

Senator Gene Davis proposes the following substitute bill:

WINE SUBSCRIPTION PROGRAM

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

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; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **32B-2-304**, as last amended by Laws of Utah 2019, Chapter 403

35 ENACTS:

36 **32B-2-701**, Utah Code Annotated 1953

37 **32B-2-702**, Utah Code Annotated 1953

38 **32B-2-703**, Utah Code Annotated 1953

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

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

42 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

43 (1) For purposes of this section:

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

45 (A) the cost of the product; and

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

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

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

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

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

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

56 (b) wine sold by the department within the state shall be marked up in an amount not

57 less than 88% above the landed case cost to the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 other type of alcoholic product.

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

92 [~~(4)~~] (5) The department shall deposit 10% of the total gross revenue from sales of
93 liquor with the state treasurer to be credited to the Uniform School Fund and used to support
94 the school lunch program administered by the State Board of Education under Section
95 53E-3-510.

96 [~~(5)~~] (6) This section does not prohibit the department from selling discontinued items
97 at a discount.

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

99 **32B-2-701. Definitions.**

100 As used in this part:

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

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

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

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

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

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

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

111 **32B-2-702. Wine subscription program.**

112 (1) The department shall establish and administer a wine subscription program as
113 described in this part.

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

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

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

119 (c) paying the department, in a manner the department prescribes:
120 (i) the price of the wine subscription;
121 (ii) in addition to any tax, the markup described in Subsection 32B-2-304(4); and
122 (iii) a fee the department charges in accordance with Subsection 32B-2-703(1); and
123 (d) designating the state store or package agency at which the individual would prefer
124 to collect the wine.

125 (3) The department shall:

126 (a) designate by contract with a wine subscription business the department warehouse
127 to which the wine subscription business ships or transports wine under the subscription
128 program;

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

131 (c) notify a subscriber when wine purchased through the subscription program is ready
132 for the subscriber to collect from the state store or package agency described in Subsection
133 (3)(b).

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

135 **32B-2-703. Fees -- Rulemaking.**

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

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

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

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