

SB0103S02 compared with SB0103S01

~~{deleted text}~~ shows text that was in SB0103S01 but was deleted in SB0103S02.

inserted text shows text that was not in SB0103S01 but was inserted into SB0103S02.

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Senator Gene Davis proposes the following substitute bill:

~~{WINE SUBSCRIPTION PROGRAM}~~CONSUMER ALCOHOLIC
BEVERAGE PURCHASING

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Alcoholic Beverage Control Act ~~{to establish a wine subscription program}~~ regarding consumer purchasing.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{requires}~~ creates the Division of Consumer Purchasing (division) within 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;~~

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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;};
 - ▶ requires the division to establish a consumer purchasing system;
 - ▶ outlines the parameters of the consumer purchasing system;
 - ▶ requires the Alcoholic Beverage Control Commission (commission) to receive and review complaints regarding the Division or the consumer purchasing system; and
 - ▶ grants the 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-2-304, as last amended by Laws of Utah 2019, Chapter 403~~

ENACTS:

~~{~~ENACTS:

32B-2-212, Utah Code Annotated 1953

32B-2-701, Utah Code Annotated 1953

32B-2-702, Utah Code Annotated 1953

32B-2-703, Utah Code Annotated 1953

32B-2-704, Utah Code Annotated 1953

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

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Section 1. Section ~~{32B-2-304}~~32B-2-212 is ~~{amended}~~enacted to read:

~~{32B-2-304}~~32B-2-212. ~~{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;~~ Division of Consumer Purchasing.

There is created within 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~~

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

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~~— (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.~~ the Division of Consumer Purchasing to establish and administer the consumer purchasing system described in Part 7, Consumer Purchasing System.

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

32B-2-701. Definitions.

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As used in this part:

~~(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}{Consumer purchasing system" means the consumer purchasing system~~ 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}{Division" means the Division of Consumer Purchasing created in Section 32B-2-212.~~

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

32B-2-702.~~{ Wine subscription program}~~ **Consumer purchasing system.**

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

~~(2) The subscription program shall permit}{consumer purchasing system that:~~

~~(a) allows 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 prescribes;~~

~~(b) authorizing the department to purchase the wine subscription in};~~

~~(i) order an alcoholic product:~~

~~(A) from a third party through the division; and~~

~~(B) if the alcoholic product is for personal household use and consumption, and not for sale, resale, or consumption on premises licensed by the commission; and~~

~~(ii) pick up the alcoholic product ordered under Subsection (1)(a)(i) from a state store or package agency; and~~

~~(b) requires an individual ordering an alcoholic product to first:~~

~~(i) (A) enter the individual's {name};~~

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

~~(i) the price of the wine subscription;~~

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- ~~(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-issued identification number through an electronic platform;~~

or

(B) show proof of age to division staff taking the order in person;

(ii) designate a state store or package agency at which the individual would prefer to collect the {wine}.

~~(3) The department} alcoholic product; and~~

(iii) pay the division for the alcoholic product order in full, including:

(A) the cost of the alcoholic product; and

(B) in addition to any tax, the markup described in Section 32B-2-304.

(2) The division shall:

(a) {designate by contract with a wine subscription business the} ensure that an alcoholic product ordered through the consumer purchasing system is shipped or transported to a department warehouse {to which the wine subscription business ships or transports wine under the subscription program};

(b) deliver {wine purchased through } the {subscription program} alcoholic product to the appropriate state store or package agency; {and}

(c) notify {a subscriber} the individual who ordered the alcoholic product when {wine purchased through } the {subscription program} alcoholic product is ready for the {subscriber} individual to collect from the state store or package agency described in Subsection (~~(3)(b)~~)(2)(b);

(d) administer the consumer purchasing system in a manner that:

(i) is efficient; and

(ii) ensures timely delivery of alcoholic products; and

(e) establish a method by which an individual may submit to the commission a comment or complaint regarding the division or the consumer purchasing system.

(3) (a) Subject to Subsection (3)(b), the division may not require that an individual order a specific quantity of an alcoholic product that is different than a quantity the third-party seller offers for sale.

(b) The division may require that an individual order an alcoholic product in a

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container that is not:

- (i) smaller than 200 milliliters, except as otherwise allowed by the commission; or
- (ii) larger than two liters.

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

32B-2-703. ~~{ Fees -- Rulemaking:~~

~~(1) The department may 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) } **Consumer purchasing complaints.**~~

The commission shall:

(1) receive and review each comment or complaint an individual submits in relation to the division or the consumer purchasing system; and

(2) take any action the commission determines necessary.

Section 5. Section **32B-2-704** is enacted to read:

32B-2-704. Rulemaking.

The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~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.~~

~~to carry out the provisions of this part.~~