

**UTAH DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL**

**LICENSEE HANDBOOK**

**Restaurant – Full Service**

## UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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### TO ALL LICENSEES:

As a licensee of the Utah Department of Alcoholic Beverage Control, you should be aware of the responsibilities, procedures, and potential liabilities regarding the sale and service of alcoholic beverages.

This handbook has been prepared to help you with the lawful handling of alcoholic beverages. Please review this information and keep the handbook available for reference. Previously issued handbooks should be discarded.

Our website, [www.abc.utah.gov](http://www.abc.utah.gov) has information about the liquor laws and rules (with direct links to the complete code and administrative rules), stores and agencies, products and prices, server training, and other interesting links. The website is regularly updated. Please review the website for information and services as they are developed.

It is our responsibility and desire to be of service and assistance. If you have questions after consulting the handbook, please call 977-6800, write or e-mail ([hotline@utah.gov](mailto:hotline@utah.gov)) the compliance division of this department.

The Licensing and Compliance Division  
Department of Alcoholic Beverage Control

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
RESTAURANT FULL SERVICE LICENSEE HANDBOOK  
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## A. RESTAURANT FULL SERVICE LICENSE SUMMARY

A restaurant liquor license allows the storage, sale, service, and consumption of all types of alcoholic beverages on the premises of the restaurant. Licenses run from November 1 to October 31.

### **Food Service Requirements**

- Patrons may only purchase alcoholic beverages in connection with an order for food which is prepared, sold and served at the restaurant.
- Each restaurant shall maintain at least 70% of its total restaurant business from the sale of food.
- Expensive wines in excess of \$250 per bottle are not included in calculating the food to alcohol ratio.



### **Grandfathered Bar Structures**

• The dispensing, storage, service or consumption of alcoholic beverages is allowed at certain types of bar structures that existed in restaurants as of May 12, 2009 or in a restaurant that applied for a license as of May 12 and was granted the license prior to December 31, 2009. These bar structures are called “grandfathered” bar structures.

• A “bar structure” is defined as a surface or structure if on or at any place of the surface or structure an alcoholic beverage is stored or dispensed.

• A bar structure is “grandfathered” if as of May 11, 2009, the restaurant had patron seating at a bar structure that was divided by a partition along the width or length of the structure, or had an area adjacent to the bar structure that is visible to patrons sitting at the bar structure (i.e. a service bar near the bar structure), or was under construction as of May 12, 2009 and is granted a license by December 31, 2009. A grandfathered bar structure also includes a bar structure that as of May 12, 2009, had no patron seating at the bar (i.e. a service bar).

• If a restaurant remodels a “grandfathered” bar structure in such a way as to extend the length of the existing structure to increase seating or increase visibility of the storage and dispensing area, the restaurant loses the “grandfathering” benefit.

• If a restaurant loses or *wants* to eliminate a “grandfathered” bar structure, it must remodel in such a way as to dispense alcoholic beverages and store the in-service working inventory of alcoholic beverages in an area that is separated from the dining, staging, lobby, or waiting areas by a solid,  translucent, permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons.

- The restaurant licensee can apply for a credit for liquor purchases from a state store or package agency for the actual costs of the remodel or \$30,000 whichever is less if the reconstruction is done by December 31, 2011 and the credit is applied for no later than April 1, 2012. The total amount appropriated for these credits (for both full service and limited restaurants) is \$1,090,000 and is awarded on a first come first served basis.

### **Counters**

- A “counter” includes a surface or structure in a dining area of a restaurant where seating is provided for service of food, but alcohol may not be stored or dispensed at a counter. Alcoholic beverages *may* be consumed at a counter.
- Beer and heavy beer in sealed containers, and wine may be opened and poured by the server at a counter.

### **Service of Alcoholic Beverages to Patrons**

- A patron may consume an alcoholic beverage at a table, counter, or “grandfathered bar structure” that was “grandfathered” as of May 12, 2009.
- Alcoholic beverages must be sold, served and delivered to a patron by an employee that is designated and trained by the restaurant licensee.
- Each server must keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises.

### **Dispensing and Storage of Alcoholic Beverages**

- Alcoholic beverages may only be dispensed from: (1) a “grandfathered” bar structure; (2) an area adjacent to a “grandfathered” bar structure that is visible to a patron sitting at the “grandfathered” bar structure if that area was used to dispense an alcoholic beverage as of May 12, 2009 (i.e. a service bar near the bar structure); or (3) an area that is separated from the dining, staging, lobby, or waiting areas by a solid  translucent, permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons.
- The in-service working inventory of alcoholic beverages may only be stored at (1) a “grandfathered” bar structure; (2) an area adjacent to a “grandfathered” bar structure that is visible to a patron sitting at the “grandfathered” bar structure if that area was used to dispense an alcoholic beverage as of May 12, 2009 (i.e. a service bar near the bar structure); or (3) an area that is separated from the dining, staging, lobby, or waiting areas by a solid, translucent,  permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons.
- A restaurant whose license was applied for and granted *after* May 12, 2009, may only dispense alcoholic beverages and store the in-service working inventory of alcoholic beverages in an area that is separated from the dining, staging, lobby, or waiting areas by a solid,  translucent, permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons.

### **Display of Alcoholic Beverages**

- Alcoholic Beverages may be displayed in areas visible to restaurant patrons.
- In restaurants with “grandfathered bar structures”, the displayed bottles may be unopened or opened and may be used for dispensing at the “grandfathered bar structure”.
- A restaurant whose license was applied for and granted *after* May 12, 2009, may only display unopened bottles. Such bottles may be used for dispensing, but once opened, must be stored in the separate storage/dispensing area that is not visible to restaurant patrons.

### **Minors**

- Minors *may not* sit or be served food or beverages at a “grandfathered bar structure”
- Minors *may* be seated at a table or “counter”.
- Minors may be employed by a restaurant, but may not sell or dispense alcoholic beverages.
- Minors may be employed by a restaurant to bus tables with glassware, bottles or cans containing alcoholic products
- Minors (who are at least 16 years of age) may work at a cash register to ring up the sale of alcoholic beverages.
- Minors may perform maintenance and cleaning services at bar structures when the restaurant is not open for business.

### **Sale and Service of Alcoholic Beverages**

#### **(1) Liquor Sales**

- (a) The primary liquor in a mixed drink may be dispensed from any size bottle, but only in quantities **not to exceed** 1.5 ounces through a department approved calibrated metered dispensing system or device. The restaurant must post a list of types and brands of liquor dispensed through the dispensing system.
- (b) Liquor used as a secondary flavoring need not be dispensed through the dispensing system. Liquor stored and used as flavorings must be clearly labeled “flavoring”.
- (c) The total amount of spirituous liquor in a beverage (including both the primary liquor and any secondary flavorings) may not exceed 2.5 ounces of spirituous liquor.

#### **(2) Wine Sales**

- (a) Wine may be sold and served by the bottle or container in sizes not exceeding 1.5 liters to tables of four or more. For tables of less than four, the size can not be larger than 750 ml.
- (b) Wine may be sold and served by the glass or individual portion in quantities not exceeding 5 ounces. An individual portion may be served to a patron in more than one glass (as a flight) as long as the total amount of wine in all of the glasses does not exceed the individual portion size of 5 ounces.
- (c) Wine may be poured by the glass from any size bottle or container and need not be dispensed through a dispensing device.
- (d) A patron who has purchased bottled wine may serve themselves or others at the table.
- (e) Unfinished wine may be removed from a restaurant by a patron if the bottle is re-corked or re-capped.

**(3) Heavy Beer Sales:** Heavy beer may be sold and served in original containers not exceeding one liter.

**(4) Flavored Malt Beverage Sales:** Flavored malt beverages may be sold and served in original containers not exceeding one liter.

**(5) Beer Sales:** Beer may be sold and served in any size container not exceeding 2 liters and on draft. Beer may be sold to an individual patron only in a container that does not exceed one liter. A pitcher (larger than one liter and up to two liters) may only be sold to parties of two or more. Beer may be sold to go in sealed containers to patrons who have dined in the restaurant.

#### **Limitation on Total Number of Drinks**

- Each restaurant patron may have no more than one spirituous liquor drink before the patron at a time.
- Other than spirituous liquor drinks, each restaurant patron may have no more than two alcoholic beverages of any kind at a time before the patron.

#### **Discounting Practices Prohibited**

-  Alcoholic beverages may not be sold at a discount at any time.
- Other discounting practices are prohibited that encourage over-consumption of alcohol (i.e. "happy hours", "two for ones", "all you can drink for a set price", free alcohol, or selling at less than cost).
- A restaurant licensee or employee may not purchase an alcoholic beverage for a patron.

#### **Consumption on the Premises**

- An open container primarily used for drinking purposes and containing an alcoholic beverage, may not be removed from the restaurant premises.

#### **"Brown Bagging"**

- Patrons may not bring in or store alcoholic beverages on the premises, however at the licensee's discretion a patron may bring in bottled wine for consumption on the premises.
- Wine brought in must be immediately delivered to a server or an employee of the restaurant.
- A wine service may then be performed, and patrons may serve themselves or others at the table.

#### **Advertising**

- Alcoholic beverages may be listed on the food menu or an alcoholic beverage menu.
- Alcoholic beverage menus such as wine lists may be located on the patron's table.
- Servers may ask a patron if they would like an alcoholic beverage.
- Signs advertising the availability of alcoholic beverages may be displayed both inside and outside the restaurant.
- Restaurant advertising in newspapers, magazines, phone book yellow pages, other print media, and on radio, television and billboards may reference the availability of alcoholic beverages.
- Alcohol advertising by the restaurant must comply with the guidelines in Rule R81-1-17 which may be viewed at: <http://www.rules.utah.gov/publicat/code/r081/r081-01.htm#T16>
- Alcoholic beverages *may* be displayed in areas visible to patrons.

#### **Sales and Consumption Hours**

-  Liquor, wine, flavored malt beverages, and heavy beer may be sold on any day from 11:30 a.m. until midnight.
- A liquor, wine, flavored malt beverage, and heavy beer storage area must remain locked at times when liquor sales are not permitted.
-  The hours of beer sales are from 11:30 a.m. to 1 a.m.
- *Hours of Consumption:*  Patrons may not consume liquor, wine, flavored malt beverage, and heavy beer on the restaurant premises after 1 a.m. and before 11:30 a.m. However, they may consume beer until 2 a.m. and no consumption of beer is allowed on the premises after 2 a.m. and before 11:30 a.m.

#### **Employees**

- Any employee handling alcoholic beverages must be twenty one years of age or older.
- Servers of alcohol must wear a unique identification badge showing the employee's first name, initials, or a number assigned by the employer.
- Employees may not consume or be under the influence of alcoholic beverages while on duty.

- Managers, supervisors, and employees who serve alcohol must take and pass an alcohol server training seminar every three years and must complete the training within 30 days of commencing employment.

### **Employee Fines**

- The commission is authorized to assess an administrative fine against an officer, employee, or agent of a licensee for a violation of the alcoholic beverage laws.

### **Warning Sign**

- Each restaurant licensee shall display, in a prominent place, a sign no smaller than eight and one half inches high by eleven inches wide stating: *“WARNING - Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at 1-800-822-2229 with questions or for more information. Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah.”* The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health department contact information shall be no smaller than 20 point bold.

### **Bad Checks**

- The DABC may immediately suspend the license if it receives a bad check as payment for liquor, licensing or bond fees, fines and costs for violations, etc.

### **Prohibited Conduct**

- Lewd acts, attire, and sexually oriented conduct of employees and entertainers that are considered contrary to public welfare and morals are prohibited on the premises. See Utah Code Section 32B-1-501 through 506 which may be viewed at: <http://www.le.utah.gov/UtahCode/section.jsp?code=32B-1>
- Gambling – Restaurant Licensees may not engage in or permit any form of gambling on its premises.
- Illegal drugs or drug paraphernalia - A retail licensee may not knowingly allow a person on the licensed premises to sell, distribute, possess, or use a controlled substance; or use, deliver, or possess with the intent to deliver drug paraphernalia. See Utah Code Section 32B-5-301(5) which may be viewed at: [http://le.utah.gov/~code/TITLE32B/htm/32B05\\_030100.htm](http://le.utah.gov/~code/TITLE32B/htm/32B05_030100.htm)

**B. RESTAURANT LAW**  
**TITLE 32B- ALCOHOLIC BEVERAGE CONTROL ACT**  
*(Updated through July 2011)*

**The complete Alcoholic Beverage Control Act is available through our website**  
<http://abc.utah.gov/>

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

As used in this title:

- (1) "Airport lounge" means a business location:
  - (a) at which an alcoholic product is sold at retail for consumption on the premises; and
  - (b) that is located at an international airport with a United States Customs office on the premises of the international airport.
  
- (2) "Airport lounge license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.
  
- (3) "Alcoholic beverage" means the following:
  - (a) beer; or
  - (b) liquor.
  
- (4) (a) "Alcoholic product" means a product that:
  - (i) contains at least .5% of alcohol by volume; and
  - (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.
  - (b) "Alcoholic product" includes an alcoholic beverage.
  - (c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:
    - (i) except as provided in Subsection (4)(d), an extract;
    - (ii) vinegar;
    - (iii) cider;
    - (iv) essence;
    - (v) tincture;
    - (vi) food preparation; or
    - (vii) an over-the-counter medicine.
  - (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.
  
- (5) "Alcohol training and education seminar" means a seminar that is:
  - (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
  - (b) described in Section 62A-15-401.
  
- (6) "Banquet" means an event:
  - (a) that is held at one or more designated locations approved by the commission in or on the premises of a:
    - (i) hotel;
    - (ii) resort facility;
    - (iii) sports center; or
    - (iv) convention center;
  - (b) for which there is a contract:
    - (i) between a person operating a facility listed in Subsection (6)(a) and another person; and
    - (ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and
  - (c) at which food and alcoholic products may be sold, offered for sale, or furnished.

- (7) (a) "Bar" means a surface or structure:
- (i) at which an alcoholic product is:
    - (A) stored; or
    - (B) dispensed; or
  - (ii) from which an alcoholic product is served.
- (b) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:
- (i) stored; or
  - (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) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.
- (12) "Billboard" means a public display used to advertise, including:
- (a) a light device;
  - (b) a painting;
  - (c) a drawing;
  - (d) a poster;
  - (e) a sign;
  - (f) a signboard; or
  - (g) a scoreboard.
- (13) "Brewer" means a person engaged in manufacturing:
- (a) beer;

- (b) heavy beer; or
  - (c) a flavored malt beverage.
- (14) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.
- (15) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.
- (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:
- (a) under a single contract;
  - (b) at a fixed charge in accordance with the bus company's tariff; and
  - (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.
- (17) "Church" means a building:
- (a) set apart for worship;
  - (b) in which religious services are held;
  - (c) with which clergy is associated; and
  - (d) that is tax exempt under the laws of this state.
- (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.
- (b) "Club license" includes:
    - (i) a dining club license;
    - (ii) an equity club license;
    - (iii) a fraternal club license; or
    - (iv) a social club license.
- (19) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.
- (20) "Commissioner" means a member of the commission.
- (21) "Community location" means:
- (a) a public or private school;
  - (b) a church;
  - (c) a public library;
  - (d) a public playground; or
  - (e) a public park.
- (22) "Community location governing authority" means:
- (a) the governing body of the community location; or
  - (b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.
- (23) "Container" means a receptacle that contains an alcoholic product, including:
- (a) a bottle;
  - (b) a vessel; or
  - (c) a similar item.
- (24) "Convention center" means a facility that is:
- (a) in total at least 30,000 square feet; and
  - (b) otherwise defined as a "convention center" by the commission by rule.

(25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

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

- (i) stored; or
- (ii) dispensed.

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

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

- (a) an auditor or inspector; and
- (b) employed by the department.

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

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

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

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

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

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

- (i) drawing of an alcoholic product:
  - (A) from an area where it is stored; or
  - (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

(ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (32) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license; and
- (iv) a beer-only restaurant license.

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

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

(35) "Educational facility" includes:

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

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

(37) "Event permit" means:

- (a) a single event permit; or

(b) a temporary beer event permit.

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

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

- (i) that contains at least .5% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or  
(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(40) "Fraternal club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a fraternal club license.

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

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

(b) "Furnish" includes to:

- (i) serve;
- (ii) deliver; or
- (iii) otherwise make available.

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

(44) "Health care practitioner" means:

- (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
  - (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
  - (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
  - (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;
  - (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;
  - (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;
  - (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;
  - (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
  - (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
  - (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
  - (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- and
- (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

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

- (i) contains more than 4% alcohol by volume; and
  - (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- (b) "Heavy beer" is considered liquor for the purposes of this title.

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

(47) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

(48) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

(49) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

(50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

- (a) law; or
- (b) court order.

(51) "Intoxicated" means that a person:

- (a) is significantly impaired as to the person's mental or physical functions as a result of the use of:
  - (i) an alcoholic product;
  - (ii) a controlled substance;
  - (iii) a substance having the property of releasing toxic vapors; or
  - (iv) a combination of Subsections (51)(a)(i) through (iii); and
- (b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic product.

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

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

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

(54) "License" means:

- (a) a retail license;
- (b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;
- (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act; or
- (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

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

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

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

- (a) in which the driver and a passenger are separated by a partition, glass, or other barrier;
- (b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and
- (c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

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

- (A) is:
    - (I) alcohol;
    - (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
    - (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
    - (IV) other drink or drinkable liquid; and
  - (B) (I) contains at least .5% alcohol by volume; and
  - (II) is suitable to use for beverage purposes.
- (ii) "Liquor" includes:

- (A) heavy beer;
- (B) wine; and
- (C) a flavored malt beverage.
- (b) "Liquor" does not include beer.

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

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

- (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- (b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

(61) "Local authority" means:

- (a) for premises that are located in an unincorporated area of a county, the governing body of a county; or
- (b) for premises that are located in an incorporated city or a town, the governing body of the city or town.

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

(63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(64) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

(65) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

- (i) (A) under the control of the United States Department of Defense; or  
(B) of the National Guard;
- (ii) that is located within the state; and
- (iii) including a leased facility.
- (b) "Military installation" does not include a facility used primarily for:
  - (i) civil works;
  - (ii) a rivers and harbors project; or
  - (iii) a flood control project.

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

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

- (a) (i) is a state agency other than the department; or  
(ii) is an agency of a county, city, or town; and
- (b) has a responsibility to enforce one or more provisions of this title.

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

- (a) a peace officer, examiner, or investigator; and
- (b) employed by a nondepartment enforcement agency.

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

- (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and
- (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.
- (b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(70) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

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

- (a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
- (b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:
  - (i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and
  - (ii) on and after March 1, 2012, operating:
    - (A) as a tavern; or
    - (B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(72) "Opaque" means impenetrable to sight.

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

- (a) under an agreement with the department; and
- (b) by a person:
  - (i) other than the state; and
  - (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

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

(75) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

- (a) a customer;
- (b) a member;
- (c) a guest;
- (d) an attendee of a banquet or event;
- (e) an individual who receives room service;
- (f) a resident of a resort;
- (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102; or
- (h) an invitee.

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

- (a) Chapter 9, Event Permit Act; or
- (b) Chapter 10, Special Use Permit Act.

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

- (a) a licensee;
- (b) a permittee;
- (c) a manufacturer;
- (d) a supplier;
- (e) an importer;
- (f) one of the following holding a certificate of approval:
  - (i) an out-of-state brewer;
  - (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
  - (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- (g) staff of:
  - (i) a person listed in Subsections (77)(a) through (f); or
  - (ii) a package agent.

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

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

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

- (b) the order is made in the course of that health care practitioner's professional practice; and
- (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

- (80) (a) "Private event" means a specific social, business, or recreational event:
- (i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and
  - (ii) that is limited in attendance to people who are specifically designated and their guests.
- (b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

- (81) (a) "Proof of age" means:
- (i) an identification card;
  - (ii) an identification that:
    - (A) is substantially similar to an identification card;
    - (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;
    - (C) includes date of birth; and
    - (D) has a picture affixed;
  - (iii) a valid driver license certificate that:
    - (A) includes date of birth;
    - (B) has a picture affixed; and
    - (C) is issued:
      - (I) under Title 53, Chapter 3, Uniform Driver License Act; or
      - (II) in accordance with the laws of the state in which it is issued;
  - (iv) a military identification card that:
    - (A) includes date of birth; and
    - (B) has a picture affixed; or
  - (v) a valid passport.
- (b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

- (82) (a) "Public building" means a building or permanent structure that is:
- (i) owned or leased by:
    - (A) the state; or
    - (B) a local government entity; and
  - (ii) used for:
    - (A) public education;
    - (B) transacting public business; or
    - (C) regularly conducting government activities.
- (b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

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

- (84) "Reception center" means a business that:
- (a) operates facilities that are at least 5,000 square feet; and
  - (b) has as its primary purpose the leasing of the facilities described in Subsection (84)(a) to a third party for the third party's event.

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

- (86) (a) "Record" means information that is:
- (i) inscribed on a tangible medium; or
  - (ii) stored in an electronic or other medium and is retrievable in a perceivable form.
- (b) "Record" includes:

- (i) a book;
- (ii) a book of account;
- (iii) a paper;
- (iv) a contract;
- (v) an agreement;
- (vi) a document; or
- (vii) a recording in any medium.

- (87) "Residence" means a person's principal place of abode within Utah.
- (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.
- (89) "Resort" is as defined in Section 32B-8-102.
- (90) "Resort facility" is as defined by the commission by rule.
- (91) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.
- (92) "Restaurant" means a business location:
- (a) at which a variety of foods are prepared;
  - (b) at which complete meals are served to the general public; and
  - (c) that is engaged primarily in serving meals to the general public.
- (93) "Retail license" means one of the following licenses issued under this title:
- (a) a full-service restaurant license;
  - (b) a limited-service restaurant license;
  - (c) a club license;
  - (d) an airport lounge license;
  - (e) an on-premise banquet license;
  - (f) an on-premise beer license;
  - (g) a reception center license; or
  - (h) a beer-only restaurant license.
- (94) "Room service" means furnishing an alcoholic product to a person in a guest room of a:
- (a) hotel; or
  - (b) resort facility.
- (95) "Serve" means to place an alcoholic product before an individual.
- (96) (a) "School" means a building used primarily for the general education of minors.  
(b) "School" does not include an educational facility.
- (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.
- (98) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:
- (a) for the entertainment of one or more patrons;
  - (b) on the premises of:
    - (i) a social club licensee; or
    - (ii) a tavern;
  - (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
  - (d) on a contractual or voluntary basis; and

- (e) whether or not the person is designated as:
  - (i) an employee;
  - (ii) an independent contractor;
  - (iii) an agent of the licensee; or
  - (iv) a different type of classification.

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

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

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

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

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

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

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

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

- (i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;
- (ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or
- (iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

- (i) an officer;
- (ii) a director;
- (iii) an employee;
- (iv) personnel management;
- (v) an agent of the licensee, including a managing agent;
- (vi) an operator; or
- (vii) a representative.

(106) "State of nudity" means:

(a) the appearance of:

- (i) the nipple or areola of a female human breast;
- (ii) a human genital;
- (iii) a human pubic area; or
- (iv) a human anus; or

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

- (i) the nipple or areola of a female human breast;
- (ii) a human genital;
- (iii) a human pubic area; or
- (iv) a human anus.

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

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

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

- (i) with no less than the following at its widest point:
  - (A) four inches coverage width in the front of the human body; and
  - (B) five inches coverage width in the back of the human body; and
- (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

- (108) (a) "State store" means a facility for the sale of packaged liquor:
- (i) located on premises owned or leased by the state; and
  - (ii) operated by a state employee.
- (b) "State store" does not include:
- (i) a package agency;
  - (ii) a licensee; or
  - (iii) a permittee.
- (109) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.
- (b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron, except as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).
- (110) "Sublicense" is as defined in Section 32B-8-102.
- (111) "Supplier" means a person who sells an alcoholic product to the department.
- (112) "Tavern" means an on-premise beer retailer who is:
- (a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
  - (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-premise Beer Retailer License.
- (113) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.
- (114) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.
- (115) "Translucent" means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.
- (116) "Unsaleable liquor merchandise" means a container that:
- (a) is unsaleable because the container is:
    - (i) unlabeled;
    - (ii) leaky;
    - (iii) damaged;
    - (iv) difficult to open; or
    - (v) partly filled;
  - (b) (i) has faded labels or defective caps or corks;
  - (ii) has contents that are:
    - (A) cloudy;
    - (B) spoiled; or
    - (C) chemically determined to be impure; or
  - (iii) contains:
    - (A) sediment; or
    - (B) a foreign substance; or
  - (c) is otherwise considered by the department as unfit for sale.
- (117) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.
- (b) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.
- (118) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

## **Retail Licensing Process**

### **32B-5-201 Application requirements for retail license.**

- (1) (a) Before a person may store, sell, offer for sale, furnish, or permit consumption of an alcoholic product on licensed premises as a retail licensee, the person shall first obtain a retail license issued by the commission, notwithstanding whether the person holds a local license or a permit issued by a local authority.
  - (b) Violation of this Subsection (1) is a class B misdemeanor.
  
- (2) To obtain a retail license under this title, a person shall submit to the department:
  - (a) a written application in a form prescribed by the department;
  - (b) a nonrefundable application fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;
  - (c) an initial license fee:
    - (i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and
    - (ii) that is refundable if a retail license is not issued;
  - (d) written consent of the local authority;
  - (e) a copy of the person's current business license;
  - (f) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;
  - (g) a bond as specified by Section 32B-5-204;
  - (h) a floor plan, and boundary map where applicable, of the premises of the retail license, including any:
    - (i) consumption area; and
    - (ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic beverage;
  - (i) evidence that the retail licensee is carrying public liability insurance in an amount and form satisfactory to the department;
  - (j) evidence that the retail licensee is carrying dramshop insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
  - (k) a signed consent form stating that the retail licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the retail licensee;
  - (l) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
  - (m) any other information the commission or department may require.
  
- (3) The commission may not issue a retail license to a person who:
  - (a) is disqualified under Section 32B-1-304; or
  - (b) is not lawfully present in the United States.
  
- (4) Unless otherwise provided in the relevant part under Chapter 6, Specific Retail License Act, the commission may not issue a retail license to a person if the licensed premises does not meet the proximity requirements of Section 32B-1-202.

### **32B-5-202. Renewal requirements.**

- (1) A retail license expires each year on the day specified in the relevant part under Chapter 6, Specific Retail License Act, for that type of retail license.
  
- (2) To renew a person's retail license, a retail licensee shall, by no later than the day specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed, submit:
  - (a) a completed renewal application to the department in a form prescribed by the department; and
  - (b) a renewal fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the retail license effective on the date the existing retail license expires.

**32B-5-203. Commission and department duties before issuing a retail license.**

(1) (a) Before the commission may issue 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 a retail license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a retail license, the commission shall:

(a) determine that the person filed a complete application and is in compliance with:

(i) Section 32B-5-201; and

(ii) the specific licensing requirements specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the locality within which the proposed licensed premises is located, including:

(i) physical characteristics such as:

(A) condition of the licensed premises;

(B) square footage; and

(C) parking availability; and

(ii) operational factors such as:

(A) tourist traffic;

(B) demographics;

(C) population to be served;

(D) proximity to and density of other state stores, package agencies, and retail licensees; and

(E) the extent of and proximity to any community location;

(d) consider the person's ability to manage and operate a retail license of the type for which the person is applying, including:

(i) management experience;

(ii) past retail alcoholic product experience; and

(iii) the type of management scheme to be used by the retail licensee;

(e) consider the nature or type of retail licensee operation of the proposed retail licensee, including:

(i) the type of menu items that will be offered and emphasized;

(ii) whether the retail licensee will emphasize service to an adult clientele or to minors;

(iii) the proposed hours of operation;

(iv) the seating capacity of the premises; and

(v) the estimated gross sales of food items; and

(f) consider any other factor the commission considers necessary.

**32B-5-204. Bond for retail license.**

(1) (a) A retail licensee shall post a cash bond or surety bond:

(i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and

(ii) payable to the department.

(b) A retail licensee shall procure and maintain the bond required under this section for as long as the retail licensee continues to operate as a retail licensee.

(2) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the retail licensee's faithful compliance with this title and the rules of the commission.

- (3) (a) If a surety bond posted by a retail licensee under this section is canceled due to the retail licensee's negligence, the department may assess a \$300 reinstatement fee.
- (b) No part of a bond posted by a retail licensee under this section may be withdrawn:
- (i) during the period the retail license is in effect; or
  - (ii) while a revocation proceeding is pending against the retail licensee.
- (4) (a) A bond posted under this section by a retail licensee may be forfeited if the retail license is revoked.
- (b) Notwithstanding Subsection (4)(a), the department may make a claim against a bond posted by a retail licensee for money owed the department under this title without the commission first revoking the retail license.

**32B-5-205. Conditional retail license.**

- (1) As used in this section:
- (a) "Conditional retail license" means a retail license that:
- (i) is for one of the following:
    - (A) a full-service restaurant license; or
    - (B) a limited-service restaurant license;
  - (ii) conditions the holder's ability to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises on the person submitting to the department a copy of the holder's current business license before obtaining a valid retail license; and
  - (iii) provides that the holder will be issued a valid retail license if the holder complies with the requirements of Subsection (3).
- (b) "Valid retail license" means a retail license issued pursuant to this part under which the holder is permitted to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises.
- (2) Subject to the requirements of this section, the commission may issue a conditional retail license to a person if the person:
- (a) meets the requirements to obtain the retail license for which the person is applying except the requirement to submit a copy of the person's current business license; and
  - (b) agrees not to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises before obtaining a valid retail license.
- (3) (a) A conditional retail license becomes a valid retail license on the day on which the department notifies the person who holds the conditional retail license that the department finds that the person has complied with Subsection (3)(b).
- (b) For a conditional retail license to become a valid retail license, a person who holds the conditional retail license shall:
- (i) submit to the department a copy of the person's current business license; and
  - (ii) provide to the department evidence satisfactory to the department that:
    - (A) there has been no change in the information submitted to the commission as part of the person's application for a retail license; and
    - (B) the person continues to qualify for the retail license.
- (4) A conditional retail license expires six months after the day on which the commission issues the conditional retail license, unless the conditional retail license becomes a valid retail license before that day.

**32B-5-206. Seasonal retail license.**

- (1) If authorized in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license, the commission may in accordance with this section issue a seasonal retail license located in an area the commission considers proper.
- (2) (a) A seasonal retail license shall be for a period of six consecutive months.
- (b) A seasonal retail license issued for operation during a summer time period is known as a "Seasonal A" retail license. The period of operation for a Seasonal A retail license:

- (i) begins on May 1; and
  - (ii) ends on October 31.
  - (c) A seasonal retail license issued for operation during a winter time period is known as a "Seasonal B" retail license. The period of operation for a Seasonal B retail license:
    - (i) begins on November 1; and
    - (ii) ends on April 30.
- (3) In determining the number of each type of retail license that the commission may issue under the relevant part under Chapter 6, Specific Retail License Act:
- (a) a seasonal retail license is counted as one-half of one retail license of the specific type of retail license; and
  - (b) each Seasonal A retail license shall be paired with a Seasonal B retail license of the same type of retail license.

### **Part 3**

#### **Retail Licensing Operational Requirements**

##### **32B-5-301. General operational requirements.**

- (1) (a) A retail licensee and staff of a retail licensee shall comply with this title and the rules of the commission, including the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license.
- (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
- (i) a retail licensee;
  - (ii) individual staff of a retail licensee; or
  - (iii) both a retail licensee and staff of the retail licensee.
- (2) (a) If there is a conflict between this part and the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license, the relevant part under Chapter 6 governs.
- (b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.
- (c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail License Act, refers to "retail licensee," staff of the retail licensee is subject to the same requirement or prohibition.
- (3) (a) A retail licensee shall display in a prominent place in the licensed premises the retail license that is issued by the department.
- (b) A retail licensee shall display in a prominent place a sign in large letters that consists of text in the following order:
- (i) a header that reads: "WARNING";
  - (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
  - (iii) 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.";
  - (iv) a header that reads: "WARNING"; and
  - (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.
- (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
- (4) A retail licensee may not on the licensed premises:
- (a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling; or  
(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(5) A retail licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

- (a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or
- (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

(6) Upon the presentation of credentials, at any time during which a retail licensee is open for the transaction of business, the retail licensee shall immediately:

- (a) admit a commissioner, authorized department employee, or law enforcement officer to the retail licensee's premises; and
- (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to inspect completely:
  - (i) the entire premises of the retail licensee; and
  - (ii) the records of the retail licensee.

(7) An individual may not consume an alcoholic product on the licensed premises of a retail licensee on any day during the period:

- (a) beginning one hour after the time of day that the period during which a retail licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises begins; and
- (b) ending at the time specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license when the retail licensee may first sell, offer for sale, or furnish an alcoholic product on the licensed premises on that day.

### **32B-5-302. Recordkeeping.**

(1) A retail licensee shall make and maintain a record showing in detail:

- (a) quarterly expenditures made separately for:
  - (i) malt or brewed beverages;
  - (ii) liquor;
  - (iii) set-ups;
  - (iv) food; and
  - (v) any other item required by the department; and
- (b) sales made separately for:
  - (i) malt or brewed beverages;
  - (ii) set-ups;
  - (iii) food; and
  - (iv) any other item required by the department.

(2) A retail licensee shall make and maintain a record required by Subsection (1):

- (a) in a form approved by the department; and
- (b) current for each three-month period.

(3) A retail licensee shall support an expenditure by:

- (a) a delivery ticket;
- (b) an invoice;
- (c) a receipted bill;
- (d) a canceled check;
- (e) a petty cash voucher; or
- (f) other sustaining datum or memorandum.

(4) In addition to a record required under Subsection (1), a retail licensee shall make and maintain any other record

the department may require.

(5) (a) A record of a retail licensee is subject to inspection by an authorized representative of the commission and the department.

(b) A retail licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the retail licensee at times the department considers advisable.

(6) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this section.

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

(1) (a) A retail licensee may not purchase liquor except from a state store or package agency.

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

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

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

(A) a beer wholesaler licensee; or

(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.

**32B-5-304. Portions in which alcoholic product may be sold.**

(1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following requirements:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the retail licensee shall designate a location where flavorings are stored on the floor plan submitted to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert; and

(c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.

(2) (a) (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an individual portion that does not exceed 5 ounces per glass or individual portion.

(ii) A retail licensee may sell, offer for sale, or furnish an individual portion of wine to a patron in more

than one glass if the total amount of wine does not exceed 5 ounces.

(b) (i) A retail licensee may sell, offer for sale, or furnish wine in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) A retail licensee may sell, offer for sale, or furnish wine in a container not to exceed 750 milliliters at a price fixed by the commission to a table of less than four persons.

(3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(5) (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original container; and

(ii) in a container on draft.

(b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):

(i) in a size of container that exceeds two liters; or

(ii) to an individual patron in a size of container that exceeds one liter.

### **32B-5-305. Pricing of alcoholic product -- Other charge.**

(1) (a) A retail licensee may sell, offer for sale, or furnish liquor only at a price fixed by the commission.

(b) A retail licensee may not sell an alcoholic product at a discount price on any date or at any time.

(2) (a) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at less than the cost of the alcoholic product to the retail licensee.

(b) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price that encourages over consumption or intoxication.

(c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price for only certain hours of the retail licensee's business day, such as a "happy hour."

(d) A retail licensee may not sell, offer for sale, or furnish more than one alcoholic product for the price of a single alcoholic product.

(e) A retail licensee may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price.

(f) A retail licensee may not engage in a promotion involving or offering a free alcoholic product to the general public.

(3) As authorized by commission rule, a retail licensee may charge a patron for providing:

(a) a service related to liquor purchased at the licensed premises; or

(b) wine service performed for wine carried in by a patron in accordance with Section 32B-5-307.

### **32B-5-306. Purchasing or selling alcoholic product.**

(1) A retail licensee may not sell, offer for sale, or furnish an alcoholic product to:

(a) a minor;

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

(2) (a) A patron may only purchase an alcoholic product in the licensed premises of a retail licensee from and be served by an individual who is:

(i) staff of the retail licensee; and

(ii) designated and trained by the retail licensee to sell and serve an alcoholic product.

(b) An individual may sell, offer for sale, or furnish an alcoholic product to a patron only if the individual is:

- (i) staff of the retail licensee; and
  - (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.
- (c) Notwithstanding Subsection (2)(a) or (b), a patron who purchases bottled wine from staff of the retail licensee or carries bottled wine onto the retail licensee's premises pursuant to Section 32B-5-307 may thereafter serve wine from the bottle to the patron or others at the patron's table.

- (3) The following may not purchase an alcoholic product for a patron:
- (a) a retail licensee; or
  - (b) staff of a retail licensee.

**32B-5-307. Bringing onto or removing alcoholic product from premises.**

- (1) Except as provided in Subsection (3):
- (a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.
  - (b) A retail licensee may not allow a person to:
    - (i) bring onto licensed premises an alcoholic product for on-premise consumption; or
    - (ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee.
- (2) Except as provided in Subsection (3):
- (a) A person may not carry from a licensed premises of a retail licensee an open container that:
    - (i) is used primarily for drinking purposes; and
    - (ii) contains an alcoholic product.
  - (b) A retail licensee may not permit a patron to carry from the licensed premises an open container described in Subsection (2)(a).
- (3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:
  - (i) permitted by the retail licensee; and
  - (ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.
- (b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.
- (c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3).
- (d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased in the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

**32B-5-308. Requirements on staff or others on premises -- Employing a minor.**

- (1) Staff of a retail licensee, while on duty, may not:
- (a) consume an alcoholic product; or
  - (b) be intoxicated.
- (2) (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.
- (b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

**32B-5-309 (Superseded 07/01/12) Ceasing operation -- Prohibiting transfer of license.**

- (1) (a) Except as provided in Subsection (1)(h), a retail licensee may not close or cease operation for a period longer than 240 hours, unless:
- (i) the retail licensee notifies the department in writing at least seven days before the day on which the retail

licensee closes or ceases operation; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (1)(a), in the case of emergency closure, a retail licensee shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation of a retail licensee for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon:

(A) written request of the retail licensee; and

(B) a showing of good cause.

(d) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(e) A notice required under this Subsection (1) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the retail licensee will reopen or resume operation.

(f) Failure of a retail licensee to provide notice and to obtain department approval before closure or cessation of operation results in an automatic forfeiture of:

(i) the retail license; and

(ii) the unused portion of the retail license fee for the remainder of the retail license year effective immediately.

(g) Failure of a retail licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:

(i) the retail license; and

(ii) the unused portion of the retail license fee for the remainder of the retail license year.

(h) This Subsection (1) does not apply to:

(i) an on-premise beer retailer who is not a tavern; or

(ii) an airport lounge licensee.

(2) A retail licensee may not transfer a retail license from one location to another location, without prior written approval of the commission.

(3) (a) A person, having been issued a retail license may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the retail license to another person whether for monetary gain or not.

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

**32B-5-309 (Effective 07/01/12). Ceasing operation.**

(1) Except as provided in Subsection (8), a retail licensee may not close or cease operation for a period longer than 240 hours, unless:

(a) the retail licensee notifies the department in writing at least seven days before the day on which the retail licensee closes or ceases operation; and

(b) the closure or cessation of operation is first approved by the department.

(2) Notwithstanding Subsection (1), in the case of emergency closure, a retail licensee shall immediately notify the department by telephone.

(3) (a) The department may authorize a closure or cessation of operation of a retail licensee for a period not to exceed 60 days.

(b) The department may extend the initial period an additional 30 days upon:

(i) written request of the retail licensee; and

(ii) a showing of good cause.

(4) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(5) A notice required under this section shall include:

(a) the dates of closure or cessation of operation;

(b) the reason for the closure or cessation of operation; and

(c) the date on which the retail licensee will reopen or resume operation.

(6) Failure of a retail licensee to provide notice and to obtain department approval before closure or cessation of operation results in an automatic forfeiture of:

(a) the retail license; and

(b) the unused portion of the retail license fee for the remainder of the retail license year effective immediately.

(7) Failure of a retail licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:

(a) the retail license; and

(b) the unused portion of the retail license fee for the remainder of the retail license year.

(8) This section does not apply to:

(a) an on-premise beer retailer who is not a tavern; or

(b) an airport lounge licensee.

**32B-5-310. Notifying department of change in ownership.**

The commission may suspend or revoke a retail license if the retail licensee does not immediately notify the department of a change in:

(1) ownership of the premises of the retail license;

(2) for a corporate owner, the:

(a) corporate officers or directors of the retail licensee; or

(b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or

(3) for a limited liability company:

(a) managers of the limited liability company; or

(b) members owning at least 20% of the limited liability company.

**Specific Retail Licensing  
Restaurant Full Service License**

**32B-6-201. Title.**

This part is known as "Full-service Restaurant License."

**32B-6-202. Definitions.**

As used in this part:

(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a full-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection

(1)(a)(i)(B); or

(II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by

rule made by the commission; and

(III) is issued the full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection (1)(a)(i);

(iii) as of May 12, 2009, has no patron seating at the bar structure; or

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by

rule made by the commission; and

(III) is issued a full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

(2) "Seating grandfathered bar structure" means:

(a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section 32B-6-409.

**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 4,925.

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

(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.

### **32B-6-204. Specific licensing requirements for full-service restaurant license.**

(1) To obtain a full-service restaurant license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A full-service restaurant license expires on October 31 of each year.

(b) To renew a person's full-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a full-service restaurant license is \$300.

(b) The initial license fee for a full-service restaurant license is \$2,000.

(c) The renewal fee for a full-service restaurant license is in the following amount:

Gross Cost of Liquor in Previous License Year for the Licensee	Renewal Fee
under \$5,000	\$850
equals or exceeds \$5,000 but less than \$10,000	\$1,050
equals or exceeds \$10,000 but less than \$25,000	\$1,500
equals or exceeds \$25,000	\$1,750

(4) The bond amount required for a full-service restaurant license is the penal sum of \$10,000.

**32B-6-205. Specific operational requirements for a full-service restaurant license.**

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

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

- (i) a full-service restaurant licensee;
- (ii) individual staff of a full-service restaurant licensee; or
- (iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at the licensed premises on any day during the period that:

- (i) begins at midnight; and
- (ii) ends at 11:29 a.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a full-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.

(7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:

- (a) mix for an alcoholic product; or
- (b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

- (b) A patron may not have more than one spirituous liquor drink at a time before the patron.
- (c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

- (a) at:
  - (i) the patron's table;
  - (ii) a counter; or

- (iii) a seating grandfathered bar structure; and
- (b) where food is served.

(11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

- (i) sit;
- (ii) be furnished an alcoholic product; and
- (iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

- (i) sit; or
- (ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

- (i) a grandfathered bar structure;
- (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or
- (iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

- (I) not readily visible to a patron; and
- (II) not accessible by a patron; and

(B) apart from an area used:

- (I) for dining;
- (II) for staging; or
- (III) as a lobby or waiting area;

(b) the full-service restaurant licensee uses an alcoholic product that is:

- (i) stored in an area described in Subsection (12)(a); or
- (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
  - (A) immediately before the alcoholic product is dispensed it is in an unopened container;
  - (B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and
  - (C) once opened, the container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor including:

- (a) a set-up charge;
- (b) a service charge; or
- (c) a chilling fee.

## C. COMMISSION RULES

### **R81-1-2. Definitions.**

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

- (1) "ACT" means the Alcoholic Beverage Control Act, Title 32B.
- (2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.
- (3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.
- (4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.
- (5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.
- (6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.
- (7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.
- (8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.
- (9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.
- (10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.
- (11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.
- (12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, club, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.
- (13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.
- (14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.
- (15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.
- (16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(18) "WARNING SIGN" means a sign no smaller than eight and one half inches high by eleven inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health department contact information shall be no smaller than 20 point bold.

### **R81-1-3. General Policies.**

#### (1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

#### (2) Manner of Paying Fees.

Payment of all fees for licenses, permits, certificates of approval, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

#### (3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of \$20 per copy, or on the department's website at <http://www.abc.utah.gov>.

#### (4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

#### (5) Returned Checks.

(a) The department will assess a \$20 charge for any check payable to the department returned for the following reasons:

- (i) insufficient funds;
- (ii) refer to maker; or
- (iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department may require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis. The determination of when to put a licensee, permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the department and shall be based on the following factors:

- (i) dollar amount of the returned check(s);
- (ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the department;

(iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission.

(e) In addition to the remedies listed in Subsections (5)(a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes. All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

### **R81-1-9. Liquor Dispensing Systems.**

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

#### **R81-1-11. Multiple-Licensed Facility Storage and Service.**

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, club, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

- (a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;
- (b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;
- (c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;
- (d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;
- (e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;
- (f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

- (a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;
- (b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and
- (c) the common storage area may be located on the premises of one of the licensed liquor establishments.

**R81-1-12. Alcohol Training and Education Seminar.**

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32B who:

- (a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;
- (b) is employed to manage or supervise the service of alcoholic beverages; or
- (c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

- (a) date of hire, and
- (b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

- (a) alcohol as a drug and its effect on the body and behavior;
- (b) recognizing the problem drinker;
- (c) an overview of state alcohol laws;
- (d) dealing with problem customers; and
- (e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

- (a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or
- (b) engage in any activity that would constitute managing operations at the premises of a licensee.

**R81-1-16. Disqualification Based Upon Conviction of Crime.**

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

- (a) a felony under any federal or state law;
- (b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- (c) any crime involving moral turpitude; or
- (d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

- (a) a partner;
- (b) a managing agent;
- (c) a manager;
- (d) an officer;
- (e) a director;
- (f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
- (g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

- (a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;
- (b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and
- (c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

**R81-1-26. Criminal History Background Checks.**

(1) Authority. This rule is pursuant to:

- (a) the commission's powers and duties under 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;
- (b) 32B-1-301 to -307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and
- (c) 32B-1-301 to -307 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

- (a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and
- (b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a) (i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under 32B-9 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32B-9 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

#### **R81-4A-1. Licensing.**

(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) 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 recreational amenity on-premise beer retailer license is active.

#### **R81-4A-2. Application.**

(1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-204 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

#### **R81-4A-3. Bonds.**

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

**R81-4A-4. Insurance.**

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

**R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.**

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) (a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

**R81-4A-6. Restaurant Liquor Licensee Operating Hours.**

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

**R81-4A-7. Sale and Purchase of Alcoholic Beverages.**

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

**R81-4A-8. Liquor Storage.**

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

**R81-4A-9. Alcoholic Product Flavoring.**

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

**R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.**

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

**R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".**

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

**R81-4A-12. Menus; Price Lists.**

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

**R81-4A-13. Identification Badge.**

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee

shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

**R81-4A-14. Brownbagging.**

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

- (1) When the entire restaurant is closed to the general public for the private event, or
- (2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

**R81-4A-15. Grandfathered Bar Structures.**

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-202 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule;

and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-202 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

## D. ALCOHOLIC BEVERAGE LIABILITY

### **32B-15-102 Definitions.**

As used in this chapter:

- (1) "Death of a third person" includes recovery for all damages, special and general, resulting from the death, except punitive damages.
- (2) (a) "Injury" includes injury in person, property, or means of support.  
(b) "Injury" also includes recovery for intangibles such as:
  - (i) mental and emotional injuries;
  - (ii) loss of affection; and
  - (iii) loss of companionship.

### **Part 2 Liability**

### **32B-15-201. Liability for injuries and damage resulting from distribution of alcoholic products.**

- (1) (a) Except as provided in Subsections 32B-15-202(2) and (3), a person described in Subsection (1)(b) is liable for:
  - (i) any and all injury and damage, except punitive damages to:
    - (A) a third person; or
    - (B) the heir, as defined in Section 78B-3-105, of that third person; or
  - (ii) the death of a third person.(b) A person is liable under Subsection (1)(a) if:
  - (i) the person directly gives, sells, or otherwise provides an alcoholic product:
    - (A) to a person described in Subsection (1)(b)(ii); and
    - (B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product;
  - (ii) those actions cause the intoxication of:
    - (A) an individual under the age of 21 years;
    - (B) an individual who is apparently under the influence of intoxicating alcoholic products or drugs;
    - (C) an individual whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of intoxicating alcoholic products or drugs; or
    - (D) an individual who is a known interdicted person; and
  - (iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic product.
- (2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:
  - (i) any and all injury and damage, except punitive damages to:
    - (A) a third person; or
    - (B) the heir, as defined in Section 78B-3-105, of that third person; or
  - (ii) the death of the third person.(b) A person is liable under Subsection (2)(a) if:
  - (i) that person directly gives or otherwise provides an alcoholic product to an individual who the person knows or should have known is under the age of 21 years;
  - (ii) those actions caused the intoxication of the individual provided the alcoholic product;
  - (iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic product; and
  - (iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic product as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product.
- (3) This section does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

**32B-15-202. Liability for employees -- Employee protected in exercising judgment.**

(1) (a) Except for a violation of Subsection 32B-15-201(2), an employer is liable for the actions of its staff in violation of this chapter.

(b) This Subsection (1) does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

(2) An employer may not sanction or terminate the employment of individual staff of a retail licensee or other establishment serving an alcoholic product as a result of the staff having exercised the staff's independent judgment to refuse to sell an alcoholic product to a person the staff considers to meet one or more of the conditions described in Subsection 32B-15-201(1)(b).

(3) An employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

**32B-15-203. Governmental immunity.**

This title does not create civil liability on the part of the following arising out of one of the following's actions in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of an alcoholic product:

- (1) the state;
- (2) a state agency;
- (3) a state employee;
- (4) the commission;
- (5) the department; or
- (6) a political subdivision.

**Part 3  
Civil Action**

**32B-15-301. Cause of action -- Statute of limitations.**

(1) (a) A person who suffers an injury under Subsection 32B-15-201 has a cause of action against the person who provided the alcoholic product in violation of Section 32B-15-201.

(b) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.

(2) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 2010, is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to \$2,000,000.

(3) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

(4) (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.

(b) A cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (2).

(c) A cause of action brought under this chapter is exempt from Sections 78B-5-817 through 78B-5-823.

(5) This section does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

**32B-15-302. Action for contribution by provider of an alcoholic product.**

(1) (a) Except as provided in Subsections (2) and (3), a person, as defined under Section 32B-15-201 or Subsection 32B-15-202(1), against whom an award is made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which a person causing the injury and damage may be liable to a person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

- (a) a person entitled to recovery as described in Subsection 32B-15-201(1)(a)(i) or (ii); or
- (b) a person entitled to recover as described in Subsection 32B-15-201(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to a person entitled to recover as described in Subsection 32B-15-201(1)(a)(i) or (ii) or 32B-15-201(2)(a)(i) or (ii):

- (a) in a cause of action brought under this chapter; or
- (b) in a separate cause of action for injury and damage that is not brought under this chapter.

## E. ALCOHOLIC BEVERAGE ADVERTISING

### **R81-1-17. Advertising.**

(1) Authority and General Purpose. This rule is pursuant to Section 32B-4-510(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32B.

#### (2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

#### (3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32B-1-102(55), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section

(6) of this rule.

#### (6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for \$...".

(g) May not encourage or condone drunk driving;

- (h) May not depict the act of drinking;
- (i) May not promote or encourage the sale to or use of alcohol by minors;
- (j) May not be directed or appeal primarily to minors by:
  - (i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;
  - (ii) employing any entertainment figure or group that appeals primarily to minors;
  - (iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;
  - (iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;
  - (v) using models or actors in the advertising that are or reasonably appear to be minors;
  - (vi) advertising at an event where most of the audience is reasonably expected to be minors; or
  - (vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.
- (k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;
- (l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;
- (m) May not offer alcoholic beverages without charge;
- (n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and
- (o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32B-4-304 and -510.

**Alcoholic Beverage Control Act**  
**32B-1-501 through -505**  
**Part 5 - Attire, Conduct, and Entertainment Act**

**32B-1-501. Title.**

This part is known as the "Attire, Conduct, and Entertainment Act."

**32B-1-502. Purpose -- Application to other laws.**

(1) This part establishes reasonable and uniform time, place, and manner of operation requirements relating to attire, conduct, and sexually oriented entertainers on premises or at an event at which an alcoholic product is sold, offered for sale, furnished, or allowed to be consumed under a retail license or permit issued by the commission so as to:

(a) reduce the adverse secondary effects that the attire, conduct, and sexually oriented entertainers may have upon communities of this state; and  
(b) protect the health, peace, safety, welfare, and morals of the residents of communities of this state.

(2) Nothing in this part allows the showing or display of any matter that is contrary to:

- (a) applicable federal or state statutes prohibiting obscenity; or
- (b) state statutes relating to lewdness or indecent public displays.

(3) A local authority may be more restrictive of attire, conduct, or sexually oriented entertainers of the type prohibited in this part.

**32B-1-503. Definitions.**

Reserved

**32B-1-504. General requirements on attire and conduct.**

The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

(1) employing or using a person in the sale, offer for sale, or furnishing of an alcoholic product while the person is in:

- (a) a state of nudity;
- (b) a state of seminudity; or
- (c) performance attire or clothing that exposes to view any portion of:
  - (i) the female breast below the top of the areola; or
  - (ii) the cleft of the buttocks;

(2) employing or using the services of a person to mingle with patrons while the person is in:

- (a) a state of nudity;
- (b) a state of seminudity; or
- (c) performance attire or clothing that exposes to view any portion of:
  - (i) the female breast below the top of the areola; or
  - (ii) the cleft of the buttocks;

(3) encouraging or permitting a person to:

- (a) engage in or simulate an act of:
  - (i) sexual intercourse;
  - (ii) masturbation;
  - (iii) sodomy;
  - (iv) bestiality;
  - (v) oral copulation;
  - (vi) flagellation; or
  - (vii) a sexual act that is prohibited by Utah law; or
- (b) touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person;

(4) permitting a person to wear or use a device or covering that:

- (a) is exposed to view; and
  - (b) simulates all or any portion of the human genitals, anus, pubic area, or female breast;
- (5) permitting a person to use an artificial device or inanimate object to depict an act prohibited by this section;
- (6) permitting a person to remain on premises or at an event who exposes to public view any portion of that person's:
- (a) genitals, pubic area, or anus; or
  - (b) in the case of a female, the areola and nipple of the breast; or
- (7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:
- (a) an act or simulated act of:
    - (i) sexual intercourse;
    - (ii) masturbation;
    - (iii) sodomy;
    - (iv) bestiality;
    - (v) oral copulation;
    - (vi) flagellation; or
    - (vii) a sexual act that is prohibited by Utah law;
  - (b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;
  - (c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or
  - (d) a scene wherein a person displays the genitals or anus.

**32B-1-505. Sexually oriented entertainer.**

(1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a person to:

- (a) appear or perform in a state of nudity;
- (b) perform or simulate an act of:
  - (i) sexual intercourse;
  - (ii) masturbation;
  - (iii) sodomy;
  - (iv) bestiality;
  - (v) oral copulation;
  - (vi) flagellation; or
  - (vii) a sexual act that is prohibited by Utah law; or
- (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

(3) A sexually oriented entertainer may perform in a state of seminudity:

- (a) only in:
  - (i) a tavern; or
  - (ii) a social club license premises; and
- (b) only if:
  - (i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and
  - (ii) the outside entrance doors of the premises remain unlocked.

(4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:

- (a) approved by the commission in accordance with rules made by the commission;
- (b) configured so as to preclude a patron from:
  - (i) touching the sexually oriented entertainer; or
  - (ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and

- (c) configured so as to preclude the sexually oriented entertainer from touching a patron.
- (5) A sexually oriented entertainer may not touch a patron:
- (a) during the sexually oriented entertainer's performance; or
  - (b) while the sexually oriented entertainer is dressed in performance attire.
- (6) A sexually oriented entertainer, while in the portion of the premises used by patrons, shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.
- (7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.
- (8) A patron may not:
- (a) touch a sexually oriented entertainer:
    - (i) during the sexually oriented entertainer's performance; or
    - (ii) while the sexually oriented entertainer is dressed in performance attire; or
  - (b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.
- (9) A minor may not be on premises described in Subsection (3).
- (10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or social club licensee:
- (a) may not appear or perform in a state of nudity or a state of seminudity; and
  - (b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:
    - (i) is not less than the following at its widest point:
      - (A) four inches coverage width in the front of the human body; and
      - (B) five inches coverage width in the back of the human body;
    - (ii) does not taper to less than one inch wide at the narrowest point; and
    - (iii) if covering a female, completely covers the breast below the top of the areola.

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**U.S. DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**REMINDER  
Retailers Of Beverage Alcohol Products**

If you sell beverage alcohol as part of your business, you must pay an annual special occupational tax. Beverage alcohol means distilled spirits, wine, beer, mixed drinks, and beer or wine coolers. This tax applies to persons who sell on or off premises or who provide alcoholic beverages as part of the cost of an item or service. You may owe this tax even when you will not make a profit or when you are exempt from income tax.

Detailed information, forms, and taxpayer assistance, is available at web site of the ALCOHOL AND TOBACCO TAX AND TRADE BUREAU:

<http://www.ttb.gov/alcohol/retailers/index.htm>

You must file and pay the special occupational tax on form ATF F 5630.5. You can print or download ATF Form 5630.5 or you can request a packet with the form and instructions by calling the Alcohol and Tobacco Tax and Trade Bureau's toll-free number at 800-937-8864 or local to 513-684-2979.

**(REVISED APRIL 22, 2005)**

**Suspension of Special Occupational Tax Payments**

Washington, D.C. - On October 22, 2004, H.R. 4520, the American Job Creations Act of 2004, was signed into law. As part of this act, the payment of Special Occupational Tax (SOT) will be suspended for certain businesses.

Although most taxpayers no longer will have to pay this tax during the suspension period, others will still be required to continue paying, and all taxpayers must still file the SOT Tax Return (TTB Form 5630.5) annually with the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Currently, SOT is due by July 1 of every year for most businesses engaged in alcohol and tobacco industries at the manufacturing, wholesaling/importing, and retailing levels (tobacco retailers are not included).

With this new law, most SOT taxpayers will no longer be required to pay this tax for the period beginning July 1, 2005. The suspension of the SOT requirement will last three years and ends on June 30, 2008. No SOT is due for operations conducted between these dates.

Payment of SOT will no longer be required from producers, wholesalers, importers, and retailers of alcohol beverages, as well as manufacturers of non-beverage products.

SOT will remain due by Tax-Free Alcohol Users and Specially Denatured Alcohol Users and Dealers as well as Tobacco Products Manufacturers and Tobacco Export Warehouse Proprietors.

For all industry members, SOT remains due and payable for all persons in business and any new business until July 1, 2005. Any liabilities up until that date will still be due, even during the suspension period.

If you have questions regarding the suspension of SOT, please contact TTB's National Revenue Center at 1-(800) 937-8864 or (513) 684-2979.