

HB0253S01 compared with HB0253

~~deleted text~~ shows text that was in HB0253 but was deleted in HB0253S01.

inserted text shows text that was not in HB0253 but was inserted into HB0253S01.

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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:

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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

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.

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

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

or

- (iv) a liquor warehouser licensee who is licensed to distribute and transport liquor to:
 - (A) the department; or
 - (B) an out-of-state wholesaler or retailer.

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

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

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

(5) (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer directly or indirectly to a person in 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 (5)(a) does not preclude:

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(i) a small brewer who is a brewery manufacturing licensee located in this state from selling, shipping, and transporting beer to the extent authorized by Subsection 32B-11-503[~~(5)~~](6) directly to one of the following in this state:

- (A) a beer retailer; or
- (B) an event permittee; or

(ii) a brewery manufacturing licensee from selling beer to a person on its manufacturing premises under Subsection 32B-11-503[~~(4)~~](5).

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

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

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

- (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.
- (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

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

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

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

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

- (i) as part of a promotion of the industry member's product; or
- (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or sampling purposes.

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

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

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

- (a) overtly promotes the consumption of a product;
- (b) offers a product to the general public without charge; or
- (c) takes place on the premises of a school, college, university, or other educational institution.

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

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

- (1) A winery manufacturing license allows a winery manufacturing licensee to:
- (a) store, manufacture, transport, import, or export wine;
 - (b) sell wine at wholesale to the department and to out-of-state customers;
 - (c) purchase liquor for fortifying wine, if the department is notified of the purchase and date of delivery; and
 - (d) warehouse on the licensed premises liquor that is manufactured or purchased for manufacturing purposes.

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

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

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

- (a) the alteration of the plant, equipment, or licensed premises;
- (b) the alteration or removal of unsuitable wine-making equipment or material;

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

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

- (i) unfit for wine making; or
 - (ii) as producing or likely to produce an unsanitary condition;
- (e) a winery manufacturing licensee to distill or cause to be distilled or disposed of

under the department's supervision:

- (i) any unsound, poor quality finished wine; or
- (ii) unfinished wine that will not be satisfactory when finished; or

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

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

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

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

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

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

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

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(b) a single sample may not exceed 1 ounce and the maximum amount of samples allowed in the aggregate may not exceed ~~10~~5 ounces at a single serving;

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

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

(e) the winery manufacturing licensee shall hold a full-service restaurant license, a limited-service restaurant license, or a club license, and comply with the operational restrictions for the license the winery manufacturing licensee holds;

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

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

~~(g)~~h the winery manufacturing licensee shall purchase from the state the wine used for the sample ~~{ from the department and not use wine from its own package agency}~~.

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

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

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

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

(b) sell liquor to:

(i) the department;

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

(iii) as provided in Subsection (2);

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

(i) the purchase; and

(ii) the date of delivery; and

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

(2) (a) Subject to the other provisions of this Subsection (2), a distillery manufacturing

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licensee may directly sell an alcoholic product to a person engaged within the state in:

- (i) a mechanical or industrial business that requires the use of an alcoholic product; or
- (ii) scientific pursuits that require the use of an alcoholic product.

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

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

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

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

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

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

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

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

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

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

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

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

(c) a distillery manufacturing licensee may allow an individual to sample the distillery

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manufacturing licensee's product in accordance with Subsection (6).

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

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

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

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

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

(e) ~~the distillery manufacturing licensee shall have food available when furnishing a sample;~~

(~~f~~) the distillery manufacturing licensee shall dispense the sample in an area designated for sampling;

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

(~~g~~) the distillery manufacturing licensee shall purchase ~~from the state~~ the product used for the sample ~~from the department and not use product from its own package agency~~.

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

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

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

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

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

(i) the department;

(ii) a military installation; or

(iii) an out-of-state customer;

(c) sell beer to a beer wholesaler licensee;

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

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- (i) a retail licensee;
- (ii) an off-premise beer retailer; or
- (iii) an event permittee; and
- (e) warehouse on its premises an alcoholic product that the brewery manufacturing

licensee manufactures or purchases for manufacturing purposes.

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

- (a) heavy beer; or
- (b) a flavored malt beverage.

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

- (a) the alteration of the plant, equipment, or licensed premises;
- (b) the alteration or removal of any unsuitable alcoholic product-making equipment or

material;

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

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

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

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

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

- (i) beer;
- (ii) heavy beer; or
- (iii) a flavored malt beverage.

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

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beer in accordance with Subsection (5).

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

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

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

(a) the brewery manufacturing licensee shall charge for the sample;

(b) ~~a single sample may not exceed 5 ounces and~~ the maximum amount of samples allowed in the aggregate may not exceed ~~{24}25~~ ounces at a single serving;

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

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

~~(e) the brewery manufacturing licensee shall hold a full-service restaurant license, limited-service restaurant license, beer-only restaurant license, or club license, and comply with the operational requirements for the license the brewery manufacturing licensee holds;~~

~~(f) the brewery manufacturing licensee shall dispense the sample in an area designated for sampling;~~

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

~~(h) the brewery manufacturing licensee shall purchase from the state the product used for the sample { from the department and not use product from its own package agency};~~
and

~~(i) a brewery manufacturing licensee shall comply with the requirements of Chapter 7, Part 2, Off-Premise Beer Retailer Local Authority.~~

~~(5) (6) (a) A small brewer shall own, lease, or maintain and control a warehouse facility located in this state for the storage of beer to be sold to a person described in Subsection (1)(d) if the small brewer:~~

~~(i) (A) (I) is located in this state; and~~

~~(II) holds a brewery manufacturing license; or~~

~~(B) (I) is located outside this state; and~~

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(II) holds a certificate of approval to sell beer in this state; and

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

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

(i) is manufactured by the small brewer; and

(ii) is first placed in the small brewer's warehouse facility in this state.

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

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

(A) the department; and

(B) the State Tax Commission.

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

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

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

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

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

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

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

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

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

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

†

Legislative Review Note

~~as of 2-4-15 5:11 PM~~

~~Office of Legislative Research and General Counsel}~~