

1 **AMENDMENTS RELATED TO ALCOHOL**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis Oda**

5 Senate Sponsor: _____

6 **LONG TITLE**7 **General Description:**8 This bill modifies the Alcoholic Beverage Control Act to address the regulation of
9 heavy beer.10 **Highlighted Provisions:**

11 This bill:

- 12 ► modifies definition provisions;
- 13 ► modifies powers and duties of the commission;
- 14 ► modifies powers and duties of the department;
- 15 ► modifies powers and duties of the director;
- 16 ► enacts a provision related to markup on heavy beer;
- 17 ► amends a provision on unlawful sale or furnishing;
- 18 ► addresses unlawful possession by licensee or permittee;
- 19 ► modifies from whom a retail licensee may purchase liquor;
- 20 ► amends specific operational requirements for single event permits;
- 21 ► amends general operational requirements for special use permits;
- 22 ► modifies specific operational requirements for a public service permit;
- 23 ► addresses requirements for a certificate of approval for a brewer;
- 24 ► modifies general operational requirements for a manufacturing license;
- 25 ► amends authority and operational requirements for a brewery manufacturing license;
- 26 ► amends provisions related to local industry representatives;



28 ► modifies the commission's power to issue a liquor warehousing license;
29 ► modifies the commission's power to issue a beer wholesaling license;
30 ► changes application requirements for a beer wholesaling license;
31 ► modifies general operational requirements for a beer wholesaling license;
32 ► amends the Utah Beer Industry Distribution Act to include heavy beer; and
33 ► makes technical and conforming amendments.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 H→ [None] **This bill takes effect on July 1, 2013.** ←H

38 **Utah Code Sections Affected:**

39 **AMENDS:**

40 **32B-1-102**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
41 **32B-2-202**, as last amended by Laws of Utah 2012, Chapter 365
42 **32B-2-204**, as enacted by Laws of Utah 2010, Chapter 276
43 **32B-2-206**, as last amended by Laws of Utah 2012, Chapter 365
44 **32B-4-401**, as enacted by Laws of Utah 2010, Chapter 276
45 **32B-4-417**, as enacted by Laws of Utah 2010, Chapter 276
46 **32B-5-303**, as last amended by Laws of Utah 2011, Chapter 307
47 **32B-9-305**, as last amended by Laws of Utah 2011, Chapters 307 and 334
48 **32B-10-206**, as enacted by Laws of Utah 2010, Chapter 276
49 **32B-10-304**, as last amended by Laws of Utah 2011, Chapter 334
50 **32B-11-201**, as last amended by Laws of Utah 2011, Chapter 334
51 **32B-11-208**, as enacted by Laws of Utah 2010, Chapter 276
52 **32B-11-503**, as last amended by Laws of Utah 2011, Chapter 334
53 **32B-11-608**, as last amended by Laws of Utah 2011, Chapters 307 and 334
54 **32B-12-201**, as enacted by Laws of Utah 2010, Chapter 276
55 **32B-13-201**, as last amended by Laws of Utah 2011, Chapter 334
56 **32B-13-202**, as last amended by Laws of Utah 2011, Chapter 334
57 **32B-13-301**, as last amended by Laws of Utah 2011, Chapter 334
58 **32B-14-101**, as enacted by Laws of Utah 2010, Chapter 276

59 **32B-14-102**, as enacted by Laws of Utah 2010, Chapter 276
60 **32B-14-201**, as enacted by Laws of Utah 2010, Chapter 276
61 **32B-14-302**, as enacted by Laws of Utah 2010, Chapter 276
62 **32B-14-303**, as enacted by Laws of Utah 2010, Chapter 276

63 ENACTS:

64 **32B-2-304.5**, Utah Code Annotated 1953

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

67 Section 1. Section **32B-1-102** is amended to read:

68 **32B-1-102. Definitions.**

69 As used in this title:

70 (1) "Airport lounge" means a business location:
71 (a) at which an alcoholic product is sold at retail for consumption on the premises; and
72 (b) that is located at an international airport with a United States Customs office on the
73 premises of the international airport.

74 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,
75 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

76 (3) "Alcoholic beverage" means the following:

77 (a) beer; or
78 (b) liquor.

79 (4) (a) "Alcoholic product" means a product that:
80 (i) contains at least .5% of alcohol by volume; and
81 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
82 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
83 in an amount equal to or greater than .5% of alcohol by volume.

84 (b) "Alcoholic product" includes an alcoholic beverage.

85 (c) "Alcoholic product" does not include any of the following common items that
86 otherwise come within the definition of an alcoholic product:

87 (i) except as provided in Subsection (4)(d), an extract;
88 (ii) vinegar;
89 (iii) cider;

90 (iv) essence;
91 (v) tincture;
92 (vi) food preparation; or
93 (vii) an over-the-counter medicine.

94 (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation
95 when it is used as a flavoring in the manufacturing of an alcoholic product.

96 (5) "Alcohol training and education seminar" means a seminar that is:
97 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
98 (b) described in Section 62A-15-401.

99 (6) "Banquet" means an event:
100 (a) that is held at one or more designated locations approved by the commission in or
101 on the premises of a:
102 (i) hotel;
103 (ii) resort facility;
104 (iii) sports center; or
105 (iv) convention center;
106 (b) for which there is a contract:
107 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
108 and
109 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
110 provide an alcoholic product at the event; and
111 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.

112 (7) (a) "Bar" means a surface or structure:
113 (i) at which an alcoholic product is:
114 (A) stored; or
115 (B) dispensed; or
116 (ii) from which an alcoholic product is served.
117 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any
118 place of the surface or structure an alcoholic product is:
119 (i) stored; or
120 (ii) dispensed.

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (8)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

(10) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(11) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) (i) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers[.]; or

(ii) to import for sale, or sell heavy beer in wholesale or jobbing quantities to:

(A) one or more retail licensees who are authorized to sell, offer for sale, or furnish

152 heavy beer;

153 (B) one or more single event permittees;

154 (C) the department;

155 (D) military installations; and

156 (E) public service permittees.

157 (12) "Billboard" means a public display used to advertise, including:

158 (a) a light device;

159 (b) a painting;

160 (c) a drawing;

161 (d) a poster;

162 (e) a sign;

163 (f) a signboard; or

164 (g) a scoreboard.

165 (13) "Brewer" means a person engaged in manufacturing:

166 (a) beer;

167 (b) heavy beer; or

168 (c) a flavored malt beverage.

169 (14) "Brewery manufacturing license" means a license issued in accordance with

170 Chapter 11, Part 5, Brewery Manufacturing License.

171 (15) "Certificate of approval" means a certificate of approval obtained from the

172 department under Section 32B-11-201.

173 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by

174 a bus company to a group of persons pursuant to a common purpose:

175 (a) under a single contract;

176 (b) at a fixed charge in accordance with the bus company's tariff; and

177 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
178 motor vehicle, and a driver to travel together to one or more specified destinations.

179 (17) "Church" means a building:

180 (a) set apart for worship;

181 (b) in which religious services are held;

182 (c) with which clergy is associated; and

183 (d) that is tax exempt under the laws of this state.

184 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail

185 License Act, and Chapter 6, Part 4, Club License.

186 (b) "Club license" includes:

187 (i) a dining club license;

188 (ii) an equity club license;

189 (iii) a fraternal club license; or

190 (iv) a social club license.

191 (19) "Commission" means the Alcoholic Beverage Control Commission created in

192 Section 32B-2-201.

193 (20) "Commissioner" means a member of the commission.

194 (21) "Community location" means:

195 (a) a public or private school;

196 (b) a church;

197 (c) a public library;

198 (d) a public playground; or

199 (e) a public park.

200 (22) "Community location governing authority" means:

201 (a) the governing body of the community location; or

202 (b) if the commission does not know who is the governing body of a community

203 location, a person who appears to the commission to have been given on behalf of the

204 community location the authority to prohibit an activity at the community location.

205 (23) "Container" means a receptacle that contains an alcoholic product, including:

206 (a) a bottle;

207 (b) a vessel; or

208 (c) a similar item.

209 (24) "Convention center" means a facility that is:

210 (a) in total at least 30,000 square feet; and

211 (b) otherwise defined as a "convention center" by the commission by rule.

212 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a

213 dining area of a licensed premises where seating is provided to a patron for service of food.

214 (b) "Counter" does not include a surface or structure if on or at any point of the surface
215 or structure an alcoholic product is:

216 (i) stored; or
217 (ii) dispensed

218 (26) "Department" means the Department of Alcoholic Beverage Control created in
219 Section 32B-2-203.

220 (27) "Department compliance officer" means an individual who is:

221 (a) an auditor or inspector; and
222 (b) employed by the department

223 (28) "Department sample" means liquor that is placed in the possession of the
224 department for testing, analysis, and sampling.

225 (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail
226 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
227 dining club license.

228 (30) "Director," unless the context requires otherwise, means the director of the
229 department.

230 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
231 title:

232 (a) against a person subject to administrative action; and
233 (b) that is brought on the basis of a violation of this title.

234 (32) (a) Subject to Subsection (32)(b), "dispense" means:

235 (i) drawing of an alcoholic product:
236 (A) from an area where it is stored; or
237 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),
238 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and
239 (ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of
240 the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the
241 retail licensee.

242 (b) The definition of "dispense" in this Subsection (32) applies only to:
243 (i) a full-service restaurant license;
244 (ii) a limited-service restaurant license;

245 (iii) a reception center license; and
246 (iv) a beer-only restaurant license.

247 (33) "Distillery manufacturing license" means a license issued in accordance with
248 Chapter 11, Part 4, Distillery Manufacturing License.

249 (34) "Distressed merchandise" means an alcoholic product in the possession of the
250 department that is saleable, but for some reason is unappealing to the public.

251 (35) "Educational facility" includes:

252 (a) a nursery school;

253 (b) an infant day care center; and

254 (c) a trade and technical school.

255 (36) "Equity club license" means a license issued in accordance with Chapter 5, Retail
256 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an
257 equity club license.

258 (37) "Event permit" means:

259 (a) a single event permit; or

260 (b) a temporary beer event permit.

261 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being
262 considered in determining the total number of a retail license that the commission may issue at
263 any time.

264 (39) (a) "Flavored malt beverage" means a beverage:

265 (i) that contains at least .5% alcohol by volume;

266 (ii) that is treated by processing, filtration, or another method of manufacture that is not
267 generally recognized as a traditional process in the production of a beer as described in 27
268 C.F.R. Sec. 25.55;

269 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop
270 extract; and

271 (iv) (A) for which the producer is required to file a formula for approval

272 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.

273 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

276 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
277 as a fraternal club license.

278 (41) "Full-service restaurant license" means a license issued in accordance with
279 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

280 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
281 an alcoholic product, by sale or otherwise.

282 (b) "Furnish" includes to:

283 (i) serve;

284 (ii) deliver; or

285 (iii) otherwise make available.

286 (43) "Guest" means an individual who meets the requirements of Subsection
287 32B-6-407(9).

288 (44) "Health care practitioner" means:

289 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

290 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

291 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

292 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
293 Act;

294 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
295 Nurse Practice Act;

296 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
297 Practice Act;

298 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
299 Therapy Practice Act;

300 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

301 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
302 Professional Practice Act;

303 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

304 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
305 Practice Act;

306 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental

307 Hygienist Practice Act; and

308 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

309 (45) (a) "Heavy beer" means a product that:

310 (i) contains more than 4% alcohol by volume; and

311 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

312 (b) "Heavy beer" is considered liquor for the purposes of this title.

313 (46) "Hotel" is as defined by the commission by rule.

314 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,

315 Part 8, Identification Card Act.

316 (48) "Industry representative" means an individual who is compensated by salary,

317 commission, or other means for representing and selling an alcoholic product of a

318 manufacturer, supplier, or importer of liquor.

319 (49) "Industry representative sample" means liquor that is placed in the possession of

320 the department for testing, analysis, and sampling by a local industry representative on the

321 premises of the department to educate the local industry representative of the quality and

322 characteristics of the product.

323 (50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing

324 of an alcoholic product is prohibited by:

325 (a) law; or

326 (b) court order.

327 (51) "Intoxicated" means that a person:

328 (a) is significantly impaired as to the person's mental or physical functions as a result of

329 the use of:

330 (i) an alcoholic product;

331 (ii) a controlled substance;

332 (iii) a substance having the property of releasing toxic vapors; or

333 (iv) a combination of Subsections (51)(a)(i) through (iii); and

334 (b) exhibits plain and easily observed outward manifestations of behavior or physical

335 signs produced by the over consumption of an alcoholic product.

336 (52) "Investigator" means an individual who is:

337 (a) a department compliance officer; or

338 (b) a nondepartment enforcement officer.

339 (53) "Invitee" is as defined in Section 32B-8-102.

340 (54) "License" means:

341 (a) a retail license;

342 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
343 Licenses Act;

344 (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;

345 or

346 (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

347 (55) "Licensee" means a person who holds a license.

348 (56) "Limited-service restaurant license" means a license issued in accordance with
349 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

350 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other
351 than a bus or taxicab:

352 (a) in which the driver and a passenger are separated by a partition, glass, or other
353 barrier;

354 (b) that is provided by a business entity to one or more individuals at a fixed charge in
355 accordance with the business entity's tariff; and

356 (c) to give the one or more individuals the exclusive use of the limousine and a driver
357 to travel to one or more specified destinations.

358 (58) (a) (i) "Liquor" means a liquid that:

359 (A) is:

360 (I) alcohol;

361 (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;

362 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or

363 (IV) other drink or drinkable liquid; and

364 (B) (I) contains at least .5% alcohol by volume; and

365 (II) is suitable to use for beverage purposes.

366 (ii) "Liquor" includes:

367 (A) heavy beer;

368 (B) wine; and

369 (C) a flavored malt beverage.

370 (b) "Liquor" does not include beer.

371 (59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

372 (60) "Liquor warehousing license" means a license that is issued:

373 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and

374 (b) to a person, other than a licensed manufacturer, who engages in the importation for

375 storage, sale, or distribution of liquor regardless of amount.

376 (61) "Local authority" means:

377 (a) for premises that are located in an unincorporated area of a county, the governing

378 body of a county; or

379 (b) for premises that are located in an incorporated city or a town, the governing body

380 of the city or town.

381 (62) "Lounge or bar area" is as defined by rule made by the commission.

382 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or

383 otherwise make an alcoholic product for personal use or for sale or distribution to others.

384 (64) "Member" means an individual who, after paying regular dues, has full privileges

385 in an equity club licensee or fraternal club licensee.

386 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,

387 or homeport facility for a ship:

388 (i) (A) under the control of the United States Department of Defense; or

389 (B) of the National Guard;

390 (ii) that is located within the state; and

391 (iii) including a leased facility.

392 (b) "Military installation" does not include a facility used primarily for:

393 (i) civil works;

394 (ii) a rivers and harbors project; or

395 (iii) a flood control project.

396 (66) "Minor" means an individual under the age of 21 years.

397 (67) "Nondepartment enforcement agency" means an agency that:

398 (a) (i) is a state agency other than the department; or

399 (ii) is an agency of a county, city, or town; and

400 (b) has a responsibility to enforce one or more provisions of this title.

401 (68) "Nondepartment enforcement officer" means an individual who is:

402 (a) a peace officer, examiner, or investigator; and

403 (b) employed by a nondepartment enforcement agency.

404 (69) (a) "Off-premise beer retailer" means a beer retailer who is:

405 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local

406 Authority; and

407 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's

408 premises.

409 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.

410 (70) "On-premise banquet license" means a license issued in accordance with Chapter

411 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

412 (71) "On-premise beer retailer" means a beer retailer who is:

413 (a) authorized to sell, offer for sale, or furnish beer under a license issued in

414 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer

415 Retailer License; and

416 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's

417 premises:

418 (i) regardless of whether the beer retailer sells beer for consumption off the licensed

419 premises; and

420 (ii) on and after March 1, 2012, operating:

421 (A) as a tavern; or

422 (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

423 (72) "Opaque" means impenetrable to sight.

424 (73) "Package agency" means a retail liquor location operated:

425 (a) under an agreement with the department; and

426 (b) by a person:

427 (i) other than the state; and

428 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package

429 Agency, to sell packaged liquor for consumption off the premises of the package agency.

430 (74) "Package agent" means a person who holds a package agency.

442 (76) "Permittee" means a person issued a permit under:

443 (a) Chapter 9, Event Permit Act; or

444 (b) Chapter 10, Special Use Permit Act.

445 (77) "Person subject to administrative action" means:

446 (a) a licensee;

447 (b) a permittee;

448 (c) a manufacturer;

449 (d) a supplier;

450 (e) an importer;

451 (f) one of the following holding a certificate of approval:

452 (i) an out-of-state brewer;

453 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

454 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

455 (g) staff of:

456 (i) a person listed in Subsections (77)(a) through (f); or

457 (ii) a package agent.

458 (78) "Premises" means a building, enclosure, or room used in connection with the
459 storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product,
460 unless otherwise defined in this title or rules made by the commission.

461 (79) "Prescription" means an order issued by a health care practitioner when:

462 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
463 to prescribe a controlled substance, other drug, or device for medicinal purposes;

464 (b) the order is made in the course of that health care practitioner's professional
465 practice; and

466 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

467 (80) (a) "Private event" means a specific social, business, or recreational event;

468 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
469 group; and

470 (ii) that is limited in attendance to people who are specifically designated and their
471 guests.

472 (b) "Private event" does not include an event to which the general public is invited,
473 whether for an admission fee or not.

474 (81) (a) "Proof of age" means:

475 (i) an identification card;

476 (ii) an identification that:

477 (A) is substantially similar to an identification card;

478 (B) is issued in accordance with the laws of a state other than Utah in which the
479 identification is issued;

480 (C) includes date of birth; and

481 (D) has a picture affixed;

482 (iii) a valid driver license certificate that:

483 (A) includes date of birth;

484 (B) has a picture affixed; a

485 (C) is issued:

486 (I) under Title 53, Chapter 3, Uniform Driver License Act; or

487 (II) in accordance with the laws of the state in which it is issued:

488 (iv) a military identification card that:

489 (A) includes date of birth; and

480 (B) has a picture affixed; or

491 (v), a valid passport

(b) "Proof of age" does not include a driving privilege card issued in accordance with

493 Section 53-3-207.

494 (82) (a) "Public building" means a building or permanent structure that is:

495 (i) owned or leased by:

496 (A) the state; or

497 (B) a local government entity; and

498 (ii) used for:

499 (A) public education;

500 (B) transacting public business; or

501 (C) regularly conducting government activities.

502 (b) "Public building" does not include a building owned by the state or a local
503 government entity when the building is used by a person, in whole or in part, for a proprietary
504 function.

505 (83) "Public conveyance" means a conveyance to which the public or a portion of the
506 public has access to and a right to use for transportation, including an airline, railroad, bus,
507 boat, or other public conveyance.

508 (84) "Reception center" means a business that:

509 (a) operates facilities that are at least 5,000 square feet; and

510 (b) has as its primary purpose the leasing of the facilities described in Subsection (84)

511 (a) to a third party for the third party's event.

512 (85) "Reception center license" means a license issued in accordance with Chapter 5,
513 Retail License Act, and Chapter 6, Part 8, Reception Center License.

514 (86) (a) "Record" means information that is:

515 (i) inscribed on a tangible medium; or

516 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.

517 (b) "Record" includes:

518 (i) a book;

519 (ii) a book of account;

520 (iii) a paper;

521 (iv) a contract;

522 (v) an agreement;

523 (vi) a document; or

524 (vii) a recording in any medium.

525 (87) "Residence" means a person's principal place of abode within Utah.

526 (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

527 (89) "Resort" is as defined in Section 32B-8-102.

528 (90) "Resort facility" is as defined by the commission by rule.

529 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail

530 License Act, and Chapter 8, Resort License Act.

531 (92) "Restaurant" means a business location:

532 (a) at which a variety of foods are prepared;

533 (b) at which complete meals are served to the general public; and

534 (c) that is engaged primarily in serving meals to the general public.

535 (93) "Retail license" means one of the following licenses issued under this title:

536 (a) a full-service restaurant license;

537 (b) a limited-service restaurant license;

538 (c) a club license;

539 (d) an airport lounge license;

540 (e) an on-premise banquet license;

541 (f) an on-premise beer license;

542 (g) a reception center license; or

543 (h) a beer-only restaurant license.

544 (94) "Room service" means furnishing an alcoholic product to a person in a guest room

545 of a:

546 (a) hotel; or

547 (b) resort facility.

548 (95) "Serve" means to place an alcoholic product before an individual.

549 (96) (a) "School" means a building used primarily for the general education of minors.

550 (b) "School" does not include an educational facility.

551 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for

552 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,

553 delivered for value, or by a means or under a pretext is promised or obtained, whether done by

554 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules

555 made by the commission.

556 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity
557 appears at or performs:

558 (a) for the entertainment of one or more patrons;

559 (b) on the premises of:

560 (i) a social club licensee; or

561 (ii) a tavern;

562 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);

563 (d) on a contractual or voluntary basis; and

564 (e) whether or not the person is designated as:

565 (i) an employee;

566 (ii) an independent contractor;

567 (iii) an agent of the licensee; or

568 (iv) a different type of classification.

569 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,

570 Single Event Permit.

571 (100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
572 beer, heavy beer, and flavored malt beverages per year.

573 (101) "Social club license" means a license issued in accordance with Chapter 5, Retail
574 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
575 social club license.

576 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
577 Special Use Permit Act.

578 (a) "Spirituous liquor" means liquor that is distilled.

579 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
580 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

581 (104) "Sports center" is as defined by the commission by rule.

582 (a) "Staff" means an individual who engages in activity governed by this title:

583 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
584 holder;

585 (ii) at the request of the business, including a package agent, licensee, permittee, or

586 certificate holder; or

587 (iii) under the authority of the business, including a package agent, licensee, permittee,
588 or certificate holder.

589 (b) "Staff" includes:

590 (i) an officer;

591 (ii) a director;

592 (iii) an employee;

593 (iv) personnel management;

594 (v) an agent of the licensee, including a managing agent;

595 (vi) an operator; or

596 (vii) a representative.

597 (106) "State of nudity" means:

598 (a) the appearance of:

599 (i) the nipple or areola of a female human breast;

600 (ii) a human genital;

601 (iii) a human pubic area; or

602 (iv) a human anus.

603 (b) a state of dress that fails to opaque cover:

604 (i) the nipple or areola of a female human breast;

605 (ii) a human genital;

606 (iii) a human pubic area; or

607 (iv) a human anus.

608 (107) "State of seminudity" means a state of dress in which opaque clothing covers no
609 more than:

610 (a) the nipple and areola of the female human breast in a shape and color other than the
611 natural shape and color of the nipple and areola; and

612 (b) the human genitals, pubic area, and anus:

613 (i) with no less than the following at its widest point:

614 (A) four inches coverage width in the front of the human body; and

615 (B) five inches coverage width in the back of the human body; and

616 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

617 (108) (a) "State store" means a facility for the sale of packaged liquor:
618 (i) located on premises owned or leased by the state; and
619 (ii) operated by a state employee.
620 (b) "State store" does not include:
621 (i) a package agency;
622 (ii) a licensee; or
623 (iii) a permittee.
624 (109) (a) "Storage area" means an area on licensed premises where the licensee stores
625 an alcoholic product.
626 (b) "Store" means to place or maintain in a location an alcoholic product from which a
627 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
628 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
629 32B-6-905(12)(b)(ii).
630 (110) "Sublicense" is as defined in Section 32B-8-102.
631 (111) "Supplier" means a person who sells an alcoholic product to the department.
632 (112) "Tavern" means an on-premise beer retailer who is:
633 (a) issued a license by the commission in accordance with Chapter 5, Retail License
634 Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
635 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,
636 On-premise Beer Retailer License.
637 (113) "Temporary beer event permit" means a permit issued in accordance with
638 Chapter 9, Part 4, Temporary Beer Event Permit.
639 (114) "Temporary domicile" means the principal place of abode within Utah of a
640 person who does not have a present intention to continue residency within Utah permanently or
641 indefinitely.
642 (115) "Translucent" means a substance that allows light to pass through, but does not
643 allow an object or person to be seen through the substance.
644 (116) "Unsaleable liquor merchandise" means a container that:
645 (a) is unsaleable because the container is:
646 (i) unlabeled;
647 (ii) leaky;

660 (117) (a) "Wine" means an alcoholic product obtained by the fermentation of the
661 natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not
662 another ingredient is added.

663 (b) "Wine" is considered liquor for purposes of this title, except as otherwise provided
664 in this title.

665 (118) "Winery manufacturing license" means a license issued in accordance with
666 Chapter 11, Part 3, Winery Manufacturing License.

667 Section 2. Section **32B-2-202** is amended to read:

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

669 (1) The commission shall:

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

672 (b) adopt and issue policies, rules, and procedures;

673 (c) set policy by written rules that establish criteria and procedures for:

674 (i) issuing, denying, not renewing, suspending, or revoking a package agency, license,
675 permit, or certificate of approval; and

676 (ii) determining the location of a state store, package agency, or retail licensee;

677 (d) decide within the limits, and under the conditions imposed by this title, the number
678 and location of state stores, package agencies, and retail licensees in the state;

710 in accordance with Section 63J-1-504;

711 (i) fix prices at which liquor is sold that are the same at all state stores, package
712 agencies, and retail licensees[;], except that subject to Section 32B-2-304.5, the commission
713 may not set the price at which a beer wholesaler licensee may sell heavy beer;

714 (j) issue and distribute price lists showing the price to be paid by a purchaser for each
715 class, variety, or brand of liquor kept for sale by the department;

716 (k) (i) require the director to follow sound management principles; and

717 (ii) require periodic reporting from the director to ensure that:

718 (A) sound management principles are being followed; and

719 (B) policies established by the commission are being observed;

720 (l) (i) receive, consider, and act in a timely manner upon the reports, recommendations,
721 and matters submitted by the director to the commission; and

722 (ii) do the things necessary to support the department in properly performing the
723 department's duties;

724 (m) obtain temporarily and for special purposes the services of an expert or person
725 engaged in the practice of a profession, or a person who possesses a needed skill if:

726 (i) considered expedient; and

727 (ii) approved by the governor;

728 (n) prescribe the conduct, management, and equipment of premises upon which an
729 alcoholic product may be stored, sold, offered for sale, furnished, or consumed;

730 (o) make rules governing the credit terms of:

731 (i) beer sales within the state to retail licensees; and

732 (ii) heavy beer sales within the state to retail licensees authorized to sell, offer for sale,
733 or furnish heavy beer; and

734 (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take
735 disciplinary action against a person subject to administrative action.

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

739 (a) establish a state store;

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

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

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

745 (4) Notwithstanding Subsections (1)(e)(xi) and (xii), the director or deputy director
746 may issue an event permit in accordance with Chapter 9, Event Permit Act.

747 Section 3. Section **32B-2-204** is amended to read:

748 **32B-2-204. Powers and duties of the department -- Immunity.**

749 (1) (a) The department shall control liquor merchandise inventory including:

750 [~~(a)~~] (i) listing and delisting a product;

751 [~~(b)~~] (ii) the procedures for testing a new product;

752 [~~(c)~~] (iii) purchasing policy;

753 [~~(d)~~] (iv) turnover requirements for a regularly coded product to be continued; and

754 [~~(e)~~] (v) the disposition of discontinued, distressed, or unsaleable merchandise.

755 (b) The department shall list and delist heavy beer that may be sold by a beer
756 wholesaler licensee.

757 (2) (a) The department shall report to the governor on the administration of this title:

758 (i) as the governor may require; and

759 (ii) annually by no later than November 30, for the fiscal year ending June 30 of the
760 year in which the report is made.

761 (b) A report under this Subsection (2) shall contain:

762 (i) a statement of the nature and amount of the business transacted by the department
763 during the year;

764 (ii) a statement of the department's assets and liabilities including a profit and loss
765 account, and other accounts and matters necessary to show the results of operations of the
766 department for the year;

767 (iii) general information on the application of this title in the state; and

768 (iv) any other information requested by the governor.

769 (c) The department shall submit a copy of a report described in this Subsection (2) to
770 the Legislature.

771 (3) The department shall maintain insurance against loss on each motor vehicle

772 operated by it on any public highway. A motor vehicle shall be covered for:

773 (a) liability imposed by law upon the department for damages from bodily injuries
774 suffered by one or more persons by reason of the ownership, maintenance, or use of the motor
775 vehicle; and

776 (b) liability or loss from damage to or destruction of property of any description,
777 including liability of the department for the resultant loss of use of the property, which results
778 from accident due to the ownership, maintenance, or use of the motor vehicle.

779 (4) (a) The department may sue, be sued, and defend in a proceeding, in a court of law
780 or otherwise, in the name of the department.

781 (b) An action may not be taken:

782 (i) against the commission; or

783 (ii) in the name of a commissioner.

784 (5) The department is liable to respond in damages in a case if a private corporation
785 under the same circumstances would be liable.

786 (6) (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies in an action
787 commenced against the department for damages sustained as a result of department ownership,
788 maintenance, or use of a motor vehicle under Subsections (4) and (5).

789 (b) In an action described in Subsection (6)(a), the commission and each commissioner
790 are immune from suit.

791 Section 4. Section **32B-2-206** is amended to read:

792 **32B-2-206. Powers and duties of the director.**

793 Subject to the powers and responsibilities of the commission under this title, the
794 director:

795 (1) (a) shall prepare and propose to the commission general policies, rules, and
796 procedures governing the administrative activities of the department; and

797 (b) may submit other recommendations to the commission as the director considers in
798 the interest of the commission's or the department's business;

799 (2) within the general policies, rules, and procedures of the commission, shall:

800 (a) provide day-to-day direction, coordination, and delegation of responsibilities in the
801 administrative activities of the department's business; and

802 (b) make internal department policies and procedures relating to:

(i) department personnel matters; and

(ii) the day-to-day operation of the department;

(3) subject to Section 32B-2-207, shall appoint or employ personnel as considered necessary in the administration of this title, and with regard to the personnel shall:

(a) prescribe the conditions of employment;

(b) define the respective duties and powers; and

(c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel Management Act;

(4) shall establish and secure adherence to a system of reports, controls, and performance in matters relating to personnel, security, department property management, and operation of:

(a) a department office;

(b) a warehouse;

(c) a state store; and

(d) a package agency;

(5) within the policies, rules, and procedures approved by the commission and provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale, furnishing, transportation, or delivery of an alcoholic product;

(6) shall prepare for commission approval:

(a) recommendations regarding the location, establishment, relocation, and closure of a state store or package agency;

(b) recommendations regarding the issuance, denial, nonrenewal, suspension, or revocation of a license, permit, or certificate of approval;

(c) an annual budget, proposed legislation, and reports as required by law and sound business principles;

(d) plans for reorganizing divisions of the department and the functions of the divisions;

(e) manuals containing commission and department policies, rules, and procedures;

(f) an inventory control system;

(g) any other report or recommendation requested by the commission;

(h) rules described in Subsection 32B-2-202(1)(o) governing the credit terms of the

834 sale of beer or heavy beer;

835 (i) rules governing the calibration, maintenance, and regulation of a calibrated metered

836 dispensing system;

837 (j) rules governing the display of a list of types and brand names of liquor furnished

838 through a calibrated metered dispensing system;

839 (k) price lists issued and distributed showing the price to be paid for each class, variety,

840 or brand of liquor kept for sale at a state store, package agency, or retail licensee;

841 (l) policies or rules prescribing the books of account maintained by the department and

842 by a state store, package agency, or retail licensee; and

843 (m) a policy prescribing the manner of giving and serving a notice required by this title

844 or rules made under this title;

845 (7) shall make available through the department to any person, upon request, a copy of

846 a policy made by the director;

847 (8) shall make and maintain a current copy of a manual that contains the rules and

848 policies of the commission and department available for public inspection;

849 (9) (a) after consultation with the governor, shall determine whether an alcoholic

850 product should not be sold, offered for sale, or otherwise furnished in an area of the state

851 during a period of emergency that is proclaimed by the governor to exist in that area; and

852 (b) shall issue a necessary public announcement or policy with respect to the

853 determination described in Subsection (9)(a);

854 (10) issue event permits in accordance with Chapter 9, Event Permit Act; and

855 (11) shall perform any other duty required by the commission or by law.

856 Section 5. Section **32B-2-304.5** is enacted to read:

32B-2-304.5. Heavy beer price -- Remittance of markup.

(1) For purposes of this section:

(a) "Landed case cost" means:

(i) the cost of the product; and

(ii) inbound shipping costs incurred by a beer wholesaler licensee.

(b) "Landed case cost" does not include:

(i) the outbound shipping cost from a warehouse of the beer wholesaler licensee to a
retail licensee; or

865 (ii) the tax imposed under Title 59, Chapter 15, Beer Tax.

866 (2) (a) A beer wholesaler licensee shall mark up above the landed case cost of heavy
867 beer sold by the beer wholesaler licensee within the state at an amount not less than the markup
868 required of the department under Section 32B-2-304.

869 (b) If a beer wholesaler licensee sells heavy beer to the department, the heavy beer is
870 subject to only the markup imposed by the department.

871 (3) (a) A beer wholesaler licensee shall collect the markup and remit the markup
872 collected by the beer wholesaler licensee under this section:

873 (i) to the State Tax Commission monthly on or before the last day of the month
874 immediately following the last day of the previous month; and

875 (ii) using a form prescribed by the State Tax Commission.

876 (b) The State Tax Commission shall deposit revenues remitted to it under Subsection
877 (3)(a) into the Markup Holding Fund created in Section 32B-2-301.

878 (c) The assessment, collection, and refund of a markup under this section shall be in
879 accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

880 (d) A beer wholesaler licensee, if it fails to comply with this Subsection (3), is subject
881 to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

882 (e) The State Tax Commission may make rules, in accordance with Title 63G, Chapter
883 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (3).

884 Section 6. Section **32B-4-401** is amended to read:

885 **32B-4-401. Unlawful sale or furnishing.**

886 (1) It is unlawful for a retail licensee, a permittee, or staff of a retail licensee or
887 permittee to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another,
888 an alcoholic product, except as otherwise provided by this title.

889 (2) It is unlawful for a person in the business of selling liquor, a manufacturer, a
890 supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to
891 sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state
892 location directly or indirectly into this state except to the extent authorized by this title to:

893 (a) the department;

894 (b) a military installation;

895 (c) a holder of a special use permit, to the extent authorized in the special use permit;

896 [or]

897 (d) a liquor warehouser licensee licensed to distribute and transport liquor to:

898 (i) the department; or

899 (ii) an out-of-state wholesaler or retailer[:]; or

900 (e) a beer wholesaler licensee to distribute and transport heavy beer to:

901 (i) a retail licensee authorized to sell, offer for sale, or furnish heavy beer;

902 (ii) a single event permittee;

903 (iii) the department;

904 (iv) a military installation; or

905 (v) a public service permittee.

906 (3) (a) It is unlawful for a person in the business of selling beer, a manufacturer, a
907 supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship,
908 transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly
909 or indirectly into this state except to the extent authorized by this title to:

910 (i) a beer wholesaler licensee;

911 (ii) a military installation; or

912 (iii) a holder of a special use permit, to the extent authorized in the special use permit.

913 (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of
914 approval from selling, shipping, or transporting beer to the extent authorized by Subsection
915 32B-11-503(5) directly to:

916 (i) a beer retailer; or

917 (ii) an event permittee.

918 (4) (a) It is unlawful for a manufacturer, supplier, or importer of liquor in this state, or
919 staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold,
920 shipped, or transported liquor directly or indirectly to a person in this state except to the extent
921 authorized by this title to:

922 (i) the department;

923 (ii) a military installation;

924 (iii) a holder of a special use permit, to the extent authorized in the special use permit;

925 [or]

926 (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[.]; or

(v) a beer wholesaler licensee to distribute and transport heavy beer to:

(A) a retail licensee authorized to sell, offer for sale, or furnish heavy beer;

(B) a single event permittee;

(C) the department;

(D) a military installation; or

(E) a public service permittee.

(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)(c); or

(ii) under a package agency issued by the commission on the winery 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.

(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.

958 (7) It is unlawful for a person in this state other than a person described in Subsection
959 (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic
960 product directly or indirectly to another person in this state, except as otherwise provided by
961 this title.

962 (8) (a) A violation of Subsection (1) is a class B misdemeanor, except when otherwise
963 provided by this title.

964 (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.

965 (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

966 Section 7. Section **32B-4-417** is amended to read:

967 32B-4-417. Unlawful possession by licensee or permittee.

968 Except as authorized by Section 32B-4-415, other provisions of this title, or the rules of
969 the commission, a licensee or permittee may not possess, store, or allow consumption of liquor
970 on its premises if the liquor is not purchased from:

971 (1) the department;

972 (2) a state store; [ər]

973 (3) a package agency[‐]; or

974 (4) in the case of heavy beer, a beer wholesaler licensee.

975 Section 8. Section 32B-5-303 is amended to read:

32B-5-303. Purchase and storage of an alcoholic product by a retail licensee.

977 (1) (a) A retail licensee may not purchase liquor except from:

978 (i) a state store [ər]:

979 (ii) package agency[-]; or

980 (iii) in the case of heavy beer, a beer wholesaler licensee

981 (b) A retail licensee may transport liquor purchased from a state store or package
982 agency from the place of purchase to the licensed premises

983 (c) A retail licensee shall pay for liquor in accordance with rules established by the
984 commission.

985 (2) (a) (i) A retail licensee may not purchase, acquire, possess for the purpose of resale,
986 or sell beer except beer that the retail licensee purchases from:

987 (A) a beer wholesaler licensee; or

988 (B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

(3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.

(4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Section 9. Section **32B-9-305** is amended to read:

32B-9-305. Specific operational requirements for single event permit.

(1) (a) In addition to complying with Section 32B-9-204, a single event permittee or a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
ment Act, against:

(I) a single event p

(II) a person involved in the

product at the event; or

(III) any combination of persons listed in this Subsection (1)(b);

(B) immediate revocation of the single event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the single event permit is revoked, disqualifies the single event permittee from applying for a single event permit or temporary beer event permit for a period of three years

1020 from the date of revocation of the single event permit.

1021 (c) An alcoholic product seized under this Subsection (1) shall be returned to the single
1022 event permittee after an event if forfeiture proceedings are not instituted under Section
1023 32B-4-206.

1024 (2) (a) A single event permittee shall make and maintain an expense and revenue
1025 ledger or record showing:

1026 (i) expenditures made for:

1027 (A) liquor;

1028 (B) beer;

1029 (C) set-ups; and

1030 (D) an ingredient or component of an alcoholic product other than a set-up; and

1031 (ii) the revenue from the sale of an alcoholic product.

1032 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1033 accordance with this Subsection (2).

1034 (3) A single event permittee shall purchase liquor stored, sold, offered for sale,
1035 furnished, or consumed at an event from:

1036 (a) a state store [or];

1037 (b) a package agency[-]; or

1038 (c) in the case of heavy beer, a beer wholesaler licensee.

1039 (4) (a) A single event permittee may not sell, offer for sale, or furnish a primary
1040 spirituous liquor in a quantity that exceeds 1.5 ounces per beverage, except that additional
1041 spirituous liquor may be used in a beverage if:

1042 (i) used as a secondary flavoring ingredient;

1043 (ii) used in conjunction with the primary spirituous liquor;

1044 (iii) the secondary ingredient is not the only spirituous liquor in the beverage; and

1045 (iv) subject to Subsection 32B-9-204(18):

1046 (A) a patron has no more than 2.5 ounces of spirituous liquor at a time before the
1047 patron; and

1048 (B) a patron has no more than one spirituous liquor drink at a time before the patron.

1049 (b) Spirituous liquor need not be dispensed through a calibrated metered dispensing
1050 system.

1051 (5) (a) A single event permittee may sell, offer for sale, or furnish wine by the glass or
1052 an individual portion, except that a glass or individual portion may not exceed five ounces.

1053 (b) A single event permittee may furnish an individual portion served to a patron in
1054 more than one glass if the total amount of wine does not exceed five ounces.

1055 (c) An individual portion of wine is considered to be one alcoholic product under
1056 Subsection 32B-9-204(18).

1057 (d) A single event permittee may sell, offer for sale, or furnish wine in a container not
1058 exceeding 1.5 liters at a price fixed by the commission.

1059 (6) A single event permittee may sell, offer for sale, or furnish heavy beer in an original
1060 container at a price fixed by the commission, except that the original container may not exceed
1061 one liter.

1062 (7) A single event permittee may sell, offer for sale, or furnish a flavored malt beverage
1063 in an original container at a price fixed by the commission, except that the original container
1064 may not exceed one liter.

1065 (8) A single event permittee may sell liquor only at a price fixed by the commission.

1066 (9) A single event permittee may perform a service and assess a service charge as
1067 authorized by commission rule for liquor purchased at an event.

1068 Section 10. Section **32B-10-206** is amended to read:

32B-10-206. General operational requirements for special use permit.

1070 (1) (a) A special use permittee and staff of the special use permittee shall comply with
1071 this title and rules of the commission, including the relevant part of the chapter that applies to
1072 the type of special use permit held by the special use permittee.

1073 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1074 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a special use permittee;

(ii) individual staff of a special use permittee; or

(iii) a special use permittee and staff of the special use permittee.

(c) The commission may suspend or revoke a special use permit with or without cause.

1079 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
1080 the specific type of special use permit, the relevant part under this chapter governs.

1081 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," a

1082 special use permittee may only purchase, use, store, sell, offer for sale, allow consumption, or
1083 manufacture an alcoholic product authorized for the special use permit that is held by the
1084 special use permittee.

1085 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
1086 special use permit held by a special use permittee refers to "special use permittee," a person
1087 involved in the purchase, use, store, sell, offer for sale, allow consumption, or manufacture of
1088 an alcoholic product for which the special use permit is issued is subject to the same
1089 requirement or prohibition.

1090 (3) (a) A special use permittee shall make and maintain a record, as required by
1091 commission rule, of any alcoholic product purchased, used, sold, or manufactured.

1092 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1093 accordance with this Subsection (3).

1094 (4) (a) Except as otherwise provided in this title, a special use permittee may not
1095 purchase liquor except from:

1096 (i) a state store [or];

1097 (ii) a package agency[-]; or

1098 (iii) in the case of heavy beer, a beer wholesaler licensee.

1099 (b) A special use permittee may transport liquor purchased by the special use permittee
1100 in accordance with this Subsection (4) from the place of purchase to the special use permittee's
1101 premises.

1102 (c) A special use permittee shall purchase liquor at prices set by the commission.

1103 (d) When authorized by a special use permit, a special use permittee may purchase and
1104 receive an alcoholic product directly from a manufacturer for a purpose that is industrial,
1105 educational, scientific, or manufacturing.

1106 (e) A health care facility may purchase and receive an alcoholic product directly from a
1107 manufacturer for use at the health care facility.

1108 (5) A special use permittee may not use, mix, store, sell, offer for sale, furnish,
1109 manufacture, or allow consumption of an alcoholic product in a location other than as
1110 designated in a special use permittee's application.

1111 (6) Except as otherwise provided, a special use permittee may not sell, offer for sale, or
1112 furnish an alcoholic product to:

1113 (a) a minor;

1114 (b) a person actually, apparently, or obviously intoxicated;

1115 (c) a known interdicted person; or

1116 (d) a known habitual drunkard.

1117 (7) A special use permittee may not employ a minor to handle an alcoholic product.

1118 (8) (a) The location specified in a special use permit may not be transferred from one

1119 location to another location, without prior written approval of the commission.

1120 (b) A special use permittee may not sell, transfer, assign, exchange, barter, give, or

1121 attempt in any way to dispose of the permit to another person whether for monetary gain or not.

1122 (9) A special use permittee may not purchase, use, mix, store, sell, offer for sale,

1123 furnish, consume, or manufacture an alcoholic product for a purpose other than that authorized

1124 by the special use permit.

1125 (10) The commission may prescribe by policy or rule consistent with this title, the

1126 general operational requirements of a special use permittee relating to:

1127 (a) physical facilities;

1128 (b) conditions of purchase, use, storage, sale, consumption, or manufacture of an

1129 alcoholic product;

1130 (c) purchase, storage, and sales quantity limitations; and

1131 (d) other matters considered appropriate by the commission.

1132 Section 11. Section **32B-10-304** is amended to read:

1133 **32B-10-304. Specific operational requirements for a public service permit.**

1134 (1) (a) In addition to complying with Section 32B-10-206, a public service permittee

1135 and staff of the public service permittee shall comply with this section.

1136 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action

1137 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

1138 (i) a public service permittee;

1139 (ii) individual staff of a public service permittee; or

1140 (iii) both a public service permittee and staff of the public service permittee.

1141 (2) (a) A public service permittee whose public conveyances operate on an interstate

1142 basis may do the following:

1143 (i) purchase an alcoholic product outside of the state;

1144 (ii) bring an alcoholic product purchased outside of the state into the state; and
1145 (iii) sell, offer for sale, and furnish an alcoholic product purchased outside of the state
1146 to a passenger traveling on the public service permittee's public conveyance for consumption
1147 while en route on the public conveyance.

1148 (b) A public service permittee whose public conveyance operates solely within the
1149 state, to sell, offer for sale, or furnish to a passenger traveling on the public service permittee's
1150 public conveyance for consumption while en route on the public conveyance, shall purchase:

1151 (i) liquor from:

1152 (A) a state store [ɔr];

1154 (C) in the case of heavy beer, a beer wholesaler licensee; and

1155 (ii) beer from a beer wholesaler licensee.

1156 (3) (a) A public service permittee may establish a hospitality room in which an
1157 alcoholic product may be stored, sold, offered for sale, furnished, and consumed, if:

1158 (i) the room is located within a depot, terminal, or similar facility adjacent to and
1159 servicing the public service permittee's airline, railroad, bus, boat, or other public conveyance;
1160 (ii) the room is completely enclosed and the interior is not visible to the public;
1161 (iii) the sale, offer for sale, or furnishing of an alcoholic product is made only to a
1162 person:

1163 (A) then in transit using the host company's airline, railroad, bus line, or other public
1164 conveyance; and

1165 (B) holding a valid boarding pass or similar travel document issued by the host
1166 company; and

1167 (iv) (A) liquor is purchased from:

1168 (I) a state store; [ər]

1169 (II) a package agency; [and] or

1171 (B) beer is purchased from a beer wholesaler licensee.

1172 (b) (i) A public service permittee operating a hospitality room shall display in a
1173 prominent place in the hospitality room, a sign in large letters that consists of text in the
1174 following order:

(A) a header that reads: "WARNING";
(B) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
(C) 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.";
(D) a header that reads: "WARNING"; and
(E) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
(ii) (A) The text described in Subsections (3)(b)(i)(A) through (C) shall be in a different font style than the text described in Subsections (3)(b)(i)(D) and (E).
(B) The warning statements in the sign described in Subsection (3)(b)(i) shall be in the same font size.
(iii) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
(c) A hospitality room shall be operated in accordance with this chapter and rules adopted by the commission.

Section 12. Section **32B-11-201** is amended to read:

32B-11-201. Commission's power to issue a manufacturing license -- Certificates of approval.

(1) (a) Except as provided in Section 32B-11-202, before a person may manufacture an alcoholic product in this state, the person shall obtain an alcoholic product manufacturing license issued by the commission in accordance with this part.
(b) A separate license is required for each place of storage, sale, and manufacture of an alcoholic product.
(c) A violation of this Subsection (1) is a class B misdemeanor.
(2) The commission may issue an alcoholic product manufacturing license to a manufacturer whose business is located in this state for the storage, sale, and manufacture of an alcoholic product for each type of manufacturing license provided by this chapter.
(3) The types of manufacturing licenses issued under this chapter are known as:
(a) a winery manufacturing license;
(b) a distillery manufacturing license; and

1206 (c) a brewery manufacturing license.

1207 (4) (a) A brewer located outside the state is not required to be licensed under this

1208 chapter.

1209 (b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from

1210 the department before selling or delivering:

1211 (i) beer to a beer wholesaler licensee in this state;

1212 (ii) a flavored malt beverage to:

1213 (A) the department; or

1214 (B) a military installation; ~~[or]~~

1215 (iii) heavy beer to:

1216 (A) a beer wholesaler licensee in this state;

1217 (B) the department; or

1218 (C) a military installation; or

1219 ~~[(iii)]~~ (iv) if a small brewer, beer to one of the following in the state:

1220 (A) a beer wholesaler licensee;

1221 (B) a beer retailer; or

1222 (C) an event permittee.

1223 (c) To obtain a certificate of approval, a brewer shall submit to the department:

1224 (i) a written application in a form prescribed by the department;

1225 (ii) a nonrefundable \$75 application fee;

1226 (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of

1227 approval is not issued;

1228 (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau

1229 of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt

1230 beverage; and

1231 (v) any other information the commission or department may require.

1232 (d) (i) One of the following shall sign and verify a written application under this

1233 Subsection (4) by oath or affirmation:

1234 (A) a partner if the brewer is a partnership; or

1235 (B) an executive officer, manager, or person specifically authorized by a corporation or

1236 limited liability company to sign the application.

(ii) A brewer filing an application shall attach to the application written evidence of the authority of the person described in Subsection (4)(d)(i) to sign the application.

(e) (i) A certificate of approval under this Subsection (4) expires on December 31 of each year.

(ii) A brewer desiring to renew its certificate of approval shall submit to the department by no later than November 30 of the year the certificate of approval expires

- (A) a completed renewal application in the form prescribed by the department; and
- (B) a renewal fee of \$250.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate of approval effective on the date the existing certificate of approval expires.

(5) (a) An importer or supplier of beer, heavy beer, or flavored malt beverages who is not required to be licensed under this title shall obtain a certificate of approval from the department before selling or delivering:

(i) beer to a beer wholesaler licensee in this state; [or]

(ii) heavy beer or a flavored malt beverage to:

(A) the department; or

(B) a military installation[:]; or

(iii) heavy beer to a beer wholesaler licensee in this state.

(b) To obtain a certificate of approval, an importer or supplier described in Subsection (5)(a) shall submit to the department:

(i) a written application in a form prescribed by the department;

(ii) a nonrefundable \$75 application fee;

(iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of approval is not issued;

(iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt beverage; and

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

(c) (i) One of the following shall sign and verify a written application under this Subsection (5) by oath or affirmation:

(A) a partner if the importer or supplier is a partnership; or

1268 (B) an executive officer, manager, or person specifically authorized by a corporation or
1269 limited liability company to sign the application.

1270 (ii) An importer or supplier filing an application under this Subsection (5) shall attach
1271 to the application written evidence of the authority of the person described in Subsection
1272 (5)(c)(i) to sign the application.

1273 (d) (i) A certificate of approval under this Subsection (5) expires on December 31 of
1274 each year.

1275 (ii) An importer or supplier desiring to renew its certificate of approval shall submit to
1276 the department by no later than November 30 of the year the certificate of approval expires:

1277 (A) a completed renewal application in the form prescribed by the department; and
1278 (B) a renewal fee of \$250.

1279 (iii) Failure to meet the renewal requirements results in an automatic forfeiture of the
1280 certificate of approval effective on the date the existing certificate of approval expires.

1281 (6) (a) Subject to Subsection (7), a brewer, importer, or supplier required to hold a
1282 certificate of approval under this section may not distribute beer or heavy beer in this state
1283 except under a written agreement with a beer wholesaler licensee in this state or, for purposes
1284 of heavy beer, to the department or a military installation.

1285 (b) An agreement described in Subsection (6)(a) shall:

1286 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
1287 persons entering into the agreement;

1288 (ii) designate the one or more brands that may be distributed in the sales territory; and
1289 (iii) set forth the exact geographical area of the sales territory.

1290 (c) A brewer, importer of beer or heavy beer, or supplier of beer or heavy beer may
1291 have more than one agreement described in this Subsection (6) if each brand of the brewer,
1292 importer, or supplier distributed in the state is covered by one exclusive sales territory.

1293 (d) A brewer, importer of beer or heavy beer, or supplier of beer or heavy beer may not
1294 enter into an agreement with more than one beer wholesaler licensee to distribute the same
1295 brand of beer or heavy beer in the same sales territory or any portion of the sales territory.

1296 (7) A small brewer is not subject to the requirements of Subsection (6).

1297 Section 13. Section **32B-11-208** is amended to read:

1298 **32B-11-208. General operational requirements for manufacturing license.**

1299 (1) (a) A manufacturing licensee and staff of the manufacturing licensee shall comply
1300 with this title and the rules of the commission, including the relevant part of this chapter
1301 applicable to the type of manufacturing license held by the manufacturing licensee.

1302 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1303 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- 1304 (i) a manufacturing licensee;
- 1305 (ii) individual staff of a manufacturing licensee; or
- 1306 (iii) a manufacturing licensee and staff of the manufacturing licensee.

1307 (2) A manufacturing licensee shall prominently display the manufacturing license on
1308 the licensed premises.

1309 (3) (a) A manufacturing licensee shall make and maintain the records required by the
1310 department.

1311 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1312 accordance with this Subsection (3).

1313 (4) A manufacturing licensee may not sell liquor within the state except to:

- 1314 (a) the department; ~~or~~
- 1315 (b) a military installation~~;~~; or
- 1316 (c) in the case of heavy beer, a beer wholesaler licensee.

1317 (5) A manufacturing license may not be transferred from one location to another
1318 location, without prior written approval of the commission.

1319 (6) (a) A manufacturing licensee may not sell, transfer, assign, exchange, barter, give,
1320 or attempt in any way to dispose of the license to another person, whether for monetary gain or
1321 not.

1322 (b) A manufacturing license has no monetary value for any type of disposition.

1323 (7) A manufacturing licensee may not advertise its product in violation of this title or
1324 any other federal or state law, except that nothing in this title prohibits the advertising or
1325 solicitation of an order for industrial alcohol from a holder of a special use permit.

1326 (8) A manufacturing licensee shall from time to time, on request of the department,
1327 furnish for analytical purposes a sample of the alcoholic product that the manufacturing
1328 licensee has:

1329 (a) for sale; or

1330 (b) in the course of manufacture for sale in this state.

1331 (9) The commission may prescribe by policy or rule, consistent with this title, the

1332 general operational requirements of a manufacturing licensee relating to:

1333 (a) physical facilities;

1334 (b) conditions of storage, sale, or manufacture of an alcoholic product;

1335 (c) storage and sales quantity limitations; and

1336 (d) other matters considered appropriate by the commission.

1337 Section 14. Section **32B-11-503** is amended to read:

1338 **32B-11-503. Specific authority and operational requirements for brewery**

1339 **manufacturing license.**

1340 (1) A brewery manufacturing license allows a brewery manufacturing licensee to:

1341 (a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt

1342 beverages;

1343 (b) sell heavy beer and a flavored malt beverage to:

1344 (i) the department;

1345 (ii) a military installation; or

1346 (iii) an out-of-state customer;

1347 (c) sell heavy beer to a beer wholesaler licensee;

1348 [~~(e)~~] (d) sell beer to a beer wholesaler licensee;

1349 [~~(d)~~] (e) in the case of a small brewer, in accordance with Subsection (5), sell beer

1350 manufactured by the small brewer to:

1351 (i) a retail licensee;

1352 (ii) an off-premise beer retailer; or

1353 (iii) an event permittee; and

1354 [~~(e)~~] (f) warehouse on its premises an alcoholic product that the brewery manufacturing

1355 licensee manufactures or purchases for manufacturing purposes.

1356 (2) A brewery manufacturing licensee may not sell the following to a person within the

1357 state except the department or a military installation:

1358 (a) heavy beer, except heavy beer sold to a beer wholesaler licensee; or

1359 (b) a flavored malt beverage.

1360 (3) If considered necessary, the commission or department may require:

(a) the alteration of the plant, equipment, or licensed premises;

(b) the alteration or removal of any unsuitable alcoholic product-making equipment or material;

(c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

(d) that a record pertaining to the materials and ingredients used in the manufacture of an alcoholic product be available to the commission or department upon request.

(4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored malt beverage to be consumed on the licensed premises, except under the circumstances described in this Subsection (4).

(a) A brewery manufacturing licensee may allow its off-duty staff to consume beer, heavy beer, or a flavored malt beverage on its premises without charge.

(b) A brewery manufacturing licensee may allow a person who can lawfully purchase the following for wholesale or retail distribution to consume a bona fide sample of the brewery manufacturing licensee's product on the licensed premises:

(i) beer;

(ii) heavy beer; or

(iii) a flavored malt beverage.

(c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail facility allowing consumption on premises of beer in a bottle or on draft if food is also available.

(ii) A retail facility located on the licensed premises of a brewery manufacturing licensee shall be operated or supervised by the brewery manufacturing licensee.

(iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer Local Authority.

(5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility located in this state for the storage of beer to be sold to a person described in Subsection (1)(~~d~~)(e) if the small brewer:

(i) (A) (I) is located in this state; and

(II) holds a brewery manufacturing license; or

1392 (B) (I) is located outside this state; and
1393 (II) holds a certificate of approval to sell beer in this state; and
1394 (ii) sells beer manufactured by the small brewer directly to a person described in
1395 Subsection (1)(d)(e).
1396 (b) A small brewer may not sell beer to a person described in Subsection (1)(d)(e)
1397 unless the beer:
1398 (i) is manufactured by the small brewer; and
1399 (ii) is first placed in the small brewer's warehouse facility in this state.
1400 (c) (i) A small brewer warehouse shall make and maintain complete beer importation,
1401 inventory, tax, distribution, sales records, and other records as the department and State Tax
1402 Commission may require.
1403 (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:
1404 (A) the department; and
1405 (B) the State Tax Commission.
1406 (iii) Section 32B-1-205 applies to a record required to be made or maintained in
1407 accordance with this Subsection (5), except that the provision is considered to include an action
1408 described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission,
1409 or an official or employee of the State Tax Commission.
1410 (6) Subject to Subsection (7):
1411 (a) A brewery manufacturing licensee may not sell beer or heavy beer in this state
1412 except under a written agreement with a beer wholesaler licensee in this state or, for purposes
1413 of heavy beer, to the department or a military installation.
1414 (b) An agreement described in Subsection (6)(a) shall:
1415 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
1416 persons entering into the agreement;
1417 (ii) designate the one or more brands that may be distributed in the sales territory; and
1418 (iii) set forth the exact geographical area of the sales territory.
1419 (c) A brewery manufacturing licensee may have more than one agreement described in
1420 this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one
1421 exclusive sales territory.
1422 (d) A brewery manufacturing licensee may not enter into an agreement with more than

1423 one beer wholesaler licensee to distribute the same brand of beer or heavy beer in the same
1424 sales territory or any portion of the sales territory.

1425 (7) A small brewer is not subject to the requirements of Subsection (6).

1426 Section 15. Section **32B-11-608** is amended to read:

1427 **32B-11-608. Operational requirements for local industry representative license.**

1428 (1) (a) A local industry representative licensee, staff of the local industry representative
1429 licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the
1430 state, shall comply with this title and rules of the commission.

1431 (b) If a person knowingly violates Subsection (1)(a):

1432 (i) the violation may result in disciplinary action in accordance with Chapter 3,

1433 Disciplinary Actions and Enforcement Act, against:

1434 (A) a local industry representative licensee;

1435 (B) individual staff of a local industry representative licensee; or

1436 (C) both a local industry representative licensee and staff of the local industry
1437 representative licensee; and

1438 (ii) if the conditions of Subsection (1)(c) are met, the commission may order:

1439 (A) the removal of the manufacturer's, supplier's, or importer's products from the
1440 department's sales list; and

1441 (B) a suspension of the department's purchase of those products for a period
1442 determined by the commission.

1443 (c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

1444 (i) directly commits the violation; or

1445 (ii) solicits, requests, commands, encourages, or intentionally aides another to engage
1446 in the violation.

1447 (2) A local industry representative licensee shall display its license in the local industry
1448 representative licensee's principal place of business.

1449 (3) (a) A local industry representative licensee shall maintain on file with the
1450 department a current accounts list of the names and addresses of the manufacturers, suppliers,
1451 and importers the local industry representative licensee represents.

1452 (b) A local industry representative licensee shall notify the department in writing of a
1453 change to its accounts list within 14 days from the date the local industry representative

1454 licensee:

1455 (i) acquires the account of a manufacturer, supplier, or importer; or

1456 (ii) loses the account of a manufacturer, supplier, or importer.

1457 (4) (a) A local industry representative licensee shall make and maintain the records the

1458 department requires for at least three years.

1459 (b) Section 32B-1-205 applies to a record required to be made or maintained in

1460 accordance with this Subsection (4).

1461 (5) Staff of a local industry representative licensee may not be:

1462 (a) a retail licensee that sells, offers for sale, or furnishes liquor;

1463 (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or

1464 (c) a minor.

1465 (6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter,

1466 give, or attempt in any way to dispose of the license to another person, whether for monetary

1467 gain or not.

1468 (b) A local industry representative license has no monetary value for any type of

1469 disposition.

1470 (7) A local industry representative licensee, staff of the local industry representative

1471 licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the

1472 state:

1473 (a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act,

1474 may:

1475 (i) assist the department in:

1476 (A) ordering, shipping, and delivering merchandise;

1477 (B) providing new product notification;

1478 (C) obtaining listing and delisting information;

1479 (D) receiving price quotations;

1480 (E) providing product sales analysis;

1481 (F) conducting shelf management; and

1482 (G) conducting educational seminars; and

1483 (ii) to acquire new listings:

1484 (A) solicit orders from the department; and

(B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;

(b) may not sell liquor within the state except to:

(i) the department; ~~and~~

(ii) a military installation; and

(iii) a beer wholesaler licensee, in the case of heavy beer;

(c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;

(d) may not sell or furnish any liquor to any person within this state other than to:

(i) the department; ~~or~~

(ii) a military installation; or

(iii) a beer wholesaler licensee, in the case of heavy beer;

(e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;

(f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and

(g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.

(8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).

(a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) An industry representative sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

1516 (c) An industry representative sample may only be of a product not presently listed on
1517 the department's sales list.

1518 (d) (i) An industry representative sample shall be shipped:

1519 (A) prepaid by the manufacturer, supplier, or importer;

1520 (B) by common carrier and not via United States mail; and

1521 (C) directly to the department's central administrative warehouse office.

1522 (ii) An industry representative sample may not be shipped to any other location within
1523 the state.

1524 (e) An industry representative sample shall be accompanied by a letter from the
1525 manufacturer, supplier, or importer:

1526 (i) clearly identifying the product as an "industry representative sample"; and

1527 (ii) clearly stating:

1528 (A) the FOB case price of the product; and

1529 (B) the name of the local industry representative for whom it is intended.

1530 (f) The department shall assess a reasonable handling, labeling, and storage fee for
1531 each industry representative sample received.

1532 (g) The department shall affix to a container a label clearly identifying the product as
1533 an "industry representative sample."

1534 (h) The department shall:

1535 (i) account for and record each industry representative sample received;

1536 (ii) account for the industry representative sample's disposition; and

1537 (iii) maintain a record of the industry representative sample and its disposition for a
1538 two-year period.

1539 (i) An industry representative sample may not leave the premises of the department's
1540 central administrative warehouse office.

1541 (j) A local industry representative licensee's and a local industry representative
1542 licensee's staff may, at regularly scheduled days and times established by the department, taste
1543 and analyze one or more industry representative samples on the premises of the department's
1544 central administrative warehouse office.

1545 (k) The department shall destroy the unused contents of an opened product remaining
1546 after a product is sampled under controlled and audited conditions established by the

1547 department.

1548 (l) An industry representative sample that is not tasted within 30 days of receipt by the
1549 department shall be disposed of at the discretion of the department in one of the following
1550 ways:

1551 (i) the contents destroyed under controlled and audited conditions established by the
1552 department; or

1553 (ii) added to the inventory of the department for sale to the public.

1554 Section 16. Section **32B-12-201** is amended to read:

1555 **32B-12-201. Commission's power to issue liquor warehousing license.**

1556 (1) (a) [Before] Except as provided in Chapter 13, Beer Wholesaling License Act,
1557 before a person may warehouse, distribute, or transport liquor for resale to a wholesale or retail
1558 customer, the person shall first obtain a liquor warehousing license issued by the commission
1559 in accordance with this chapter.

1560 (b) A separate liquor warehousing license is required for each warehousing facility.

1561 (c) A violation of this Subsection (1) is a class B misdemeanor.

1562 (2) The commission may issue a liquor warehousing license in accordance with this
1563 chapter for the warehousing, distribution, and transportation of liquor.

1564 Section 17. Section **32B-13-201** is amended to read:

1565 **32B-13-201. Commission's power to issue beer wholesaling license.**

1566 (1) (a) Before a person may purchase, store, sell, offer for sale, distribute, or import
1567 beer or heavy beer to a person who sells at retail or acts in any way as a beer wholesaler, the
1568 person shall first obtain a beer wholesaling license issued by the commission in accordance
1569 with this chapter.

1570 (b) A violation of Subsection (1)(a) is a class A misdemeanor.

1571 (2) (a) The commission may issue a beer wholesaling license for the purchase, storage,
1572 sale, distribution, transportation, and import of beer or heavy beer.

1573 (b) A beer wholesaling license entitles the beer wholesaler licensee to:

1574 (i) purchase and import beer into the state;

1575 (ii) store beer in an approved warehouse; [and]

1576 (iii) sell and distribute beer directly to:

1577 (A) a beer retailer; or

1578 (B) an event permittee[.]; and
1579 (iv) (A) purchase and import heavy beer into the state;
1580 (B) store heavy beer in an approved warehouse; and
1581 (C) sell and distribute heavy beer directly to a retail licensee authorized to sell, offer
1582 for sale, or furnish heavy beer, a single event permittee, the department, a military installation,
1583 or a public service permittee.

1584 (3) Nothing in this section precludes a small brewer from selling beer the small brewer
1585 manufactures directly to:

- 1586 (a) a retail licensee;
- 1587 (b) an off-premise beer retailer; or
- 1588 (c) an event permittee.

1589 Section 18. Section **32B-13-202** is amended to read:

1590 **32B-13-202. Application requirements for beer wholesaling license.**

1591 To obtain a beer wholesaling license, a person shall submit to the department:

- 1592 (1) a written application in a form prescribed by the department;
- 1593 (2) a nonrefundable \$300 application fee;
- 1594 (3) an initial license fee of \$2,300 that is refundable if a beer wholesaling license is not
1595 issued;

- 1596 (4) written consent of the local authority;
- 1597 (5) a copy of the person's current business license;
- 1598 (6) a bond as specified in Section 32B-13-206;
- 1599 (7) (a) a statement of the brands of beer the person is authorized to sell and distribute;
- 1600 (b) a statement of the brands of heavy beer the person is authorized to sell and
1601 distribute;

1602 (8) (a) a statement of the one or more sales territories in which the person is authorized
1603 to sell and distribute beer under an agreement required by Section 32B-11-201 or 32B-11-503;
1604 and

1605 (b) a statement of the one or more sales territories in which the person is authorized to
1606 sell and distribute heavy beer under an agreement required by Section 32B-11-201 or
1607 32B-11-503;

1608 (9) evidence that the person is carrying public liability insurance in an amount and

1609 form satisfactory to the department;

1610 (10) a signed consent form stating that the beer wholesaling licensee will permit any
1611 authorized representative of the commission, department, or any law enforcement officer to
1612 have unrestricted right to enter the licensed premises;

1613 (11) if the person is an entity, proper verification evidencing that a person who signs
1614 the application is authorized to sign on behalf of the entity; and

1615 (12) any other information that the commission or department may require.

1616 Section 19. Section **32B-13-301** is amended to read:

32B-13-301. General operational requirements for beer wholesaling license.

1618 (1) (a) A beer wholesaler licensee and staff of the beer wholesaler licensee shall
1619 comply with this title and the rules of the commission.

1620 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1621 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

1622 (i) a beer wholesaler licensee;
1623 (ii) individual staff of a beer wholesaler licensee; or
1624 (iii) both a beer wholesaler licensee and staff of the beer wholesaler licensee.

1625 (2) (a) A beer wholesaler licensee shall make and maintain the records required by the
1626 department.

1627 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1628 accordance with this Subsection (2).

1629 (3) A beer wholesaler licensee may not employ a minor to handle an alcoholic product.
1630 (4) A beer wholesaler licensee may not sell, transfer, assign, exchange, barter, give, or
1631 attempt in any way to dispose of the beer wholesaling license to a person, whether for monetary
1632 gain or not, unless it is done:

1633 (a) in accordance with the commission rules; and
1634 (b) after written consent is given by the commission.

1635 (5) A beer wholesaler licensee may not wholesale a beer or heavy beer manufactured
1636 within the state by a brewer who is not licensed by the commission as a brewery manufacturing
1637 licensee.

1638 (6) A beer wholesaler licensee may not wholesale a beer or heavy beer manufactured
1639 out of state by a brewer who has not obtained a certificate of approval from the department.

1640 (7) (a) A beer wholesaler licensee may not sell or distribute beer to a person within the
1641 state except to:

1642 (i) a retail licensee;

1643 (ii) an off-premise beer retailer; or

1644 (iii) an event permittee.

1645 (b) A beer wholesaler licensee may not sell or distribute heavy beer to a person within
1646 the state except to:

1647 (i) a retail licensee authorized to sell, offer for sale, or furnish heavy beer;

1648 (ii) a single event permittee;

1649 (iii) the department;

1650 (iv) a military installation; or

1651 (v) a public service permittee.

1652 [+] (c) A violation of this Subsection (7) is a class A misdemeanor.

1653 (8) (a) A beer wholesaler licensee may not sell or distribute a beer or heavy beer to a
1654 person who sells the beer or heavy beer at retail outside of a sales territory designated on its
1655 application and authorized by an agreement described in Subsection 32B-13-202(8), except
1656 that if a beer wholesaler licensee is temporarily unable to supply a person within the beer
1657 wholesaler licensee's authorized sales territory, the department may grant temporary authority
1658 to another beer wholesaler licensee who distributes the same brand in another sales territory to
1659 supply:

1660 (i) a retail licensee; or

1661 (ii) an off-premise beer retailer.

1662 (b) A violation of this Subsection (8) is a class B misdemeanor.

1663 (9) (a) A beer wholesaler licensee shall own, lease, or otherwise control and maintain a
1664 warehouse facility located in this state for the receipt, storage, and further distribution of beer
1665 or heavy beer sold by the beer wholesaler licensee to a person within the state.

1666 (b) A beer wholesaler licensee may not sell beer or heavy beer to a person in this state,
1667 other than the department, unless the beer or heavy beer is first:

1668 (i) physically removed from the vehicle used to transport the beer or heavy beer from
1669 the supplier to the beer wholesaler licensee; and

1670 (ii) delivered into the actual possession and control of the beer wholesaler licensee in

1671 its warehouse or other facility.

1672 (10) A beer wholesaler licensee may not sell or distribute an alcoholic product that has
1673 not had its label and packaging approved by the department in accordance with Chapter 1, Part
1674 6, Malted Beverage Act.

1675 (11) The commission may prescribe by policy or rule, consistent with this title, the
1676 general operational requirements of a beer [wholesaling] wholesaler licensee relating to:

1677 (a) physical facilities; and

1678 (b) the conditions of importation, purchase, storage, sale, offering for sale, distribution,
1679 or transportation of beer or heavy beer within the state.

1680 (12) A beer wholesaler licensee may sell or distribute only heavy beer approved by the
1681 department in accordance with Section 32B-2-204.

1682 Section 20. Section **32B-14-101** is amended to read:

1683 **32B-14-101. Title -- Legislative intent.**

1684 (1) This chapter is known as the "Utah Beer Industry Distribution Act."

1685 (2) (a) It is the policy of the Legislature to regulate and control the importation, sale,
1686 and distribution of beer and heavy beer within the state in the exercise of its powers under the
1687 Twenty-first Amendment to the Constitution of the United States and pursuant to the Utah
1688 Constitution.

1689 (b) In furtherance of the policy described in Subsection (2)(a), this chapter is enacted
1690 to:

1691 (i) promote good faith and fair dealing in the business relationships between suppliers,
1692 wholesalers, and retailers of beer and heavy beer; and

1693 (ii) provide for the establishment and maintenance of an orderly system for the
1694 distribution of beer or heavy beer in accordance with the laws of the state regulating the sale
1695 and distribution of beer or heavy beer to the public.

1696 Section 21. Section **32B-14-102** is amended to read:

1697 **32B-14-102. Definitions.**

1698 As used in this chapter:

1699 (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship
1700 agreement that a terminating party seeks to terminate or not renew.

1701 (2) (a) "Distributorship agreement" means a written agreement between a supplier and

1702 a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in
1703 a designated geographical area any brand of beer or heavy beer manufactured, imported, or
1704 distributed by the supplier.

1705 (b) For purposes of this chapter, a separate agreement between a supplier and a
1706 wholesaler is considered to be part of a distributorship agreement if it relates to:

1707 (i) the relationship between the supplier and the wholesaler; or

1708 (ii) the duties of either the supplier or the wholesaler under a distributorship agreement.

1709 (3) "Good cause" means the material failure by a supplier or a wholesaler to comply
1710 with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if
1711 the failure occurs after the supplier or wholesaler acting in good faith provides notice of
1712 deficiency and an opportunity to correct in accordance with Part 2, Termination.

1713 (4) "Good faith" is as defined in Subsection 70A-1a-201(2)(t).

1714 (5) "Retailer" means a beer retailer or, for purposes of heavy beer, a retail licensee
1715 authorized to sell, offer for sale, or furnish heavy beer.

1716 (6) "Sales territory" means the geographic area of distribution and sale responsibility
1717 designated by a distributorship agreement.

1718 (7) "Supplier," notwithstanding Section 32B-1-102, means a brewer or other person
1719 who sells beer or heavy beer to a wholesaler for resale in this state.

1720 (8) "Terminating party" means a supplier or wholesaler who:

1721 (a) is a party to a distributorship agreement; and

1722 (b) seeks to terminate or not renew the distributorship agreement.

1723 Section 22. Section **32B-14-201** is amended to read:

32B-14-201. Termination of distributorship agreements.

1725 (1) Except as provided in Subsection (2) or (3), a supplier or wholesaler may not:

1726 (a) terminate a distributorship agreement; or

1727 (b) fail to renew a distributorship agreement.

1728 (2) A supplier or wholesaler may take an action prohibited by Subsection (1) if:

1729 (a) the supplier or wholesaler has good cause for the action; and

1730 (b) if notification is required by Section 32B-14-202:

1731 (i) the terminating party provides the affected party prior notification in accordance

1732 with Section 32B-14-202; and

1733 (ii) the affected party has not eliminated the reasons specified in the notification as the
1734 reasons for the action within 90 days after the date the notification is mailed in accordance with
1735 Section 32B-14-202.

1736 (3) A supplier may take an action prohibited by Subsection (1) if:

1737 (a) the supplier gives the wholesaler 30 days written notice before termination or
1738 nonrenewal;

1739 (b) the supplier discontinues production or discontinues distribution throughout the
1740 state of all brands of beer or heavy beer sold by the supplier to the wholesaler; and

1741 (c) the termination or nonrenewal does not violate the distributorship agreement.

1742 Section 23. Section 32B-14-302 is amended to read:

1743 32B-14-302. Prohibited

1744 (1) A supplier may not:

1745 (a) induce or coerce, or attempt to induce or coerce, a wholesaler to engage in an illegal
1746 act or course of conduct;

1747 (b) impose a requirement that is discriminatory by its terms or in the methods of
1748 enforcement as compared to requirements imposed by the supplier on similarly situated
1749 wholesalers;

1750 (c) prohibit a wholesaler from selling a product of another supplier;

1751 (d) fix or maintain the price at which a wholesaler may resell beer or heavy beer;

1752 (e) fail to execute with each wholesaler of its brands a written distributorship
1753 agreement;

1754 (f) require a wholesaler to accept delivery of beer, heavy beer, or any other item that is
1755 not voluntarily ordered by the wholesaler;

1756 (g) restrict or inhibit, directly or indirectly, the right of a wholesaler to participate in an
1757 organization representing interests of wholesalers for a lawful purpose;

1758 (h) require a wholesaler to participate in or contribute to a local, regional, or national
1759 advertising fund or other promotional activity that:

1760 (i) is not used for an advertising or promotional activity in the wholesaler's sales
1761 territory; or

1762 (ii) would require a contribution by the wholesaler in excess of the amounts specified
1763 in the distributorship agreement;

1764 (i) retaliate against a wholesaler that files a complaint with the department or the
1765 applicable federal agency regarding an alleged violation by the supplier of a state or federal
1766 statute or administrative rule;

1767 (j) require without good cause a change in the manager of a wholesaler who has
1768 previously been approved by the supplier;

1769 (k) if a wholesaler changes its approved manager, prohibit the change unless the new
1770 manager fails to meet the reasonable standards for similarly situated wholesalers of the supplier
1771 as stated in the distributorship agreement; or

1772 (l) refuse to deliver a beer product or heavy beer product covered by a distributorship
1773 agreement to the wholesaler:

1774 (i) in a reasonable quantity; and

1775 (ii) within a reasonable time after receipt of the wholesaler's order.

(2) Notwithstanding Subsection (1)(l), the supplier may refuse to deliver a beer product or heavy beer product if the refusal is due to:

1778 (a) the wholesaler's failure to pay the supplier pursuant to the distributorship
1779 agreement;

1780 (b) an unforeseeable event beyond the supplier's control

1781 (c) a work stoppage or delay due to a strike or labor problem;

1782 (d) a bona fide shortage of materials; or

1783 (e) a freight embargo.

1784 Section 24. Section **32B-14-303** is amended to read:

32B-14-303. Prohibited conduct of wholesaler.

1786 (1) A wholesaler may not:

1787 (a) induce or coerce, or attempt to induce or coerce, a retailer to engage in an illegal act
1788 or course of conduct;

(b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;

1792 (c) prohibit a retailer from selling a product of another wholesaler;

1793 (d) fix or maintain the price at which a retailer may resell beer or heavy beer;

1794 (e) require a retailer to accept delivery of beer, heavy beer, or any other item that is not

1795 voluntarily ordered by the retailer;

1796 (f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an
1797 organization representing interests of retailers for a lawful purpose;

1798 (g) require a retailer to participate in or contribute to a local, regional, or national
1799 advertising fund or other promotional activity;

1800 (h) retaliate against a retailer that files a complaint with the department or the
1801 applicable federal agency regarding an alleged violation by the wholesaler of a state or federal
1802 statute or administrative rule; and

1803 (i) refuse to deliver a beer product or heavy beer product carried by the wholesaler to a
1804 properly licensed retailer who resides within the wholesaler's sales territory:

1805 (i) in a reasonable quantity; and

1806 (ii) within a reasonable time after receipt of the retailer's order.

1807 (2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver a beer
1808 product or heavy beer product if the refusal is due to:

1809 (a) the retailer's failure to pay the wholesaler pursuant to Subsection 32B-4-704(6);

1810 (b) an unforeseeable event beyond the wholesaler's control;

1811 (c) a work stoppage or delay due to a strike or labor problem;

1812 (d) a bona fide shortage of materials; or

1813 (e) a freight embargo.

1813a **→ Section 29. Effective date.**

1813b **This bill takes effect on July 1, 2013. ←**

Legislative Review Note
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