

Representative Gage Froerer proposes the following substitute bill:

SAMPLING AMENDMENTS

2015 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 sampling.

Highlighted Provisions:

This bill:

- ▶ addresses a manufacturing licensee providing samples under limited circumstances;
- and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 32B-4-401**, as enacted by Laws of Utah 2010, Chapter 276
- 32B-4-708**, as enacted by Laws of Utah 2010, Chapter 276
- 32B-11-303**, as enacted by Laws of Utah 2010, Chapter 276
- 32B-11-403**, as enacted by Laws of Utah 2010, Chapter 276
- 32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334



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

Section 1. Section **32B-4-401** is amended to read:

32B-4-401. Unlawful sale or furnishing.

(1) It is unlawful for a retail licensee, a permittee, or staff of a retail licensee or permittee to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another, an alcoholic product, except as otherwise provided by this title.

(2) It is unlawful for a person in the business of selling liquor, a manufacturer, a supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (a) the department;
- (b) a military installation;
- (c) a holder of a special use permit, to the extent authorized in the special use permit;

or

(d) a liquor warehouser licensee licensed to distribute and transport liquor to:

- (i) the department; or
- (ii) an out-of-state wholesaler or retailer.

(3) (a) It is unlawful for a person in the business of selling beer, a manufacturer, a supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (i) a beer wholesaler licensee;
- (ii) a military installation; or
- (iii) a holder of a special use permit, to the extent authorized in the special use permit.

(b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of approval from selling, shipping, or transporting beer to the extent authorized by Subsection **32B-11-503**~~(5)~~(6) directly to:

- (i) a beer retailer; or
- (ii) an event permittee.

(4) (a) It is unlawful for a manufacturer, supplier, or importer of liquor in this state, or

57 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,
58 shipped, or transported liquor directly or indirectly to a person in this state except to the extent
59 authorized by this title to:

- 60 (i) the department;
- 61 (ii) a military installation;
- 62 (iii) a holder of a special use permit, to the extent authorized in the special use permit;

63 or

64 (iv) a liquor warehouse licensee who is licensed to distribute and transport liquor to:

- 65 (A) the department; or
- 66 (B) an out-of-state wholesaler or retailer.

67 (b) Subsection (4)(a) does not preclude a winery manufacturing licensee located in this
68 state from selling wine to a person on its winery premises:

- 69 (i) to the extent authorized by Subsection [32B-11-303](#)~~[(4)(c)]~~(5); or
- 70 (ii) under a package agency issued by the commission on the winery premises.

71 (c) Subsection (4)(a) does not preclude a distillery manufacturing licensee located in
72 this state from furnishing liquor to a person on its distillery premises to the extent authorized
73 by Subsection [32B-11-403](#)(6).

74 (5) (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or
75 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,
76 shipped, or transported beer directly or indirectly to a person in this state except to the extent
77 authorized by this title to:

- 78 (i) a beer wholesaler licensee;
- 79 (ii) a military installation; or
- 80 (iii) a holder of a special use permit, to the extent authorized in the special use permit.

81 (b) Subsection (5)(a) does not preclude:

82 (i) a small brewer who is a brewery manufacturing licensee located in this state from
83 selling, shipping, and transporting beer to the extent authorized by Subsection

84 [32B-11-503](#)~~[(5)]~~(6) directly to one of the following in this state:

- 85 (A) a beer retailer; or
- 86 (B) an event permittee; or
- 87 (ii) a brewery manufacturing licensee from selling beer to a person on its

88 manufacturing premises under Subsection ~~32B-11-503(4)(e)~~(5).

89 (6) It is unlawful for a person other than a person described in Subsection (2) or (3) to
90 sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product from an
91 out-of-state location directly or indirectly into this state, except as otherwise provided by this
92 title.

93 (7) It is unlawful for a person in this state other than a person described in Subsection
94 (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic
95 product directly or indirectly to another person in this state, except as otherwise provided by
96 this title.

97 (8) (a) A violation of Subsection (1) is a class B misdemeanor, except when otherwise
98 provided by this title.

99 (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.

100 (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

101 Section 2. Section **32B-4-708** is amended to read:

102 **32B-4-708. Unlawful act involving consumers.**

103 (1) (a) It is unlawful for an industry member, directly or indirectly, or through an
104 affiliate, to give away any of its product to a person except for testing, analysis, and sampling
105 purposes by the department ~~[or]~~, a local industry representative licensee, or a member of the
106 general public to the extent authorized by this title.

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

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

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

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

117 (3) It is unlawful for an industry member or retailer, directly or indirectly, or through
118 an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a

119 rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an
120 alcoholic product.

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

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

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

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

127 Section 3. Section **32B-11-303** is amended to read:

128 **32B-11-303. Specific authority and operational requirements for winery**
129 **manufacturing license.**

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

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

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

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

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

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

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

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

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

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

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

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

152 (i) unfit for wine making; or

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

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

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

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

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

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

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

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

167 (c) A winery manufacturing licensee may ~~operate on its licensed premises a retail~~
168 ~~facility allowing consumption of a sample on the licensed premises of wine as long as food is~~
169 ~~also available. This type of retail facility located on the licensed premises shall be operated or~~
170 ~~supervised by the winery manufacturing licensee] allow an individual to sample the winery~~
171 manufacturing licensee's product in accordance with Subsection (5).

172 (5) A winery manufacturing licensee may offer a sample tasting to an individual on the
173 licensed premises in accordance with the following:

174 (a) the winery manufacturing licensee shall charge for the sample;

175 (b) a single sample may not exceed 1 ounce and the maximum amount of samples
176 allowed in the aggregate may not exceed 5 ounces at a single serving;

177 (c) a sample may be served only by a person who is 21 years of age or older;

178 (d) a sample may be served only to an individual who is 21 years of age or older;

179 (e) the winery manufacturing licensee shall hold a full-service restaurant license, a
180 limited-service restaurant license, or a club license, and comply with the operational

181 restrictions for the license the winery manufacturing licensee holds;

182 (f) the winery manufacturing licensee shall dispense the sample in an area designated
183 for sampling;

184 (g) if the designated area for sampling is in a separate building than where the
185 manufacturing occurs, the designated area for sampling shall be located on the same
186 identifiable contiguous unit of property that is treated as separate for valuation or zoning
187 purposes and includes an improvement on that unit of property; and

188 (h) the winery manufacturing licensee shall purchase from the state the wine used for
189 the sample.

190 Section 4. Section **32B-11-403** is amended to read:

191 **32B-11-403. Specific authority and operational requirements for distillery**
192 **manufacturing license.**

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

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

195 (b) sell liquor to:

196 (i) the department;

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

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

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

201 (i) the purchase; and

202 (ii) the date of delivery; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

236 (c) a distillery manufacturing licensee may allow an individual to sample the distillery
237 manufacturing licensee's product in accordance with Subsection (6).

238 (6) A distillery manufacturing licensee may offer a sample tasting to an individual on
239 the licensed premises in accordance with the following:

240 (a) the distillery manufacturing licensee shall charge for the sample;

241 (b) a single sample may not exceed .5 ounces and the maximum amount of samples
242 allowed in the aggregate may not exceed 2.5 ounces at a single serving;

- 243 (c) a sample may be served only by a person who is 21 years of age or older;
- 244 (d) a sample may be served only to an individual who is 21 years of age or older;
- 245 (e) the distillery manufacturing licensee shall have food available when furnishing a
- 246 sample;
- 247 (f) the distillery manufacturing licensee shall dispense the sample in an area designated
- 248 for sampling;
- 249 (g) if the designated area for sampling is in a separate building than where the
- 250 manufacturing occurs, the designated area for sampling shall be located on the same
- 251 identifiable contiguous unit of property that is treated as separate for valuation or zoning
- 252 purposes and includes an improvement on that unit of property; and
- 253 (h) the distillery manufacturing licensee shall purchase from the state the product used
- 254 for the sample.

255 Section 5. Section **32B-11-503** is amended to read:

256 **32B-11-503. Specific authority and operational requirements for brewery**
257 **manufacturing license.**

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

- 259 (a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt
- 260 beverages;
- 261 (b) sell heavy beer and a flavored malt beverage to:
 - 262 (i) the department;
 - 263 (ii) a military installation; or
 - 264 (iii) an out-of-state customer;
- 265 (c) sell beer to a beer wholesaler licensee;
- 266 (d) in the case of a small brewer, in accordance with Subsection (5), sell beer
- 267 manufactured by the small brewer to:
 - 268 (i) a retail licensee;
 - 269 (ii) an off-premise beer retailer; or
 - 270 (iii) an event permittee; and
- 271 (e) warehouse on its premises an alcoholic product that the brewery manufacturing
- 272 licensee manufactures or purchases for manufacturing purposes.

273 (2) A brewery manufacturing licensee may not sell the following to a person within the

274 state except the department or a military installation:

275 (a) heavy beer; or

276 (b) a flavored malt beverage.

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

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

279 (b) the alteration or removal of any unsuitable alcoholic product-making equipment or
280 material;

281 (c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise

282 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

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

285 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored
286 malt beverage to be consumed on the licensed premises, except under the circumstances
287 described in this Subsection (4).

288 (a) A brewery manufacturing licensee may allow its off-duty staff to consume beer,
289 heavy beer, or a flavored malt beverage on its premises without charge.

290 (b) A brewery manufacturing licensee may allow a person who can lawfully purchase
291 the following for wholesale or retail distribution to consume a bona fide sample of the brewery
292 manufacturing licensee's product on the licensed premises:

293 (i) beer;

294 (ii) heavy beer; or

295 (iii) a flavored malt beverage.

296 (c) (i) A brewery manufacturing licensee may ~~[operate on its licensed premises a retail~~
297 ~~facility allowing consumption on premises of beer in a bottle or on draft if food is also~~
298 ~~available]~~ allow an individual to sample the brewery manufacturing licensee's beer or heavy
299 beer in accordance with Subsection (5).

300 ~~[(ii) A retail facility located on the licensed premises of a brewery manufacturing~~
301 ~~licensee shall be operated or supervised by the brewery manufacturing licensee.]~~

302 ~~[(iii) In operating a retail facility under this Subsection (4)(c), a]~~

303 (5) A brewery manufacturing licensee may offer a sample tasting of beer or heavy beer
304 to an individual on the licensed premises in accordance with the following:

- 305 (a) the brewery manufacturing licensee shall charge for the sample;
- 306 (b) a single sample may not exceed 5 ounces and the maximum amount of samples
- 307 allowed in the aggregate may not exceed 25 ounces at a single serving;
- 308 (c) a sample may be served only by a person who is 21 years of age or older;
- 309 (d) a sample may be served only to an individual who is 21 years of age or older;
- 310 (e) the brewery manufacturing licensee shall hold a full-service restaurant license,
- 311 limited-service restaurant license, beer-only restaurant license, or club license, and comply with
- 312 the operational requirements for the license the brewery manufacturing licensee holds;
- 313 (f) the brewery manufacturing licensee shall dispense the sample in an area designated
- 314 for sampling;
- 315 (g) if the designated area for sampling is in a separate building than where the
- 316 manufacturing occurs, the designated area for sampling shall be located on the same
- 317 identifiable contiguous unit of property that is treated as separate for valuation or zoning
- 318 purposes and includes an improvement on that unit of property;
- 319 (h) the brewery manufacturing licensee shall purchase from the state the product used
- 320 for the sample; and
- 321 (i) a brewery manufacturing licensee shall comply with the requirements of Chapter 7,
- 322 Part 2, Off-Premise Beer Retailer Local Authority.
- 323 ~~[(5)]~~ (6) (a) A small brewer shall own, lease, or maintain and control a warehouse
- 324 facility located in this state for the storage of beer to be sold to a person described in
- 325 Subsection (1)(d) if the small brewer:
- 326 (i) (A) (I) is located in this state; and
- 327 (II) holds a brewery manufacturing license; or
- 328 (B) (I) is located outside this state; and
- 329 (II) holds a certificate of approval to sell beer in this state; and
- 330 (ii) sells beer manufactured by the small brewer directly to a person described in
- 331 Subsection (1)(d).
- 332 (b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless
- 333 the beer:
- 334 (i) is manufactured by the small brewer; and
- 335 (ii) is first placed in the small brewer's warehouse facility in this state.

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

339 (ii) The records described in Subsection [~~(5)~~] (6)(c)(i) are subject to inspection by:

340 (A) the department; and

341 (B) the State Tax Commission.

342 (iii) Section 32B-1-205 applies to a record required to be made or maintained in
343 accordance with this Subsection [~~(5)~~] (6), except that the provision is considered to include an
344 action described in Section 32B-1-205 made for the purpose of deceiving the State Tax
345 Commission, or an official or employee of the State Tax Commission.

346 [~~(6)~~] (7) Subject to Subsection [~~(7)~~] (8):

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

349 (b) An agreement described in Subsection [~~(6)~~] (7)(a) shall:

350 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
351 persons entering into the agreement;

352 (ii) designate the one or more brands that may be distributed in the sales territory; and

353 (iii) set forth the exact geographical area of the sales territory.

354 (c) A brewery manufacturing licensee may have more than one agreement described in
355 this Subsection [~~(6)~~] (7) if each brand of the brewery manufacturing licensee is covered by one
356 exclusive sales territory.

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

360 [~~(7)~~] (8) A small brewer is not subject to the requirements of Subsection [~~(6)~~] (7).