

# UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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## LOCAL ALCOHOLIC BEVERAGE ORDINANCES AND THE STATE ALCOHOLIC BEVERAGE CONTROL ACT

Our department often receives inquiries from local governments concerning the relationship between Utah's Alcoholic Beverage Control Act and local ordinances, and the respective roles state and local officials play under these laws. It is clear that the Act requires state and local governments to work closely with each other in licensing and regulating businesses which sell alcoholic beverages, and in enforcing the general alcoholic beverage control laws. As questions arise, please feel free to contact our Licensing and Compliance Division.

### I. RELATIONSHIP BETWEEN STATE ALCOHOL LAWS & LOCAL ORDINANCES – WHICH LAW GOVERNS?

Utah Code Ann. §32B-1-204 of the Alcoholic Beverage Control Act provides:

32B-1-204. Powers of local authority.

(1) If this title expressly addresses an issue related to alcoholic product control in this state, a local authority may not regulate in relation to that issue except when a local authority is expressly granted regulatory authority to regulate the issue by this title.

(2) If this title does not expressly address an issue related to alcoholic product control, a local authority may regulate that issue if the regulation:

- (a) is of the sale, offer for sale, furnishing, or consumption of an alcoholic product; and
- (b) does not conflict with this title.

This provision attempts to provide uniformity of alcoholic beverage laws statewide. State law governs most aspects of alcoholic beverage control except where expressly delegated to local government, and overrides local ordinances that are inconsistent with state law. If state law is silent on an issue regarding the sale, offer for sale, furnishing, or consumption of an alcoholic product, local governments may regulate by local ordinance, but only in a manner consistent with the intent of state law. To avoid confusion, local ordinances should be reviewed to ensure their consistency with state law.

The Act *expressly* grants regulatory control to local governments in many areas:

**A. LOCAL CONSENT.** Before a person may apply for any state alcoholic beverage package agency, license or permit, written consent must first be obtained from local governmental authority.<sup>1</sup> This allows each local government to decide the extent to

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<sup>1</sup>See 32B-5-201(2)(d) (retail licensees); 32B-6-504(1)(a) (airport lounge), 32B-9-201(1)(c) (event permits); 32B-10-202(1)(g) (special use permits); 32B-11-203(4) (manufacturer); 32B-12-202(4) (liquor warehouse); and 32B-13-202(4)(beer wholesaler).

which it will allow alcoholic beverage outlets in its community.<sup>2</sup> Some local jurisdictions by ordinance put a limit on the number of outlets for which their governing authority will grant local consent. An alcoholic beverage business license issued by a local government under Section 11-10-1 does not constitute written consent. Local consent of the airport authority must also be obtained before locating an airport liquor lounge in the terminal of an international airport.<sup>3</sup>

**B. LOCAL BUSINESS LICENSES.** Before a business may apply for any state alcoholic beverage license, it must first obtain a local business license.<sup>4</sup> Local licensing fees may not exceed \$300.<sup>5</sup> Local authorities may adopt ordinances making it unlawful to operate such establishments without being locally licensed.<sup>6</sup> Local business licenses may be suspended or revoked by local governments for any violation of Title 32A, and local governments may establish criteria and procedures for granting, denying, suspending or revoking such licenses. However, at a minimum, licensees must be of good moral character, over the age of 21 years, and must not have been convicted of a felony or crime involving moral turpitude.<sup>7</sup> Note that the minimum qualifications for a state alcoholic beverage license or package agency are even more comprehensive.<sup>8</sup> Local governments should therefore supplement the minimal requirements of Utah Code Sections 11-10-1 and -2 with these additional state qualifications.

**C. CONSULTATION BEFORE LOCATING ESTABLISHMENTS; ZONING ORDINANCES.** Local governments must be consulted before any state liquor store may be located.<sup>9</sup> Local governments may enact and all state stores, package agencies, and state licensees must comply with local zoning ordinances governing the location of such

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<sup>2</sup>*See Boulder Mountain Lodge, Inc. v. Town of Boulder*, 983 P.2d 570 (Utah 1999). “While the state reserves ultimate control over licensing, the statutory requirement [of local consent] affords the local authority significant participation in licensing decisions. The requirement, in fact, gives local authorities ‘veto power’ over the submission of applications to the Commission.” *See also* Utah Code Ann. §10-8-42.

<sup>3</sup>32B-6-504(1)(a).

<sup>4</sup>11-10-1 to -6. *See e.g.* 32B-5-201(2)(e). However, 32B-5-205 allows the commission to issue a “conditional license” for a full service restaurant or a limited service restaurant prior to the applicant obtaining a local business license. Sale of alcohol is not permitted under a conditional license. Within six months of being granted a conditional license, the applicant must submit a copy of the current business license before the conditional license is converted to a “valid license”, otherwise the conditional license expires.

<sup>5</sup>11-10-3.

<sup>6</sup>11-10-4.

<sup>7</sup>11-10-1(5) and 11-10-2. The statutes also require that the licensee be a citizen of the United States. However, the Utah Attorney General rendered a legal opinion on May 24, 1991 (No. 91-21) concluding that this provision is unconstitutional.

<sup>8</sup>*See e.g.* 32B-5-201.

<sup>9</sup>32B-2-502(2)(a).

establishments.<sup>10</sup>

**D. CLOSURE ON LOCAL ELECTION DAYS REPEALED.** The Utah Legislature repealed the restrictions on the sale of alcohol on election days including the requirement that state stores and package agencies close on local election days upon the request of the local authority.

**E. RETAIL BEER LICENSES.**

**(1) OFF-PREMISE – EXCLUSIVE LOCAL LICENSING.**

Establishments that sell beer for off-premise consumption such as general food and convenience stores are licensed and regulated exclusively by local governments.<sup>11</sup> A local government may prohibit the retail sale of beer for off-premise consumption altogether if it so chooses. A local government may also restrict the proximity of the location of such licensed establishments to public or private schools, churches, public libraries, public playgrounds and parks.<sup>12</sup> Operational restrictions for these outlets may generally be set by local ordinance (i.e. hours and days of sale). However, state law (a) prohibits issuing such licenses to minors; (b) does not allow minors to sell beer except that a minor who is at least 16 years of age may sell beer under the supervision of a person 21 years of age or older who is on the premises; (c) prohibits the sale of beer to go in containers larger than two liters (no keg sales); (d) requires the business to display beer in an area that is visibly separate and distinct from the area where non-alcoholic beverages are displayed; (e) requires the licensee to display a sign where malt coolers or malt liquors (3.2%) are sold stating: "These beverages contain alcohol. Please read the label carefully."; and (f) requires the licensee to purchase the beer from the licensed wholesaler authorized to sell beer in the geographic area in which the beer retailer is located in compliance with 32B-13-301.<sup>13</sup> Of course, local governments may not enact regulatory controls which are inconsistent with the criminal provisions of the Act (i.e. sales to minors or intoxicated persons, etc.).<sup>14</sup>

**(2) ON-PREMISE – DUAL LICENSING AUTHORITY.**

Local governments have the discretionary authority to license establishments that sell beer for on-premise consumption such as taverns, restaurants, bowling centers, golf course snack shops etc. However, such establishments must be

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<sup>10</sup>32B-2-502(2)(a) and (b) and 32B-2-603(2)(c)

<sup>11</sup>32B-7-201(1).

<sup>12</sup>32B-7-201(1)(c).

<sup>13</sup>See 32B-7-202, and commission rule R81-10-1.

<sup>14</sup>See 32B-7-Part 3 and 32B-4.

licensed by the state if they sell beer for more than 30 days.<sup>15</sup> Before a state license may be obtained, the applicant must either obtain a local on-premise beer license, or other written consent from local authority. It is suggested that local governments adopt the minimum state law qualifications for obtaining a state beer license as the minimum qualifications for obtaining a local license to avoid confusion.<sup>16</sup> The suspension or revocation of either the state or local license prohibits the establishment from continuing to operate under the other license.<sup>17</sup>

Unlike local beer ordinances which often contain several classes of on-premise beer licenses, there are only two categories of an "on-premise beer license" under state law: (1) "taverns" which are defined as including beer bars, parlors, lounges, cabarets, and night clubs where the revenue from the sale of beer exceeds the revenue of the sale of food<sup>18</sup> and (2) all others (non-taverns). The "all others" group includes establishments where the sale of food exceeds the sale of beer. Effective March 1, 2012, this non-tavern group will be required to be tied to a "recreational amenity" as defined in 32B-6-702 in order to be classified as a non-tavern. Minors are prohibited from being on the premises of a "tavern".<sup>19</sup> All other operational restrictions of state law apply uniformly to both categories. Effective March 1, 2012, if an establishment cannot meet the recreational amenity conditions, it must be licensed as a tavern or under a newly created license type called a "beer only restaurant". The "beer only restaurant" (see 32B-6 Part 9) license requires restaurants that only sell beer to operate in a similar manner to full service and limited service restaurants (patrons may only purchase beer in connection with an order for food which is prepared, sold and served at the restaurant, and each restaurant shall maintain at least 70% of its total restaurant business from the sale of food).

If the applicant for a state on-premise beer license is a local government entity, the fee and bond requirements are waived.<sup>20</sup>

Only one state on-premise beer license (and beer only restaurant license effective

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<sup>15</sup>32B-6-704, and 32B-9-404

<sup>16</sup>See 32B-1-304.

<sup>17</sup>32B-6-704(3). *When a local government suspends or revokes the local license, our department should be notified so that the state license may be retrieved and held pending further notice from local licensing authorities. Conversely, our department routinely notifies local law enforcement agencies when state licenses are suspended or revoked.*

<sup>18</sup>32B-1-102(112) and 32B-6-703(2).

<sup>19</sup>32B-6-706(6). *Alcoholic Beverage Control Commission Rule R81-10A-7 further provides that local authorities may exclude minors from the premises or portions of premises which have the atmosphere or appearance of a "tavern" as defined in the Act. The rule was passed because certain on-premise beer facilities don't meet the percent of beer sales prong of the Act, but certain facilities or areas of a facility are clearly in the nature of a tavern (i.e. lounge areas inside bowling alleys).*

<sup>20</sup>32B-6-705(5).

March 1, 2012) is required for each building or resort facility owned or leased by the same applicant. Separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premises owned or operated by the same applicant.<sup>21</sup>

Section 32B-6-704(4) states that businesses licensed by a local authority shall comply with this title, including provisions related to the storage, sale, offer for sale, furnishing, consumption, warehousing, or distribution of beer. These provisions are found in Sections 32B-1-304, 32B-5-Part 3, 32B-6-Part 7, 32B-7, and 32B-4. If state law does not expressly address a provision, local governments may only regulate in a manner consistent with state law. To illustrate, state law is silent as to matters often seen in local ordinances such as restrictions on beer sales on Sundays, minimum levels of lighting in taverns, use of certain barriers and enclosed booths, use of lookouts, etc. Local governments may continue to regulate in such areas. The Act also expressly allows local governments to be more restrictive than minimum state standards in regulating the attire and conduct of servers and sexually oriented entertainers on premises or at an event at which an alcoholic product is sold.<sup>22</sup>

On the other hand, state law expressly preempts local ordinances as to many subjects. For example:

- hours of beer sales in *on-premise* beer establishments are expressly addressed in statute;
- an order of food in conjunction with the sale of beer is *not* required in a tavern or recreational amenity on-premise beer licensee;
- *until* March 1, 2012, the percentage of food sales must exceed the sale of beer in non-taverns;
- effective March 1, 2012, a non-tavern licensee that becomes a recreational amenity licensee must either maintain at least 70% of its total gross revenues from business directly related to the recreational amenity *or* maintain at least 70% of its total gross revenues from the sale of food;
- effective March 1, 2012, a new “beer-only restaurant” license is created. Beer-only restaurants must maintain at least 70% of the total gross revenues from the sale of food and an order of food in conjunction with the sale of beer *is* required;
- beer in sealed containers may be sold to go in containers no larger than two liters;
- beer may not be sold (on or off premise) in containers larger than two liters;
- no alcoholic beverages may be brought into on-premise beer establishments by patrons;
- minors may not sell or dispense beer in such establishments and may not be on the premises of a beer tavern<sup>23</sup>;

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<sup>21</sup> 32B-6-703(4). However, if one outlet operates as a “tavern” and another does not, separate state licenses will be required (because tavern licenses are under a statutory quota. See 32B-6-703(4)(b). Also see 32B-6-903(3) effective 3/1/12.

<sup>22</sup> See 32B-1-502(3), as more fully explained below.

<sup>23</sup> 32B-5-308(1)(b) does allow a minor to enter the beer sale at a cash register or other sales recording device of an on-premise beer retailer that is not a tavern.

- the allowable hours of on-premise consumption of alcoholic beverages is expressly addressed in statute<sup>24</sup>; and
- employees on duty may not consume or be under the influence of alcoholic beverages.

Retail licensees as defined in 32B-1-102(92) that have a state license to sell liquor are not required to obtain a separate state license to sell beer. However, the operational restrictions for on-premise retail beer establishments are equally applicable to these other types of liquor outlets.<sup>25</sup>

The state on-premise beer license (or restaurant, limited restaurant, beer only restaurant, on-premise banquet, reception center airport lounge, or club liquor license) authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. café, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be excluded from establishments based on whether draft beer is sold. As stated earlier, minors may be excluded from an establishment or portion of an establishment which is a "tavern" as defined in 32B-1-102(112).<sup>26</sup>

**(3) TEMPORARY EVENT BEER PERMITS – DUAL PERMIT AUTHORITY.**

Local governments have the discretionary authority to issue permits to sell beer for on-premise consumption at temporary special events that do not last longer than 30 days.<sup>27</sup> However, a state temporary special event beer permit is also required.<sup>28</sup> And the permit holder is subject to state operational restrictions during the event.<sup>29</sup> The suspension or revocation of either the local or state permit prohibits the permit holder from selling beer at the event under the other permit.<sup>30</sup>

**F. LEWD ATTIRE AND CONDUCT.** The Act recognizes that the attire and sexually oriented conduct of employees and entertainers in establishments or at events where alcoholic beverages are sold and consumed on the premises should be governed by local community standards. Therefore, it establishes maximum limits on such activities, but expressly provides that local authorities may be more restrictive in this area.<sup>31</sup>

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<sup>24</sup>32B-5-301(7)

<sup>25</sup>32B-6-707(5) (retail licensees). *See also* 32B-6-706.

<sup>26</sup>*See also* Commission Rule R81-10A-7.

<sup>27</sup>32B-9-404.

<sup>28</sup>32B-9-403(2).

<sup>29</sup>32B-9-204; 32B-9-206.

<sup>30</sup>32B-9-404.

<sup>31</sup>32B-1-502(3).

**G. “BROWN-BAGGING”.** Subject to certain exceptions, persons may not bring alcoholic beverages onto the premises of an establishment or an event that is open to the general public (this restriction also includes licensed clubs). If such an establishment or holder of an alcohol permit for a temporary event knowingly allows this to occur, the local authority may immediately suspend or revoke any local alcoholic beverage license or permit, any local consent previously granted for issuance of the state license or permit, and any local business license. This penalty is in addition to criminal sanctions and state regulatory penalties. Exceptions to the “brown-bagging” restrictions allow restaurants with liquor licenses, limited restaurants, and clubs to permit patrons to bring bottled wine onto the premises to consume. However, the patron must deliver the wine to a server upon entering the premises.<sup>32</sup> Persons are not precluded from bringing alcoholic beverages to a “private event” that is not open to the public.<sup>33</sup>

**H. MINORS IN CLUBS.** Although the Act heavily regulates and places severe restrictions on minors being in clubs, it expressly allows local governments to be even more restrictive with respect to a minor’s “admittance to, use of, or presence on the licensed premises of a club licensee.”<sup>34</sup>

**I. SALES, SERVICE AND CONSUMPTION HOURS AT TEMPORARY EVENTS.** Although the Act provides that alcoholic beverages may be sold, served and consumed at temporary events under either a single event permit or a temporary special event beer permit between the hours of 10 a.m. to 1 a.m., the Act allows local authorities to set more restrictive hours for such events.<sup>35</sup>

## II. CRIMINAL ENFORCEMENT AND PROCEDURE.

Municipal attorneys have been given broad authority to enforce Utah's alcoholic beverage control laws. Section 32B-4-205(2)(b) provides that “[i]f a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of the law limiting the powers of a city attorney.” It is also the duty of local prosecutors

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<sup>32</sup>32B-5-307(3)

<sup>33</sup> A “private event” means a specific social, business or recreational event for which an entire room, area, or hall is leased or rented in advance by an identified group ; and is limited in attendance to people who are specifically designated and their guests. A “private event does not include an event to which the general public is invited whether for an admission fee or not.. 32B-1-102(80). Commission rules further state that when a privately hosted event or private social function is held on the premises of a licensed restaurant or club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the premises their own alcoholic beverages under the following circumstances:

- (1) When the entire premises is closed to the general public for the private event or function; or
- (2) When an entire room or area within the premises is closed to the general public for the private event or function, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the premises (e.g. private banquet room within the establishment). See Commission Rules R81-4A-14 and R81-5-13.

<sup>34</sup>32B-6-406(5)(d).

<sup>35</sup>32B-9-204(17).

and law enforcement agencies to diligently enforce the Act.<sup>36</sup> The department urges local law enforcement officials to forward any investigative reports when violations by licensees or permittees or their employees are found. A law enforcement agency must report a violation to the DABC no later than eight (8) business days after the officer or agency completes the investigation.<sup>37</sup> This will allow administrative action to be taken to suspend or revoke licenses, or impose administrative fines. The Act also requires the clerks of the courts to notify the department of all convictions of alcoholic beverage offenses immediately upon conviction.<sup>38</sup> The Department of Alcoholic Beverage Control is a licensing, not a law enforcement agency. However, the State Bureau of Investigation, Alcoholic Beverage Enforcement Division of the Department of Public Safety is a state law enforcement agency that works closely with local law enforcement in enforcing the Act.<sup>39</sup> Their phone number is (801) 532-2168. Finally, any alcoholic beverages or property seized by law enforcement officials for violation of the Act are subject to forfeiture in accordance with the Utah Uniform Forfeiture Procedures Act (Title 24, Chapter 1).<sup>40</sup>

### III. NUISANCE LICENSEE ACT.

The “Nuisance Licensee Act” (32B-3-301 to –307) gives local governmental entities, prosecutors, and law enforcement agencies the opportunity to file a formal objection with the commission to oppose the renewal of a particular state alcoholic beverage license that is engaging in certain statutorily defined nuisance activities that adversely impact the public health, peace, safety, welfare, or morals of the community. The objection must be in writing, be filed no later than 60 days before the license expires, detail all relevant facts and circumstances relating to the nuisance activities, and include any documents relevant to those activities.

The commission will then issue a notice of agency action and give the licensee an opportunity to respond and be heard on the objection. In assessing the case, the commission may take into account:

- the nature of the nuisance activities
- the frequency or pattern of the activities
- the length of time the licensee has operated the premises
- the condition of the premises
- whether the licensee had notice (knew or should have known) of the activities
- whether the licensee made a substantial effort to correct the problem or work with law enforcement to curtail the activities
- whether the licensee initiated contact with law enforcement seeking help to curtail the activities and cooperated during the law enforcement agency’s investigation
- whether prior efforts to stop the activities by the licensee and the community have

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<sup>36</sup>32B-4-202.

<sup>37</sup>32B-3-202

<sup>38</sup>32B-4-202.

<sup>39</sup>53-10-112, -113, -304, and -305

<sup>40</sup>32B-4-206(7).

been unsuccessful.

The commission will determine whether the license should or should not be renewed. Alternatively, the commission may conditionally renew the license and require that the licensee and premises be closely monitored during the licensing year, and require a review prior to the next renewal period. The commission may also conditionally renew the license contingent on a person involved in the business divesting his or her interest in the business.

The statutory list of nuisance activities include:

- a judicial finding under 32B-4-208 that a licensed establishment is a common public nuisance
- a single felony conviction within the last two years of the licensee or any supervisory or managerial level employee of the licensee
- a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act of the licensee or any employee of the licensee within the last two years made on the basis of activities that occurred on the premises
- three or more convictions of patrons of a retail licensee under the Controlled Substances Act if based on activities that occurred on the premises, and there is evidence that the licensee knew or should have known of the illegal activity
- a single conviction within the last two years of the licensee or any employee of the licensee made on the basis of:
  - pornographic and harmful materials in violation of Title 76, Chapter 10, Part 2, and the violation occurs on the premises
  - prostitution
  - engaging in or permitting gambling, or having any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, on the premises
  - disturbance of the peace that occurs on the premises
  - disorderly conduct that occurs on the premises
- three or more adjudicated violations of this title within the last two years by the licensee or its employees based on a criminal citation or an administrative referral to the Department of Alcoholic Beverage Control relating to:
  - the sale, service, or furnishing of alcohol to a minor
  - the sale, service, or furnishing of alcohol to a person actually, apparently, or obviously intoxicated
  - the sale or service of alcohol after lawful sales or service hours
  - acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by the Alcoholic Beverage Control Act

#### IV. OTHER ISSUES.

**A. CONSISTENCY IN DEFINING "PREMISES".** State law requires that an applicant for a state alcoholic beverage license furnish a floor plan of the premises, identifying all sales, storage and consumption areas.<sup>41</sup> The department must approve any changes to

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<sup>41</sup>32B-5-201(2)(h).

this floor plan.<sup>42</sup> Every effort should be made to ensure that the designated "premises" under the local license is the same for the state license. There have been instances where this has not occurred causing problems for law enforcement officials.

**B. DUAL LICENSING.** Some businesses desire to operate as an on-premise beer licensee during part of the day, and as a restaurant liquor licensee during the balance of the day. This allows them to sell beer during part of the day without the numerous restrictions of a restaurant liquor license. The Commission has authorized dual licensing under the following restrictions: (1) the business must obtain two separate licenses; (2) the business must notify the department (and local authorities) of the time periods under which each license will be operational at the time application is made, and changes must be requested in writing and approved in advance by the department; (3) licensees may operate sequentially under either license, but not concurrently; (4) the operational restrictions for each license type apply during those hours of the day when the particular license type is operational; (5) liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.<sup>43</sup>

**C. SALES TO MINORS.** 32B-4-403 states:

*(1) A person may not sell, offer for sale, or furnish an alcoholic product to a minor.*

*(2) (a) (i) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person who violates Subsection (1) negligently or recklessly fails to determine whether the recipient of the alcoholic product is a minor.*

*(ii) As used in this Subsection (2)(a), "negligently" means with simple negligence.*

*(b) Except as provided in Subsection (3), a person is guilty of a class A misdemeanor if the person who violates Subsection (1) knows the recipient of the alcoholic product is a minor.*

*(3) This section does not apply to the furnishing of an alcoholic product to a minor in accordance with this title:*

*(a) for medicinal purposes by:*

*(i) the parent or guardian of the minor; or*

*(ii) the health care practitioner of the minor, if the health care practitioner is authorized by law to write a prescription; or*

*(b) as part of a religious organization's religious services.*

**D. SALES TO INTOXICATED PERSONS.** 32B-4-404 states:

*(1) A person may not sell, offer to sell, or otherwise furnish any alcoholic beverage or product to:*

*(a) any person who is actually or apparently intoxicated; or*

*(b) a person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was actually or apparently intoxicated.*

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<sup>42</sup>32A-5-303(3).

<sup>43</sup>Commission Rules R81-4A-1, R81-4C-1 and R81-10A-1.

(2)(a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.

(b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.

(3) As used in Subsection (2)(a), “negligently” means with simple negligence.

“Intoxicated” means that a person is significantly impaired as to the person's mental or physical functions as a result of the use of (a) an alcoholic beverage, (b) a controlled substance, (c) a substance having the property of releasing toxic vapors, or a combination of (a) through (c), and exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic beverage.<sup>44</sup>

**E. INTERFERING WITH AN INVESTIGATION.** The Alcoholic Beverage Control Act has long had a provision that makes it a crime to refuse to admit a law enforcement officer into a premises if the officer demands entry when acting to enforce the Act.<sup>45</sup> However, the provision did not cover situations where law enforcement officers encountered problems with licensees or their patrons once they were inside the establishment. In 2003, this statute was expanded to prohibit a person in or having charge of any premises from interfering with a law enforcement officer who is conducting an investigation under the Act at the premises.

**F. ADVERTISING.** Utah statutes that heavily restricted the advertising of alcoholic beverages have either been repealed or amended to conform with recent rulings of the United States Supreme Court and Tenth Circuit Court of Appeals.<sup>46</sup> The Department of Alcoholic Beverage Control and its state liquor stores are still statutorily restricted from advertising alcoholic beverages, and package agencies may not advertise except to the extent allowed by commission rule.<sup>47</sup> However, other alcoholic beverage retailers, wholesalers, industry members and their representatives may now advertise alcoholic beverages provided they comply with basic guidelines outlined by the commission in rule R81-1-17.<sup>48</sup> Those guidelines focus on issues relating to truth in advertising, obscene or indecent depictions, reference to illegal conduct, encouraging over-consumption or intoxication, encouraging drunk driving, targeting minors, etc.

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<sup>44</sup>32B-1-102(51).

<sup>45</sup>32B-4-505.

<sup>46</sup> *44 Liquormart v. Rhode Island*, 116 S.Ct. 1495 (1996); *Lorillard Tobacco Co. v. Reilly*, 121 S.Ct. 2404 (2001); and *Utah Licensed Beverage Assn. v. Leavitt*, 256 F3d 1061 (10<sup>th</sup> Cir. 2001).

<sup>47</sup>32B-1-206.

<sup>48</sup>32B-1-206(4).