

## SB0103S01 compared with SB0103

~~{deleted text}~~ shows text that was in SB0103 but was deleted in SB0103S01.

inserted text shows text that was not in SB0103 but was inserted into SB0103S01.

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Senator Gene Davis proposes the following substitute bill:

### WINE SUBSCRIPTION PROGRAM

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gene Davis**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill ~~{establishes a wine subscription program under}~~ 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~~;~~

→ ~~establishes parameters and requirements of}~~ 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;

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- 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;
- { → requires a wine subscription business to register with the department in order to ship or transport wine to a customer in the state;
- establishes requirements for a registered wine subscription business;
- ‡ ▶ grants the {Alcoholic Beverage Control Commission} commission rulemaking authority; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

- ~~{32B-1-104}~~ 32B-2-304, as last amended by Laws of Utah ~~{2017, Chapter 455~~
- ~~32B-2-202~~, as last amended by Laws of Utah 2019, Chapter 403
- ~~32B-2-209~~, as last amended by Laws of Utah 2012, Chapter 365
- ~~32B-2-503~~, as last amended by Laws of Utah 2011, Chapters 307 and 334
- ~~32B-2-601~~, as last amended by Laws of Utah 2011, Chapter 307
- ~~32B-2-605~~, as last amended by Laws of Utah 2019, Chapter 403
- ~~32B-4-401~~, as last amended by Laws of Utah 2016, Chapter 266
- ~~32B-4-420~~, as last amended by Laws of Utah 2011, Chapters 307 and 334
- ‡ 2019, Chapter 403

ENACTS:

32B-2-701, Utah Code Annotated 1953

32B-2-702, Utah Code Annotated 1953

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32B-2-703, Utah Code Annotated 1953

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

~~— 32B-2-705, Utah Code Annotated 1953~~

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

Section 1. Section ~~{32B-1-104}~~32B-2-304 is amended to read:

~~{ 32B-1-104. Exercise of police powers -- Severability.~~

~~— (1) (a) This title is an exercise of the police powers of the state for the protection of the public health, peace, safety, welfare, and morals, and regulates the storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product.~~

~~— (b) This title governs alcoholic product control unless otherwise provided in this title.~~

~~— (2) (a) A licensee, [or] permittee, or registrant has the rights and privileges described in this title that are applicable to the licensee's [or], permittee's, or registrant's license [or], permit, or registration.~~

~~— (b) A licensee [or], permittee, or registrant may engage in an activity related to the storage, sale, offer for sale, furnishing, consumption, manufacture, or distribution of an alcoholic product only if the activity is expressly permitted under this title or a rule authorized under this title and made by the commission.~~

~~— (3) The department and the commission:~~

~~— (a) shall implement and enforce the provisions of this title in accordance with the express language of the provisions of this title and in a manner consistent with the policy described in Section 32B-1-103; and~~

~~— (b) may not waive any provision of this title.~~

~~— (4) If a provision of this title or the application of a provision to a person or circumstance is held invalid, the remainder of this title shall be given effect without the invalid provision or application. The provisions of this title are severable.~~

~~— Section 2. Section 32B-2-202 is amended to read:~~

~~— 32B-2-202. Powers and duties of the commission.~~

~~— (1) The commission shall:~~

~~— (a) consistent with the policy established by the Legislature by statute, act as a general policymaking body on the subject of alcoholic product control;~~

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- ~~—— (b) adopt and issue policies, rules, and procedures;~~
- ~~—— (c) set policy by written rules that establish criteria and procedures for:~~
  - ~~—— (i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, [or] certificate of approval, or registration; and~~
  - ~~—— (ii) determining the location of a state store, package agency, or retail licensee;~~
- ~~—— (d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;~~
- ~~—— (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:~~
  - ~~—— (i) a package agency;~~
  - ~~—— (ii) a full-service restaurant license;~~
  - ~~—— (iii) a master full-service restaurant license;~~
  - ~~—— (iv) a limited-service restaurant license;~~
  - ~~—— (v) a master limited-service restaurant license;~~
  - ~~—— (vi) a bar establishment license;~~
  - ~~—— (vii) an airport lounge license;~~
  - ~~—— (viii) an on-premise banquet license;~~
  - ~~—— (ix) a resort license, under which at least four or more sublicenses may be included;~~
  - ~~—— (x) an on-premise beer retailer license;~~
  - ~~—— (xi) a reception center license;~~
  - ~~—— (xii) a beer-only restaurant license;~~
  - ~~—— (xiii) a hotel license, under which at least three or more sublicenses may be included;~~
  - ~~—— (xiv) subject to Subsection (4), a single event permit;~~
  - ~~—— (xv) subject to Subsection (4), a temporary beer event permit;~~
  - ~~—— (xvi) a special use permit;~~
  - ~~—— (xvii) a manufacturing license;~~
  - ~~—— (xviii) a liquor warehousing license;~~
  - ~~—— (xix) a beer wholesaling license;~~
  - ~~—— (xx) a liquor transport license;~~
  - ~~—— (xxi) an off-premise beer retailer state license;~~

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- ~~—— (xxii) a master off-premise beer retailer state license; and~~
- ~~—— (xxiii) one of the following that holds a certificate of approval:~~
- ~~—— (A) an out-of-state brewer;~~
- ~~—— (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and~~
- ~~—— (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;~~
- ~~—— (f) issue, deny, suspend, or revoke the following conditional licenses:~~
- ~~—— (i) a conditional retail license as defined in Section 32B-5-205; and~~
- ~~—— (ii) a conditional off-premise beer retailer state license as defined in Section 32B-7-406;~~
- ~~—— (g) issue, deny, suspend, revoke, or not renew the registration of a wine subscription business as defined in Section 32B-2-701;~~
- ~~—— [(g)] (h) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;~~
- ~~—— [(h)] (i) to the extent a fee is not specified in this title, establish a fee allowed under this title in accordance with Section 63J-1-504;~~
- ~~—— [(i)] (j) fix prices at which liquor is sold that are the same at all state stores, package agencies, and retail licensees;~~
- ~~—— [(j)] (k) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;~~
- ~~—— [(k)] (l) (i) require the director to follow sound management principles; and~~
- ~~—— (ii) require periodic reporting from the director to ensure that:~~
- ~~—— (A) sound management principles are being followed; and~~
- ~~—— (B) policies established by the commission are being observed;~~
- ~~—— [(l)] (m) (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and~~
- ~~—— (ii) do the things necessary to support the department in properly performing the department's duties;~~
- ~~—— [(m)] (n) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:~~
- ~~—— (i) considered expedient; and~~
- ~~—— (ii) approved by the governor;~~

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~~——— [(n)] (o) prescribe by rule the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;~~

~~——— [(o)] (p) make rules governing the credit terms of beer sales within the state to retail licensees; and~~

~~——— [(p)] (q) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.~~

~~——— (2) Consistent with the policy established by the Legislature by statute, the power of the commission to do the following is plenary, except as otherwise provided by this title, and not subject to review:~~

~~——— (a) establish a state store;~~

~~——— (b) issue authority to act as a package agent or operate a package agency; and~~

~~——— (c) issue or deny a license, permit, or certificate of approval.~~

~~——— (3) If the commission is authorized or required to make a rule under this title, the commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~——— (4) Notwithstanding Subsections (1)(e)(xiv) and (xv), the director or deputy director may issue an event permit in accordance with Chapter 9, Event Permit Act.~~

~~——— Section 3. Section **32B-2-209** is amended to read:~~

~~——— **32B-2-209. Prohibited interests, relationships, and actions.**~~

~~——— (1) As used in this section:~~

~~——— (a) "Applicable department employee" means a department employee who is:~~

~~——— (i) designated as a deputy or assistant director;~~

~~——— (ii) a chief administrative officer of a division within the department;~~

~~——— (iii) a department compliance officer; or~~

~~——— (iv) an employee directly performing purchasing, licensing, or compliance functions of the department.~~

~~——— (b) "Immediate family" means an individual's:~~

~~——— (i) spouse; or~~

~~——— (ii) child who is younger than 18 years of age.~~

~~——— (c) "Permit" does not include:~~

~~——— (i) an industrial or manufacturing use permit;~~

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~~—— (ii) a scientific or educational use permit; or~~

~~—— (iii) a religious wine use permit.~~

~~—— (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable department employee may not:~~

~~—— (a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, [or] permit, or registration under this title;~~

~~—— (b) otherwise have a conflict of interest with a person who applies for or holds a package agency, license, [or] permit, or registration under this title;~~

~~—— (c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment;~~

~~—— (d) have a direct business relationship with a person subject to administrative action under this title;~~

~~—— (e) accept a gift, gratuity, emolument, or employment from:~~

~~—— (i) a person who applies for or holds a package agency, license, [or] permit, or registration under this title; or~~

~~—— (ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, [or] permit, or registration under this title, except that a commissioner, the director, or an applicable department employee may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or~~

~~—— (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, [or] permit, or registration under this title.~~

~~—— (3) An immediate family member of a commissioner, the director, or an applicable department employee may not:~~

~~—— (a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, [or] permit, or registration under this title;~~

~~—— (b) otherwise have a conflict of interest with a person who applies for or holds a~~

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~~package agency, license, [or] permit, or registration under this title;~~

~~—— (c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment of the commissioner, director, or applicable department employee for whom the person is immediate family;~~

~~—— (d) accept a gift, gratuity, emolument, or employment from:~~

~~—— (i) a person who applies for or holds a package agency, license, [or] permit, or registration under this title; or~~

~~—— (ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, [or] permit, or registration under this title, except that an immediate family member may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or~~

~~—— (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, [or] permit, or registration under this title.~~

~~—— (4) An officer, agent, attorney, or employee of a person who applies for or holds a package agency, license, [or] permit, or registration under this title may not directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the department the appointment of any person:~~

~~—— (a) as a commissioner;~~

~~—— (b) as director of the department; or~~

~~—— (c) to a department staff position.~~

~~—— (5) (a) A commissioner shall disclose during a meeting of the commission a potential violation of this section, including the existence and nature of a professional, financial, business, or personal interest with a person who holds, or an applicant for, a package agency, license, [or] permit, or registration issued under this title that may result in a violation of this section.~~

~~—— (b) After a commissioner makes a disclosure under Subsection (5)(a):~~

~~—— (i) the commission may, by motion, determine whether there is a potential violation of this section;~~

~~—— (ii) if the commission determines that there is a potential violation of this section:~~



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~~—— (A) the commission shall notify the governor; and~~

~~—— (B) the commissioner may not vote on any matter that would result in the potential violation of this section; and~~

~~—— (iii) if the commission determines that there is not a potential violation of this section, a commissioner may elect whether to vote on the issue that gives rise to the disclosure under Subsection (5)(a):~~

~~—— (c) The commission shall record any declaration of a potential violation of this section in the minutes of the meeting.~~

### ‡ **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

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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

(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.

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

Section ~~{4. Section 32B-2-503~~ is amended to read:

~~32B-2-503. Operational requirements for a state store.~~

~~(1) (a) A state store shall display in a prominent place in the store a sign in large letters that consists of text in the following order:~~

~~(i) a header that reads: "WARNING";~~

~~(ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";~~

~~(iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";~~

~~(iv) a header that reads: "WARNING"; and~~

~~(v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."~~

~~(b) (i) The text described in Subsections (1)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (1)(a)(iv) and (v).~~

~~(ii) The warning statements in the sign described in Subsection (1)(a) shall be in the same font size.~~

~~(c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.~~

~~(2) [A] Except as provided in Subsection (9), a state store may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.~~

~~(3) A state store may not sell, offer for sale, or furnish liquor to:~~

~~(a) a minor;~~

~~(b) a person actually, apparently, or obviously intoxicated;~~

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

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

~~(4) (a) A state store employee may not:~~

~~(i) consume an alcoholic product on the premises of a state store; or~~

~~(ii) allow any person to consume an alcoholic product on the premises of a state store.~~

~~(b) A violation of this Subsection (4) is a class B misdemeanor.~~

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~~—— (5) (a) Sale or delivery of liquor may not be made on or from the premises of a state store, and a state store may not be kept open for the sale of liquor:~~

~~—— (i) on Sunday; or~~

~~—— (ii) on a state or federal legal holiday.~~

~~—— (b) Sale or delivery of liquor may be made on or from the premises of a state store, and a state store may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.~~

~~—— (6) (a) A minor may not be admitted into, or be on the premises of, a state store unless accompanied by a person who is:~~

~~—— (i) 21 years of age or older; and~~

~~—— (ii) the minor's parent, legal guardian, or spouse.~~

~~—— (b) A state store employee that has reason to believe that a person who is on the premises of a state store is under the age of 21 and is not accompanied by a person described in Subsection (6)(a) may:~~

~~—— (i) ask the suspected minor for proof of age;~~

~~—— (ii) ask the person who accompanies the suspected minor for proof of age; and~~

~~—— (iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.~~

~~—— (c) A state store employee shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).~~

~~—— (d) A state store employee shall require a suspected minor and the person who accompanies the suspected minor into the state store to immediately leave the premises of the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).~~

~~—— (7) (a) A state store may not sell, offer for sale, or furnish liquor except in a sealed container.~~

~~—— (b) A person may not open a sealed container on the premises of a state store.~~

~~—— (8) [On or after October 1, 2011, a] A state store may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.~~

~~—— (9) A state store may not charge any amount other than the handling fee described in~~

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~~Subsection 32B-2-704(1) for wine shipped or transported to the state store, directly or indirectly, from a registered wine subscription business as defined in Section 32B-2-701.~~

~~Section 5. Section 32B-2-601 is amended to read:~~

~~32B-2-601. Commission's power to issue package agency.~~

~~(1) (a) The commission may, when the commission considers proper, issue authority to operate as a package agency by directing the department to enter into a package agency agreement with a person to sell, offer for sale, or furnish liquor in sealed containers from premises other than those owned or leased by the state.~~

~~(b) The commission shall authorize a person to operate a package agency by issuing a record that designates the person in charge of the package agency as a "package agent."~~

~~(2) (a) Subject to this Subsection (2), the commission may not issue a total number of package agencies that at any time exceeds the number determined by dividing the population of the state by 18,000.~~

~~(b) (i) The commission may issue a seasonal package agency in an area the commission considers proper:~~

~~(ii) A seasonal package agency shall be for a period of six consecutive months.~~

~~(iii) A seasonal package agency issued for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a Seasonal A package agency shall:~~

~~(A) begin on May 1; and~~

~~(B) end on October 31.~~

~~(iv) A seasonal package agency issued for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a Seasonal B package agency shall:~~

~~(A) begin on November 1; and~~

~~(B) end on April 30.~~

~~(v) In determining the number of package agencies that the commission may issue under this section:~~

~~(A) a seasonal package agency is counted as one-half of one package agency; and~~

~~(B) each Seasonal A package agency shall be paired with a Seasonal B package agency.~~

~~(c) (i) If the location, design, and construction of a hotel may require more than one~~

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~~package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:~~

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

~~—— (B) all locations under the package agency are:~~

~~—— (I) within the same hotel; and~~

~~—— (II) on premises that are managed or operated, and owned or leased, by the package agent.~~

~~—— (ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished.~~

~~—— (3) (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a package agency's sale or furnishing of liquor.~~

~~—— (b) (i) A package agent may not be a state employee.~~

~~—— (ii) A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state.~~

~~—— (c) A package agent, when selling or furnishing liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.~~

~~—— (4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title.~~

~~—— Section 6. Section **32B-2-605** is amended to read:~~

~~—— **32B-2-605. Operational requirements for package agency.**~~

~~—— (1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.~~

~~—— (b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.~~

~~—— (c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.~~

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- ~~—— (ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.~~
- ~~—— (iii) A package agency agreement shall provide procedures to be followed if a package agent fails to pay money owed to the department including a procedure for replacing the package agent or operator of the package agency.~~
- ~~—— (iv) A package agency agreement shall provide that the package agency is subject to covert investigations for selling an alcoholic product to a minor.~~
- ~~—— (v) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or prohibition.~~
- ~~—— (2) (a) A package agency shall be operated by an individual who is either:~~
  - ~~—— (i) the package agent; or~~
  - ~~—— (ii) an individual designated by the package agent.~~
- ~~—— (b) An individual who is a designee under this Subsection (2) shall be:~~
  - ~~—— (i) an employee of the package agent; and~~
  - ~~—— (ii) responsible for the operation of the package agency.~~
- ~~—— (c) The conduct of the designee is attributable to the package agent.~~
- ~~—— (d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.~~
- ~~—— (e) A package agent shall state the name and title of a designee on the application for a package agency.~~
- ~~—— (f) A package agent shall:~~
  - ~~—— (i) inform the department of a proposed change in the individual designated to operate a package agency; and~~
  - ~~—— (ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).~~
- ~~—— (g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.~~
- ~~—— (3) (a) A package agent shall display in a prominent place in the package agency the record issued by the commission that designates the package agency.~~
- ~~—— (b) A package agent that displays or stores liquor at a location visible to the public shall display in a prominent place in the package agency a sign in large letters that consists of~~

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text in the following order:

- ~~—— (i) a header that reads: "WARNING";~~
- ~~—— (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";~~
- ~~—— (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";~~
- ~~—— (iv) a header that reads: "WARNING"; and~~
- ~~—— (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."~~
- ~~—— (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v);~~
- ~~—— (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size;~~
- ~~—— (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section:~~
- ~~—— (4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.~~
- ~~—— (5) (a) A package agency may not purchase liquor from a person except from the department.~~
- ~~—— (b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.~~
- ~~—— (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.~~
- ~~—— (7) [A] Subject to Subsection (20), a package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.~~
- ~~—— (8) A package agency may not sell, offer for sale, or furnish liquor to:~~
  - ~~—— (a) a minor;~~
  - ~~—— (b) a person actually, apparently, or obviously intoxicated;~~
  - ~~—— (c) a known interdicted person; or~~



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- ~~—— (d) a known habitual drunkard.~~
- ~~—— (9) (a) A package agency may not employ a minor to handle liquor.~~
- ~~—— (b) (i) Staff of a package agency may not:~~
  - ~~—— (A) consume an alcoholic product on the premises of a package agency; or~~
  - ~~—— (B) allow any person to consume an alcoholic product on the premises of a package agency.~~
- ~~—— (ii) Violation of this Subsection (9)(b) is a class B misdemeanor.~~
- ~~—— (10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:~~
  - ~~—— (i) the package agency notifies the department in writing at least seven days before the closing; and~~
  - ~~—— (ii) the closure or cessation of operation is first approved by the department.~~
- ~~—— (b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.~~
- ~~—— (c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.~~
- ~~—— (ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.~~
- ~~—— (iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.~~
- ~~—— (d) The notice required by Subsection (10)(a) shall include:~~
  - ~~—— (i) the dates of closure or cessation of operation;~~
  - ~~—— (ii) the reason for the closure or cessation of operation; and~~
  - ~~—— (iii) the date on which the package agency will reopen or resume operation.~~
- ~~—— (e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.~~
- ~~—— (f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.~~
- ~~—— (11) A package agency may not transfer [its] the package agency's operations from one location to another location without prior written approval of the commission.~~

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~~———— (12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.~~

~~———— (b) A package agency has no monetary value for any type of disposition.~~

~~———— (13) (a) Subject to the other provisions of this Subsection (13):~~

~~———— (i) sale or delivery of liquor may not be made on or from the premises of a package agency, and a package agency may not be kept open for the sale of liquor:~~

~~———— (A) on Sunday; or~~

~~———— (B) on a state or federal legal holiday.~~

~~———— (ii) Sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.~~

~~———— (b) A package agency located at a manufacturing facility is not subject to Subsection (13)(a) if:~~

~~———— (i) the package agency is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;~~

~~———— (ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:~~

~~———— (A) a full-service restaurant license;~~

~~———— (B) a limited-service restaurant license;~~

~~———— (C) a beer-only restaurant license;~~

~~———— (D) a dining club license; or~~

~~———— (E) a bar license;~~

~~———— (iii) the restaurant, dining club, or bar is located at the manufacturing facility;~~

~~———— (iv) the restaurant, dining club, or bar sells an alcoholic product produced at the manufacturing facility;~~

~~———— (v) the manufacturing facility:~~

~~———— (A) owns the restaurant, dining club, or bar; or~~

~~———— (B) operates the restaurant, dining club, or bar;~~

~~———— (vi) the package agency only sells an alcoholic product produced at the manufacturing facility; and~~

## SB0103S01 compared with SB0103

~~—— (vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant, dining club, or bar.~~

~~—— (c) (i) Subsection (13)(a) does not apply to a package agency held by the following if the package agent that holds the package agency to sell liquor at a resort or hotel does not sell liquor in a manner similar to a state store:~~

~~—— (A) a resort licensee; or~~

~~—— (B) a hotel licensee.~~

~~—— (ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."~~

~~—— (14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of, a package agency unless accompanied by a person who is:~~

~~—— (i) 21 years of age or older; and~~

~~—— (ii) the minor's parent, legal guardian, or spouse.~~

~~—— (b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:~~

~~—— (i) ask the suspected minor for proof of age;~~

~~—— (ii) ask the person who accompanies the suspected minor for proof of age; and~~

~~—— (iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.~~

~~—— (c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).~~

~~—— (d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).~~

~~—— (15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.~~

~~—— (b) A person may not open a sealed container on the premises of a package agency.~~

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~~—— (c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:~~

~~—— (i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;~~

~~—— (ii) if the liquor is sold, offered for sale, or furnished as part of room service; and~~

~~—— (iii) subject to:~~

~~—— (A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;~~

~~—— (B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; and~~

~~—— (C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.~~

~~—— (16) [On or after October 1, 2011, a] A package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.~~

~~—— (17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.~~

~~—— (18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:~~

~~—— (a) physical facilities;~~

~~—— (b) conditions of operation;~~

~~—— (c) hours of operation;~~

~~—— (d) inventory levels;~~

~~—— (e) payment schedules;~~

~~—— (f) methods of payment;~~

~~—— (g) premises security; and~~

~~—— (h) any other matter considered appropriate by the commission.~~

~~—— (19) A package agency may not maintain a minibar.~~

~~—— (20) A package agency may not charge any amount other than the handling fee described in Subsection 32B-2-704(1) for wine shipped or transported to the package agency, directly or indirectly, from a registered wine subscription business as defined in Section 32B-2-701.~~

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~~Section 7~~2. Section 32B-2-701 is enacted to read:

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

As used in this part:

(1) "~~{Registered wine subscription business" means}~~Subscriber" means an individual who subscribes to a wine subscription ~~{business that registers with the department in accordance with}~~as described in Subsection 32B-2-702(2).

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

~~(2) "Wine subscription business" means a person that sells or offers for sale a wine subscription.~~

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

~~{Section 8}~~(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. Wine subscription ~~{registration -- Duties:~~**

~~(1) Before a person as a wine subscription business may sell or offer for sale a wine subscription that involves shipping or transporting wine to a customer in the state, the person shall first register with the department in accordance with this section.~~

~~(2) To register as a wine subscription business, a person shall submit to the department:~~

~~(a) a written application in a form the department prescribes;~~

~~(b) a nonrefundable application fee of \$300;~~

~~(c) if the person applying is an entity, verification that an individual who signs the application is authorized to sign on behalf of the entity; and~~

~~(d) any other information the commission or department may require.~~

~~(3) (a) Registration under this section expires August 31 of each year.~~

~~(b) To renew a registration under this section, a registered wine subscription business shall submit to the department no later than July 31:~~

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- ~~(i) a renewal application in a form the department prescribes;~~
- ~~(ii) a nonrefundable renewal fee of \$100; and~~
- ~~(iii) any other information the commission or department requires.~~
- ~~(4) A registered wine subscription business shall:~~
- ~~(a) only sell or offer for sale a wine subscription to an individual who is 21 years of age or older;~~
- ~~(b) ensure that all wine the wine subscription business ships or transports to a customer in the state as part of a wine subscription:~~
- ~~(i) is delivered to a state store or package agency; and~~
- ~~(ii) is not otherwise available for sale by the department; and~~
- ~~(c) cooperate with the department to ensure that after the registered wine subscription business ships or transports wine in accordance with this Subsection (4), the state store or package agency can furnish the wine to the intended customer.~~
- ~~Section 9. Section 32B-2-703 is enacted to read:~~
- ~~32B-2-703. Commission and department duties before approving a wine subscription registration.~~
- ~~Before approving a registration under this part, the commission shall determine that the person:~~
- ~~(1) filed a complete application; and~~
- ~~(2) is in compliance with this title.~~
- ~~Section 10. Section 32B-2-704 is enacted to read:~~
- ~~32B-2-704. Department handling of wine subscription products} program.~~
- ~~(1) The department shall establish ~~for a program that:~~~~
- ~~(a) permits a registered; and administer a wine subscription program as described in this part.~~
- ~~(2) The subscription program shall permit an individual to subscribe to a wine subscription that a wine subscription business ~~to ship or transport wine:~~~~
- ~~(i) as part of a} sells or offers for sale by:~~
- ~~(a) enrolling in the wine subscription program in a manner the department prescribes;~~
- ~~(b) authorizing the department to purchase the wine subscription in the individual's name;~~

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

(i) the price of the wine subscription;~~{and}~~

(ii) to a state store or package agency, as the customer of the wine subscription determines;

~~—— (b) notifies the customer of a wine subscription when wine delivered to a state store or package agency as~~in addition to any tax, the markup described in Subsection ~~{(1)(a) is ready for the customer to collect;~~

~~—— (c) ensures~~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 ~~{verifies that}~~at which the individual ~~{who collects}~~would prefer to collect the wine~~{ is the customer who purchased the wine through}~~.

(3) The department shall:

(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

~~{(d) upon collection of the wine, requires}~~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 ~~{to charge the customer a handling fee that the department establishes in accordance with Title 63J-1-504.~~

~~—— (2) The department may not charge or collect a markup described in Section 32B-2-304 on wine shipped or transported to a state store or package agency from a registered wine subscription business.~~

~~—— Section 11}~~described in Subsection (3)(b).

Section 4. Section ~~{32B-2-705}~~32B-2-703 is enacted to read:

~~{32B-2-705}~~32B-2-703. ~~{~~ Rulemaking.

~~—— The commission shall}~~ Fees -- Rulemaking.

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

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

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(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, ~~to administer~~ for the administration of this part ~~and adjust to an evolving market.~~

~~Section 12. 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, a registrant, or staff of a retail licensee [or], permittee, or registrant 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 warehouse 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.~~

~~(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) directly to:~~

~~(i) a beer retailer; or~~



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~~—— (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); 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 selling liquor on its distillery premises:~~

~~—— (i) to the extent authorized in Subsection 32B-11-403(5); or~~

~~—— (ii) under a package agency issued by the commission on the distillery premises.~~

~~—— (d) Subsection (4)(a) does not preclude a brewery manufacturing licensee located in this state from selling heavy beer or flavored malt beverages on its brewery premises:~~

~~—— (i) to the extent authorized under Subsection 32B-11-503(4); or~~

~~—— (ii) under a package agency issued by the commission on its brewery premises.~~

~~—— (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.~~

## SB0103S01 compared with SB0103

~~—— (b) Subsection (5)(a) does not preclude:~~

~~—— (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) 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)(c):~~

~~—— (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 13. Section **32B-4-420** is amended to read:~~

~~—— **32B-4-420. Unlawful adulteration:**~~

~~—— (1) For purposes of this section, "tamper" means to do one or more of the following to the contents of a container:~~

~~—— (a) fortify;~~

~~—— (b) adulterate;~~

~~—— (c) contaminate;~~

~~—— (d) dilute;~~

~~—— (e) change its character or purity; or~~

~~—— (f) otherwise change:~~

~~—— (2) A person may not, for any purpose, mix or allow to be mixed with an alcoholic~~

## SB0103S01 compared with SB0103

product sold or supplied by the person as a beverage any of the following:

~~— (a) a drug;~~

~~— (b) methylic alcohol;~~

~~— (c) a crude, unrectified, or impure form of ethylic alcohol; or~~

~~— (d) another deleterious substance.~~

~~— (3) (a) The following may not engage in an act listed in Subsection (3)(b):~~

~~— (i) a package agent;~~

~~— (ii) a retail licensee;~~

~~— (iii) a permittee;~~

~~— (iv) a beer wholesaler licensee;~~

~~— (v) a liquor warehouser licensee;~~

~~— (vi) a supplier; [or]~~

~~— (vii) an importer[.]; or~~

~~— (viii) a registrant.~~

~~— (b) A person listed in Subsection (3)(a) may not:~~

~~— (i) tamper with the contents of a container of alcoholic product as originally marketed by a manufacturer;~~

~~— (ii) refill or partly refill with any substance the contents of an original container of alcoholic product as originally marketed by a manufacturer;~~

~~— (iii) misrepresent the brand of an alcoholic product sold or offered for sale; or~~

~~— (iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a purchaser without first advising the purchaser of the difference.~~

~~†, including rules designating which package agencies may receive from the department wines that are purchased through the subscription program.~~