

BEER EXCISE TAX REVENUE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and the Substance Abuse and Mental Health Act to address the use of beer excise tax revenues to prevent abuse of alcohol and other substances.

Highlighted Provisions:

This bill:

- ▶ expands the scope of the Alcoholic Beverage Enforcement and Treatment Restricted Account to become the Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account;
- ▶ modifies definition provisions;
- ▶ encourages the most effective formula allocation in relationship to prevention;
- ▶ addresses preparation of forms;
- ▶ grants rulemaking authority; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

32B-2-401, as enacted by Laws of Utah 2010, Chapter 276

32B-2-402, as last amended by Laws of Utah 2011, Chapter 307

30 **32B-2-403**, as enacted by Laws of Utah 2010, Chapter 276
 31 **32B-2-404**, as last amended by Laws of Utah 2011, Chapter 307
 32 **62A-15-103**, as last amended by Laws of Utah 2013, Chapters 17, 167, and 400

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

35 Section 1. Section **32B-2-401** is amended to read:

36 **Part 4. Alcoholic Beverage and Substance Abuse Enforcement and**
 37 **Treatment Restricted Account Act**

38 **32B-2-401. Title.**

39 This part is known as the "Alcoholic Beverage and Substance Abuse Enforcement and
 40 Treatment Restricted Account Act."

41 Section 2. Section **32B-2-402** is amended to read:

42 **32B-2-402. Definitions -- Calculations.**

43 (1) As used in this part:

44 (a) "Account" means the Alcoholic Beverage and Substance Abuse Enforcement and
 45 Treatment Restricted Account created in Section **32B-2-403**.

46 (b) "Advisory council" means the Utah Substance Abuse Advisory Council created in
 47 Section **63M-7-301**.

48 (c) "Alcohol-related offense" means:

49 (i) a violation of:

50 (A) Section **41-6a-502**; or

51 (B) an ordinance that complies with the requirements of:

52 (I) Subsection **41-6a-510**(1); or

53 (II) Section **76-5-207**; or

54 (ii) an offense involving the illegal:

55 (A) sale of an alcoholic product;

56 (B) consumption of an alcoholic product;

57 (C) distribution of an alcoholic product;

- 58 (D) transportation of an alcoholic product; or
- 59 (E) possession of an alcoholic product.
- 60 (d) "Annual conviction time period" means the time period that:
- 61 (i) begins on July 1 and ends on June 30; and
- 62 (ii) immediately precedes the fiscal year for which an appropriation under this part is
- 63 made.
- 64 (e) "Municipality" means:
- 65 (i) a city; or
- 66 (ii) a town.
- 67 (f) (i) "Prevention" is as defined by rule, in accordance with Title 63G, Chapter 3, Utah
- 68 Administrative Rulemaking Act, by the Division of Substance Abuse and Mental Health within
- 69 the Department of Human Services.
- 70 (ii) In defining the term "prevention," the Division of Substance Abuse and Mental
- 71 Health shall:
- 72 (A) include only evidence-based or evidence-informed programs; and
- 73 (B) provide for coordination with local substance abuse authorities designated to
- 74 provide substance abuse services in accordance with Section [17-43-201](#).
- 75 (2) For purposes of Subsection [32B-2-404\(1\)\(b\)\(iii\)](#), the number of premises located
- 76 within the limits of a municipality or county:
- 77 (a) is the number determined by the department to be so located;
- 78 (b) includes the aggregate number of premises of the following:
- 79 (i) a state store;
- 80 (ii) a package agency; and
- 81 (iii) a retail licensee; and
- 82 (c) for a county, consists only of the number located within an unincorporated area of
- 83 the county.
- 84 (3) The department shall determine:
- 85 (a) a population figure according to the most current population estimate prepared by

86 the Utah Population Estimates Committee;

87 (b) a county's population for the 25% distribution to municipalities and counties under
88 Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated
89 areas of the county; and

90 (c) a county's population for the 25% distribution to counties under Subsection
91 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of
92 a municipality.

93 (4) (a) A conviction occurs in the municipality or county that actually prosecutes the
94 offense to judgment.

95 (b) If a conviction is based upon a guilty plea, the conviction is considered to occur in
96 the municipality or county that, except for the guilty plea, would have prosecuted the offense.

97 Section 3. Section 32B-2-403 is amended to read:

98 **32B-2-403. Alcoholic Beverage and Substance Abuse Enforcement and**
99 **Treatment Restricted Account created.**

100 (1) (a) There is created in the General Fund a restricted account known as the
101 "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account."

102 (b) The account is funded from:

103 (i) money deposited by the state treasurer in accordance with Section 59-15-109;

104 (ii) appropriations made to the account by the Legislature; and

105 (iii) interest described in Subsection (1)(c).

106 (c) Interest earned on the account shall be deposited into the account.

107 (2) (a) Consistent with the policies provided in Subsection 32B-1-103(4)(b), money in
108 the account shall be used for statewide public purposes, including promoting the reduction of
109 the harmful effects of substance abuse, over consumption of alcoholic products by an adult,
110 and alcohol consumption by minors, by exclusively funding programs or projects related to
111 prevention, treatment, detection, prosecution, and control of violations of this title and other
112 offenses in which alcohol or substance abuse is a contributing factor except as provided in
113 Subsection (2)(b).

114 (b) The portion distributed under this part to a county may also be used for the
115 confinement or treatment of persons arrested for or convicted of offenses in which alcohol or
116 substance abuse is a contributing factor.

117 (c) A municipality or county entitled to receive money shall use the money exclusively
118 as required by this Subsection (2).

119 (3) The appropriations provided for under Section 32B-2-404 are:

120 (a) intended to supplement the budget of the appropriate agencies of each municipality
121 and county within the state to enable the municipalities and counties to more effectively fund
122 the programs and projects described in Subsection (2); and

123 (b) not intended to replace money that would otherwise be allocated for the programs
124 and projects in Subsection (2).

125 (4) It is the intent of the Legislature that the appropriations distributed under this part
126 be used to fund a balanced approach to reducing the harmful effects of substance abuse, over
127 consumption of alcoholic products by adults, and alcohol consumption by minors. To this end,
128 the Legislature encourages municipalities and counties receiving money under this part to use
129 the most effective formula allocation to fund evidence-based and evidence-informed
130 prevention programs.

131 Section 4. Section 32B-2-404 is amended to read:

132 **32B-2-404. Alcoholic Beverage and Substance Abuse Enforcement and**
133 **Treatment Restricted Account distribution.**

134 (1) (a) The money deposited into the account under Section 32B-2-403 shall be
135 distributed to municipalities and counties:

136 (i) to the extent appropriated by the Legislature, except that the Legislature shall
137 appropriate each fiscal year an amount equal to at least the amount deposited in the account in
138 accordance with Section 59-15-109; and

139 (ii) as provided in this Subsection (1).

140 (b) The amount appropriated from the account shall be distributed as follows:

141 (i) 25% to municipalities and counties on the basis of the percentage of the state

142 population residing in each municipality and county;

143 (ii) 30% to municipalities and counties on the basis of each municipality's and county's
144 percentage of the statewide convictions for all alcohol-related offenses;

145 (iii) 20% to municipalities and counties on the basis of the percentage of the following
146 in the state that are located in each municipality and county:

147 (A) state stores;

148 (B) package agencies;

149 (C) retail licensees; and

150 (D) off-premise beer retailers; and

151 (iv) 25% to the counties for confinement and treatment purposes authorized by this part
152 on the basis of the percentage of the state population located in each county.

153 (c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law
154 enforcement agency:

155 (A) the municipality may not receive money under this part; and

156 (B) the State Tax Commission:

157 (I) may not distribute the money the municipality would receive but for the
158 municipality not having a law enforcement agency to that municipality; and

159 (II) shall distribute the money that the municipality would have received but for it not
160 having a law enforcement agency to the county in which the municipality is located for use by
161 the county in accordance with this part.

162 (ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i)
163 demonstrates that the municipality can use the money that the municipality is otherwise eligible
164 to receive in accordance with this part, the advisory council may direct the State Tax
165 Commission to distribute the money to the municipality.

166 (2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax
167 Commission shall annually:

168 (a) for an annual conviction time period:

169 (i) multiply by two the total number of convictions in the state obtained during the

170 annual conviction time period for violation of:

171 (A) Section 41-6a-502; or

172 (B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or
173 Section 76-5-207; and

174 (ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions
175 obtained during the annual conviction time period for the alcohol-related offenses other than
176 the alcohol-related offenses described in Subsection (2)(a)(i);

177 (b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum
178 obtained in Subsection (2)(a); and

179 (c) multiply the amount calculated under Subsection (2)(b), by the number of
180 convictions obtained in each municipality and county during the annual conviction time period
181 for alcohol-related offenses.

182 (3) By not later than September 1 each year:

183 (a) the state court administrator shall certify to the State Tax Commission the number
184 of convictions obtained for alcohol-related offenses in each municipality or county in the state
185 during the annual conviction time period; and

186 (b) the advisory council shall notify the State Tax Commission of any municipality that
187 does not have a law enforcement agency.

188 (4) By not later than December 1 of each year, the advisory council shall notify the
189 State Tax Commission for the fiscal year of appropriation of:

190 (a) a municipality that may receive a distribution under Subsection (1)(c)(ii);

191 (b) a county that may receive a distribution allocated to a municipality described in
192 Subsection (1)(c)(i);

193 (c) a municipality or county that may not receive a distribution because the advisory
194 council has suspended the payment under Subsection 32B-2-405(2)(a); and

195 (d) a municipality or county that receives a distribution because the suspension of
196 payment has been cancelled under Subsection 32B-2-405(2).

197 (5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax

198 Commission shall annually distribute to each municipality and county the portion of the
199 appropriation that the municipality or county is eligible to receive under this part, except for
200 any municipality or county that the advisory council notifies the State Tax Commission in
201 accordance with Subsection (4) may not receive a distribution in that fiscal year.

202 (b) (i) The [~~State Tax Commission~~] advisory council shall prepare forms for use by a
203 municipality or county in applying for a distribution under this part.

204 (ii) A form described in this Subsection (5) may require the submission of information
205 the [~~State Tax Commission~~] advisory council considers necessary to enable the State Tax
206 Commission to comply with this part.

207 Section 5. Section **62A-15-103** is amended to read:

208 **62A-15-103. Division -- Creation -- Responsibilities.**

209 (1) There is created the Division of Substance Abuse and Mental Health within the
210 department, under the administration and general supervision of the executive director. The
211 division is the substance abuse authority and the mental health authority for this state.

212 (2) The division shall:

213 (a) (i) educate the general public regarding the nature and consequences of substance
214 abuse by promoting school and community-based prevention programs;

215 (ii) render support and assistance to public schools through approved school-based
216 substance abuse education programs aimed at prevention of substance abuse;

217 (iii) promote or establish programs for the prevention of substance abuse within the
218 community setting through community-based prevention programs;

219 (iv) cooperate and assist other organizations and private treatment centers for substance
220 abusers, by providing them with essential materials for furthering programs of prevention and
221 rehabilitation of actual and potential substance abusers;

222 (v) promote integrated programs that address an individual's substance abuse, mental
223 health, and physical healthcare needs;

224 (vi) evaluate the effectiveness of programs described in Subsection (2);

225 (vii) consider the impact of the programs described in Subsection (2) on:

- 226 (A) emergency department utilization;
- 227 (B) jail and prison populations;
- 228 (C) the homeless population; and
- 229 (D) the child welfare system; and
- 230 (viii) promote or establish programs for education and certification of instructors to
- 231 educate persons convicted of driving under the influence of alcohol or drugs or driving with
- 232 any measurable controlled substance in the body;
- 233 (b) (i) collect and disseminate information pertaining to mental health;
- 234 (ii) provide direction over the state hospital including approval of its budget,
- 235 administrative policy, and coordination of services with local service plans;
- 236 (iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 237 Rulemaking Act, to educate families concerning mental illness and promote family
- 238 involvement, when appropriate, and with patient consent, in the treatment program of a family
- 239 member; and
- 240 (iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 241 Rulemaking Act, to direct that all individuals receiving services through local mental health
- 242 authorities or the Utah State Hospital be informed about and, if desired, provided assistance in
- 243 completion of a declaration for mental health treatment in accordance with Section
- 244 [62A-15-1002](#);
- 245 (c) (i) consult and coordinate with local substance abuse authorities and local mental
- 246 health authorities regarding programs and services;
- 247 (ii) provide consultation and other assistance to public and private agencies and groups
- 248 working on substance abuse and mental health issues;
- 249 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
- 250 medical and social agencies, public health authorities, law enforcement agencies, education and
- 251 research organizations, and other related groups;
- 252 (iv) promote or conduct research on substance abuse and mental health issues, and
- 253 submit to the governor and the Legislature recommendations for changes in policy and

254 legislation;

255 (v) receive, distribute, and provide direction over public funds for substance abuse and
256 mental health services;

257 (vi) monitor and evaluate programs provided by local substance abuse authorities and
258 local mental health authorities;

259 (vii) examine expenditures of any local, state, and federal funds;

260 (viii) monitor the expenditure of public funds by:

261 (A) local substance abuse authorities;

262 (B) local mental health authorities; and

263 (C) in counties where they exist, the private contract provider that has an annual or
264 otherwise ongoing contract to provide comprehensive substance abuse or mental health
265 programs or services for the local substance abuse authority or local mental health authorities;

266 (ix) contract with local substance abuse authorities and local mental health authorities
267 to provide a comprehensive continuum of services in accordance with division policy, contract
268 provisions, and the local plan;

269 (x) contract with private and public entities for special statewide or nonclinical services
270 according to division rules;

271 (xi) review and approve each local substance abuse authority's plan and each local
272 mental health authority's plan in order to ensure:

273 (A) a statewide comprehensive continuum of substance abuse services;

274 (B) a statewide comprehensive continuum of mental health services;

275 (C) services result in improved overall health and functioning; and

276 (D) appropriate expenditure of public funds;

277 (xii) review and make recommendations regarding each local substance abuse
278 authority's contract with its provider of substance abuse programs and services and each local
279 mental health authority's contract with its provider of mental health programs and services to
280 ensure compliance with state and federal law and policy;

281 (xiii) monitor and ensure compliance with division rules and contract requirements;

282 and

283 (xiv) withhold funds from local substance abuse authorities, local mental health
284 authorities, and public and private providers for contract noncompliance, failure to comply
285 with division directives regarding the use of public funds, or for misuse of public funds or
286 money;

287 (d) assure that the requirements of this part are met and applied uniformly by local
288 substance abuse authorities and local mental health authorities across the state;

289 (e) require each local substance abuse authority and each local mental health authority
290 to submit its plan to the division by May 1 of each year; [~~and~~]

291 (f) conduct an annual program audit and review of each local substance abuse authority
292 in the state and its contract provider and each local mental health authority in the state and its
293 contract provider, including:

294 (i) a review and determination regarding whether:

295 (A) public funds allocated to local substance abuse authorities and local mental health
296 authorities are consistent with services rendered and outcomes reported by them or their
297 contract providers; and

298 (B) each local substance abuse authority and each local mental health authority is
299 exercising sufficient oversight and control over public funds allocated for substance abuse and
300 mental health programs and services; and

301 (ii) items determined by the division to be necessary and appropriate[-]; and

302 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,
303 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act.

304 (3) (a) The division may refuse to contract with and may pursue its legal remedies
305 against any local substance abuse authority or local mental health authority that fails, or has
306 failed, to expend public funds in accordance with state law, division policy, contract
307 provisions, or directives issued in accordance with state law.

308 (b) The division may withhold funds from a local substance abuse authority or local
309 mental health authority if the authority's contract with its provider of substance abuse or mental

310 health programs or services fails to comply with state and federal law or policy.

311 (4) Before reissuing or renewing a contract with any local substance abuse authority or
312 local mental health authority, the division shall review and determine whether the local
313 substance abuse authority or local mental health authority is complying with its oversight and
314 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
315 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
316 liability described in Section 17-43-303 and to the responsibility and liability described in
317 Section 17-43-203.

318 (5) In carrying out its duties and responsibilities, the division may not duplicate
319 treatment or educational facilities that exist in other divisions or departments of the state, but
320 shall work in conjunction with those divisions and departments in rendering the treatment or
321 educational services that those divisions and departments are competent and able to provide.

322 (6) (a) The division may accept in the name of and on behalf of the state donations,
323 gifts, devises, or bequests of real or personal property or services to be used as specified by the
324 donor.

325 (b) Those donations, gifts, devises, or bequests shall be used by the division in
326 performing its powers and duties. Any money so obtained shall be considered private funds
327 and shall be deposited into an interest-bearing expendable special revenue fund to be used by
328 the division for substance abuse or mental health services. The state treasurer may invest the
329 fund and all interest shall remain with the fund.

330 (7) The division shall annually review with each local substance abuse authority and
331 each local mental health authority the authority's statutory and contract responsibilities
332 regarding:

- 333 (a) the use of public funds;
- 334 (b) oversight responsibilities regarding public funds; and
- 335 (c) governance of substance abuse and mental health programs and services.

336 (8) The Legislature may refuse to appropriate funds to the division upon the division's
337 failure to comply with the provisions of this part.

338 (9) If a local substance abuse authority contacts the division under Subsection
339 [17-43-201](#)(9) for assistance in providing treatment services to a pregnant woman or pregnant
340 minor, the division shall:

341 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
342 capacity to provide the treatment services; or

343 (b) otherwise ensure that treatment services are made available to the pregnant woman
344 or pregnant minor.

345 Section 6. **Effective date.**

346 This bill takes effect on July 1, 2014.