

Representative Michael K. McKell proposes the following substitute bill:

WINE SERVICES AND AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Alcoholic Beverage Control Act to establish a wine subscription program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Alcoholic Beverage Control (department) to establish and administer a wine subscription program in which:

- the department purchases a wine subscription on behalf of an individual;
 - a individual pays to the department the cost of the wine subscription plus, in addition to any tax or fee, an established markup;
 - wine purchased through the wine subscription program is shipped or transported to a department warehouse;
 - the department ships or transports wine purchased through the wine subscription program to a state store or package agency; and
 - an individual collects the wine from a state store or package agency;
- ▶ permits the department to charge a fee to cover costs of administering the wine subscription program;



- 26 ▶ grants the commission rulemaking authority;
- 27 ▶ removes the requirement that a person moving the person's residence into the state
- 28 obtain department approval before bringing liquor for personal consumption into
- 29 the state;
- 30 ▶ removes the requirement that a person who inherits liquor that is located outside the
- 31 state obtain department approval before bringing the liquor into the state; and
- 32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **32B-2-304**, as last amended by Laws of Utah 2019, Chapter 403

40 **32B-4-414**, as enacted by Laws of Utah 2010, Chapter 276

41 ENACTS:

42 **32B-2-701**, Utah Code Annotated 1953

43 **32B-2-702**, Utah Code Annotated 1953

44 **32B-2-703**, Utah Code Annotated 1953



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

47 Section 1. Section **32B-2-304** is amended to read:

48 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

49 (1) For purposes of this section:

50 (a) (i) "Landed case cost" means:

51 (A) the cost of the product; and

52 (B) inbound shipping costs incurred by the department.

53 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
54 of the department to a state store.

55 (b) "Proof gallon" means the same as that term is defined in 26 U.S.C. Sec. 5002.

56 (c) Notwithstanding Section **32B-1-102**, "small brewer" means a brewer who

57 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt
58 beverage.

59 (2) Except as provided in [~~Subsection~~] Subsections (3) and (4):

60 (a) spirituous liquor sold by the department within the state shall be marked up in an
61 amount not less than 88% above the landed case cost to the department;

62 (b) wine sold by the department within the state shall be marked up in an amount not
63 less than 88% above the landed case cost to the department;

64 (c) heavy beer sold by the department within the state shall be marked up in an amount
65 not less than 66.5% above the landed case cost to the department; and

66 (d) a flavored malt beverage sold by the department within the state shall be marked up
67 in an amount not less than 88% above the landed case cost to the department.

68 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked
69 up in an amount not less than 17% above the landed case cost to the department.

70 (b) Except for spirituous liquor sold by the department to a military installation in
71 Utah, spirituous liquor that is sold by the department within the state shall be marked up 49%
72 above the landed case cost to the department if:

73 (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000
74 proof gallons of spirituous liquor in a calendar year; and

75 (ii) the manufacturer applies to the department for a reduced markup.

76 (c) Except for wine sold by the department to a military installation in Utah, wine that
77 is sold by the department within the state shall be marked up 49% above the landed case cost to
78 the department if:

79 (i) (A) except as provided in Subsection (3)(c)(i)(B), the wine is manufactured by a
80 manufacturer producing less than 20,000 gallons of wine in a calendar year; or

81 (B) for hard cider, the hard cider is manufactured by a manufacturer producing less
82 than 620,000 gallons of hard cider in a calendar year; and

83 (ii) the manufacturer applies to the department for a reduced markup.

84 (d) Except for heavy beer sold by the department to a military installation in Utah,
85 heavy beer that is sold by the department within the state shall be marked up 32% above the
86 landed case cost to the department if:

87 (i) a small brewer manufactures the heavy beer; and

88 (ii) the small brewer applies to the department for a reduced markup.

89 (e) The department shall verify an amount described in Subsection (3)(b), (c), or (d)
90 pursuant to a federal or other verifiable production report.

91 (f) For purposes of determining whether an alcoholic product qualifies for a markup
92 under this Subsection (3), the department shall evaluate whether the manufacturer satisfies the
93 applicable production requirement without considering the manufacturer's production of any
94 other type of alcoholic product.

95 (4) Wine the department purchases on behalf of a subscriber through the wine
96 subscription program established in Section 32B-2-702 shall be marked up not less than 88%
97 above the cost of the subscription for the interval in which the wine is purchased.

98 [~~4~~] (5) The department shall deposit 10% of the total gross revenue from sales of
99 liquor with the state treasurer to be credited to the Uniform School Fund and used to support
100 the school lunch program administered by the State Board of Education under Section
101 53E-3-510.

102 [~~5~~] (6) This section does not prohibit the department from selling discontinued items
103 at a discount.

104 Section 2. Section 32B-2-701 is enacted to read:

105 **32B-2-701. Definitions.**

106 As used in this part:

107 (1) "Subscriber" means an individual who subscribes to a wine subscription as
108 described in Subsection 32B-2-702(2).

109 (2) "Subscription program" means the wine subscription program established in
110 Section 32B-2-702.

111 (3) "Wine subscription" means an arrangement in which a customer pays a recurring
112 price at regular intervals for a product that involves the shipment or transportation of wine.

113 (4) "Wine subscription business" means a person that:

114 (a) sells or offers for sale a wine subscription; and

115 (b) contracts with the department to participate in the subscription program.

116 Section 3. Section 32B-2-702 is enacted to read:

117 **32B-2-702. Wine subscription program.**

118 (1) The department shall establish and administer a wine subscription program as

119 described in this part.

120 (2) The subscription program shall permit an individual to subscribe to a wine
121 subscription that a wine subscription business sells or offers for sale by:

122 (a) enrolling in the wine subscription program in a manner the department prescribes;

123 (b) authorizing the department to purchase the wine subscription in the individual's
124 name;

125 (c) paying the department, in a manner the department prescribes:

126 (i) the price of the wine subscription;

127 (ii) in addition to any tax, the markup described in Subsection 32B-2-304(4); and

128 (iii) a fee the department charges in accordance with Subsection 32B-2-703(1); and

129 (d) designating the state store or package agency at which the individual would prefer
130 to collect the wine.

131 (3) The department shall:

132 (a) designate by contract with a wine subscription business the department warehouse
133 to which the wine subscription business ships or transports wine under the subscription
134 program;

135 (b) deliver wine purchased through the subscription program to the appropriate state
136 store or package agency; and

137 (c) notify a subscriber when wine purchased through the subscription program is ready
138 for the subscriber to collect from the state store or package agency described in Subsection

139 (3)(b).

140 Section 4. Section 32B-2-703 is enacted to read:

141 **32B-2-703. Fees -- Rulemaking.**

142 (1) The department may charge a fee as part of the subscription program:

143 (a) in accordance with Section 63J-1-504; and

144 (b) to cover costs to the department for administering the subscription program.

145 (2) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
146 Administrative Rulemaking Act, for the administration of this part, including rules designating
147 which package agencies may receive from the department wines that are purchased through the
148 subscription program.

149 Section 5. Section 32B-4-414 is amended to read:

150 **32B-4-414. Unlawful possession -- Exceptions.**

151 [(+)] A person may not possess liquor within this state unless authorized by this title or
 152 the rules of the commission, except that:

153 [(a)] (1) a person who clears United States Customs when entering this country may
 154 possess for personal consumption and not for sale or resale, a maximum of [~~two~~] nine liters of
 155 liquor purchased from without the United States;

155a **Ŝ→ (2) a person who enters this state may possess for personal consumption and not for**
 155b **sale or resale, a maximum of nine liters of liquor purchased from without the state; ←Ŝ**

156 [(b)] **Ŝ→ [~~(2)~~] (3) ←Ŝ** a person who moves the person's residence to this state from outside
 156a of this

157 state may possess for personal consumption and not for sale or resale, liquor previously
 158 purchased outside the state and brought into this state during the move **Ŝ→ [;if the person[: (i)**

159 **obtains department approval before moving the liquor into the state; and (ii)] pays the**

160 **department a reasonable administrative handling fee as determined by the commission] ←Ŝ ;**

161 [(c)] **Ŝ→ [~~(3)~~] (4) ←Ŝ** a person who inherits liquor as a beneficiary of an estate that is
 161a located outside

162 the state, may possess the liquor and transport or cause the liquor to be transported into the
 163 state if the person[:] **Ŝ→ [;**

164 **— [(i) obtains department approval before moving the liquor into the state;]**

165 **— [(ii)] (a) ←Ŝ** provides sufficient documentation to the department to establish the person's
 166 legal right to the liquor as a beneficiary; **Ŝ→ [-and**

167 **— [(iii)] (b) pays the department a reasonable administrative handling fee as determined**
 168 **by the commission;] ←Ŝ or**

169 [(d)] **Ŝ→ [~~(4)~~] (5) ←Ŝ** a person may transport or possess liquor if:

170 [(+)] (a) the person transports or possesses the liquor:

171 [(A)] (i) for personal household use and consumption; and

172 [(B)] (ii) not for:

173 [(+)] (A) sale;

174 [(+)] (B) resale;

175 [(+)] (C) gifting to another; or

176 [(+)] (D) consumption on premises licensed by the commission;

177 [(+)] (b) the liquor is purchased from a store or facility on a military installation; and

178 [(+)] (c) the maximum amount the person transports or possesses under this

179 Subsection [(+)](d)] **Ŝ→ [~~(4)~~] (5) ←Ŝ** is:

180 [(A)] (i) two liters of:

181 ~~[(F)]~~ (A) spirituous liquor;
182 ~~[(H)]~~ (B) wine; or
183 ~~[(H)]~~ (C) a combination of spirituous liquor and wine; and
184 ~~[(B)]~~ ~~[(F)]~~ (ii) (A) one case of heavy beer that does not exceed 288 ounces; or
185 ~~[(H)]~~ (B) one case of a flavored malt beverage that does not exceed 288 ounces.
186 ~~[(2) (a) Approval under Subsection (1)(b) may be obtained by a person who:]~~
187 ~~[(i) is transferring the person's permanent residence to this state; or]~~
188 ~~[(ii) maintains separate residences both in and out of this state.]~~
189 ~~[(b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more~~
190 ~~than one time.]~~