

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 S 900 W • PO Box 30408 • Salt Lake City, UT 84130-0408 • Phone (801) 977-6800 • Fax (801) 977-6889

website: www.abc.utah.gov

“CERTIFICATE OF APPROVAL”

for

Brewer (Located Outside Of Utah)

Importer or Supplier of Beer, Heavy Beer, or Flavored Malt Beverages

APPLICATION CHECKLIST

Dear Applicant:

The items below must be completed and submitted before a certificate of approval can be issued by the Utah Department of Alcoholic Beverage Control. Incomplete applications will not be accepted.

Brewers located outside of Utah, and importers or suppliers of beer, heavy beer, and flavored malt beverages must obtain a “Certificate of Approval” from the department before selling or delivering beer to a beer wholesaler in Utah or a flavored malt beverage to the department or a military installation. If the brewer located outside of Utah is a small brewer, it must obtain a “Certificate of Approval” before selling or delivering beer in Utah to a beer wholesaler, a beer retailer, or an event permittee.

1. ___ Application (form enclosed)
2. ___ Brand registration (form enclosed)
3. ___ Brand & territorial agreement(s) between brewer / agent and each beer wholesaler, reflecting brands of beer / malt beverages and geographical areas for distribution (form enclosed)
4. ___ Copy of federal TTB brewer’s notice of approval to operate as a brewer
(if foreign brewer, send federal permit for importer / wholesaler and letter of appointment)
5. ___ Statement of alcohol analysis for each brand of beer / malt beverage as to actual alcohol content
(not more than 4.0% alcohol by volume or 3.2% by weight)
6. ___ Copy of label approval (“COLA”) from federal TTB reflecting actual brewer / producer, and actual label for product shipped into Utah for each beer / malt beverage brand
(label must contain a statement as an alcoholic beverage, and may list alcohol content)
7. ___ \$ 75 application fee (non-refundable)
8. ___ \$300 annual certificate fee for period ending December 31 (refundable if certificate not granted).
> make check(s) payable to Utah Department of Alcoholic Beverage Control or UDABC

Enclosed for your information are copies of laws / rules pertaining to brewers located outside of Utah. If you have any questions, please contact UDABC Licensing and Compliance at (801) 977-6800.

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Application for a BREWER (Located Outside Of Utah), or IMPORTER or SUPPLIER of Beer, Heavy Beer, or Flavored Malt Beverages

NOTE: Please complete this application in the name of the actual producer of the beer / malt beverage products, and list additional information regarding importing agent holding a federal permit (see #10).

1. Business Name of Actual Brewing Company	
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2. Name of Brewing Ownership Entity (as listed in #9)	
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3. TTB Federal Permit # (if U.S. Brewer)		<i>* please attach copy of TTB permit</i>
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4. Location Address					
	Street	City	State	Zip	Country

5. Mailing Address					
	Street or PO Box	City	State	Zip	Country

6. Business Phone(s)			Fax	
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7. Contact person		Phone Number	
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8. Local Representative (if any)		Phone Number	
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9. Ownership Entity (Check appropriate box and provide information in space below or attach sheet)	
	Individual (List information for individual)
	Partnership (List information for all partners owning at least 20% of company)
	Corporation (List information for stockholders owning at least 20% of company and all corporate officers)
	Limited Liability Company / LLC (List information for members owning at least 20% of company)

TITLE	FULL NAME	PLACE OF RESIDENCE	% OWNED	BIRTH DATE

10. Importing Company: Is a U.S. importer involved in the distribution / marketing of beer / malt beverages ?
 Yes No *If yes, please list information below:*

11. Name of U.S. Importer	
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12. Registered Trade Names	
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13. TTB Federal Permit #		Permit Type	
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14. Mailing Address				
	Street or PO Box	City	State	Zip

15. Business Phone(s)			Fax	
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16. Contact person		Phone Number	
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17. Local Representative (if any)		Phone Number	
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18. Applicant agrees as a condition of issuing the certificate that they have read and will abide by the provisions of the Alcoholic Beverage Control Act (Title 32B, Utah Code), all rules and directives of the department, and understands that failure to adhere thereto shall constitute grounds for a fine, suspension or revocation of said certificate.

19. The undersigned acknowledges that they have read and understands the statements made herein, certify that the information contained herein is true and correct, and that execution of this application is done voluntarily and by authorization of said organization.

Dated this _____ day of _____, _____.

Applicant / Business Name

Authorized Signature

Name / Title *(please print)*

STATE OF: _____

COUNTY OF: _____

(or) COUNTRY OF: _____

Subscribed & sworn to before me this _____ day of _____, _____.

Notary Public {& Seal}

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“BEER - BRAND & TERRITORIAL AGREEMENT” for Brewer and Utah Beer Wholesaler

Name of Brewer / Agent		Is Agent a U.S. Importer ?	
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Mailing Address	Street / PO Box	City	State / Province	Zip/Postal Code	Country
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Contact Person		Phone		FAX	
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Pursuant to Utah Code 32B-13-202(7) and (8), the brewer / agent hereby assigns the following brands of beer (containing not more than 3.2% alc/wt or 4% alc/vol) to the Utah beer wholesaler listed below, for distribution to licensed retailers within the described geographical area(s).

Utah Beer Wholesaler Company	
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Contact Person		Phone		FAX	
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List brands of beer / malt beverage (3.2% alc/wt or 4% alc/vol) (attach list if necessary)

List geographical areas within Utah for beer distribution to licensed retailers (attach map is necessary)

Brewer / Agent (Authorized Signature & Title)		Date	
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Utah Beer Wholesaler (Authorized Signature & Title)		Date	
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TITLE 32B - ALCOHOLIC BEVERAGE CONTROL ACT
CHAPTER 11
MANUFACTURING AND RELATED LICENSES ACT

Effective July 1, 2011

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

(c) a brewery manufacturing license.

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

(b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from the department before selling or delivering:

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

(ii) a flavored malt beverage to:

(A) the department; or

(B) a military installation; or

(iii) if a small brewer, beer to one of the following in the state:

(A) a beer wholesaler licensee;

(B) a beer retailer; or

(C) an event permittee.

(c) To obtain a certificate of approval, a brewer 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.

(d) (i) One of the following shall sign and verify a written application under this Subsection (4) by oath or affirmation:

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

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

(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

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

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

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

(ii) An importer or supplier 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.

(6) (a) Subject to Subsection (7), a brewer, importer, or supplier required to hold a certificate of approval under this section may not distribute beer in this state except under a written agreement with a beer wholesaler licensee in this state.

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

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

(ii) designate the one or more brands that may be distributed in the sales territory; and

(iii) set forth the exact geographical area of the sales territory.

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

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

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

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturers (Distillery, Winery, Brewery).

R81-8-2. Out of State Business. (proposed changes indicated)

(1) Purpose. Pursuant to [~~32A-8-101(4)~~] 32B-11-201(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under [~~32A-8-101(4)~~] 32B-11-201(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of [~~32A-8-101(4)~~] 32B-11-201(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

TRADE PRACTICES INFORMATION

Because the interplay between state and federal law is so technical and detailed, we are providing very general information below.

In the Alcoholic Beverage Control Act, Section 32B-4 Part 7, U.C.A., Utah=s trade practice and tied house laws are made consistent with federal laws (27 U.S.C. 201 to 219A; 27 C.F.R. Subchapter A, Parts 6, 8, 10 & 11) except with respect to furnishing samples of liquor products which are regulated by Utah law. Liquor samples may only be shipped to the department for tasting and analysis by the department or for tasting and analysis by local industry representatives at the department under certain conditions. Beer samples may be given to a retailer, however not more than three gallons of any brand may be given and only if the retailer has not purchased the brand within the last 12 months.

Generally, alcoholic beverage industry members (such as manufacturers, manufacturer representatives, wholesalers, or importers), are prohibited from engaging in certain practices with retailers that unlawfully induce the retailer to purchase their products to the exclusion in whole or in part of other competitor=s products. For example, manufacturers may not have either a direct or indirect ownership in any retail license (unless it is complete ownership); acquire any interest in the real or personal property of a retailer (unless it is complete ownership); furnish a retailer with equipment, fixtures, signs, supplies, money, services, or other things of value@ unless specifically authorized by the federal or state tied house@ laws; extend credit beyond a specified period (usually 30 days), act as guarantor of a retailer=s debt; lend money; or require any quota or condition the sale of one product upon the purchase of another.

Industry members *may*:

§ contribute to charitable, civic, religious, fraternal, educational, or community activities. These contributions may not be given to influence a retailer in the selection of alcoholic beverage products which might be sold at these activities and events.

§ lease or furnish certain equipment for a reasonable rental or service fee for a period not to exceed 30 days to a retailer for a special event. Equipment includes a picnic pump, cold plate, tub, keg box, refrigerated trailer or van, or refrigerated draft system.

Industry members *may not*:

§ give away any of their alcoholic products. This does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served as part of a promotion of its products, or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes;

§ engage in any advertisement or promotional scheme that requires the purchase or sale of an alcoholic beverage, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; or

§ sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that overtly promotes consumption, offers alcoholic products to the general public without charge, or takes place on the premises of a school, college, university, or other educational institution.