

ALCOHOL MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies provisions related to alcohol regulation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reduces the permissible proximity of a restaurant licensee to a community location;
- ▶ repeals the Alcoholic Beverage Control Commission's authority to grant a variance to a proximity requirement;
- ▶ addresses the effect of a previously approved variance to a proximity requirement;
- ▶ provides that a licensee may continue to operate, regardless of whether a person establishes a community location closer to the licensee than is otherwise permissible; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

32B-1-202, as last amended by Laws of Utah 2016, Chapter 176



28 **32B-6-203**, as last amended by Laws of Utah 2016, Chapter 82

29 **32B-6-303**, as last amended by Laws of Utah 2016, Chapter 82

30 **32B-6-903**, as enacted by Laws of Utah 2011, Chapter 334

31 **32B-8a-302**, as last amended by Laws of Utah 2016, Chapter 82

32 **Utah Code Sections Affected by Coordination Clause:**

33 **32B-1-202**, as last amended by Laws of Utah 2016, Chapter 176

33a **Ĥ→ 32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82 ←Ĥ**

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

36 Section 1. Section **32B-1-202** is amended to read:

37 **32B-1-202. Proximity to community location.**

38 (1) ~~[For purposes of]~~ As used in this section~~[-,"outlet" means]:~~

39 (a) (i) "Outlet" means:

40 ~~[(a)]~~ (A) a state store;

41 ~~[(b)]~~ (B) a package agency; or

42 ~~[(c)]~~ (C) a retail licensee~~[-, except an airport lounge licensee].~~

43 (ii) "Outlet" does not include:

44 (A) an airport lounge licensee; or

45 (B) a restaurant.

46 (b) "Restaurant" means:

47 (i) a full-service restaurant licensee;

48 (ii) a limited-service restaurant licensee; or

49 (iii) a beer-only restaurant licensee.

50 ~~[(2) Except as otherwise provided in this section, the premises of an outlet may not be~~
51 ~~located:]~~

52 (2) (a) The commission may not issue a license for an outlet if, on the date the
53 commission takes final action to approve or deny the application, there is a community
54 location:

55 ~~[(a)]~~ (i) within 600 feet of [a community location] the proposed outlet, as measured
56 from the nearest entrance of the proposed outlet by following the shortest route of ordinary
57 pedestrian travel to the property boundary of the community location; or

58 ~~[(b)]~~ (ii) within 200 feet of [a community location] the proposed outlet, measured in a

59 straight line from the nearest entrance of the proposed outlet to the nearest property boundary
60 of the community location.

61 (b) The commission may not issue a license for a restaurant if, on the date the
62 commission takes final action to approve or deny the application, there is a community
63 location:

64 (i) within 300 feet of the proposed restaurant, as measured from the nearest entrance of
65 the proposed restaurant by following the shortest route of ordinary pedestrian travel to the
66 property boundary of the community location; or

67 (ii) within 200 feet of the proposed restaurant, measured in a straight line from the
68 nearest entrance of the proposed restaurant to the nearest property boundary of the community
69 location.

70 ~~[(3) With respect to the location of an outlet, the commission may authorize a variance~~
71 ~~to reduce the proximity requirement of Subsection (2) if:]~~

72 ~~[(a) when the variance reduces the proximity requirement of Subsection (2)(b), the~~
73 ~~community location at issue is:]~~

74 ~~[(i) a public library; or]~~

75 ~~[(ii) a public park;]~~

76 ~~[(b) except with respect to a state store, the local authority gives its written consent to~~
77 ~~the variance;]~~

78 ~~[(c) the commission finds that alternative locations for locating that type of outlet in~~
79 ~~the community are limited;]~~

80 ~~[(d) a public hearing is held in the city, town, metro township, or county, and when~~
81 ~~practical in the neighborhood concerned;]~~

82 ~~[(e) after giving full consideration to the attending circumstances and the policies~~
83 ~~stated in Subsections [32B-1-103](#)(3) and (4), the commission determines that locating the outlet~~
84 ~~in that location would not be detrimental to the public health, peace, safety, and welfare of the~~
85 ~~community;]~~

86 ~~[(f) (i) the community location governing authority gives its written consent to the~~
87 ~~variance; or]~~

88 ~~[(ii) if the community location governing authority does not give its written consent to~~
89 ~~a variance, the commission finds the following for a state store, or if the outlet is a package~~

90 agency or retail licensee, the commission finds that the applicant establishes the following:]

91 [~~(A) there is substantial unmet public demand to consume an alcoholic product;~~]

92 [~~(F) within the geographic boundary of the local authority in which the outlet is to be~~
93 ~~located; and]~~

94 [~~(H) for an outlet that is a retail licensee, in a public setting;]~~

95 [~~(B) there is no reasonably viable alternative for satisfying the substantial unmet~~
96 ~~demand other than through locating that type of outlet in that location; and]~~

97 [~~(C) there is no reasonably viable alternative location within the geographic boundary~~
98 ~~of the local authority in which the outlet is to be located for locating that type of outlet to~~
99 ~~satisfy the unmet demand.]~~

100 [~~(4) With respect to the premises of a package agency or retail licensee that undergoes~~
101 ~~a change of ownership, the commission may waive or vary the proximity requirements of~~
102 ~~Subsection (2) in considering whether to issue the package agency or same type of retail license~~
103 ~~to the new owner of the premises if:]~~

104 [~~(a) the premises previously received a variance reducing the proximity requirement of~~
105 ~~Subsection (2)(a);]~~

106 [~~(b) the premises received a variance reducing the proximity requirement of Subsection~~
107 ~~(2)(b) on or before May 4, 2008; or]~~

108 [~~(c) a variance from proximity requirements was otherwise allowed under this title.]~~

109 (3) For an outlet or a restaurant that holds a license on May 9, 2017, and operates under
110 a previously approved variance to one or more proximity requirements in effect before May 9,
111 2017, subject to the other provisions of this title, that outlet or restaurant, or another outlet or
112 restaurant with the same type of license as that outlet or restaurant, may operate under the
113 previously approved variance regardless of whether:

114 (a) the outlet or restaurant changes ownership;

115 (b) the property on which the outlet or restaurant is located changes ownership; or

116 (c) there is a lapse in the use of the property as an outlet or a restaurant with the same
117 type of license, unless during the lapse, the property is used for a different purpose.

118 (4) (a) If, after an outlet or a restaurant obtains a license under this title, a person
119 establishes a community location on a property that puts the outlet or restaurant in violation of
120 the proximity requirements in effect at the time the license is issued or a previously approved

121 variance described in Subsection (3), subject to the other provisions of this title, that outlet or
122 restaurant, or an outlet or a restaurant with the same type of license as that outlet or restaurant,
123 may operate at the premises regardless of whether:

- 124 (i) the outlet or restaurant changes ownership;
- 125 (ii) the property on which the outlet or restaurant is located changes ownership; or
- 126 (iii) there is a lapse in the use of the property as an outlet or a restaurant with the same
127 type of license, unless during the lapse the property is used for a different purpose.

128 (b) The provisions of this Subsection (4) apply regardless of when the outlet's or
129 restaurant's license is issued.

130 (5) Nothing in this section prevents the commission from considering the proximity of
131 an educational, religious, and recreational facility, or any other relevant factor in reaching a
132 decision on a proposed location of an outlet.

133 Section 2. Section **32B-6-203** is amended to read:

134 **32B-6-203. Commission's power to issue full-service restaurant license.**

135 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
136 an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a
137 full-service restaurant license from the commission in accordance with this part.

138 (2) The commission may issue a full-service restaurant license to establish full-service
139 restaurant licensed premises at places and in numbers the commission considers proper for the
140 storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises
141 operated as a full-service restaurant.

142 (3) Subject to Section [32B-1-201](#):

143 (a) The commission may not issue a total number of full-service restaurant licenses that
144 at any time exceeds the number determined by dividing the population of the state by 4,467.

145 (b) The commission may issue a seasonal full-service restaurant license in accordance
146 with Section [32B-5-206](#).

147 (c) (i) If the location, design, and construction of a hotel may require more than one
148 full-service restaurant sales location within the hotel to serve the public convenience, the
149 commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as
150 many as three full-service restaurant locations within the hotel under one full-service restaurant
151 license if:

152 (A) the hotel has a minimum of 150 guest rooms; and

153 (B) the locations under the full-service restaurant license are:

154 (I) within the same hotel; and

155 (II) on premises that are managed or operated, and owned or leased, by the full-service
156 restaurant licensee.

157 (ii) A facility other than a hotel shall have a separate full-service restaurant license for
158 each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

159 (4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section 32B-1-202, the
160 commission may not issue a full-service restaurant license for premises that do not meet the
161 proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

162 ~~[(b) With respect to the premises of a full-service restaurant license issued by the
163 commission that undergoes a change of ownership, the commission shall waive or vary the
164 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a
165 full-service restaurant license to the new owner of the premises if:]~~

166 ~~[(i) when a full-service restaurant license was issued to a previous owner, the premises
167 met the proximity requirements of Subsection 32B-1-202(2);]~~

168 ~~[(ii) the premises has had a full-service restaurant license at all times since the
169 full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance;
170 and]~~

171 ~~[(iii) the community location was located within the proximity requirements of
172 Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in
173 Subsection (4)(b)(i) was issued.]~~

174 Section 3. Section **32B-6-303** is amended to read:

175 **32B-6-303. Commission's power to issue limited-service restaurant license.**

176 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
177 wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first
178 obtain a limited-service restaurant license from the commission in accordance with this part.

179 (2) (a) The commission may issue a limited-service restaurant license to establish
180 limited-service restaurant licensed premises at places and in numbers the commission considers
181 proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or
182 beer on premises operated as a limited-service restaurant.

183 (b) A person may not sell, offer for sale, furnish, or allow the consumption of the
184 following on the licensed premises of a limited-service restaurant licensee:

- 185 (i) spirituous liquor; or
186 (ii) a flavored malt beverage.

187 (3) Subject to Section [32B-1-201](#):

188 (a) The commission may not issue a total number of limited-service restaurant licenses
189 that at any time exceeds the number determined by dividing the population of the state by
190 6,817.

191 (b) The commission may issue a seasonal limited-service restaurant license in
192 accordance with Section [32B-5-206](#).

193 (c) (i) If the location, design, and construction of a hotel may require more than one
194 limited-service restaurant sales location within the hotel to serve the public convenience, the
195 commission may authorize the sale of wine, heavy beer, and beer at as many as three
196 limited-service restaurant locations within the hotel under one limited-service restaurant license
197 if:

198 (A) the hotel has a minimum of 150 guest rooms; and

199 (B) the locations under the limited-service restaurant license are:

200 (I) within the same hotel; and

201 (II) on premises that are managed or operated, and owned or leased, by the
202 limited-service restaurant licensee.

203 (ii) A facility other than a hotel shall have a separate limited-service restaurant license
204 for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or
205 furnished.

206 (4) ~~(a)~~ Except as otherwise provided in [~~Subsection (4)(b)~~] [Section 32B-1-202](#), the
207 commission may not issue a limited-service restaurant license for premises that do not meet the
208 proximity requirements of [~~Section 32B-1-202~~] [Subsection 32B-1-202\(2\)](#).

209 ~~[(b) With respect to the premises of a limited-service restaurant license issued by the
210 commission that undergoes a change of ownership, the commission shall waive or vary the
211 proximity requirements of Subsection [32B-1-202\(2\)](#) in considering whether to issue a
212 limited-service restaurant license to the new owner of the premises if:]~~

213 ~~[(i) when a limited-service restaurant license was issued to a previous owner, the~~

214 ~~premises met the proximity requirements of Subsection 32B-1-202(2);]~~

215 ~~[(ii) the premises has had a limited-service restaurant license at all times since the~~
216 ~~limited-service restaurant license described in Subsection (4)(b)(i) was issued without a~~
217 ~~variance; and]~~

218 ~~[(iii) the community location was located within the proximity requirements of~~
219 ~~Subsection 32B-1-202(2) after the day on which the limited-service restaurant license~~
220 ~~described in Subsection (4)(b)(i) was issued.]~~

221 Section 4. Section 32B-6-903 is amended to read:

222 **32B-6-903. Commission's power to issue beer-only restaurant license.**

223 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
224 beer on its premises as a beer-only restaurant, the person shall first obtain a beer-only
225 restaurant license from the commission in accordance with this part.

226 (2) (a) The commission may issue a beer-only restaurant license to establish beer-only
227 restaurant licensed premises at places and in numbers the commission considers proper for the
228 storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as a
229 beer-only restaurant.

230 (b) A person may not sell, offer for sale, furnish, or allow the consumption of liquor on
231 the licensed premises of a beer-only restaurant licensee.

232 (3) (a) Only one beer-only restaurant license is required for each building or resort
233 facility owned or leased by the same person.

234 (b) A separate license is not required for each beer-only restaurant license dispensing
235 location in the same building or on the same resort premises owned or operated by the same
236 person.

237 (4) ~~(a)~~ Except as otherwise provided in [~~Subsection (4)(b) or (c)~~] Section 32B-1-202,
238 the commission may not issue a beer-only restaurant license for premises that do not meet the
239 proximity requirements of [~~Section 32B-1-202~~] Subsection 32B-1-202(2).

240 ~~[(b) With respect to the premises of a beer-only restaurant license issued by the~~
241 ~~commission that undergoes a change of ownership, the commission shall waive or vary the~~
242 ~~proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a~~
243 ~~beer-only restaurant license to the new owner of the premises if:]~~

244 ~~[(i) when a beer-only restaurant license was issued to a previous owner, the premises~~

245 met the proximity requirements of Subsection ~~32B-1-202(2)~~;

246 ~~[(ii) the premises has had a beer-only restaurant license at all times since the beer-only~~
247 ~~restaurant license described in Subsection (4)(b)(i) was issued without a variance; and]~~

248 ~~[(iii) the community location was located within the proximity requirements of~~
249 ~~Subsection ~~32B-1-202(2)~~ after the day on which the beer-only restaurant license described in~~
250 ~~Subsection (4)(b)(i) was issued.]~~

251 ~~[(c) The location of the licensed premises of an on-premise beer retailer who is~~
252 ~~licensed as of July 1, 2011, is grandfathered and not required to meet the proximity~~
253 ~~requirements of Section ~~32B-1-202~~ if the on-premise beer retailer obtains a beer-only~~
254 ~~restaurant license by not later than March 1, 2012. A location grandfathered under this~~
255 ~~Subsection (4)(c) is considered grandfathered notwithstanding that the beer-only restaurant~~
256 ~~license undergoes a change of ownership.]~~

257 Section 5. Section **32B-8a-302** is amended to read:

258 **32B-8a-302. Application -- Approval process.**

259 (1) To obtain the transfer of a retail license from a retail licensee, the transferee shall
260 file a transfer application with the department that includes:

261 (a) an application in the form provided by the department;

262 (b) a statement as to whether the consideration, if any, to be paid to the transferor
263 includes payment for transfer of the retail license;

264 (c) a statement executed under penalty of perjury that the consideration as set forth in
265 the escrow agreement required by Section ~~32B-8a-401~~ is deposited with the escrow holder; and

266 (d) (i) an application fee of \$300; and

267 (ii) a transfer fee determined in accordance with Section ~~32B-8a-303~~.

268 (2) If the intended transfer of a retail license involves consideration, at least 10 days
269 before the commission may approve the transfer, the department shall post a notice of the
270 intended transfer on the Public Notice Website created in Section ~~63F-1-701~~ that states the
271 following:

272 (a) the name of the transferor;

273 (b) the name and address of the business currently associated with the retail license;

274 (c) instructions for filing a claim with the escrow holder; and

275 (d) the projected date that the commission may consider the transfer application.

276 (3) (a) (i) Before the commission may approve the transfer of a retail license, the
277 department shall conduct an investigation and may hold public hearings to gather information
278 and make recommendations to the commission as to whether the transfer of the retail license
279 should be approved.

280 (ii) The department shall forward the information and recommendations described in
281 this Subsection (3)(a) to the commission to aid in the commission's determination.

282 (b) Before approving a transfer, the commission shall:

283 (i) determine that the transferee filed a complete application;

284 (ii) determine that the transferee is eligible to hold the type of retail license that is to be
285 transferred at the premises to which the retail license would be transferred;

286 (iii) determine that the transferee is not delinquent in the payment of an amount
287 described in Subsection [32B-8a-201\(3\)](#);

288 (iv) determine that the transferee is not disqualified under Section [32B-1-304](#);

289 (v) consider the locality within which the proposed licensed premises is located,
290 including the factors listed in Section [32B-5-203](#) for the issuance of a retail license;

291 (vi) consider the transferee's ability to manage and operate the retail license to be
292 transferred, including the factors listed in Section [32B-5-203](#) for the issuance of a retail license;

293 (vii) consider the nature or type of retail licensee operation of the transferee, including
294 the factors listed in Section [32B-5-203](#) for the issuance of a retail license;

295 (viii) if the transfer involves consideration, determine that the transferee and transferor
296 have complied with Part 4, Protection of Creditors; and

297 (ix) consider any other factor the commission considers necessary.

298 (4) ~~(a)~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section [32B-1-202](#), the
299 commission may not approve the transfer of a retail license to premises that do not meet the
300 proximity requirements of ~~[Section [32B-1-202](#)]~~ Subsection [32B-1-202\(2\)](#).

301 ~~[(b) If after a transfer of a retail license the transferee operates the same type of retail~~
302 ~~license at the same location as did the transferor, the commission may waive or vary the~~
303 ~~proximity requirements of Subsection [32B-1-202\(2\)](#) in considering whether to approve the~~
304 ~~transfer under the same circumstances that the commission may waive or vary the proximity~~
305 ~~requirements in accordance with Subsection [32B-1-202\(4\)](#) when considering whether to issue a~~
306 ~~retail license.]~~

307 Section 6. **Coordinating S.B. 279 with H.B. 442 -- Superseding technical and**
308 **substantive amendments.**

309 If this S.B. 279 and H.B. 442, Alcohol Amendments, both pass and become law, it is
310 the intent of the Legislature that the amendments to ~~Section~~ Sections ~~←~~ [32B-1-202](#)
310a ~~Section~~ and ~~32B-8a-302~~ ~~←~~ in this bill supersede
311 the amendments to ~~Section~~ Sections ~~←~~ [32B-1-202](#) ~~Section~~ and ~~32B-8a-302~~ ~~←~~ in H.B. 442,
311a when the Office of Legislative Research
312 and General Counsel prepares the Utah Code database for publication.

Legislative Review Note
Office of Legislative Research and General Counsel