

MANUFACTURING LICENSEE PROVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to address manufacturing licensees.

Highlighted Provisions:

This bill:

- ▶ grants rulemaking authority to define "bona fide sample";
- ▶ changes references to "sample" to "bona fide sample";
- ▶ permits the operation of a retail facility by a distillery manufacturing licensee;
- ▶ addresses staff consumption on the premises of a beer manufacturing licensee;
- ▶ refers to bona fide samples of beer, heavy beer, or flavored malt beverages;
- ▶ removes requirement to comply with the off-premise beer retailer local authority

provisions; and

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32B-11-303, as enacted by Laws of Utah 2010, Chapter 276



28 **32B-11-403**, as enacted by Laws of Utah 2010, Chapter 276

29 **32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334



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

32 Section 1. Section **32B-11-303** is amended to read:

33 **32B-11-303. Specific authority and operational requirements for winery**
34 **manufacturing license.**

35 (1) A winery manufacturing license allows a winery manufacturing licensee to:

36 (a) store, manufacture, transport, import, or export wine;

37 (b) sell wine at wholesale to the department and to out-of-state customers;

38 (c) purchase liquor for fortifying wine, if the department is notified of the purchase and
39 date of delivery; and

40 (d) warehouse on the licensed premises liquor that is manufactured or purchased for
41 manufacturing purposes.

42 (2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery
43 manufacturing license shall conform to the standards of identity and quality established in the
44 regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

45 (b) The federal definitions, standards of identity, and quality and labeling requirements
46 for wine, in regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201
47 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with the
48 laws of this state.

49 (3) If considered necessary, the commission or department may require:

50 (a) the alteration of the plant, equipment, or licensed premises;

51 (b) the alteration or removal of unsuitable wine-making equipment or material;

52 (c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve
53 the sanitary and working conditions of the plant, licensed premises, and wine-making
54 equipment;

55 (d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed
56 premises because it is considered:

57 (i) unfit for wine making; or

58 (ii) as producing or likely to produce an unsanitary condition;

59 (e) a winery manufacturing licensee to distill or cause to be distilled or disposed of
60 under the department's supervision:

61 (i) any unsound, poor quality finished wine; or

62 (ii) unfinished wine that will not be satisfactory when finished; or

63 (f) that a record pertaining to the grapes and other materials and ingredients used in the
64 manufacture of wine be available to the commission or department upon request.

65 (4) A winery manufacturing licensee may not permit wine to be consumed on its
66 premises, except under the following circumstances:

67 (a) A winery manufacturing licensee may allow its staff to consume on the licensed
68 premises wine as the winery manufacturing licensee furnishes to the staff without charge.

69 (b) A winery manufacturing licensee may allow a person who can lawfully purchase
70 wine for wholesale or retail distribution to consume a bona fide sample of the winery
71 manufacturing licensee's product on the licensed premises.

72 (c) A winery manufacturing licensee may operate on its licensed premises a retail
73 facility allowing consumption of a bona fide sample on the licensed premises of wine as long
74 as food is also available. This type of retail facility located on the licensed premises shall be
75 operated or supervised by the winery manufacturing licensee.

76 (d) The commission may define by rule, made in accordance with Title 63G, Chapter 3,
77 Utah Administrative Rulemaking Act, the term "bona fide sample."

78 Section 2. Section **32B-11-403** is amended to read:

79 **32B-11-403. Specific authority and operational requirements for distillery**
80 **manufacturing license.**

81 (1) A distillery manufacturing license allows a distillery manufacturing licensee to:

82 (a) store, manufacture, transport, import, or export liquor;

83 (b) sell liquor to:

84 (i) the department;

85 (ii) an out-of-state customer; and

86 (iii) as provided in Subsection (2);

87 (c) purchase an alcoholic product for mixing and manufacturing purposes if the
88 department is notified of:

89 (i) the purchase; and

90 (ii) the date of delivery; and

91 (d) warehouse on its licensed premises an alcoholic product that the distillery
92 manufacturing licensee manufactures or purchases for manufacturing purposes.

93 (2) (a) Subject to the other provisions of this Subsection (2), a distillery manufacturing
94 licensee may directly sell an alcoholic product to a person engaged within the state in:

95 (i) a mechanical or industrial business that requires the use of an alcoholic product; or

96 (ii) scientific pursuits that require the use of an alcoholic product.

97 (b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a
98 valid special use permit issued in accordance with Chapter 10, Special Use Permit Act,
99 authorizing the use of the alcoholic product.

100 (c) A distillery manufacturing licensee may sell to a special use permittee described in
101 Subsection (2)(b) an alcoholic product only in the type for which the special use permit
102 provides.

103 (d) The sale of an alcoholic product under this Subsection (2) is subject to rules
104 prescribed by the department and the federal government.

105 (3) The federal definitions, standards of identity and quality, and labeling requirements
106 for distilled liquor, in the regulations issued under Federal Alcohol Administration Act, 27
107 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or
108 inconsistent with laws of this state.

109 (4) If considered necessary, the commission or department may require:

110 (a) the alteration of the plant, equipment, or licensed premises;

111 (b) the alteration or removal of unsuitable alcoholic product-making equipment or
112 material;

113 (c) a distillery manufacturing licensee to clean, disinfect, ventilate, or otherwise
114 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

115 (d) that a record pertaining to the materials and ingredients used in the manufacture of
116 an alcoholic product be made available to the commission or department upon request.

117 (5) A distillery manufacturing licensee may not permit an alcoholic product to be
118 consumed on its premises, except that:

119 (a) a distillery manufacturing licensee may allow its staff to consume on the licensed
120 premises an alcoholic product that the distillery furnishes to the staff without charge; ~~and~~

121 (b) a distillery manufacturing licensee may allow a person who can lawfully purchase
122 an alcoholic product for wholesale or retail distribution to consume a bona fide sample of the
123 distillery manufacturing licensee's product on the licensed premises[-]; and

124 (c) a distillery manufacturing licensee may operate on its licensed premises a retail
125 facility:

126 (i) allowing consumption of a bona fide sample on the licensed premises of the
127 distillery manufacturing licensee's product as long as food is also available; and

128 (ii) located on the licensed premises being operated or supervised by the distillery
129 manufacturing licensee.

130 (6) The commission may define by rule, made in accordance with Title 63G, Chapter 3,
131 Utah Administrative Rulemaking Act, the term "bona fide sample."

132 Section 3. Section **32B-11-503** is amended to read:

133 **32B-11-503. Specific authority and operational requirements for brewery**
134 **manufacturing license.**

135 (1) A brewery manufacturing license allows a brewery manufacturing licensee to:

136 (a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt
137 beverages;

138 (b) sell heavy beer and a flavored malt beverage to:

139 (i) the department;

140 (ii) a military installation; or

141 (iii) an out-of-state customer;

142 (c) sell beer to a beer wholesaler licensee;

143 (d) in the case of a small brewer, in accordance with Subsection (5), sell beer
144 manufactured by the small brewer to:

145 (i) a retail licensee;

146 (ii) an off-premise beer retailer; or

147 (iii) an event permittee; and

148 (e) warehouse on its premises an alcoholic product that the brewery manufacturing
149 licensee manufactures or purchases for manufacturing purposes.

150 (2) A brewery manufacturing licensee may not sell the following to a person within the
151 state except the department or a military installation:

152 (a) heavy beer; or
153 (b) a flavored malt beverage.
154 (3) If considered necessary, the commission or department may require:
155 (a) the alteration of the plant, equipment, or licensed premises;
156 (b) the alteration or removal of any unsuitable alcoholic product-making equipment or
157 material;
158 (c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise
159 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or
160 (d) that a record pertaining to the materials and ingredients used in the manufacture of
161 an alcoholic product be available to the commission or department upon request.
162 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored
163 malt beverage to be consumed on the licensed premises, except under the circumstances
164 described in this Subsection (4).
165 (a) A brewery manufacturing licensee may allow its ~~[off-duty]~~ staff to consume beer,
166 heavy beer, or a flavored malt beverage on its premises without charge.
167 (b) A brewery manufacturing licensee may allow a person who can lawfully purchase
168 the following for wholesale or retail distribution to consume a bona fide sample of the brewery
169 manufacturing licensee's product on the licensed premises:
170 (i) beer;
171 (ii) heavy beer; or
172 (iii) a flavored malt beverage.
173 (c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail
174 facility allowing consumption on the premises of ~~[beer in a bottle or on draft]~~ a bona fide
175 sample of beer, heavy beer, and flavored malt beverages if food is also available.
176 (ii) A retail facility located on the licensed premises of a brewery manufacturing
177 licensee shall be operated or supervised by the brewery manufacturing licensee.
178 ~~[(iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing~~
179 ~~licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer~~
180 ~~Local Authority.]~~
181 (d) The commission may define by rule, made in accordance with Title 63G, Chapter 3,
182 Utah Administrative Rulemaking Act, the term "bona fide sample."

183 (5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility
184 located in this state for the storage of beer to be sold to a person described in Subsection (1)(d)
185 if the small brewer:

- 186 (i) (A) (I) is located in this state; and
187 (II) holds a brewery manufacturing license; or
188 (B) (I) is located outside this state; and
189 (II) holds a certificate of approval to sell beer in this state; and

190 (ii) sells beer manufactured by the small brewer directly to a person described in
191 Subsection (1)(d).

192 (b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless
193 the beer:

- 194 (i) is manufactured by the small brewer; and
195 (ii) is first placed in the small brewer's warehouse facility in this state.

196 (c) (i) A small brewer warehouse shall make and maintain complete beer importation,
197 inventory, tax, distribution, sales records, and other records as the department and State Tax
198 Commission may require.

199 (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:

- 200 (A) the department; and
201 (B) the State Tax Commission.

202 (iii) Section 32B-1-205 applies to a record required to be made or maintained in
203 accordance with this Subsection (5), except that the provision is considered to include an action
204 described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission,
205 or an official or employee of the State Tax Commission.

206 (6) Subject to Subsection (7):

207 (a) A brewery manufacturing licensee may not sell beer in this state except under a
208 written agreement with a beer wholesaler licensee in this state.

209 (b) An agreement described in Subsection (6)(a) shall:

- 210 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
211 persons entering into the agreement;
212 (ii) designate the one or more brands that may be distributed in the sales territory; and
213 (iii) set forth the exact geographical area of the sales territory.

214 (c) A brewery manufacturing licensee may have more than one agreement described in
215 this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one
216 exclusive sales territory.

217 (d) A brewery manufacturing licensee may not enter into an agreement with more than
218 one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or
219 any portion of the sales territory.

220 (7) A small brewer is not subject to the requirements of Subsection (6).

Legislative Review Note
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Office of Legislative Research and General Counsel