, labeling, and storage fee for
- 1032 each industry representative sample received.
- 1033 (g) The department shall affix to a container a label clearly identifying the product as
- 1034 an "industry representative sample."
- 1035 (h) The department shall:
- 1036 (i) account for and record each industry representative sample received;
- 1037 (ii) account for the industry representative sample's disposition; and
- 1038 (iii) maintain a record of the industry representative sample and its disposition for a
- 1039 two-year period.
- 1040 (i) An industry representative sample may not leave the premises of the department's
- 1041 central administrative warehouse office.
- 1042 (j) A local industry representative licensee's and a local industry representative
- 1043 licensee's staff may, at regularly scheduled days and times established by the department, taste
- 1044 and analyze one or more industry representative samples on the premises of the department's
- 1045 central administrative warehouse office.
- 1046 (k) The department shall destroy the unused contents of an opened product remaining
- 1047 after a product is sampled under controlled and audited conditions established by the
- 1048 department.
- 1049 (l) An industry representative sample that is not tasted within 30 days of receipt by the
- 1050 department shall be disposed of at the discretion of the department in one of the following

1051 ways:

1052 (i) the contents destroyed under controlled and audited conditions established by the  
1053 department; or

1054 (ii) added to the inventory of the department for sale to the public.

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**Legislative Review Note**  
**as of 2-25-13 11:12 AM**

**Office of Legislative Research and General Counsel**