

HB0157S01 compared with HB0157

~~{deleted text}~~ shows text that was in HB0157 but was deleted in HB0157S01.

inserted text shows text that was not in HB0157 but was inserted into HB0157S01.

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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: _____

LONG TITLE

General Description:

This bill amends ~~{and enacts provisions in }~~the Alcoholic Beverage Control Act ~~{regarding}~~to establish a wine ~~{and a state wine order and delivery service}~~subscription program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Alcoholic Beverage Control (department) to establish ~~{a wine order and delivery service;~~
- ▶ ~~outlines requirements for the wine order and delivery service;~~
- ▶ ~~grants}~~and administer a wine subscription program in which:
 - the department purchases a wine subscription on behalf of an individual;

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- 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;
- ▶ grants the commission rulemaking authority ~~{ to administer the wine order and delivery service }~~;
- ▶ removes the requirement that a person moving the person's residence into the state obtain department approval before bringing liquor for personal consumption into the state;
- ▶ removes the requirement that a person who inherits liquor that is located outside the state obtain department approval before bringing the liquor into the state; and
- ▶ ~~{ raises the amount of wine purchased from without the United States that a person who clears customs may bring into the state }~~ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

32B-2-701, Utah Code Annotated 1953

32B-2-702, Utah Code Annotated 1953

32B-2-703, Utah Code Annotated 1953

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~~{ 32B-2-704, Utah Code Annotated 1953~~

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

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

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

(1) For purposes of this section:

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

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

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

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

(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~[(1)]~~ 2. Section **32B-2-701** is enacted to read:

32B-2-701. Definitions.

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As used in this part ~~{,"valid address" means an address that:~~

~~(1) is in the state;~~

~~(2) is not associated with licensed premises; and~~

~~(3) is not a community location;~~

~~Section 2~~};

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

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

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

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

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

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

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

32B-2-702. ~~{ Department wine order and delivery service}~~ **Wine subscription program.**

(1) The ~~{commission}~~ department shall establish and administer a wine ~~{order and delivery service}~~ subscription program as described in this part.

(2) The ~~{department's wine order and delivery service shall allow a person to:~~

~~(a) order wine through the department; and~~

~~(b) (i) pick up wine ordered through}~~ subscription program shall permit an individual to subscribe to a wine subscription that a wine subscription business sells or offers for sale by:

(a) enrolling in the wine subscription program in a manner the department ~~{from:~~

~~(A) a state store; or~~

~~(B) a package agency; or~~

~~(ii) have the department deliver wine ordered through}~~ prescribes;

(b) authorizing the department to ~~{a valid address.~~

(3) The department shall require an individual placing a wine order to:

~~(a) (i) enter}~~ purchase the wine subscription in the individual's ~~{state-issued identification number through an electronic platform; or~~

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- ~~(ii) show proof of age to department staff taking the order in person; and~~
- ~~(b) pay for the wine order in full, including:~~
 - ~~(i) the cost of the wine; and~~
 - ~~(ii) if applicable, the cost of delivering the wine to the valid address.~~
- ~~(4) (a) The department may not deliver wine to a valid address unless the wine is first delivered to:~~
 - ~~(i) a state store; or~~
 - ~~(ii) a package agency.~~
- ~~(b) After a wine order is delivered to a }name;~~
- ~~(c) paying the department, in a manner the department prescribes:~~
 - ~~(i) the price of the wine subscription;~~
 - ~~(ii) in addition to any tax, the markup described in Subsection 32B-2-304(4); and~~
 - ~~(iii) a fee the department charges in accordance with Subsection 32B-2-703(1); and~~
 - ~~(d) designating the state store or package agency {in accordance with this Subsection~~
- ~~(4), the; at which the individual would prefer to collect the wine.~~
- ~~(3) The department shall:~~
 - ~~{i} notify the individual who ordered the wine that the wine is available for pickup} a~~
~~designate by contract with a wine subscription business the department warehouse to which the wine subscription business ships or transports wine under the subscription program;~~
 - ~~(b) deliver wine purchased through the subscription program to the appropriate state store or package agency; and~~
 - ~~(c) notify a subscriber when wine purchased through the subscription program is ready for the subscriber to collect from the state store or package agency{; or~~
- ~~(ii) deliver the wine to the valid address provided in the wine order, in accordance with Section 32B-2-703.~~
- ~~Section 3} described in Subsection (3)(b).~~
- ~~Section 4.~~ Section **32B-2-703** is enacted to read:
32B-2-703. { Delivery of wine to a valid address.
- ~~(1) An individual transporting wine ordered through the wine order and delivery service to a valid address may not:~~
 - ~~(a) open or allow to be opened a container containing the wine; or~~

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~~(b) consume, use, or allow to be consumed or used, the wine.~~

~~(2) Before furnishing wine ordered through the wine order and delivery service to an individual at a valid address, the department shall require the signature of an individual who is at least 21 years of age.~~

~~(3) Fees -- Rulemaking.~~

~~(1) The department may not furnish wine ordered through the wine order and delivery service to:~~

~~(a) a minor;~~

~~(b) an individual actually, apparently, or obviously intoxicated;~~

~~(c) a known interdicted individual; or~~

~~(d) a known habitual drunkard.~~

~~Section 4. Section 32B-2-704 is enacted to read:~~

~~32B-2-704. Rulemaking.~~

~~In} charge a fee as part of the subscription program:~~

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

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

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

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

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

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

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

[(b)] (2) a person who moves the person's residence to this state from outside of this state may possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move, if the person[:-(i)-{ } obtains department approval before moving the liquor into the state; and (ii)] pays the

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department a reasonable administrative handling fee as determined by the commission;

~~[(c)] (3)~~ a person who inherits liquor as a beneficiary of an estate that is located outside the state, may possess the liquor and transport or cause the liquor to be transported into the state if the person~~[(c)]~~:

~~[(i)] obtains department approval before moving the liquor into the state;~~ ~~[(c)]~~

~~[(ii)] (a)~~ provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary; and

~~[(iii)] (b)~~ pays the department a reasonable administrative handling fee as determined by the commission; or

~~[(d)] (4)~~ a person may transport or possess liquor if:

~~[(i)] (a)~~ the person transports or possesses the liquor:

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

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

~~[(i)] (A)~~ sale;

~~[(ii)] (B)~~ resale;

~~[(iii)] (C)~~ gifting to another; or

~~[(iv)] (D)~~ consumption on premises licensed by the commission;

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

~~[(iii)] (c)~~ the maximum amount the person transports or possesses under this

Subsection ~~[(1)(d)] (4)~~ is:

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

~~[(i)] (A)~~ spirituous liquor;

~~[(ii)] (B)~~ wine; or

~~[(iii)] (C)~~ a combination of spirituous liquor and wine; and

~~[(B)(i)] (ii) (A)~~ one case of heavy beer that does not exceed 288 ounces; or

~~[(ii)] (B)~~ one case of a flavored malt beverage that does not exceed 288 ounces.

~~[(2)(a)] Approval under Subsection (1)(b) may be obtained by a person who:~~

~~[(i)] is transferring the person's permanent residence to this state; or]~~

~~[(ii)] maintains separate residences both in and out of this state.]~~

~~[(b)] A person may not obtain approval to transfer liquor under Subsection (1)(b) more than one time.]~~

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