

ALCOHOL MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies provisions related to alcohol regulation.

Highlighted Provisions:

This bill:

- defines terms;
- reduces the permissible proximity of a restaurant licensee to a community location;
- repeals the Alcoholic Beverage Control Commission's authority to grant a variance to a proximity requirement;
- addresses the effect of a previously approved variance to a proximity requirement;
- provides that a licensee may continue to operate, regardless of whether a person establishes a community location closer to the licensee than is otherwise permissible; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

32B-1-202, as last amended by Laws of Utah 2016, Chapter 176

32B-6-203, as last amended by Laws of Utah 2016, Chapter 82

32B-6-303, as last amended by Laws of Utah 2016, Chapter 82

32B-6-903, as enacted by Laws of Utah 2011, Chapter 334

32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82

Utah Code Sections Affected by Coordination Clause:

32B-1-202, as last amended by Laws of Utah 2016, Chapter 176

32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82

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

Section 1. Section 32B-1-202 is amended to read:

32B-1-202. Proximity to community location.

(1) ~~[For purposes of]~~ As used in this section~~[-,"outlet" means]:~~

(a) (i) "Outlet" means:

~~[(a)]~~ (A) a state store;

~~[(b)]~~ (B) a package agency; or

~~[(c)]~~ (C) a retail licensee~~[-except an airport lounge licensee].~~

(ii) "Outlet" does not include:

(A) an airport lounge licensee; or

(B) a restaurant.

(b) "Restaurant" means:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee; or

(iii) a beer-only restaurant licensee.

~~[(2) Except as otherwise provided in this section, the premises of an outlet may not be located:]~~

(2) (a) The commission may not issue a license for an outlet if, on the date the commission takes final action to approve or deny the application, there is a community location:

[(a)] (i) within 600 feet of [a community location] the proposed outlet, as measured from the nearest entrance of the proposed outlet by following the shortest route of ordinary

pedestrian travel to the property boundary of the community location; or

~~[(b)]~~ (ii) within 200 feet of ~~[a community location]~~ the proposed outlet, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the community location.

(b) The commission may not issue a license for a restaurant if, on the date the commission takes final action to approve or deny the application, there is a community location:

(i) within 300 feet of the proposed restaurant, as measured from the nearest entrance of the proposed restaurant by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(ii) within 200 feet of the proposed restaurant, measured in a straight line from the nearest entrance of the proposed restaurant to the nearest property boundary of the community location.

~~[(3) With respect to the location of an outlet, the commission may authorize a variance to reduce the proximity requirement of Subsection (2) if:]~~

~~[(a) when the variance reduces the proximity requirement of Subsection (2)(b), the community location at issue is:]~~

~~[(i) a public library; or]~~

~~[(ii) a public park;]~~

~~[(b) except with respect to a state store, the local authority gives its written consent to the variance;]~~

~~[(c) the commission finds that alternative locations for locating that type of outlet in the community are limited;]~~

~~[(d) a public hearing is held in the city, town, metro township, or county, and when practical in the neighborhood concerned;]~~

~~[(e) after giving full consideration to the attending circumstances and the policies stated in Subsections [32B-1-103](#)(3) and (4), the commission determines that locating the outlet in that location would not be detrimental to the public health, peace, safety, and welfare of the~~

community;]

~~[(f) (i) the community location governing authority gives its written consent to the variance; or]~~

~~[(ii) if the community location governing authority does not give its written consent to a variance, the commission finds the following for a state store, or if the outlet is a package agency or retail licensee, the commission finds that the applicant establishes the following:]~~

~~[(A) there is substantial unmet public demand to consume an alcoholic product:]~~

~~[(f) within the geographic boundary of the local authority in which the outlet is to be located; and]~~

~~[(H) for an outlet that is a retail licensee, in a public setting;]~~

~~[(B) there is no reasonably viable alternative for satisfying the substantial unmet demand other than through locating that type of outlet in that location; and]~~

~~[(C) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the outlet is to be located for locating that type of outlet to satisfy the unmet demand:]~~

~~[(4) With respect to the premises of a package agency or retail licensee that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (2) in considering whether to issue the package agency or same type of retail license to the new owner of the premises if:]~~

~~[(a) the premises previously received a variance reducing the proximity requirement of Subsection (2)(a);]~~

~~[(b) the premises received a variance reducing the proximity requirement of Subsection (2)(b) on or before May 4, 2008; or]~~

~~[(c) a variance from proximity requirements was otherwise allowed under this title:]~~

(3) For an outlet or a restaurant that holds a license on May 9, 2017, and operates under a previously approved variance to one or more proximity requirements in effect before May 9, 2017, subject to the other provisions of this title, that outlet or restaurant, or another outlet or restaurant with the same type of license as that outlet or restaurant, may operate under the

previously approved variance regardless of whether:

(a) the outlet or restaurant changes ownership;

(b) the property on which the outlet or restaurant is located changes ownership; or

(c) there is a lapse in the use of the property as an outlet or a restaurant with the same type of license, unless during the lapse, the property is used for a different purpose.

(4) (a) If, after an outlet or a restaurant obtains a license under this title, a person establishes a community location on a property that puts the outlet or restaurant in violation of the proximity requirements in effect at the time the license is issued or a previously approved variance described in Subsection (3), subject to the other provisions of this title, that outlet or restaurant, or an outlet or a restaurant with the same type of license as that outlet or restaurant, may operate at the premises regardless of whether:

(i) the outlet or restaurant changes ownership;

(ii) the property on which the outlet or restaurant is located changes ownership; or

(iii) there is a lapse in the use of the property as an outlet or a restaurant with the same type of license, unless during the lapse the property is used for a different purpose.

(b) The provisions of this Subsection (4) apply regardless of when the outlet's or restaurant's license is issued.

(5) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet.

Section 2. Section **32B-6-203** is amended to read:

32B-6-203. Commission's power to issue full-service restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a full-service restaurant license from the commission in accordance with this part.

(2) The commission may issue a full-service restaurant license to establish full-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises

operated as a full-service restaurant.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of full-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 4,467.

(b) The commission may issue a seasonal full-service restaurant license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than one full-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as many as three full-service restaurant locations within the hotel under one full-service restaurant license if:

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

(B) the locations under the full-service restaurant license are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the full-service restaurant licensee.

(ii) A facility other than a hotel shall have a separate full-service restaurant license for each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

(4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section 32B-1-202, the commission may not issue a full-service restaurant license for premises that do not meet the proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

~~[(b) With respect to the premises of a full-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a full-service restaurant license to the new owner of the premises if:]~~

~~[(i) when a full-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);]~~

~~[(ii) the premises has had a full-service restaurant license at all times since the~~

~~full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance;
and]~~

~~[(iii) the community location was located within the proximity requirements of
Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in
Subsection (4)(b)(i) was issued.]~~

Section 3. Section **32B-6-303** is amended to read:

32B-6-303. Commission's power to issue limited-service restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first obtain a limited-service restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a limited-service restaurant license to establish limited-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or beer on premises operated as a limited-service restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of the following on the licensed premises of a limited-service restaurant licensee:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of limited-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 6,817.

(b) The commission may issue a seasonal limited-service restaurant license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than one limited-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale of wine, heavy beer, and beer at as many as three limited-service restaurant locations within the hotel under one limited-service restaurant license

198 if:

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

200 (B) the locations under the limited-service restaurant license are:

201 (I) within the same hotel; and

202 (II) on premises that are managed or operated, and owned or leased, by the
203 limited-service restaurant licensee.

204 (ii) A facility other than a hotel shall have a separate limited-service restaurant license
205 for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or
206 furnished.

207 (4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section 32B-1-202, the
208 commission may not issue a limited-service restaurant license for premises that do not meet the
209 proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

210 ~~[(b) With respect to the premises of a limited-service restaurant license issued by the~~
211 ~~commission that undergoes a change of ownership, the commission shall waive or vary the~~
212 ~~proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a~~
213 ~~limited-service restaurant license to the new owner of the premises if:]~~

214 ~~[(i) when a limited-service restaurant license was issued to a previous owner, the~~
215 ~~premises met the proximity requirements of Subsection 32B-1-202(2);]~~

216 ~~[(ii) the premises has had a limited-service restaurant license at all times since the~~
217 ~~limited-service restaurant license described in Subsection (4)(b)(i) was issued without a~~
218 ~~variance; and]~~

219 ~~[(iii) the community location was located within the proximity requirements of~~
220 ~~Subsection 32B-1-202(2) after the day on which the limited-service restaurant license~~
221 ~~described in Subsection (4)(b)(i) was issued.]~~

222 Section 4. Section **32B-6-903** is amended to read:

223 **32B-6-903. Commission's power to issue beer-only restaurant license.**

224 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
225 beer on its premises as a beer-only restaurant, the person shall first obtain a beer-only

restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a beer-only restaurant license to establish beer-only restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as a beer-only restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of liquor on the licensed premises of a beer-only restaurant licensee.

(3) (a) Only one beer-only restaurant license is required for each building or resort facility owned or leased by the same person.

(b) A separate license is not required for each beer-only restaurant license dispensing location in the same building or on the same resort premises owned or operated by the same person.

(4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b) or (c)]~~ Section 32B-1-202, the commission may not issue a beer-only restaurant license for premises that do not meet the proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

~~[(b) With respect to the premises of a beer-only restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a beer-only restaurant license to the new owner of the premises if:]~~

~~[(i) when a beer-only restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);]~~

~~[(ii) the premises has had a beer-only restaurant license at all times since the beer-only restaurant license described in Subsection (4)(b)(i) was issued without a variance; and]~~

~~[(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the beer-only restaurant license described in Subsection (4)(b)(i) was issued.]~~

~~[(c) The location of the licensed premises of an on-premise beer retailer who is licensed as of July 1, 2011, is grandfathered and not required to meet the proximity~~

requirements of Section ~~32B-1-202~~ if the on-premise beer retailer obtains a beer-only restaurant license by not later than March 1, 2012. A location grandfathered under this Subsection (4)(c) is considered grandfathered notwithstanding that the beer-only restaurant license undergoes a change of ownership.]

Section 5. Section **32B-8a-302** is amended to read:

32B-8a-302. Application -- Approval process.

(1) To obtain the transfer of a retail license from a retail licensee, the transferee shall file a transfer application with the department that includes:

- (a) an application in the form provided by the department;
- (b) a statement as to whether the consideration, if any, to be paid to the transferor includes payment for transfer of the retail license;
- (c) a statement executed under penalty of perjury that the consideration as set forth in the escrow agreement required by Section ~~32B-8a-401~~ is deposited with the escrow holder; and
- (d) (i) an application fee of \$300; and
- (ii) a transfer fee determined in accordance with Section ~~32B-8a-303~~.

(2) If the intended transfer of a retail license involves consideration, at least 10 days before the commission may approve the transfer, the department shall post a notice of the intended transfer on the Public Notice Website created in Section ~~63F-1-701~~ that states the following:

- (a) the name of the transferor;
- (b) the name and address of the business currently associated with the retail license;
- (c) instructions for filing a claim with the escrow holder; and
- (d) the projected date that the commission may consider the transfer application.

(3) (a) (i) Before the commission may approve the transfer of a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether the transfer of the retail license should be approved.

- (ii) The department shall forward the information and recommendations described in

282 this Subsection (3)(a) to the commission to aid in the commission's determination.

283 (b) Before approving a transfer, the commission shall:

284 (i) determine that the transferee filed a complete application;

285 (ii) determine that the transferee is eligible to hold the type of retail license that is to be
286 transferred at the premises to which the retail license would be transferred;

287 (iii) determine that the transferee is not delinquent in the payment of an amount
288 described in Subsection 32B-8a-201(3);

289 (iv) determine that the transferee is not disqualified under Section 32B-1-304;

290 (v) consider the locality within which the proposed licensed premises is located,
291 including the factors listed in Section 32B-5-203 for the issuance of a retail license;

292 (vi) consider the transferee's ability to manage and operate the retail license to be
293 transferred, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

294 (vii) consider the nature or type of retail licensee operation of the transferee, including
295 the factors listed in Section 32B-5-203 for the issuance of a retail license;

296 (viii) if the transfer involves consideration, determine that the transferee and transferor
297 have complied with Part 4, Protection of Creditors; and

298 (ix) consider any other factor the commission considers necessary.

299 (4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section 32B-1-202, the
300 commission may not approve the transfer of a retail license to premises that do not meet the
301 proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

302 ~~[(b) If after a transfer of a retail license the transferee operates the same type of retail~~
303 ~~license at the same location as did the transferor, the commission may waive or vary the~~
304 ~~proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the~~
305 ~~transfer under the same circumstances that the commission may waive or vary the proximity~~
306 ~~requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a~~
307 ~~retail license.]~~

308 Section 6. **Coordinating S.B. 279 with H.B. 442 -- Superseding technical and**
309 **substantive amendments.**

310 If this S.B. 279 and H.B. 442, Alcohol Amendments, both pass and become law, it is
311 the intent of the Legislature that the amendments to Sections [32B-1-202](#) and [32B-8a-302](#) in this
312 bill supersede the amendments to Sections [32B-1-202](#) and [32B-8a-302](#) in H.B. 442, when the
313 Office of Legislative Research and General Counsel prepares the Utah Code database for
314 publication.