

JONI J. JONES (7562)
KYLE J. KAISER (13924)
Assistant Utah Attorneys General
Office of the Utah Attorney General
160 East 300 South, Sixth Floor
PO BOX 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Attorneys for Defendants
E-mail: jonijones@utah.gov
E-mail: kkaiser@utah.gov

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

**UTAH HOSPITALITY ASSOC.,
INC.**, a nonprofit corporation licensed to do
business in the State of Utah, John Doe I, an
individual owning a social club; and John
Doe II, an individual denied a social club
license,

Plaintiffs,

v.

Gary R. Herbert, Governor of the State
of Utah, in his official capacity, Mark
Shurtleff, Attorney General for the State of
Utah, in his official capacity, Richard J.
Sperry, Jeffrey Wright, Kathleen
McConkie Collinwood, and David Gladwell,
in their official capacities as members of the
Department of Alcohol and Beverage
Control Commission, John Does III-X,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

Case No. 2:11-CV-00612

Judge Bruce S. Jenkins

TABLE OF CONTENTS

INTRODUCTION..... vi
STATEMENT OF FACTS..... vi
LEGAL STANDARD..... 1
LEGAL ARGUMENT..... 2

I. SB 314 Does Not Violate Section I of the Sherman Act...... 2

A. SB314’s “Happy Hour” Ban Does Not Violate the Sherman Act. 4

1. The “Happy Hour” Regulation Is a Unilateral State Regulation and Thus Exempt from the Sherman Act...... 4

2. The “Happy Hour” Restriction Is Not a *Per Se* Violation of the Act...... 6

3. The Happy Hour Ban Constitutes State Action and Thus Is Exempt from the Sherman Act...... 9

4. Even If the Happy Hour Ban Violated the Sherman Act, the Legislation Is Lawful Under the Twenty-first Amendment...... 9

B. SB 314’s Provisions Regulating the Number of Liquor Licenses, Tying Liquor Licenses to the Number of Law Enforcement Officials, and Allowing Private Sales of Licenses Do Not Violate the Sherman Act. 11

C. Defendants Enjoy Eleventh Amendment Immunity from Plaintiffs’ Damages Claims...... 13

II. SB 314 Does Not Violate Plaintiffs’ Procedural Due Process, Substantive Due Process, or Equal Protection Rights Under the Federal or State Constitutions...... 14

A. SB 314 Does Not Violate the Federal Constitution. 14

B. SB 314 Does Not Violate the State Constitution. 18

III. The LDS Church’s Practice of Offering Its View to Legislators on Liquor Laws Does Not Violate the Federal or State Constitutions...... 18

CONCLUSION..... 24

TABLE OF AUTHORITES

FEDERAL AND STATE CASES

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	1, 2, 8
<i>Associated General Contractors of California, Inv. v. Carpenters</i> , 459 U.S. 519 (2009)	2
<i>Bailey v. Bayles</i> , 2002 UT 58, 52 P.3d 1158 (Utah 2002)	18
<i>Bayview-Lofberg’s Inc. v. City of Milwaukee</i> , 905 F.2d 142 (7th Cir. 1990)	16
<i>Bd. of Regents of State Colleges v. Roth</i> , 408 U.S. 564 (1972)	15
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 554 (2009)	2
<i>California Retail Liquor Dealers v. Midcal Aluminum, Inc.</i> , 445 U.S. 97 (1980)	3, 9
<i>Capital Cities Cable, Inc. v. Crisp</i> , 467 U.S. 691 (1984)	10
<i>Cathy’s Tap, Inc. v. Village of Mapleton</i> , 65 F. Supp. 2d 874 (C.D. Ill. 1999)	18, 19
<i>City of Cleburne v. Cleburne Living Center</i> , 473 U.S. 432 (1985)	17
<i>City of Columbia, Columbia Outdoor Advertising v. Omni Outdoor Advertising</i> , 499 U.S. 365 (1991)	6
<i>City of Wichita, Kansas. v. U.S. Gypsum Co</i> , 72 F.3d 1491 (10th Cir. 1996)	2
<i>Cleveland Bd. of Education v. Loudermill</i> , 470 U.S. 532 (1985)	15
<i>Costco Wholesale Corp. v. Maleng</i> , 522 F.3d 874 (9th Cir. 2008)	8
<i>Dr. Miles Medical Co. v. John D. Park & Sons Co.</i> , 220 U.S. 373 (1911)	7
<i>Exxon Corp. v. Governor of Maryland</i> , 437 U.S. 117 (1978)	4
<i>F.S. Royster Guano Co. v. Virginia</i> , 253 U.S. 412 (1920)	17
<i>Farthing v. City of Shawnee</i> , 39 F.3d 1131 (10th Cir. 1994)	15
<i>Fisher v. City of Berkley</i> , 475 U.S. 260 (1986)	5, 6
<i>Florida Prepaid Postsecondary Education Expense Bd. v. College Savings Bank</i> , 527 U.S. 627 (1999)	14
<i>Gallivan v. Walker</i> , 2002 UT 89, 54 P.3d 1069 (Utah 2002)	18
<i>Gee v. Pacheco</i> , 627 F.3d 1178 (10th Cir. 2010)	2
<i>Hall v. Bellmon</i> , 935 F.2d 1106 (10th Cir. 1991)	2
<i>Hall v. Witteman</i> , 584 F.3d 859 (10th Cir. 2009)	1, 2
<i>Harries v. McCrea</i> , 62 Utah 348, 219 P. 533 (Utah 1923)	21
<i>Jacobs, Visconti & Jacobs v. City of Lawrence</i> , 927 F.2d 1111 (10th Cir. 1991)	17
<i>KT&G Corp. v. Attorney Gen. of Oklahoma</i> , 535 F. 3d 1114 (10th Cir. 2008)	5, 7
<i>Leegin Creative Leather Products, Inc. v. PSKS, Inc.</i> , 551 U.S. 877 (2007)	7, 8
<i>Lehman v. City of Louisville</i> , 967 F.2d 1474 (10th Cir. 1992)	17
<i>Leverington v. City of Colo. Springs</i> , 643 F.3d 719 (10th Cir. 2011)	1, 2
<i>Massachusetts Food Ass’n v. Sullivan</i> , 184 F.R.D. 217 (D. Mass. 1999)	3
<i>Massachusetts Food Ass’n v. Massachusetts Alcoholic Beverages Control Comm’n</i> , 197 F.3d 560 (1st Cir. 1999)	12
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978)	19, 20, 23
<i>Muscogee (Creek) Nation v. Okla. Tax Comm’n</i> , 611 F.3d 1222 (10th Cir. 2010)	14
<i>North Dakota v. United States</i> , 495 U.S. 423 (1990)	10
<i>Rice v. Normal Williams Co.</i> , 458 U.S. 654 (1982)	6
<i>Stone v. Salt Lake City Corp.</i> , 11 Utah 2d 196, 356 P.2d 631 (Utah 1960)	22, 23

Tal v. Hogan, 453 F.3d 1244 (10th Cir. 2006) 2
Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, (2007) 2
TWFS, Inc. v. Schaefer, 242 F.3d 198 (4th Cir. 2001)..... 8, 14
United States v. Frankfort Distilleries, Inc., 324 U.S. 293..... 10
United States v. Topco Associates, Inc., 405 U.S. 596 (1972)..... 7
Wal-Mart Stores, Inc. v. City of Cheyenne, No. 96-8080, 120 F.3d 271,
 1997 WL 446806 (10th Cir. Aug. 7, 1997) (unpublished table op.) 16, 17
Watson v. City of Kansas City, Kansas, 857 F.2d 690 (10th Cir. 1998)..... 17
Will v. Michigan Department of State Police, 491 U.S. 58 (1989)..... 13, 14
Yakima Valley Memorial Hospital v. Washington State Department of Health,
 654 F. 3d 919 (9th Cir. 2011) 5, 12, 13

STATE AND FEDERAL STATUTES

U.S. CONST. amend. XIV 15
 U.S. CONST. amend. XXI..... 10
 15 U.S.C. § 1..... 3, 4
 UTAH CONST. art. I § 4..... 20
 SB 167, 58th Leg. g.s., (March 29, 2010), 2010 Utah Laws ch. 276 1
 SB 314, 59th Leg. g.s., (March 25, 2011), 2011 Utah Laws ch. 334 passim
 UTAH CODE § 32B-1-103..... 10
 UTAH CODE § 32B-1-201..... 1, 16
 UTAH CODE § 32B-5-203..... 16
 UTAH CODE § 32B-5-305..... 1, 8

FEDERAL RULES

Fed. R. Civ. P. 10(c) 2
 Fed. R. Civ. P. 12(b)(6)..... 1
 Fed. R. Civ. P. 8..... 6

STATE ADMINISTRATIVE RULES

UTAH ADMIN.CODE R81-5-11 7, 11,15

ADDITIONAL AUTHORITY

HERBERT HOVENKAMP, HOVENKAMP HORNBOOK ON FEDERAL ANTITRUST POLICY, THE LAW OF
 COMPETITION AND ITS PRACTICE (4th ed. 2011)..... 5
 Lester J. Mazor, *Notes on a Bill of Rights in a State Constitution*, 1966 UTAH L. REV. 326, 332
 (1966) 21
 National Highway Traffic Safety Administration, *Research Report, Preventing Over-
 Consumption of Alcohol—Sales to the Intoxicated and Happy Hour (Drink Special) Laws*,
 DOT HS 809 878 (Rev. Feb. 2005)..... 11
 Pamela Jones Harbour, *The Supreme Court’s Antitrust Future: New Directions or Revisiting Old
 Cases*, ANTITRUST SOURCE (Dec. 2007)..... 8

Scott C. Idelman, *Religious Premises, Legislative Judgments, and the Establishment Clause*,
12 CORNELL J.L. & PUB. POL'Y 1, 82 (2002) 20, 23
Tammy E. Linn, *Competing with Antitrust Laws*, 75 BROOK. L. REV. 975, 991 (2010) 3

INTRODUCTION

Defendants Gary R. Herbert, Governor of the State of Utah; Mark L. Shurtleff, Attorney General for the State of Utah, and Dr. Richard J. Sperry, Jeffrey Wright, Kathleen McConkie Collinwood, and David Gladwell, Commissioners of the Utah Department of Alcoholic Beverage Control, by and through counsel Joni J. Jones and Kyle J. Kaiser, Assistant Utah Attorneys General, respectfully submit their Memorandum in Support of their Motion to Dismiss.

STATEMENT OF FACTS

Taking all of the non-conclusory factual allegations made in the Complaint as true, the following facts form the basis of the Defendants' Motion:

1. Plaintiffs Old Post Office LLC, Moffat, and Whittle are owners of social clubs licensed to sell liquor in Utah. ([Pls.' Am. Compl. \(doc. 3\) ¶¶ 41, 42.](#)) Plaintiffs Chevalier and Odgen Entertainment LLC are owners of businesses that are licensed to sell beer pursuant to a "tavern license." Plaintiffs Chevalier and Odgen Entertainment LLC wish to be granted a license to sell liquor as a social club, but have not secured a license, at least in part because, under Utah's liquor license quota system, no licenses are available for them. ([Id. ¶¶ 43, 44.](#)) Plaintiff Utah Hospitality Association ("UHA") is a trade group, claiming to be "a representative body of Utah's social clubs." ([Id. ¶ 40.](#))

2. Defendant Gary R. Herbert is the Governor of the State of Utah. Defendant Mark L. Shurtleff is the Attorney General for the State of Utah. Dr. Richard J. Sperry, Jeffrey Wright, Kathleen McConkie Collinwood, and David Gladwell are Commissioners of the Utah Department of Alcoholic Beverage Control ("DABC"). Governor Herbert and Attorney General

Shurtleff are charged with enforcing the laws of the State of Utah. The Commissioners of the DABC are charged with, among other things, issuing liquor licenses pursuant to Utah law. All Defendants are named in their official capacity only. (*Id.* ¶¶ 46–48.)

3. Plaintiffs challenge the enforcement of a number of provisions of Senate Bill 314,¹ enacted by the Legislature and signed by the Governor in 2011, and its predecessor, Senate Bill 167, enacted in 2010². (*E.g.*, *id.* ¶ 1.)

4. As further described below, Section 26 of SB314 restricts licensees’ ability to sell alcoholic products at discounts during certain times of the day, below cost, or at reduced prices “that encourages over consumption or intoxication.” [SB 314](#), 59th Leg. g.s. (March 25, 2011) [2011 Utah Laws ch. 334](#), § 26 (1)(b), (2)(a)–(e) (codified at [UTAH CODE § 32B-5-305\(1\)\(b\)](#), (2)(a)–(e)). Rule 81-5-11, enacted pursuant to DABC rulemaking authority, requires that club licensees prepare a menu or board listing all prices of alcoholic beverages available for inspection by patrons. [UTAH ADMIN. CODE R81-5-11](#). No regulation specifies the length of time in which the prices must remain valid. Likewise, no regulation specifies that a retail social club must provide, or post, its prices to the DABC.

¹ [SB 314](#) includes 109 sections, amends nearly eighty sections of the ABC act, and enacts twenty-eight new sections of the Utah Code. The brief analyzes only the legal questions raised by Plaintiffs in the Amended Complaint, and only in regards to the sections of [SB314](#) described in the Complaint. A full copy of the slip law is attached hereto as [Exhibit A](#).

[SB 314](#), 59th Leg. g.s., (March 25, 2011), [2011 Utah Laws ch. 334](#), available at <http://le.utah.gov/~2011/bills/sbillenr/sb0314.htm> (last visited January 11, 2012).

² In actuality, the happy hour restrictions challenged by Plaintiffs were enacted in [Senate Bill 167](#) in the 2010 legislature. [SB 167](#), 58th Leg., g.s., (March 29, 2010), [2010 Utah Laws ch. 276](#), § 160, codified at [UTAH CODE § 32B-5-305](#)). But both statutes’ effective dates were July 1, 2011. *See id.* § 384. Because Plaintiffs complains of enactments in Senate Bill 314, and because the happy hour language is included in both SB 314 and SB 167 for consistency’s sake, Defendants will also refer to the statute as Senate Bill 314.

5. Additionally, SB 314 places restrictions on the number of licenses that the Commission may issue and ties the issuance of licenses to a ratio to the number of “alcohol-related law enforcement officers” as designated by the Utah Department of Public Safety. [SB 314](#), 59th Leg. g.s., (March 25, 2011), [2011 Utah Laws ch. 334](#), § 2 (codified at [UTAH CODE § 32B-1-201](#)).

6. As a result of Utah’s liquor control laws, there is a greater demand for licenses than licenses available. (*E.g.*, [Am. Compl. ¶¶ 43–44, 64–65](#).)

7. Plaintiffs claim that unnamed “representatives” of the Church of Jesus Christ of Latter-Day Saints “support[ed]” SB 314, and told unnamed legislators that if SB 314 did not pass “there would be repercussions.” ([Am. Compl. ¶¶ 60\(d\), 61, 63](#).)

LEGAL STANDARD

Defendants move to dismiss Plaintiffs’ Amended Complaint pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#). In reviewing a 12(b)(6) motion to dismiss, the court assumes the truth of well-pleaded facts and draws reasonable inference in a light most favorable to the plaintiff. *E.g.*, [Leverington v. City of Colo. Springs](#), 643 F.3d 719, 723 (10th Cir. 2011). But a claim survives only if “there is plausibility in the complaint.” [Hall v. Witteman](#), 584 F.3d 859, 863 (10th Cir. 2009) (citations and quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting [Ashcroft v. Iqbal](#), 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009)). Threadbare recitals of elements, facts “merely consistent” with liability, “labels and conclusions,” or “unadorned, the-defendant-unlawfully-harmed me

accusation[s]” are insufficient. [Iqbal](#), 556 U.S. at ___, 129 S. Ct. at 1949; [Leverington](#), 643 F.3d at 723 (quoting [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 555 (2007)); [Gee v. Pacheco](#), 627 F.3d 1178, 1184–85 (10th Cir. 2010) (citations and quotations omitted); [Hall](#), 584 F.3d at 863 (citations and quotations omitted). Particularly in the antitrust context, “a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.” [Twombly](#), 550 U.S. at 558 (quoting [Assoc. Gen. Contractors of Cal., Inc. v. Carpenters](#), 459 U.S. 519, 528, n.17 (1983)).

In reviewing a motion to dismiss, the Court may rely on the facts as alleged in the complaint, but may also rely on all documents adopted by reference in the complaint, documents attached to the complaint, or facts that may be judicially noticed. See [Fed. R. Civ. P. 10\(c\)](#); [Tellabs, Inc. v. Makor Issues & Rights, Ltd.](#), 551 U.S. 308, 322–23 (2007); [Hall v. Bellmon](#), 935 F.2d 1106, 1112 (10th Cir. 1991). Statutes and published administrative rules and regulations are appropriate for judicial notice. See, e.g., [Tal v. Hogan](#), 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) (recognizing that a court may take judicial notice of “facts which are a matter of public record” in the context of a motion to dismiss); [City of Wichita, Kan. v. U.S. Gypsum Co.](#), 72 F.3d 1491, 1496 (10th Cir. 1996) (allowing OSHA regulations to be judicially noticed as “a social fact with evidential consequences”).

LEGAL ARGUMENT

I. SB 314 Does Not Violate Section I of the Sherman Act.

Plaintiffs’ first claim for relief seeks damages and injunctive and declaratory relief for alleged violations of the Sherman Antitrust Act. In particular, Plaintiffs allege that the requirement in SB 314 that social clubs maintain a printed price list of alcoholic beverages

amounts to private price-fixing ([Am. Compl. ¶¶ 1–11](#)), and they claim the requirement that the number of liquor licenses must be tied both to population and to the number of law enforcement officers—coupled with the provision that allows private license holders to sell their liquor licenses—is an unreasonable restraint of trade. ([Am. Compl. ¶¶ 14-17.](#))

Section 1 of the Sherman Act prohibits “[e]very contract ... or conspiracy in restraint of trade or commerce among the several States, or with foreign nations” [15 U.S.C. § 1](#). A state statute that authorizes private parties to engage in anticompetitive conduct may be unenforceable as contrary to the Sherman Act. *See generally* [Cal. Retail Liquor Dealers v. Midcal Aluminum, Inc.](#), [445 U.S. 97 \(1980\)](#). The Supreme Court applies a three-part test to determine if a state statute regulating the sale or distribution of liquor, such as SB 314, must be struck down: First, does the regulation violate the Sherman Act? If so, does the State Action Doctrine render the state immune? Third, if the regulation violates the Act and the State Action doctrine does not apply, is the regulation still a permissible exercise of the State’s power under the Twenty-first Amendment? *See* [Midcal](#), [445 U.S. at 102–06](#); [Mass. Food Ass’n v. Sullivan](#), [184 F.R.D. 217, 225 \(D. Mass. 1999\)](#) (refusing to analyze the state action doctrine following a determination that a state statute does not violate the federal antitrust laws); *see also* [Tammy E. Linn, Competing with Antitrust Laws](#), [75 BROOK. L. REV. 975, 991 \(2010\)](#) (collecting cases and laying out the three-step analysis).

Plaintiffs’ allegations fail to state a plausible claim for relief under any part of the test. For the reasons discussed below, neither of the two sections of SB 314 that Plaintiffs challenge violates the Sherman Act.

A. SB314's "Happy Hour" Ban Does Not Violate the Sherman Act.

Plaintiffs challenge the amendments to SB 314 that prohibit retail licensees from temporarily lowering prices—which effectively prevents social clubs from holding a “Happy Hour” period when alcoholic drinks are discounted for a portion of the day. (See [Am. Compl. ¶¶ 1, 6.](#)) Section 26 of SB 314 provides that a retail licensee (which includes full-service restaurants, limited-service restaurants, clubs, and other types of licensees) may not: sell an alcoholic product at a “discount price” on any date or at any time; sell below cost; sell a product at a “special or reduced price that encourages over consumption or intoxication”; sell a product at a reduced price for only certain hours of the day, such as a “happy hour”; or, sell 2-for-the-price-of-one, or unlimited drinks. [SB 314](#), 59th Leg. g.s. (March 25, 2011), [2011 Utah Laws ch. 334](#), § 26 (1)(b), (2)(a)–(e) (codified at [UTAH CODE § 32B-5-305\(1\)\(b\), \(2\)\(a\)–\(e\)](#)). Rule 81-5-11 requires that club licensees prepare a menu or board listing all prices of alcoholic beverages available for inspection by patrons; but no regulation specifies the length of time in which the prices must remain valid. [UTAH ADMIN. CODE R81-5-11](#). These provisions of the statute and implementing regulations do not violate the Sherman Act because there is no conspiracy to restrain trade.

1. The “Happy Hour” Regulation Is a Unilateral State Regulation and Thus Exempt from the Sherman Act.

The Sherman Act prohibits contracts or conspiracies in restraint of trade. [15 U.S.C. § 1](#). But a unilateral government regulation is wholly exempt from scrutiny under the Sherman Act, even when the state action has anticompetitive effects. [Exxon Corp. v. Governor of Md.](#), [437 U.S. 117, 133 \(1978\)](#). A unilateral restraint is one in which “no further action is necessary by the private parties because the anticompetitive nature of the restraint is complete upon enactment.”

Yakima Valley Mem. Hosp. v. Wash. State Dep't of Health, 654 F. 3d 919, 927 (9th Cir. 2011).

In other words, a conspiracy does not exist simply because a government entity issues restraints that citizens must follow. *Fisher v. City of Berkley*, 475 U.S. 260, 267 (1986). Such restraints constitute a unilateral action by the state and thus do not constitute an antitrust violation. *Id.*

In contrast, a “hybrid” restraint is one in which “nonmarket mechanisms merely enforce private marketing decisions,” *id.* at 267–68, or “enforce companies’ decisions to collude in prices, to dictate prices by which other companies must abide, or to otherwise violate the Sherman Act.” *KT&G Corp. v. Att’y Gen. of Okla.*, 535 F. 3d 1114, 1130 (10th Cir. 2008). Put another way, a restraint is hybrid where the statute “effectively g[ives] one set of private persons the power to control the pricing decisions of another set of private persons.” HERBERT HOVENKAMP, HOVENKAMP HORNBOOK ON FEDERAL ANTITRUST POLICY, THE LAW OF COMPETITION AND ITS PRACTICE § 20.1 (4th ed. 2011) .

SB 314 is a unilateral, not a hybrid, restraint. Here, the legislation at issue simply imposes certain requirements that social clubs must follow: they cannot temporarily discount liquor prices (no happy hour), cannot sell drinks at discounted prices (two-for-the-price-of-one), and they must provide a printed price list. While SB 314 allows each bar or restaurant to set its own prices on alcoholic beverages (so long as the prices are not sold below cost), SB 314 does not allow any bar or restaurant the power to control the pricing decision of any of its competitors. Bars and restaurants *can* compete in the marketplace, and no private party mandates the clubs’ prices. SB 314 merely provides a direct, governmental regulation on conduct designed to encourage overconsumption by temporarily reducing prices.

Furthermore, as a unilateral regulation, the statute cannot implicate the Sherman Act because there is no conspiracy. Plaintiffs name the government actors and unnamed “additional co-conspirators.” ([Am. Compl. ¶ 49.](#)) The government cannot conspire with a regulated person, [Fisher](#), 475 U.S. at 267; [City of Columbia, Columbia Outdoor Advertising v. Omni Outdoor Advertising](#), 499 U.S. 365, 374 (1991). And there is no de facto agreement among bars and restaurants as to price. The lack of a co-conspirator further demonstrates the unilateral nature of the restriction.

Moreover, the Federal Rules of Civil Procedure require a plaintiff to allege “enough factual matter (taken as true) to suggest that an agreement was made.” [Twombly](#), 550 U.S. at 556.; *see also* [Fed. R. Civ. P. 8](#). “[A] conclusory allegation of agreement at some unidentified point does not supply adequate facts to show illegality.” [Id.](#) at 557. Plaintiffs have pleaded nothing more than a conclusory allegation of some agreement at some time with unnamed coconspirators. In the absence of any well pleaded conspiracy, Plaintiffs allegations fail to show a “conspiracy” in restraint of trade, and therefore, they have not pleaded a violation of the Sherman Act.

2. The “Happy Hour” Restriction Is Not a *Per Se* Violation of the Act.

Even if Plaintiffs could allege a conspiracy, the “Happy Hour” restriction does not violate the Sherman Act because it is not a *per se* violation. Courts have held that a state statute is unenforceable as conflicting with the Sherman Act only if the statute is a *per se* violation of the Sherman Act. [Rice v. Normal Williams Co.](#), 458 U.S. 654, 661 (1982). An act is a “per se” violation “only if it mandates or authorizes conduct that necessarily constitutes a violation of the antitrust laws *in all cases*, or if it places irresistible pressure on a private party to violate the

antitrust laws in order to comply with the statute....” *Id.* (emphasis added); accord [KT&G Corp., 535 F.3d at 1128](#). *Per se* prohibitions apply to statutes that “would always or almost always tend to restrict competition and decrease output ... have manifestly uncompetitive effects, and lack any redeeming virtue.” [Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 886 \(2007\)](#). *Per se* violations include horizontal agreements³ among competitors to fix prices or to divide markets. *Id.* (citations omitted). For other restraints, the Rule of Reason requires a factfinder to weigh all the circumstances to determine whether the practice should be prohibited. *Id.* The Rule of Reason applies to agreements and business relationships whose “economic impact ... is not immediately obvious.” *Id.* at 887 (citations and quotations omitted).

If the Court believes the legislation creates such a conspiracy or agreement, it would nonetheless not be a *per se* violation of the Sherman Act. Each individual retail licensee retains the freedom to set prices however it chooses. It retains the freedom to respond to its competitors’ prices (subject to direct regulation). It is far from obvious that such an agreement would reduce competition. And the restriction has redeeming value, protecting against binge drinking, overconsumption in a short period of time, and drunk driving.⁴

³ A “horizontal” agreement involves competitors at the same level entering into a price fixing, exclusive territory swapping, or similar agreements. *E.g.*, [United States v. Topco Assocs., Inc., 405 U.S. 596, 607–08 \(1972\)](#). These stand in contrast to “vertical price maintenance” agreements, in which a manufacturer dictates price or terms of future sales by retailers or others. Such agreements are now governed by the Rule of Reason. *See generally* [Dr. Miles Med. Co. v. John D. Park & Sons Co., 220 U.S. 373 \(1911\)](#) (establishing that vertical price maintenance agreements were *per se* violations of the Sherman Act), *overruled by* [Leegin Creative Leather Prods., Inc., 551 U.S. at 887](#) (establishing Rule of Reason analysis for vertical price maintenance agreements).

⁴ *Midcal* held that the vertical price scheme put in place by the California legislature was a *per se* restraint, but subsequent Supreme Court cases have withdrawn from that proposition, and such arrangements are not judged by the rule of reason. *Compare* [Midcal, 445 U.S. at 100](#) (“This court has ruled consistently that resale price maintenance illegally restrains trade.”), *with*

Nor is the legislation tantamount to a “post and hold” requirement. In a “Post-and-Hold” regime, a liquor retailer must post its prices to a government agency, and then it must hold that price for a specific period of time. Courts have recognized that such a scheme may be a *per se* antitrust violation. *See, e.g., Costco Wholesale Corp. v. Maleng*, 522 F.3d 874, 893–94 (9th Cir. 2008); *TWFS, Inc. v. Schaefer*, 242 F.3d 198, 206–07 (4th Cir. 2001).

The provisions at issue in this case are not the equivalent of the post-and-hold requirements in *Costco* and *TWFS*. First, despite Plaintiffs’ incorrect legal conclusions in their complaint, no statute or regulation requires retail establishments to post their prices to anyone except their customers. *Cf. UTAH CODE § 32B-5-305* (1)(b), (2)(a)–(e); *UTAH ADMIN. CODE R81-5-11*. The Court should not accept Plaintiffs’ conclusory legal assertions, directly contradictory to the statute, as true. *Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 at 1949; *Twombly*, 550 U.S. at 564.

But even if the Court were to accept Plaintiffs’ incorrect legal conclusion that they must post prices with the DABC, the regulatory scheme is still not a “post and hold.” Nothing in the statute or regulations requires any retail licensee to “hold” to their prices for any length of time (only as long as takes to print a new menu). Retail licensees are permitted to change their prices whenever they wish; they just cannot change them *temporarily* or for the purpose of increasing consumption in a short period. *Cf. UTAH CODE § 32B-5-305* (1)(b), (2)(a)–(e); *UTAH ADMIN.*

Leegin Creative Leather Products, Inc., 551 U.S. at 899 (“[W]e think that were the Court considering the issue as an original matter, the rule of reason, not a *per se* rule of unlawfulness, would be the appropriate standard to judge vertical price restraints.”), and *Pamela Jones Harbour, The Supreme Court’s Antitrust Future: New Directions or Revisiting Old Cases, ANTITRUST SOURCE*, at 5 (Dec. 2007) (“[I] the post-*Leegin* era, it will be a rare case indeed in which a plaintiff will be able to answer the *Midcal* Court’s threshold question in the affirmative. And if one cannot make it past the threshold question of *Midcal*, the classic two-pronged analysis for state action becomes irrelevant.”).

[CODE R81-5-1](#). Thus the “post and hold” cases do not apply to the provisions of SB 314 that bar happy hour pricing.

3. The Happy Hour Ban Constitutes State Action and Thus Is Exempt from the Sherman Act.

Even if the Court were to understand Section 26 as creating an unlawful restraint on trade in violation of the Sherman Act, the provision is lawful under the State Action Doctrine. Under that doctrine, a state is immune and the law is not preempted by the Sherman Act if there is a “clearly articulated and affirmatively expressed [] state policy” that limits competition, and if the restraint is “actively supervised by the State itself.” [Midcal, 445 U.S. at 105](#) (citations and quotations omitted).

The first requirement for State Action is easily satisfied. Section 26 clearly and affirmatively recognizes the limitation on retail licensees’ ability to sell alcohol below cost, at special rates, or at times to encourage quick consumption in a short period. [UTAH CODE § 32B-5-305\(1\)\(b\), \(2\)\(a\)–\(e\)](#).

Regarding the second element, the restriction on happy hour *is* actively supervised. The DABC is authorized to conduct investigations, fine, suspend, and take other disciplinary action for licensees who have violated the law or DABC rules. Thus the State Action Doctrine bars Plaintiffs from suing the DABC officials.

4. Even If the Happy Hour Ban Violated the Sherman Act, the Legislation Is Lawful Under the Twenty-first Amendment.

Even if Plaintiffs state a plausible claim that section 26 of SB 314 could violate the Sherman Act, and even if the State Action Doctrine does not apply, the statute still survives as a

valid exercise of Utah’s authority under the Twenty-first Amendment to the United States Constitution.

Section 1 of the Twenty-first Amendment repeals prohibition, but section 2 provides substantive authority over state regulation of alcohol: “The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” [U.S. CONST. amend. XXI](#), § 2.

Courts examine whether the statute restraining the sale or distribution of alcohol serves and substantiates a legitimate state policy and “whether the interests implicated by a state regulation are so closely related to the powers reserved by the Twenty-first Amendment that the regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies.” [Capital Cities Cable, Inc. v. Crisp](#), 467 U.S. 691, 714 (1984). Temperance, of course, is a legitimate interest at the core of the Twenty-first Amendment. [North Dakota v. United States](#), 495 U.S. 423, 433 (1990). Although not explicitly recognized, binge drinking, and fast consumption of alcohol, which may arise during the limited period of time alcohol is discounted, would certainly be a “temptation[] of cheap liquor” which a state may regulate through the Twenty-first Amendment “and the Commerce Clause does not gainsay it.” [United States v. Frankfort Distilleries, Inc.](#), 324 U.S. 293, 301 (Frankfurter, J., concurring). One of the express purposes of Utah’s ABC laws is to “promote the reduction of the harmful effects of (i) over consumption of alcoholic products by adults” [UTAH CODE § 32B-1-103\(4\)](#).

Happy hour prohibitions encourage temperance and moderation in alcohol consumption. Happy hours, drinking contests, ‘all you can drink’ specials, and the like encourage over-consumption by reducing prices, a potent inducement to drinking large amounts of alcohol in short time periods. The research offers strong evidence for the negative health outcomes of happy hour and other drink

specials practices, thereby suggesting that policies restricting these practices could have a positive impact on public health.

National Highway Traffic Safety Administration, *Research Report, Preventing Over-Consumption of Alcohol—Sales to the Intoxicated and “Happy Hour” (Drink Special) Laws*, DOT HS 809 878, at 3 (Rev. Feb. 2005), available at <http://www.nhtsa.gov/people/injury/alcohol/pireweb/images/2240pierfinal.pdf> (last visited Jan. 11, 2012) (attached hereto as Exhibit B.)

There can be no doubt that the concern for moderation is adequately expressed in section 26’s happy hour, 2-for-1, free drink, and unlimited drink prohibitions. Discouraging over consumption of alcohol is core to the Twenty-first Amendment. Further, to the extent there are any anticompetitive effects caused by prohibiting retail licensees from temporarily discounting their prices, they are more than outweighed by the state’s interest in protecting against tragic loss of life from binge drinking or auto fatalities tied to drunk driving. Accordingly, even if section 26 could be construed to violate the Sherman Act, the statute and rules promulgated thereunder survive as a reasonable exercise of Utah’s rights under the Twenty-first Amendment.

B. SB 314’s Provisions Regulating the Number of Liquor Licenses, Tying Liquor Licenses to the Number of Law Enforcement Officials, and Allowing Private Sales of Licenses Do Not Violate the Sherman Act.

Plaintiffs’ Amended Complaint points to three aspects of the licensing portion of the statute that they allege violate antitrust laws. First, they assert that scarcity of licenses is an unreasonable restriction on trade. Second, they assert that the new requirement of a ratio of police officers to citizens’ gives the department of safety unchecked ability to regulate the number of licenses based on how many officers it chooses to hire. Finally, they assert that the ability for a private party already possessing a license to sell that license places unreasonable

restraints on trade. All three of these allegations are without merit because the statutory mandates amount to unilateral action.

A unilateral decision to limit the number of liquor licenses available to private parties is not an antitrust violation. [*Mass. Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n*, 197 F.3d 560, 563 \(1st Cir. 1999\)](#). In *Massachusetts Food Ass'n*, a state statute limited to three the number of licenses an individual retailer could be issued. In affirming a motion to dismiss, the court noted that the usual antitrust tests found in cases like *Midcal* and *Fisher* were not necessary in this instance because such a restriction “has not ordered or authorized private parties to engage in conduct that, absent immunity, would even arguably violate antitrust laws ...” [*Id.* at 564](#). In coming to this conclusion the court points out that the statute does not give private parties the ability to negotiate the number of licenses available. [*Id.*](#) Instead, it simply gives a directive that must be adhered to by private parties that want to sell liquor in the state. [*Id.*](#)

Similarly, in *Yakima Valley Memorial Hospital*, the Ninth Circuit rejected an antitrust challenge to Washington’s licensing scheme tying additional licenses for certain medical procedures to proof that the market capacity of the geographical area requires additional providers. [*Yakima Valley*, 654 F.3d at 925](#). The Ninth Circuit rejected the hospital’s antitrust argument that the scheme allowed already-licensed hospitals to squeeze out competition by expanding capacity, where new entrants to the market could not have access to a new license. According to the court, the “regulations create *market* power, but that is different from a hybrid regulation that delegates *regulatory* power.” [*Id.* at 929](#). Because the license itself is the barrier to entry, and the license is complete upon imposition by the state, the restraint of trade is the

“logical and intended consequence of the ... regulation[,]” a unilateral restraint, and not subject to restriction by the Sherman Act. *Id.*

The Utah statute is similarly unilateral, and delegates market power (who may enter the market for establishments selling liquor) rather than regulatory power (any discretion on how to provide the liquor) and thus does not violate the Sherman Act. Even if the Department of Public Safety chooses to limit the number of liquor licenses by refusing to hire more officers, this will not be an antitrust violation because the Department is a state entity and the decision to hire individuals is not at the discretion of any private party.

Furthermore, the ability to sell a license does not affect the number of available licenses. It simply alters who possesses the license. At no point is any private party free to opt into or out of any of these regulatory provisions, a fact which places the state’s licensing policies outside the reach of antitrust liability.

The provisions of SB 314 that limit licenses to population, tie the number of licenses available to the number of law enforcement officers, and allow for private sale of licenses, do not violate the Sherman Act. Utah has simply unilaterally set limits on liquor licenses, and such action has consistently been found not to implicate the Sherman Act.

C. Defendants Enjoy Eleventh Amendment Immunity from Plaintiffs’ Damages Claims.

Plaintiffs allege that they are entitled to treble damages pursuant to the Sherman Act. ([Am. Compl. at 20–21](#), [Request for Relief ¶¶ 6–7](#).) However, Plaintiffs have named only public officials in their official capacity. Public officials sued in their official capacities are also arms of the state, and immune from suit in federal court. [Will v. Mich. Dep’t of State Police](#), 491 U.S. 58, 65–66 (1989); [Muscogee \(Creek\) Nation v. Okla. Tax Comm’n](#), 611 F.3d 1222, 1234 (10th

[Cir. 2010](#)) (“When a state official is sued in his or her official capacity, the Eleventh Amendment bars retrospective relief, usually in the form of money damages, because any such judgment is deemed directed at the state as the real party in interest rather than the nominal officer.”). Congress can abrogate Eleventh Amendment immunity by enacting legislation pursuant to section 5 of the Fourteenth Amendment, but the Sherman Act was enacted pursuant to Congress’s Commerce Clause power, which cannot abrogate immunity. [Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank, 527 U.S. 627, 636 \(1999\)](#); cf. [TFWS, 242 F.3d at 204–05](#) (recognizing that a Sherman Act claim could go forward, but only because the plaintiffs did not seek monetary damages from the state officials in their official capacities). Accordingly, the Defendants are immune from money damages under Plaintiffs’ Count I that portions of SB 314 violate the Sherman Act.

II. SB 314 Does Not Violate Plaintiffs’ Procedural Due Process, Substantive Due Process, or Equal Protection Rights Under the Federal or State Constitutions.

Plaintiffs assert that the provisions of SB 314 discussed above violate their “procedural and substantive due process and equal protection rights afforded to them by the federal and state constitutions.” ([Am. Compl. ¶ 69](#).) Plaintiffs have not alleged any facts to show how SB 314 purportedly violates these rights, and these claims therefore fail as a matter of law.

A. SB 314 Does Not Violate the Federal Constitution.

First, Plaintiffs have sued Defendants in their official capacity, and for the reasons set out in section I.C, above they are entitled to Eleventh Amendment immunity from any claims for money damages based on alleged violation of the federal constitution. [Will, 491 U.S. at 65–66](#); [Muscogee \(Creek\) Nation, 611 F.3d at 1234](#). Second, there is no legal basis for these claims.

Plaintiffs' procedural due process claim fails because there is no allegation in the complaint that they have been deprived of a legally protected property interest without due process of law. The Fourteenth Amendment to the United States Constitution prohibits states from depriving "any person of life, liberty, or property without due process of law." [U.S. CONST. amend. XIV](#). Its procedural protections are "a safeguard of the security of interests that a person has already acquired in specific benefits." [Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 576 \(1972\)](#). Determining whether an individual's due process right has been violated requires the Court to answer two questions: "(1) did the individual possess a protected interest such that the due process protections were applicable; and if so, then (2) was the individual afforded an appropriate level of process[?]" [Farthing v. City of Shawnee, 39 F.3d 1131, 1135 \(10th Cir. 1994\)](#).

Plaintiffs allege they have not been able to obtain the desired "full liquor" licenses, and hold only a tavern (sale of beer only) license. ([Am. Compl. ¶¶ 43, 44.](#)) A due process claim cannot be based on a property interest which a party hopes to obtain. Property interests to which Fourteenth Amendment procedural rights attach are not created by the Constitution, but rather by "existing rules or understandings that stem from an independent source such as state law." [Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 \(1985\)](#) (citations and internal quotation marks omitted). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it.... He must, instead, have a legitimate claim of entitlement to it." [Roth, 408 U.S. at 577.](#)

Courts have recognized that laws establishing a process for obtaining a liquor license do not create a property interest. See [Bayview-Lofberg's Inc. v. City of Milwaukee, 905 F.2d 142,](#)

[145-46 \(7th Cir. 1990\)](#) (“[T]he ordinance does not establish substantive criteria which, if met, automatically entitle an applicant to a liquor license. Without substantive criteria, no property interest is created within the meaning of the due process clause.”); [Wal-Mart Stores, Inc. v. City of Cheyenne](#), No. 96-8080, 120 F.3d 271, 1997 WL 446896, at *1 (10th Cir. Aug. 7, 1997) ([unpublished table op.](#)) (holding that liquor statutes and ordinances governing applications did not create property interest because “these provisions do not state that fulfillment of specified conditions assures approval of an application”).

Here, Plaintiffs allege they cannot obtain the desired full liquor license because, due to the quota system (basing number of licenses on the state’s population), no licenses are currently available. ([Am. Compl. ¶ 27.](#)) Even if Utah laws did guarantee applicants a license if they meet all criteria⁵, Plaintiffs would still not have a property interest in the liquor licenses because Utah law provides that an applicant cannot obtain a liquor license unless population increase allows additional licenses to be issued. [UTAH CODE § 32B-1-201](#); (*see also* [Am. Compl. ¶ 14](#)). Under Utah law “fulfillment of specified conditions” includes the condition that population increases sufficiently to allow a new license to be issued. [UTAH CODE § 32B-1-201](#). Plaintiffs concede that this condition has not been met. ([Am. Compl. ¶ 28.](#)) Thus Plaintiffs have not alleged that state law creates a property interest in full liquor licenses for those who otherwise qualify.

Nor can Plaintiffs assert a substantive due process claim. “Authority in [the tenth] circuit is unclear on what interest is required to trigger substantive due process guarantees.” [Jacobs](#),

⁵ In fact, Utah law grants broad discretion to the ABC Commission in deciding whether to grant a license. *See* [UTAH CODE § 32B-5-203](#) (providing that DABC shall conduct an investigation into and hold public hearings on applicant’s fitness and make recommendation to the ABC commission, which must consider enumerated criteria, including “any other factor the commission considers necessary”).

Visconti & Jacobs v. City of Lawrence, 927 F.2d 1111, 1119 (10th Cir. 1991). But, “asserted interest in a liquor license ‘bears little resemblance to the fundamental interests that previously have been viewed as implicitly protected by the Constitution.’” Wal-Mart Stores, 1997 WL 446896, at * 2 n.4 (quoting Lehman v. City of Louisville, 967 F.2d 1474, 1476 n.2 (10th Cir. 1992)) (additional internal quotations omitted). Plaintiffs’ allegations that they have not been able to obtain a full liquor license do not state a cognizable claim of a fundamental right that is protected by substantive due process.

Plaintiffs’ equal protection claim is likewise unavailing. The Equal Protection Clause requires that “all persons similarly circumstanced shall be treated alike.” F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). A violation occurs if the state treats a person differently from one who is similarly situated, without justification for the different treatment. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). A plaintiff who claims violation of his equal protection rights must allege specific facts that show a discriminatory purpose was a motivating factor in the decision the plaintiff challenges. Watson v. City of Kansas City, Kan., 857 F.2d 690, 694 (10th Cir. 1998).

Plaintiffs allege that they were denied a “full” liquor license because no licenses are available, due to the quota system. (Am. Compl. ¶¶ 28-30, 40-44.) They have not alleged the decision to deny the license was based on discrimination; indeed, they have alleged the decision was based on an objective criterion: the lack of available licenses due to the quota system. Plaintiffs therefore cannot state an equal protection claim.

B. *SB 314 Does Not Violate the State Constitution.*

Plaintiffs’ state constitutional due process and equal protection claims fail for substantially the same reasons that their Federal Constitutional claims fail. [Bailey v. Bayles, 2002 UT 58, ¶ 11 n.2, 52 P.3d 1158, 1162 \(Utah 2002\)](#) (“Utah’s constitutional guarantee of due process is substantially the same as the due process guarantees contained in the Fifth and Fourteenth amendments to the United States Constitution. Therefore, our analysis of questions concerning procedural due process under [both state and federal] constitutions are also substantially the same.”); (internal quotation marks omitted). [Gallivan v. Walker, 2002 UT 89, ¶ 31, 54 P.3d 1069, 1083 \(Utah 2002\)](#) (noting that Utah’s “uniform operation of laws” provision and the federal Equal Protection Clause “embody the same general principle: persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same”). These claims should likewise be dismissed.

III. *The LDS Church’s Practice of Offering Its View to Legislators on Liquor Laws Does Not Violate the Federal or State Constitutions.*

Plaintiffs claim that it is a violation of the Federal and State constitutions for the Church of Jesus Christ, Latter Day Saints to provide its views on, and for the Legislature to consider the LDS Church’s views, on state laws and policies governing alcohol sale and consumption. ([Am. Compl. ¶¶ 93, 94; Am. Compl., Prayer for Relief, ¶ 4.](#)) But both the federal courts and the Utah Supreme court have made it plain that religious leaders and organizations have a First Amendment right to comment upon proposed legislation.

In *Cathy’s Tap, Inc. v. Village of Mapleton*, strip club owners challenged an ordinance that prohibited the selling of alcohol where there was also live nude dancing. [65 F. Supp. 2d 874 \(C.D. Ill. 1999\)](#). The business owners claimed that the ordinance violated the federal

Establishment Clause, because the town had “succumb[ed] to the importuning of religious groups whose religious creed opposes either or both [alcohol or live nude dancing].” *Id.* at 892.

The court rejected the challenge, noting:

The Court has not found any case in which the successful lobbying efforts of religious organizations or individuals invalidates a legislative enactment under the Establishment Clause. ... *It would be a severe infringement on the free speech rights of those persons or groups with religious views to forbid them from lobbying their local government*, or, if allowed to lobby, to require them to leave their religious beliefs and convictions at the steps of city hall.

Id. (emphasis added). The court found a secular purpose from the face of the law, combating the “harmful secondary effects associated with adult-use establishments” and “the combustible mixture of alcohol and nudity,” and rejected the First Amendment challenge. *Id.*

The U.S. Supreme Court has likewise recognized that states cannot seek to exclude religious leaders from being involved in lawmaking. In *McDaniel v. Paty*, the Court addressed Tennessee’s prohibition on ministers serving as a state legislator. [435 U.S. 618 \(1978\)](#). It unanimously held that such a prohibition violated the minister’s constitutional rights, even though Tennessee asserted that the prohibition was justified on protecting the state from undue influence of the clergy’s religion under the Establishment Clause. *Id.* at 629. Justice Brennan, concurring in the judgment, explained the heart of the problem:

[G]overnment may not as a goal promote “safe thinking” with respect to religion and fence out from political participation those, such as ministers, whom it regards as overinvolved in religion. Religionists no less than members of any other group enjoy the full measure of protection afforded speech, association, and political activity generally. The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion as it has done here. It may not be used as a sword to justify repression of religion or its adherence from any aspect of public life.

Id. at 632, 641 (Brennan, J. concurring in the judgment) (emphasis added).⁶ Given this well settled law, Plaintiffs’ allegations that the LDS Church’s input on Utah’s liquor laws violates the Federal Constitution must fail.

Likewise, Plaintiffs’ claim directed at the LDS Church fails under the Utah Constitution. Plaintiffs cite Article I, § 4 of the Utah Constitution, and cite particularly to the “Domination Clause”: “There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions.” [UTAH CONST. art. I § 4](#).

There is little history or Utah case law regarding the Clause. The entire section received little discussion during the 1895 constitutional convention, “probably because both Mormon and non-Mormon delegates agreed that a strong emphasis on church-state separation was necessary to change perceptions of Utah by citizens of other states and to foster a favorable vote for the constitution by Utah’s non-Mormon voters.” JEAN BICKMORE WHITE, *THE UTAH STATE CONSTITUTION: A REFERENCE GUIDE* 27 (1998). Professor White described the section as “the cornerstone of the commitment by the constitution’s framers to guarantee religious freedom and separation of church and state in Utah, and to overcome the perception in the rest of the nation that Utah was a de facto Mormon theocracy.” *Id.* Another commentator recognized the Domination Clause as “unusual,” not only because it is unique to Utah’s constitution, but also unusual because the plain text of the clause is a prohibition “directed at individuals or private groups rather than at the government itself.” [Lester J. Mazor, Notes on a Bill of Rights in a State](#)

⁶ See also [Scott C. Idelman, Religious Premises, Legislative Judgments, and the Establishment Clause](#), 12 *CORNELL J.L. & PUB. POL’Y* 1, 82 (2002) (“[T]he contention that [legislative reliance on religious premises] should in fact be invalidated [under the Establishment Clause] cannot be squared with two basic principles of democratic legitimacy—that citizens should be able to participate equally in the political and legal spheres and that citizens should be able to expect that laws will generally reflect majoritarian values.”).

[Constitution, 1966 UTAH L. REV. 326, 332 \(1966\)](#). In other words, the clause’s plain text does not proscribe government action at all. It prohibits “any church” from “dominat[ing]” the State or “interfer[ing]” with the State’s functioning.

Professor Mazor notes, “[e]nforcement of a provision limiting private conduct is likely to require a greater exercise of judicial creativity,” and suggests that the provision, like other state constitutional provisions prohibiting private discrimination, be viewed as permission for the legislature to pass a statute enforcing the constitutional mandate, rather than as a self-executing, enforceable constitutional right. [Id. at 332, 343 & nn.37, 114](#). Because the clause is aimed at private actors, Plaintiffs cannot state a cause of action against Defendants, who are being sued based on their status as state officials, for relief.

Even if the clause were aimed at state action, the clause cannot serve to invalidate a validly passed law merely because the law was advocated by two unnamed “representatives from the Church of Jesus Christ of Latter-Day Saints.” ([Am. Compl. ¶ 63](#).) To do so would entangle the Courts in impossible political quagmires and violate LDS Church members’ rights to free exercise of their religion and to free speech.

The few cases interpreting Utah’s Domination clause do not support Plaintiffs’ claim. In *Ewing v. Harries*, the Utah Supreme Court refused to invalidate a Salt Lake County Sheriff election, even though the plaintiffs alleged that the LDS president and the Ministerial Association of Salt Lake City instructed the members of the LDS church to cast their ballots for one of the candidates. [68 Utah 452, 250 P. 1049 \(Utah 1926\)](#); see also [Harries v. McCrea, 62 Utah 348, 219 P. 533 \(Utah 1923\)](#) (recounting the facts and allegations in both cases). While much of the Court’s review centered on the propriety of the suit as an election contest, the Court

did address the plaintiffs' contention that, through speeches and writing, the LDS church leaders violated the Domination Clause and thus made the election invalid. The Court noted:

Keeping in mind the political rights of the electors of this state, how can a court prevent any number of them, whether they are churchmen or laymen, whether they are members of any particular church or denomination or whether they have no church affiliations whatever, from combining and uniting their efforts to bring about the election of a particular candidate or any number of candidates?...

[A clergyman] possesses all the rights and privileges of a citizen and elector, and has a right to reason with his fellows precisely as anyone else. How can a court, then, draw the line where the right of the citizen ends and the influence of a churchman begins?

Ewing, 250 P. at 1053. The Court then noted the immense problems of proving that it was religious influence, not some other purpose, that led the voters to elect the sheriff:

[H]ow can a court determine whether the voter was influenced by what a church leader said as such or by what he said as a citizen?... Is the court going to compel the electors to come before it and require them to state for whom they voted and what caused them to do so until such a number have appeared and testified as will change the result of the election....”

Id. Thus, the Utah Supreme Court has recognized both the logistical difficulty of separating out one's political choice with a religious command and the rights of the religious to be active in the political sphere.

In *Stone v. Salt Lake City Corp.*, the Court was asked to declare invalid a conveyance of a parcel of land from Salt Lake City to the LDS church. 11 Utah 2d 196, 356 P.2d 631 (Utah 1960). The plaintiff alleged that because the land was supposed to later be conveyed to the federal government for the purpose of a federal building, that the LDS church was attempting to influence the government, and the conveyance thus violated the Domination Clause. The Court rejected the argument, noting that “just as any other property owner ... [the Church] can use any legitimate means to persuade a prospective buyer to purchase from it.... To expect a court to

infer from the sole fact that the parties involved are the Church and the federal government that there must be some improper influence exerted upon the latter would involve farfetched and unrealistic conjecture.” *Id.* at 202, [356 P.2d at 634–35](#).

The Utah Supreme Court recognizes that, while Utah’s freedom from religion clauses may be unique and expansive, the Domination Clause cannot be read to disadvantage the religious over the nonreligious, nor can they invalidate a legal government act or election merely because it is consonant with a particular religious belief or advocated by religious leaders.

Whatever protections it may provide, the Domination Clause cannot be interpreted as Plaintiffs assert in their complaint. To prohibit individuals, and even representatives of any church from petitioning their government, and to invalidate laws passed following any such consultation would create the host of problems identified by the Utah and United States Supreme Courts. It would require a court to unnecessarily assert itself into valid political decisionmaking. *See Ewing, 250 P. at 1053*. It would require an unprecedented and unpredictable level of proof for a court to inquire into a legislator’s motivation. *Id.* It would require a new separation of church and state—one that separates secular evaluation of the public good from religious morals of a safe and just society. *See Idelman, supra* note 6, at 82. And, most fundamentally, it would force Utahans to choose between their religion and their constitutionally protected rights to speak with public officials about issues of public concern. *See McDaniel, 435 U.S. at 626* (noting that a state cannot “punish[] a religious profession with the privation of a civil right” (quoting 5 WRITINGS OF JAMES MADISON 288 (G. Hunt ed. 1904))). Plaintiffs’ interpretation and requested relief has been rejected by every court to hear such an argument, and for good reason.

Plaintiffs' interpretation would violate the federal constitution, and, regardless of the scope of the Domination Clause, Plaintiffs' claims fail to state a plausible claim and must be dismissed.

CONCLUSION

Based on the foregoing, Defendants respectfully ask this Court to dismiss Plaintiffs' Amended Complaint, with prejudice.

DATED this 12th day of January, 2012.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Kyle J. Kaiser
KYLE J. KAISER
JONI J. JONES
Assistant Utah Attorneys General
Attorneys for Defendants

Enrolled Copy

S.B. 314

ALCOHOLIC BEVERAGE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act and related provisions to address various issues concerning the regulation of alcoholic products.

Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ provides that certain retail licenses are exempt from limitations on the number of retail licenses that may be issued at any time;
- ▶ addresses the relationship between the number of alcohol-related enforcement officers and the issuance of licenses;
- ▶ modifies the calculation of the ratio of revenue from food as compared to revenue from alcoholic products;
- ▶ requires taverns to comply with electronic verification requirements for proof of age;
- ▶ provides for the governor to appoint the chair of the Alcoholic Beverage Control Commission;
- ▶ provides for the issuance of certificates of approval for out-of-state importers and suppliers of beer, heavy beer, and flavored malt beverages;
- ▶ provides for the commission with the approval of the governor and with the consent of the Senate to appoint the director of the Department of Alcoholic Beverage Control;
- ▶ addresses prohibited interests, relationships, and actions;

S.B. 314

Enrolled Copy

- 30 ▶ creates the Alcoholic Beverage Control Act Enforcement Fund and directs how
- 31 money in the fund is to be expended;
- 32 ▶ consolidates language regarding warning signs required to be posted in retail
- 33 settings, including event permits;
- 34 ▶ addresses the size of containers of heavy beer that can be sold;
- 35 ▶ modifies fees;
- 36 ▶ permits the sale, offer for sale, or furnishing of an alcoholic product by room service
- 37 in other than a sealed container;
- 38 ▶ prohibits consumption of an alcoholic product on licensed premises after a specified
- 39 time;
- 40 ▶ removes existing restrictions on transferring licenses or locations of licenses and
- 41 replaces the provisions with the Transfer of Retail License Act;
- 42 ▶ addresses the discounting of an alcoholic product;
- 43 ▶ changes the numbers used to determine the number of retail licenses that may be
- 44 issued at any one time;
- 45 ▶ modifies requirements related to the location in restaurants of dispensing, storage,
- 46 and related instruments or equipment;
- 47 ▶ modifies provisions related to dining club licenses;
- 48 ▶ modifies hours of sale;
- 49 ▶ addresses the limit on the number of airport lounge licenses;
- 50 ▶ eliminates outdated language regarding grandfathered facilities for on-premise
- 51 banquet licenses;
- 52 ▶ enacts a new reception center license, including:
 - 53 • addressing the commission's power to issue;
 - 54 • addressing specific licensing requirements; and
 - 55 • addressing specific operational requirements;
- 56 ▶ enacts a new beer-only restaurant license, including:
 - 57 • addressing the commission's power to issue;

Enrolled Copy

S.B. 314

- 58 • addressing specific licensing requirements; and
- 59 • addressing specific operational requirements;
- 60 ▶ imposes additional requirements on on-premise beer retailers;
- 61 ▶ extends certain grandfathering for restaurant sublicenses;
- 62 ▶ prohibits event permittees from selling, offering for sale, or furnishing an indefinite
- 63 or unlimited number of alcoholic products during a set period for a fixed price
- 64 unless certain conditions are met;
- 65 ▶ clarifies provisions related to the number of drinks a patron may have before them
- 66 at an event;
- 67 ▶ requires agreements to create exclusive sales territories for beer wholesaler
- 68 licensees;
- 69 ▶ clarifies penalties related to obtaining a beer wholesaling license;
- 70 ▶ addresses when meetings of the commission may be closed;
- 71 ▶ addresses alcohol training and education seminars;
- 72 ▶ requires the governor to comply with certain requirements under the Budgetary
- 73 Procedures Act; and
- 74 ▶ makes technical and conforming amendments.

75 Money Appropriated in this Bill:

- 76 This bill appropriates:
- 77 ▶ to the Department of Public Safety - Programs and Operations, as ongoing and one
 - 78 time appropriations:
 - 79 • from the General Fund, one time, \$83,600; and
 - 80 • from the General Fund, ongoing, (\$2,642,900).

81 Other Special Clauses:

82 This bill provides an effective date.

83 Utah Code Sections Affected:

84 AMENDS:

85 **32B-1-102 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

S.B. 314

Enrolled Copy

- 86 **32B-1-201 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 87 **32B-1-402 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 88 **32B-1-407 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 89 **32B-1-602 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 90 **32B-1-605 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 91 **32B-2-201 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 92 **32B-2-202 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 93 **32B-2-205 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 94 **32B-2-503 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 95 **32B-2-504 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 96 **32B-2-602 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 97 **32B-2-605 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 98 **32B-2-606 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 99 **32B-4-203 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 100 **32B-4-206 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 101 **32B-4-208 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 102 **32B-4-406 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 103 **32B-4-420 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 104 **32B-4-705 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 105 **32B-5-301 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 106 **32B-5-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 107 **32B-5-305 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 108 **32B-5-307 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 109 **32B-5-309 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 110 **32B-6-102 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 111 **32B-6-202 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 112 **32B-6-203 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 113 **32B-6-204 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

Enrolled Copy

S.B. 314

- 114 **32B-6-205 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 115 **32B-6-302 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 116 **32B-6-303 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 117 **32B-6-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 118 **32B-6-305 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 119 **32B-6-403 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 120 **32B-6-404 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 121 **32B-6-405 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 122 **32B-6-406 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 123 **32B-6-502 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 124 **32B-6-503 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 125 **32B-6-504 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 126 **32B-6-603 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 127 **32B-6-604 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 128 **32B-6-605 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 129 **32B-6-702 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 130 **32B-6-703 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 131 **32B-6-705 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 132 **32B-6-706 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 133 **32B-8-202 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 134 **32B-8-204 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 135 **32B-8-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 136 **32B-8-401 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 137 **32B-8-402 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 138 **32B-9-204 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 139 **32B-9-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 140 **32B-9-305 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 141 **32B-9-405 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

S.B. 314

Enrolled Copy

- 142 **32B-10-303 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 143 **32B-10-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 144 **32B-10-403 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 145 **32B-10-404 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 146 **32B-10-503 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 147 **32B-10-603 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 148 **32B-11-201 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 149 **32B-11-203 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 150 **32B-11-204 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 151 **32B-11-503 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 152 **32B-11-604 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 153 **32B-11-605 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 154 **32B-11-608 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 155 **32B-12-202 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 156 **32B-12-203 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 157 **32B-13-201 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 158 **32B-13-202 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 159 **32B-13-203 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 160 **32B-13-301 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 161 **52-4-205**, as last amended by Laws of Utah 2010, Chapters 35, 60, and 239
- 162 **62A-15-401 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 276
- 163 **63J-1-201**, as last amended by Laws of Utah 2010, Chapter 415

164 ENACTS:

- 165 **32B-1-206**, Utah Code Annotated 1953
- 166 **32B-2-209**, Utah Code Annotated 1953
- 167 **32B-2-305**, Utah Code Annotated 1953
- 168 **32B-6-409**, Utah Code Annotated 1953
- 169 **32B-6-801**, Utah Code Annotated 1953

Enrolled Copy

S.B. 314

- 170 **32B-6-802**, Utah Code Annotated 1953
- 171 **32B-6-803**, Utah Code Annotated 1953
- 172 **32B-6-804**, Utah Code Annotated 1953
- 173 **32B-6-805**, Utah Code Annotated 1953
- 174 **32B-6-901**, Utah Code Annotated 1953
- 175 **32B-6-902**, Utah Code Annotated 1953
- 176 **32B-6-903**, Utah Code Annotated 1953
- 177 **32B-6-904**, Utah Code Annotated 1953
- 178 **32B-6-905**, Utah Code Annotated 1953
- 179 **32B-8a-101**, Utah Code Annotated 1953
- 180 **32B-8a-102**, Utah Code Annotated 1953
- 181 **32B-8a-201**, Utah Code Annotated 1953
- 182 **32B-8a-202**, Utah Code Annotated 1953
- 183 **32B-8a-203**, Utah Code Annotated 1953
- 184 **32B-8a-301**, Utah Code Annotated 1953
- 185 **32B-8a-302**, Utah Code Annotated 1953
- 186 **32B-8a-303**, Utah Code Annotated 1953
- 187 **32B-8a-401**, Utah Code Annotated 1953
- 188 **32B-8a-402**, Utah Code Annotated 1953
- 189 **32B-8a-403**, Utah Code Annotated 1953
- 190 **32B-8a-404**, Utah Code Annotated 1953
- 191 **32B-8a-501**, Utah Code Annotated 1953
- 192 **32B-8a-502**, Utah Code Annotated 1953

193 REPEALS:

- 194 **26-7-6 (Effective 07/01/11)**, as enacted by Coordination Clause, Laws of Utah 2010,
- 195 Chapter 136
- 196 **32B-4-506 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 197 **32B-4-507 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

S.B. 314**Enrolled Copy**

198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225

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

Section 1. Section **32B-1-102 (Effective 07/01/11)** is amended to read:

32B-1-102 (Effective 07/01/11). 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

Enrolled Copy

S.B. 314

226 (vii) an over-the-counter medicine.

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

229 (5) "Alcohol training and education seminar" means a seminar that is:

230 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
231 (b) described in Section 62A-15-401.

232 (6) "Banquet" means an event:

233 (a) that is held at one or more designated locations approved by the commission in or
234 on the premises of a:

235 (i) hotel;
236 (ii) resort facility;
237 (iii) sports center; or
238 (iv) convention center;

239 (b) for which there is a contract:

240 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
241 and
242 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
243 provide an alcoholic product at the event; and

244 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.

245 (7) (a) [~~Subject to Subsection (7)(b);~~] "Bar" means a [~~counter or similar~~] surface or
246 structure:

247 (i) at which an alcoholic product is:

248 (A) stored; or
249 (B) dispensed; or

250 (ii) from which an alcoholic product is served.

251 (b) [~~For purposes of a full-service restaurant license or a limited-service restaurant~~
252 ~~license;~~] "Bar structure" means a surface or structure on [~~the premises of a restaurant~~] a
253 licensed premises if on or at any place of the surface or structure an alcoholic product is:

S.B. 314

Enrolled Copy

- 254 (i) stored; or
- 255 (ii) dispensed.
- 256 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:
- 257 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
- 258 volume or 3.2% by weight; and
- 259 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 260 (b) "Beer" may or may not contain hops or other vegetable products.
- 261 (c) "Beer" includes a product that:
- 262 (i) contains alcohol in the percentages described in Subsection (8)(a); and
- 263 (ii) is referred to as:
- 264 (A) beer;
- 265 (B) ale;
- 266 (C) porter;
- 267 (D) stout;
- 268 (E) lager; or
- 269 (F) a malt or malted beverage.
- 270 (d) "Beer" does not include a flavored malt beverage.
- 271 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,
- 272 Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.
- 273 [~~9~~] (10) "Beer retailer" means a business:
- 274 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,
- 275 whether for consumption on or off the business premises; and
- 276 (b) to whom a license is issued:
- 277 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
- 278 Beer Retailer Local Authority; or
- 279 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
- 280 and Chapter 6, Part 7, On-premise Beer Retailer License.
- 281 [~~10~~] (11) "Beer wholesaling license" means a license:

Enrolled Copy

S.B. 314

282 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
283 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
284 retail licensees or off-premise beer retailers.

285 ~~[(11)]~~ (12) "Billboard" means a public display used to advertise, including:

- 286 (a) a light device;
- 287 (b) a painting;
- 288 (c) a drawing;
- 289 (d) a poster;
- 290 (e) a sign;
- 291 (f) a signboard; or
- 292 (g) a scoreboard.

293 ~~[(12)]~~ (13) "Brewer" means a person engaged in manufacturing:

- 294 (a) beer;
- 295 (b) heavy beer; or
- 296 (c) a flavored malt beverage.

297 ~~[(13)]~~ (14) "Brewery manufacturing license" means a license issued in accordance with
298 Chapter 11, Part 5, Brewery Manufacturing License.

299 ~~[(14)]~~ (15) "Certificate of approval" means a certificate of approval obtained from the
300 department under ~~[Subsection]~~ Section 32B-11-201~~[(4)]~~.

301 ~~[(15)]~~ (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle
302 provided by a bus company to a group of persons pursuant to a common purpose:

- 303 (a) under a single contract;
- 304 (b) at a fixed charge in accordance with the bus company's tariff; and
- 305 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
306 motor vehicle, and a driver to travel together to one or more specified destinations.

307 ~~[(16)]~~ (17) "Church" means a building:

- 308 (a) set apart for worship;
- 309 (b) in which religious services are held;

S.B. 314

Enrolled Copy

- 310 (c) with which clergy is associated; and
- 311 (d) that is tax exempt under the laws of this state.
- 312 [~~(17)~~] (18) (a) "Club license" means a license issued in accordance with Chapter 5,
- 313 Retail License Act, and Chapter 6, Part 4, Club License.
- 314 (b) "Club license" includes:
- 315 (i) a dining club license;
- 316 (ii) an equity club license;
- 317 (iii) a fraternal club license; or
- 318 (iv) a social club license.
- 319 [~~(18)~~] (19) "Commission" means the Alcoholic Beverage Control Commission created
- 320 in Section 32B-2-201.
- 321 [~~(19)~~] (20) "Commissioner" means a member of the commission.
- 322 [~~(20)~~] (21) "Community location" means:
- 323 (a) a public or private school;
- 324 (b) a church;
- 325 (c) a public library;
- 326 (d) a public playground; or
- 327 (e) a public park.
- 328 [~~(21)~~] (22) "Community location governing authority" means:
- 329 (a) the governing body of the community location; or
- 330 (b) if the commission does not know who is the governing body of a community
- 331 location, a person who appears to the commission to have been given on behalf of the
- 332 community location the authority to prohibit an activity at the community location.
- 333 (23) "Container" means a receptacle that contains an alcoholic product, including:
- 334 (a) a bottle;
- 335 (b) a vessel; or
- 336 (c) a similar item.
- 337 [~~(22)~~] (24) "Convention center" means a facility that is:

Enrolled Copy

S.B. 314

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

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

340 [~~(23)~~ For purposes of a full-service restaurant license or limited-service restaurant
341 license:]

342 [~~(a)~~ subject to Subsection ~~(23)(b)~~;

343 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a
344 dining area of a ~~[restaurant]~~ licensed premises where seating is provided to a patron for service
345 of food[~~;~~ and].

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

348 (i) stored; or

349 (ii) dispensed.

350 [~~(24)~~ (26) "Department" means the Department of Alcoholic Beverage Control created
351 in Section 32B-2-203.

352 [~~(25)~~ (27) "Department compliance officer" means an individual who is:

353 (a) an auditor or inspector; and

354 (b) employed by the department.

355 [~~(26)~~ (28) "Department sample" means liquor that is placed in the possession of the
356 department for testing, analysis, and sampling.

357 [~~(27)~~ (29) "Dining club license" means a license issued in accordance with Chapter 5,
358 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
359 as a dining club license.

360 [~~(28)~~ (30) "Director," unless the context requires otherwise, means the director of the
361 department.

362 [~~(29)~~ (31) "Disciplinary proceeding" means an adjudicative proceeding permitted
363 under this title:

364 (a) against a person subject to administrative action; and

365 (b) that is brought on the basis of a violation of this title.

S.B. 314

Enrolled Copy

366 ~~[(30) For purposes of a full-service restaurant license or a limited-service restaurant~~
367 ~~license, "dispense" means:]~~

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

369 ~~[(a)]~~ (i) drawing of an alcoholic product:

370 ~~[(i)]~~ (A) from an area where it is stored; or

371 ~~[(ii)]~~ (B) as provided in Subsection 32B-6-205(12)(b)(ii) ~~[or], 32B-6-305(12)(b)(ii),~~

372 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

373 ~~[(b)]~~ (ii) using the alcoholic product described in Subsection ~~[(29)(a)] (32)(a)(i) on the~~
374 premises of the ~~[restaurant] licensed premises~~ to mix or prepare an alcoholic product to be
375 furnished to a patron of the ~~[restaurant] retail licensee.~~

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

377 (i) a full-service restaurant license;

378 (ii) a limited-service restaurant license;

379 (iii) a reception center license; and

380 (iv) a beer-only restaurant license.

381 ~~[(31)]~~ (33) "Distillery manufacturing license" means a license issued in accordance
382 with Chapter 11, Part 4, Distillery Manufacturing License.

383 ~~[(32)]~~ (34) "Distressed merchandise" means an alcoholic product in the possession of
384 the department that is saleable, but for some reason is unappealing to the public.

385 ~~[(33)]~~ (35) "Educational facility" includes:

386 (a) a nursery school;

387 (b) an infant day care center; and

388 (c) a trade and technical school.

389 ~~[(34)]~~ (36) "Equity club license" means a license issued in accordance with Chapter 5,
390 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
391 as an equity club license.

392 ~~[(35)]~~ (37) "Event permit" means:

393 (a) a single event permit; or

Enrolled Copy

S.B. 314

394 (b) a temporary beer event permit.

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

398 [~~36~~] (39) (a) "Flavored malt beverage" means a beverage:

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

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

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

405 (iv) (A) for which the producer is required to file a formula for approval with the
406 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

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

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

409 [~~37~~] (40) "Fraternal club license" means a license issued in accordance with Chapter
410 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the
411 commission as a fraternal club license.

412 [~~38~~] (41) "Full-service restaurant license" means a license issued in accordance with
413 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

414 [~~39~~] (42) (a) "Furnish" means by any means to provide with, supply, or give an
415 individual an alcoholic product, by sale or otherwise.

416 (b) "Furnish" includes to:

417 (i) serve;

418 (ii) deliver; or

419 (iii) otherwise make available.

420 [~~40~~] (43) "Guest" means an individual who meets the requirements of Subsection
421 32B-6-407(9).

S.B. 314

Enrolled Copy

- 422 [~~(41)~~] (44) "Health care practitioner" means:
- 423 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 424 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
- 425 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- 426 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical [~~Therapist~~]
- 427 Therapy Practice Act;
- 428 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
- 429 Nurse Practice Act;
- 430 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
- 431 Practice Act;
- 432 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
- 433 Therapy Practice Act;
- 434 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 435 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
- 436 Professional Practice Act;
- 437 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- 438 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
- 439 Practice Act;
- 440 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
- 441 Hygienist Practice Act; and
- 442 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.
- 443 [~~(42)~~] (45) (a) "Heavy beer" means a product that:
- 444 (i) contains more than 4% alcohol by volume; and
- 445 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 446 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 447 [~~(43)~~] (46) "Hotel" is as defined by the commission by rule.
- 448 [~~(44)~~] (47) "Identification card" means an identification card issued under Title 53,
- 449 Chapter 3, Part 8, Identification Card Act.

Enrolled Copy

S.B. 314

450 [~~(45)~~] (48) "Industry representative" means an individual who is compensated by
451 salary, commission, or other means for representing and selling an alcoholic product of a
452 manufacturer, supplier, or importer of liquor.

453 [~~(46)~~] (49) "Industry representative sample" means liquor that is placed in the
454 possession of the department for testing, analysis, and sampling by a local industry
455 representative on the premises of the department to educate the local industry representative of
456 the quality and characteristics of the product.

457 [~~(47)~~] (50) "Interdicted person" means a person to whom the sale, offer for sale, or
458 furnishing of an alcoholic product is prohibited by:

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

461 [~~(48)~~] (51) "Intoxicated" means that a person:

462 (a) is significantly impaired as to the person's mental or physical functions as a result of
463 the use of:

- 464 (i) an alcoholic product;
- 465 (ii) a controlled substance;
- 466 (iii) a substance having the property of releasing toxic vapors; or
- 467 (iv) a combination of Subsections [~~(48)~~] (51)(a)(i) through (iii); and

468 (b) exhibits plain and easily observed outward manifestations of behavior or physical
469 signs produced by the over consumption of an alcoholic product.

470 [~~(49)~~] (52) "Investigator" means an individual who is:

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

473 [~~(50)~~] (53) "Invitee" is as defined in Section 32B-8-102.

474 [~~(51)~~] (54) "License" means:

- 475 (a) a retail license;
- 476 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
477 Licenses Act;

S.B. 314

Enrolled Copy

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

479 or

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

481 [~~52~~] (55) "Licensee" means a person who holds a license.

482 [~~53~~] (56) "Limited-service restaurant license" means a license issued in accordance
483 with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

484 [~~54~~] (57) "Limousine" means a motor vehicle licensed by the state or a local
485 authority, other than a bus or taxicab:

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

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

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

492 [~~55~~] (58) (a) (i) "Liquor" means a liquid that:

493 (A) is:

494 (I) alcohol;

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

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

497 (IV) other drink or drinkable liquid; and

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

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

500 (ii) "Liquor" includes:

501 (A) heavy beer;

502 (B) wine; and

503 (C) a flavored malt beverage.

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

505 [~~56~~] (59) "Liquor Control Fund" means the enterprise fund created by Section

Enrolled Copy

S.B. 314

506 32B-2-301.

507 [~~57~~] (60) "Liquor warehousing license" means a license that is issued:

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

509 (b) to a person, other than a licensed manufacturer, who engages in the importation for
510 storage, sale, or distribution of liquor regardless of amount.

511 [~~58~~] (61) "Local authority" means:

512 (a) for premises that are located in an unincorporated area of a county, the governing
513 body of a county; or

514 (b) for premises that are located in an incorporated city or a town, the governing body
515 of the city or town.

516 [~~59~~] (62) "Lounge or bar area" is as defined by rule made by the commission.

517 (63) "Opaque" means impenetrable to sight.

518 [~~60~~] (64) "Manufacture" means to distill, brew, rectify, mix, compound, process,
519 ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to
520 others.

521 [~~61~~] (65) "Member" means an individual who, after paying regular dues, has full
522 privileges in an equity club licensee or fraternal club licensee.

523 [~~62~~] (66) (a) "Military installation" means a base, air field, camp, post, station, yard,
524 center, or homeport facility for a ship:

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

526 (B) of the National Guard;

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

528 (iii) including a leased facility.

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

530 (i) civil works;

531 (ii) a rivers and harbors project; or

532 (iii) a flood control project.

533 [~~63~~] (67) "Minor" means an individual under the age of 21 years.

S.B. 314

Enrolled Copy

534 ~~[(64)]~~ (68) "Nondepartment enforcement agency" means an agency that:

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

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

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

538 ~~[(65)]~~ (69) "Nondepartment enforcement officer" means an individual who is:

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

540 (b) employed by a nondepartment enforcement agency.

541 ~~[(66)]~~ (70) (a) "Off-premise beer retailer" means a beer retailer who is:

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

543 Authority; and

544 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
545 premises.

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

547 ~~[(67)]~~ (71) "On-premise banquet license" means a license issued in accordance with
548 Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

549 ~~[(68)]~~ (72) "On-premise beer retailer" means a beer retailer who is:

550 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
551 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer
552 Retailer License; and

553 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
554 premises[;];

555 (i) regardless of whether the beer retailer sells beer for consumption off the licensed
556 premises[;]; and

557 ~~[(69) "Package" means any of the following containing an alcoholic product:]~~

558 ~~[(a) a container;]~~

559 ~~[(b) a bottle;]~~

560 ~~[(c) a vessel; or]~~

561 ~~[(d) other receptacle.]~~

Enrolled Copy

S.B. 314

562 (ii) on and after March 1, 2012, operating:
563 (A) as a tavern; or
564 (B) in a manner that meets the recreational amenity requirements of Subsection
565 32B-6-703(2)(e).
566 [~~(70)~~] (73) "Package agency" means a retail liquor location operated:
567 (a) under an agreement with the department; and
568 (b) by a person:
569 (i) other than the state; and
570 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
571 Agency, to sell packaged liquor for consumption off the premises of the package agency.
572 [~~(71)~~] (74) "Package agent" means a person who holds a package agency.
573 [~~(72)~~] (75) "Patron" means an individual to whom food, beverages, or services are sold,
574 offered for sale, or furnished, or who consumes an alcoholic product including:
575 (a) a customer;
576 (b) a member;
577 (c) a guest;
578 (d) an attendee of a banquet or event;
579 (e) an individual who receives room service;
580 (f) a resident of a resort;
581 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;
582 or
583 (h) an invitee.
584 [~~(73)~~] (76) "Permittee" means a person issued a permit under:
585 (a) Chapter 9, Event Permit Act; or
586 (b) Chapter 10, Special Use Permit Act.
587 [~~(74)~~] (77) "Person subject to administrative action" means:
588 (a) a licensee;
589 (b) a permittee;

S.B. 314**Enrolled Copy**

- 590 (c) a manufacturer;
- 591 (d) a supplier;
- 592 (e) an importer;
- 593 (f) ~~[an out-of-state brewer]~~ one of the following holding a certificate of approval~~[-or]~~;
- 594 (i) an out-of-state brewer;
- 595 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
- 596 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- 597 (g) staff of:
- 598 (i) a person listed in Subsections ~~[(74)]~~ (77)(a) through ~~[(g)]~~ (f); or
- 599 (ii) a package agent.
- 600 ~~[(75)]~~ (78) "Premises" means a building, enclosure, or room used in connection with
- 601 the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic
- 602 product, unless otherwise defined in this title or rules made by the commission.
- 603 ~~[(76)]~~ (79) "Prescription" means an order issued by a health care practitioner when:
- 604 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
- 605 to prescribe a controlled substance, other drug, or device for medicinal purposes;
- 606 (b) the order is made in the course of that health care practitioner's professional
- 607 practice; and
- 608 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.
- 609 ~~[(77)]~~ (80) (a) "Private event" means a specific social, business, or recreational event:
- 610 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
- 611 group; and
- 612 (ii) that is limited in attendance to people who are specifically designated and their
- 613 guests.
- 614 (b) "Private event" does not include an event to which the general public is invited,
- 615 whether for an admission fee or not.
- 616 ~~[(78)]~~ (81) (a) "Proof of age" means:
- 617 (i) an identification card;

Enrolled Copy

S.B. 314

- 618 (ii) an identification that:
- 619 (A) is substantially similar to an identification card;
- 620 (B) is issued in accordance with the laws of a state other than Utah in which the
- 621 identification is issued;
- 622 (C) includes date of birth; and
- 623 (D) has a picture affixed;
- 624 (iii) a valid driver license certificate that:
- 625 (A) includes date of birth;
- 626 (B) has a picture affixed; and
- 627 (C) is issued:
- 628 (I) under Title 53, Chapter 3, Uniform Driver License Act; or
- 629 (II) in accordance with the laws of the state in which it is issued;
- 630 (iv) a military identification card that:
- 631 (A) includes date of birth; and
- 632 (B) has a picture affixed; or
- 633 (v) a valid passport.
- 634 (b) "Proof of age" does not include a driving privilege card issued in accordance with
- 635 Section 53-3-207.
- 636 [~~(79)~~ (82) (a) "Public building" means a building or permanent structure that is:
- 637 (i) owned or leased by:
- 638 (A) the state; or
- 639 (B) a local government entity; and
- 640 (ii) used for:
- 641 (A) public education;
- 642 (B) transacting public business; or
- 643 (C) regularly conducting government activities.
- 644 (b) "Public building" does not include a building owned by the state or a local
- 645 government entity when the building is used by a person, in whole or in part, for a proprietary

S.B. 314

Enrolled Copy

646 function.

647 ~~[(80)]~~ (83) "Public conveyance" means a conveyance to which the public or a portion
648 of the public has access to and a right to use for transportation, including an airline, railroad,
649 bus, boat, or other public conveyance.

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

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

652 (b) has as its primary purpose the leasing of the facilities described in Subsection
653 (84)(a) to a third party for the third party's event.

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

656 ~~[(81)]~~ (86) (a) "Record" means information that is:

657 (i) inscribed on a tangible medium; or

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

659 (b) "Record" includes:

660 (i) a book;

661 (ii) a book of account;

662 (iii) a paper;

663 (iv) a contract;

664 (v) an agreement;

665 (vi) a document; or

666 (vii) a recording in any medium.

667 ~~[(82)]~~ (87) "Residence" means a person's principal place of abode within Utah.

668 ~~[(83)]~~ (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

669 ~~[(84)]~~ (89) "Resort" is as defined in Section 32B-8-102.

670 ~~[(85)]~~ (90) "Resort facility" is as defined by the commission by rule.

671 ~~[(86)]~~ (91) "Resort license" means a license issued in accordance with Chapter 5,
672 Retail License Act, and Chapter 8, Resort License Act.

673 ~~[(87)]~~ (92) "Restaurant" means a business location:

Enrolled Copy

S.B. 314

- 674 (a) at which a variety of foods are prepared;
675 (b) at which complete meals are served to the general public; and
676 (c) that is engaged primarily in serving meals to the general public.

677 [~~88~~] (93) "Retail license" means one of the following licenses issued under this title:

- 678 (a) a full-service restaurant license;
679 (b) a limited-service restaurant license;
680 (c) a club license;
681 (d) an airport lounge license;
682 (e) an on-premise banquet license; [~~or~~]
683 (f) an on-premise beer license[?];
684 (g) a reception center license; or
685 (h) a beer-only restaurant license.

686 [~~89~~] (94) "Room service" means furnishing an alcoholic product to a person in a
687 guest room of a:

- 688 (a) hotel; or
689 (b) resort facility.

690 [~~90~~] (95) "Serve" means to place an alcoholic product before an individual.

691 [~~91~~] (96) (a) "School" means a building used primarily for the general education of
692 minors.

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

694 [~~92~~] (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby,
695 for consideration, an alcoholic product is either directly or indirectly transferred, solicited,
696 ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether
697 done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or
698 the rules made by the commission.

699 [~~93~~] (98) "Sexually oriented entertainer" means a person who while in a state of
700 seminudity appears at or performs:

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

S.B. 314

Enrolled Copy

- 702 (b) on the premises of:
- 703 (i) a social club licensee; or
- 704 (ii) a tavern;
- 705 (c) on behalf of or at the request of the licensee described in Subsection [~~93~~] (98)(b);
- 706 (d) on a contractual or voluntary basis; and
- 707 (e) whether or not the person is designated as:
- 708 (i) an employee;
- 709 (ii) an independent contractor;
- 710 (iii) an agent of the licensee; or
- 711 (iv) a different type of classification.
- 712 [~~94~~] (99) "Single event permit" means a permit issued in accordance with Chapter 9,
- 713 Part 3, Single Event Permit.
- 714 [~~95~~] (100) "Small brewer" means a brewer who manufactures less than 60,000 barrels
- 715 of beer, heavy beer, and flavored malt beverages per year.
- 716 [~~96~~] (101) "Social club license" means a license issued in accordance with Chapter 5,
- 717 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
- 718 as a social club license.
- 719 [~~97~~] (102) "Special use permit" means a permit issued in accordance with Chapter 10,
- 720 Special Use Permit Act.
- 721 [~~98~~] (103) (a) "Spirituous liquor" means liquor that is distilled.
- 722 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
- 723 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.
- 724 [~~99~~] (104) "Sports center" is as defined by the commission by rule.
- 725 [~~100~~] (105) (a) "Staff" means an individual who engages in activity governed by this
- 726 title:
- 727 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
- 728 holder;
- 729 (ii) at the request of the business, including a package agent, licensee, permittee, or

Enrolled Copy

S.B. 314

730 certificate holder; or

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

733 (b) "Staff" includes:

734 (i) an officer;

735 (ii) a director;

736 (iii) an employee;

737 (iv) personnel management;

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

739 (vi) an operator; or

740 (vii) a representative.

741 [~~(101)~~] (106) "State of nudity" means:

742 (a) the appearance of:

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

744 (ii) a human genital;

745 (iii) a human pubic area; or

746 (iv) a human anus; or

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

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

749 (ii) a human genital;

750 (iii) a human pubic area; or

751 (iv) a human anus.

752 [~~(102)~~] (107) "State of seminudity" means a state of dress in which opaque clothing
753 covers no more than:

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

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

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

S.B. 314

Enrolled Copy

758 (A) four inches coverage width in the front of the human body; and
759 (B) five inches coverage width in the back of the human body; and
760 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.
761 ~~[(103)]~~ (108) (a) "State store" means a facility for the sale of packaged liquor:
762 (i) located on premises owned or leased by the state; and
763 (ii) operated by a state employee.
764 (b) "State store" does not include:
765 (i) a package agency;
766 (ii) a licensee; or
767 (iii) a permittee.
768 ~~[(104) For purposes of a full-service restaurant license or a limited-service restaurant~~
769 ~~license:]~~
770 (109) (a) "Storage area" means an area on licensed premises where the licensee stores
771 an alcoholic product.
772 (b) "Store" means to place or maintain in a location an alcoholic product from which a
773 person draws to prepare an alcoholic product to be furnished to a patron ~~[of the restaurant]~~,
774 except as provided in Subsection 32B-6-205(12)(b)(ii) ~~[or]~~, 32B-6-305(12)(b)(ii),
775 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).
776 ~~[(105)]~~ (110) "Sublicense" is as defined in Section 32B-8-102.
777 ~~[(106)]~~ (111) "Supplier" means a person who sells an alcoholic product to the
778 department.
779 ~~[(107)]~~ (112) "Tavern" means an on-premise beer retailer who is:
780 (a) issued a license by the commission in accordance with Chapter 5, Retail License
781 Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
782 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,
783 On-premise Beer Retailer License.
784 ~~[(108)]~~ (113) "Temporary beer event permit" means a permit issued in accordance with
785 Chapter 9, Part 4, Temporary Beer Event Permit.

Enrolled Copy

S.B. 314

786 [~~(109)~~] (114) "Temporary domicile" means the principal place of abode within Utah of
787 a person who does not have a present intention to continue residency within Utah permanently
788 or indefinitely.

789 (115) "Translucent" means a substance that allows light to pass through, but does not
790 allow an object or person to be seen through the substance.

791 [~~(110)~~] (116) "Unsaleable liquor merchandise" means a [~~package~~] container that:

792 (a) is unsaleable because the [~~package~~] container is:

793 (i) unlabeled;

794 (ii) leaky;

795 (iii) damaged;

796 (iv) difficult to open; or

797 (v) partly filled;

798 (b) (i) has faded labels or defective caps or corks;

799 (ii) has contents that are:

800 (A) cloudy;

801 (B) spoiled; or

802 (C) chemically determined to be impure; or

803 (iii) contains:

804 (A) sediment; or

805 (B) a foreign substance; or

806 (c) is otherwise considered by the department as unfit for sale.

807 [~~(111)~~] (117) (a) "Wine" means an alcoholic product obtained by the fermentation of
808 the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or
809 not another ingredient is added.

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

812 [~~(112)~~] (118) "Winery manufacturing license" means a license issued in accordance
813 with Chapter 11, Part 3, Winery Manufacturing License.

S.B. 314

Enrolled Copy

814 Section 2. Section **32B-1-201 (Effective 07/01/11)** is amended to read:
815 **32B-1-201 (Effective 07/01/11). Restrictions on number of retail licenses that may**
816 **be issued -- Determining population -- Exempt licenses.**
817 (1) As used in this section:
818 (a) "Alcohol-related law enforcement officer" means a law enforcement officer
819 employed by the Department of Public Safety that has as a primary responsibility:
820 (i) the enforcement of this title; or
821 (ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and
822 Reckless Driving.
823 (b) "Enforcement ratio" is the number calculated as follows:
824 (i) determine the quotient equal to the total number of quota retail licenses available
825 divided by the total number of alcohol-related law enforcement officers; and
826 (ii) round the number determined in accordance with Subsection (1)(b)(ii) up to the
827 nearest whole number.
828 (c) "Quota retail license" means:
829 (i) a full-service restaurant license;
830 (ii) a limited-service restaurant license;
831 (iii) a club license;
832 (iv) an on-premise banquet license;
833 (v) an on-premise beer retailer operating as a tavern; and
834 (vi) a reception center license.
835 (d) "Total number of alcohol-related law enforcement officers" means the total number
836 of positions designated as alcohol-related law enforcement officers that are funded as of a
837 specified date as certified by the Department of Public Safety to the department.
838 (e) "Total number of quota retail licenses available" means the number calculated by:
839 (i) determining as of a specified date for each quota retail license the number of
840 licenses that the commission may not exceed calculated by dividing the population of the state
841 by the number specified in the relevant provision for the quota retail license; and

Enrolled Copy

S.B. 314

842 (ii) adding together the numbers determined under Subsection (1)(d)(i).

843 (2) (a) Beginning on July 1, 2012, the department shall annually determine the
844 enforcement ratio as of July 1 of that year.

845 (b) If, beginning on July 1, 2012, the enforcement ratio is greater than 52, the
846 commission may not issue a quota retail license for the 12-month period beginning on the July
847 1 for which the enforcement ratio is greater than 52.

848 (c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license
849 during the 12-month period described in Subsection (2)(b) beginning on the day on which a
850 sufficient number of alcohol-related law enforcement officers are employed so that if the
851 enforcement ratio is calculated, the enforcement ratio would be equal to or less than 52.

852 (d) Once the Department of Public Safety certifies under Subsection (1)(d) the total
853 number of positions designated as alcohol-related law enforcement officers that are funded as
854 of July 1, the Department of Public Safety may not use the funding for the designated
855 alcohol-related law enforcement officers for a purpose other than funding those positions.

856 (3) For purposes of determining the number of state stores that the commission may
857 establish or the number of package agencies or retail licenses that the commission may issue,
858 the commission shall determine population by:

859 [~~(1)~~] (a) the most recent United States decennial or special census; or

860 [~~(2)~~] (b) another population determination made by the United States or state
861 governments.

862 (4) The commission may not consider a retail license that meets the following
863 conditions in determining the total number of licenses available for that type of retail license
864 that the commission may issue at any time:

865 (a) the retail license was issued to a club licensee designated as a dining club as of July
866 1, 2011; and

867 (b) the dining club license is converted to another type of retail license in accordance
868 with Section 32B-6-709.

869 Section 3. Section **32B-1-206** is enacted to read:

S.B. 314

Enrolled Copy

870 **32B-1-206. Calculation of ratio of gross receipts of food to alcoholic product.**

871 In calculating the annual gross receipts of a retail license or sublicense for purposes of
872 determining the percentage of gross receipts from the sale, offer for sale, or furnishing of food
873 or an alcoholic product, a retail licensee may not include in the calculation the money from the
874 sale of a bottle of wine by the retail licensee or under a sublicense that is in excess of \$250.

875 Section 4. Section **32B-1-402 (Effective 07/01/11)** is amended to read:

876 **32B-1-402 (Effective 07/01/11). Definitions.**

877 As used in this part:

878 [~~(1)~~ "Applicable licensee" means the following:]

879 [~~(a)~~ a dining club licensee; or]

880 [~~(b)~~ a social club licensee;]

881 [~~(2)~~ (1) "Authorized person" means a person authorized by law to sell or otherwise
882 handle an alcoholic product.

883 [~~(3)~~ (2) "Restricted area" means a place where an alcoholic product is sold or
884 consumed, but where under this title a minor is not permitted.

885 [~~(4)~~ (3) "Statement of age" means a statement signed under Section 32B-1-405
886 verifying the age of the person signing the statement.

887 Section 5. Section **32B-1-407 (Effective 07/01/11)** is amended to read:

888 **32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable**
889 **licensees.**

890 (1) As used in this section, "applicable licensee" means:

891 (a) a dining club;

892 (b) a social club; or

893 (c) a tavern.

894 [~~(1)~~ (2) Notwithstanding any other provision of this part, an applicable licensee shall
895 require that an authorized person ~~[under]~~ for the applicable licensee verify proof of age as
896 provided in this section.

897 [~~(2)~~ (3) An authorized person is required to verify proof of age under this section

Enrolled Copy

S.B. 314

898 before an individual who appears to be 35 years of age or younger:

899 (a) gains admittance to the premises of a social club licensee or tavern; or

900 (b) procures an alcoholic product on the premises of a dining club licensee.

901 [~~(3)~~] (4) To comply with Subsection [~~(2)~~] (3), an authorized person shall:

902 (a) request the individual present proof of age; and

903 (b) (i) verify the validity of the proof of age electronically under the verification

904 program created in Subsection [~~(4)~~] (5); or

905 (ii) if the proof of age cannot be electronically verified as provided in Subsection [~~(3)~~]

906 (4)(b)(i), request that the individual comply with a process established by the commission by

907 rule.

908 [~~(4)~~] (5) The commission shall establish by rule an electronic verification program that
909 includes the following:

910 (a) the specifications for the technology used by the applicable licensee to

911 electronically verify proof of age, including that the technology display to the person described

912 in Subsection [~~(1)~~] (2) no more than the following for the individual who presents the proof of

913 age:

914 (i) the name;

915 (ii) the age;

916 (iii) the number assigned to the individual's proof of age by the issuing authority;

917 (iv) the birth date;

918 (v) the gender; and

919 (vi) the status and expiration date of the individual's proof of age; and

920 (b) the security measures that must be used by an applicable licensee to ensure that

921 information obtained under this section is:

922 (i) used by the applicable licensee only for purposes of verifying proof of age in

923 accordance with this section; and

924 (ii) retained by the applicable licensee for seven days after the day on which the

925 applicable licensee obtains the information.

S.B. 314

Enrolled Copy

926 [~~5~~] (6) (a) An applicable licensee may not disclose information obtained under this
927 section except as provided under this title.

928 (b) Information obtained under this section is considered a record for any purpose
929 under Chapter 5, Part 3, Retail Licensee Operational Requirements.

930 Section 6. Section **32B-1-602 (Effective 07/01/11)** is amended to read:

931 **32B-1-602 (Effective 07/01/11). Definitions.**

932 As used in this part:

933 (1) "Malted beverage" means:

934 (a) beer;

935 (b) a flavored malt beverage; and

936 (c) heavy beer.

937 (2) "Packaging" means the outer packaging that is visible to a consumer such as a
938 carton, case, or other wrapper of a [~~package~~] container.

939 Section 7. Section **32B-1-605 (Effective 07/01/11)** is amended to read:

940 **32B-1-605 (Effective 07/01/11). General procedure for approval.**

941 (1) To obtain approval of the label and packaging of a malted beverage, the
942 manufacturer of the malted beverage shall submit an application to the department for
943 approval.

944 (2) The application described in Subsection (1) shall be on a form approved by the
945 department and include the following:

946 (a) a copy of a federal certificate of label approval from the Department of Treasury,
947 Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking
948 approval;

949 (b) a complete set of original labels for each size of [~~package~~] container of the malted
950 beverage;

951 (c) a description of the size of the [~~package~~] container on which a label will be placed;

952 (d) a description of each type of [~~package~~] container of the malted beverage; and

953 (e) a description of any packaging for the malted beverage.

Enrolled Copy

S.B. 314

954 (3) The department may assess a reasonable fee for reviewing a label and packaging for
955 approval.

956 (4) (a) The department shall notify a manufacturer within 30 days after the day on
957 which the manufacturer submits an application whether the label and packaging is approved or
958 denied.

959 (b) If the department determines that an unusual circumstance requires additional time,
960 the department may extend the time period described in Subsection (4)(a).

961 (5) A manufacturer shall obtain the approval of the department of a revision of a
962 previously approved label and packaging before a malted beverage using the revised label and
963 packaging may be distributed or sold in this state.

964 (6) (a) The department may revoke a label and packaging previously approved upon a
965 finding that the label and packaging is not in compliance with this title or rules of the
966 commission.

967 (b) The department shall notify the person who applies for the approval of a label and
968 packaging at least five business days before the day on which a label and packaging approval is
969 considered revoked.

970 (c) After receiving notice under Subsection (6)(b), a manufacturer may present written
971 argument or evidence to the department on why the revocation should not occur.

972 (7) A manufacturer that applies for approval of a label and packaging may appeal a
973 denial or revocation of a label and packaging approval to the commission.

974 Section 8. Section **32B-2-201 (Effective 07/01/11)** is amended to read:

975 **32B-2-201 (Effective 07/01/11). Alcoholic Beverage Control Commission created.**

976 (1) There is created the "Alcoholic Beverage Control Commission." The commission is
977 the governing board over the department.

978 (2) (a) The commission is composed of five part-time commissioners appointed by the
979 governor with the consent of the Senate.

980 (b) No more than three commissioners may be of the same political party.

981 (3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the

S.B. 314

Enrolled Copy

982 governor shall appoint each new commissioner or reappointed commissioner to a four-year
983 term.

984 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
985 time of appointment or reappointment, adjust the length of terms to ensure that the terms of no
986 more than two commissioners expire in a fiscal year.

987 (4) (a) When a vacancy occurs on the commission for any reason, the governor shall
988 appoint a replacement for the unexpired term with the consent of the Senate.

989 (b) Unless removed in accordance with Subsection (6), a commissioner shall remain on
990 the commission after the expiration of a term until a successor is appointed by the governor,
991 with the consent of the Senate.

992 (5) A commissioner shall take the oath of office.

993 (6) (a) The governor may remove a commissioner from the commission for cause after
994 a public hearing conducted by:

995 (i) the governor; or

996 (ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

997 (b) At least 10 days before the hearing described in Subsection (6)(a), the governor
998 shall provide the commissioner notice of:

999 (i) the date, time, and place of the hearing; and

1000 (ii) the alleged grounds for the removal.

1001 (c) The commissioner shall have an opportunity to:

1002 (i) attend the hearing;

1003 (ii) present witnesses and other evidence; and

1004 (iii) confront and cross examine witnesses.

1005 (d) After a hearing under this Subsection (6):

1006 (i) the person conducting the hearing shall prepare written findings of fact and
1007 conclusions of law; and

1008 (ii) the governor shall serve a copy of the prepared findings and conclusions upon the
1009 commissioner.

Enrolled Copy**S.B. 314**

1010 (e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing
 1011 examiner shall issue a written recommendation to the governor in addition to complying with
 1012 Subsection (6)(d).

1013 (f) A commissioner has five days from the day on which the commissioner receives the
 1014 findings and conclusions described in Subsection (6)(d) to file written objections to the
 1015 recommendation before the governor issues a final order.

1016 (g) The governor shall:

1017 (i) issue the final order under this Subsection (6) in writing; and

1018 (ii) serve the final order upon the commissioner.

1019 (7) (a) A commissioner may not receive compensation or benefits for the
 1020 commissioner's service, but may receive per diem and expenses incurred in the performance of
 1021 the commissioner's official duties at the rates established by the Division of Finance under
 1022 Sections 63A-3-106 and 63A-3-107.

1023 (b) A commissioner may decline to receive per diem and expenses for the
 1024 commissioner's service.

1025 [~~(8)(a)(i) The commission shall elect:~~]

1026 [~~(A) one commissioner to serve as chair;~~]

1027 (8) (a) The governor shall annually appoint the chair of the commission. A
 1028 commissioner serves as chair to the commission at the pleasure of the governor.

1029 (b) The commission shall elect:

1030 [~~(B)~~] (i) another commissioner to serve as vice chair; and

1031 [~~(C)~~] (ii) other commission officers as the commission considers advisable.

1032 [~~(i)~~] (c) A commissioner elected under Subsection (8)(b) shall serve in the office to
 1033 which the commissioner is elected [~~under Subsection (8)(a)(i)~~] at the pleasure of the
 1034 commission.

1035 [~~(b)~~] (9) (a) Each commissioner has equal voting rights on a commission matter when
 1036 in attendance at a commission meeting.

1037 [~~(c)~~] (b) Three commissioners is a quorum for conducting commission business.

S.B. 314

Enrolled Copy

1038 [~~(d)~~] (c) A majority vote of the quorum present at a meeting is required for the
1039 commission to act.

1040 [~~(9)~~] (10) (a) The commission shall meet at least monthly, but may hold other meetings
1041 at times and places as scheduled by:

1042 (i) the commission;

1043 (ii) the chair; or

1044 (iii) three commissioners upon filing a written request for a meeting with the chair.

1045 (b) Notice of the time and place of a commission meeting shall be given to each
1046 commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public
1047 Meetings Act. A commission meeting is open to the public, except for a commission meeting
1048 or portion of a commission meeting that is closed by the commission as authorized by Sections
1049 52-4-204 and 52-4-205.

1050 Section 9. Section **32B-2-202 (Effective 07/01/11)** is amended to read:

1051 **32B-2-202 (Effective 07/01/11). Powers and duties of the commission.**

1052 (1) The commission shall:

1053 (a) act as a general policymaking body on the subject of alcoholic product control;

1054 (b) adopt and issue policies, rules, and procedures;

1055 (c) set policy by written rules that establish criteria and procedures for:

1056 (i) issuing, denying, not renewing, suspending, or revoking a package agency, license,
1057 permit, or certificate of approval; and

1058 (ii) determining the location of a state store, package agency, or retail licensee;

1059 (d) decide within the limits, and under the conditions imposed by this title, the number
1060 and location of state stores, package agencies, and retail licensees in the state;

1061 (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses,
1062 permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing,
1063 consumption, manufacture, and distribution of an alcoholic product:

1064 (i) a package agency;

1065 (ii) a full-service restaurant license;

Enrolled Copy**S.B. 314**

- 1066 (iii) a limited-service restaurant license;
- 1067 (iv) a club license;
- 1068 (v) an airport lounge license;
- 1069 (vi) an on-premise banquet license;
- 1070 (vii) a resort license, under which four or more sublicenses may be included;
- 1071 (viii) an on-premise beer retailer license;
- 1072 (ix) a reception center license;
- 1073 (x) a beer-only restaurant license;
- 1074 [~~(ix)~~] (xi) a single event permit;
- 1075 [~~(x)~~] (xii) a temporary beer event permit;
- 1076 [~~(xi)~~] (xiii) a special use permit;
- 1077 [~~(xii)~~] (xiv) a manufacturing license;
- 1078 [~~(xiii)~~] (xv) a liquor warehousing license;
- 1079 [~~(xiv)~~] (xvi) a beer wholesaling license; and
- 1080 [~~(xv) an out-of-state brewer]~~
- 1081 (xvii) one of the following that holds a certificate of approval[;]:
- 1082 (A) an out-of-state brewer;
- 1083 (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
- 1084 (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- 1085 (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke one of the
- 1086 following conditional licenses for the purchase, storage, sale, furnishing, consumption,
- 1087 manufacture, and distribution of an alcoholic product:
- 1088 (i) a conditional full-service restaurant license; or
- 1089 (ii) a conditional limited-service restaurant license;
- 1090 (g) prescribe the duties of the department in assisting the commission in issuing a
- 1091 package agency, license, permit, or certificate of approval under this title;
- 1092 (h) to the extent a fee is not specified in this title, establish a fee allowed under this title
- 1093 in accordance with Section 63J-1-504;

S.B. 314

Enrolled Copy

- 1094 (i) fix prices at which liquor is sold that are the same at all state stores, package
1095 agencies, and retail licensees;
- 1096 (j) issue and distribute price lists showing the price to be paid by a purchaser for each
1097 class, variety, or brand of liquor kept for sale by the department;
- 1098 (k) (i) require the director to follow sound management principles; and
1099 (ii) require periodic reporting from the director to ensure that:
1100 (A) sound management principles are being followed; and
1101 (B) policies established by the commission are being observed;
- 1102 (l) (i) receive, consider, and act in a timely manner upon the reports, recommendations,
1103 and matters submitted by the director to the commission; and
1104 (ii) do the things necessary to support the department in properly performing the
1105 department's duties;
- 1106 (m) obtain temporarily and for special purposes the services of an expert or person
1107 engaged in the practice of a profession, or a person who possesses a needed skill if:
1108 (i) considered expedient; and
1109 (ii) approved by the governor;
- 1110 (n) prescribe the conduct, management, and equipment of premises upon which an
1111 alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- 1112 (o) make rules governing the credit terms of beer sales within the state to retail
1113 licensees; and
- 1114 (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take
1115 disciplinary action against a person subject to administrative action.
- 1116 (2) The power of the commission to do the following is plenary, except as otherwise
1117 provided by this title, and not subject to review:
1118 (a) establish a state store;
1119 (b) issue authority to act as a package agent or operate a package agency; and
1120 (c) issue or deny a license, permit, or certificate of approval.
- 1121 (3) If the commission is authorized or required to make a rule under this title, the

Enrolled Copy

S.B. 314

1122 commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative
1123 Rulemaking Act.

1124 Section 10. Section **32B-2-205 (Effective 07/01/11)** is amended to read:

1125 **32B-2-205 (Effective 07/01/11). Director of alcoholic beverage control.**

1126 (1) (a) The commission by a vote of four of the five commissioners, [~~and~~] with the
1127 approval of the governor, and with the consent of the Senate, shall appoint a director of
1128 alcoholic beverage control who is the administrative head of the department.

1129 (b) The director serves at the pleasure of the commission, except that the director may
1130 only be removed from office by a vote of four commissioners.

1131 (c) The director may not be a commissioner.

1132 (d) The director shall:

1133 (i) be qualified in administration;

1134 (ii) be knowledgeable by experience and training in the field of business management;

1135 and

1136 (iii) possess any other qualification prescribed by the commission.

1137 (2) The governor shall establish the director's compensation within the salary range
1138 fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

1139 (3) The director shall:

1140 (a) carry out the policies of the commission;

1141 (b) carry out the policies of the department;

1142 (c) fully inform the commission of the operations and administrative activities of the
1143 department; and

1144 (d) assist the commission in the proper discharge of the commission's duties.

1145 Section 11. Section **32B-2-209** is enacted to read:

1146 **32B-2-209. Prohibited interests, relationships, and actions.**

1147 (1) As used in this section:

1148 (a) "Applicable department employee" means a department employee who is:

1149 (i) designated as a deputy or assistant director;

S.B. 314

Enrolled Copy

- 1150 (ii) a chief administrative officer of a division within the department;
1151 (iii) a department compliance officer; or
1152 (iv) an employee directly performing licensing or compliance functions of the
1153 department.
- 1154 (b) "Immediate family" means an individual's:
1155 (i) spouse; or
1156 (ii) child who is younger than 18 years of age.
- 1157 (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and
1158 Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable
1159 department employee may not:
- 1160 (a) have a pecuniary interest, whether as the holder of stock or other securities other
1161 than a mutual fund, in a person who applies for or holds a package agency, license, permit, or
1162 certificate under this title;
- 1163 (b) otherwise have a conflict of interest with a person who applies for or holds a
1164 package agency, license, permit, or certificate under this title;
- 1165 (c) have an office, position, or relationship, or be engaged in a business or avocation
1166 that interferes or is incompatible with the effective and objective fulfillment of the duties of
1167 office or employment;
- 1168 (d) have a direct business relationship with a person subject to administrative action
1169 under this title;
- 1170 (e) accept a gift, gratuity, emolument, or employment from:
1171 (i) a person who applies for or holds a package agency, license, permit, or certificate
1172 under this title; or
1173 (ii) an officer, agent, or employee of a person who applies for or holds a package
1174 agency, license, permit, or certificate under this title, except that a commissioner, the director,
1175 or an applicable department employee may accept a gift from an officer, agent, or employee if
1176 the gift is equal to or less than \$50; or
1177 (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of

Enrolled Copy

S.B. 314

1178 any person to any office or employment with a person who applies for or holds a package
1179 agency, license, permit, or certificate under this title.

1180 (3) An immediate family member of a commissioner, the director, or an applicable
1181 department employee may not:

1182 (a) have a pecuniary interest, whether as the holder of stock or other securities other
1183 than a mutual fund, in a person who applies for or holds a package agency, license, permit, or
1184 certificate under this title;

1185 (b) otherwise have a conflict of interest with a person who applies for or holds a
1186 package agency, license, permit, or certificate under this title;

1187 (c) have an office, position, or relationship, or be engaged in a business or avocation
1188 that interferes or is incompatible with the effective and objective fulfillment of the duties of
1189 office or employment of the commissioner, director, or applicable department employee for
1190 whom the person is immediate family;

1191 (d) accept a gift, gratuity, emolument, or employment from:

1192 (i) a person who applies for or holds a package agency, license, permit, or certificate
1193 under this title; or

1194 (ii) an officer, agent, or employee of a person who applies for or holds a package
1195 agency, license, permit, or certificate under this title, except that an immediate family member
1196 may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

1197 (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
1198 any person to any office or employment with a person who applies for or holds a package
1199 agency, license, permit, or certificate under this title.

1200 (4) An officer, agent, attorney, or employee of a person who applies for or holds a
1201 package agency, license, permit, or certificate under this title may not directly or indirectly
1202 solicit, request, or recommend to the governor, any state senator, the commission, or the
1203 department the appointment of any person:

1204 (a) as a commissioner;

1205 (b) as director of the department; or

S.B. 314

Enrolled Copy

1206 (c) to a department staff position.
1207 (5) (a) A commissioner shall disclose during a meeting of the commission a potential
1208 violation of this section, including the existence and nature of a professional, financial,
1209 business, or personal interest with a person who holds, or an applicant for, a license, permit, or
1210 certificate issued under this title that may result in a violation of this section.
1211 (b) After a commissioner makes a disclosure under Subsection (5)(a):
1212 (i) the commission may, by motion, determine whether there is a potential violation of
1213 this section;
1214 (ii) if the commission determines that there is a potential violation of this section:
1215 (A) the commission shall notify the governor; and
1216 (B) the commissioner may not vote on any matter that would result in the potential
1217 violation of this section; and
1218 (iii) if the commission determines that there is not a potential violation of this section,
1219 a commissioner may elect whether to vote on the issue that gives rise to the disclosure under
1220 Subsection (5)(a).
1221 (c) The commission shall record any declaration of a potential violation of this section
1222 in the minutes of the meeting.
1223 Section 12. Section **32B-2-305** is enacted to read:
1224 **32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.**
1225 (1) As used in this section:
1226 (a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.
1227 (b) "Enforcement ratio" is as defined in Section 32B-1-201.
1228 (c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in
1229 this section.
1230 (2) There is created a restricted special revenue fund known as the "Alcoholic
1231 Beverage Control Act Enforcement Fund."
1232 (3) (a) The fund consists of:
1233 (i) deposits made under Subsection (4); and

Enrolled Copy

S.B. 314

1234 (ii) interest earned on the fund.

1235 (b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

1236 (4) After the deposit made under Section 32B-2-304, the department shall deposit 1%
1237 of the total gross revenue from the sale of liquor with the state treasurer to be credited to the
1238 fund to be used by the Department of Public Safety as provided in Subsection (5).

1239 (5) The Department of Public Safety shall expend money from the fund to supplement
1240 appropriations by the Legislature so that the Department of Public Safety maintains a sufficient
1241 number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each
1242 year the enforcement ratio as of July 1 is equal to or less than the number specified in Section
1243 32B-1-201.

1244 Section 13. Section **32B-2-503 (Effective 07/01/11)** is amended to read:

1245 **32B-2-503 (Effective 07/01/11). Operational requirements for a state store.**

1246 (1) (a) A state store shall display in a prominent place in the store a sign in large letters
1247 [~~stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is~~
1248 ~~prosecuted aggressively in Utah."~~] that consists of text in the following order:

1249 (i) a header that reads: "WARNING";

1250 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
1251 can cause birth defects and permanent brain damage for the child.";

1252 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
1253 [insert most current toll-free number] with questions or for more information.";

1254 (iv) a header that reads: "WARNING"; and

1255 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
1256 serious crime that is prosecuted aggressively in Utah."

1257 (b) (i) The text described in Subsections (1)(a)(i) through (iii) shall be in a different
1258 font style than the text described in Subsections (1)(a)(iv) and (v).

1259 (ii) The warning statements in the sign described in Subsection (1)(a) shall be in the
1260 same font size.

1261 (c) The Department of Health shall work with the commission and department to

S.B. 314

Enrolled Copy

1262 facilitate consistency in the format of a sign required under this section.

1263 (2) A state store may not sell, offer for sale, or furnish liquor except at a price fixed by
1264 the commission.

1265 (3) A state store may not sell, offer for sale, or furnish liquor to:

1266 (a) a minor;

1267 (b) a person actually, apparently, or obviously intoxicated;

1268 (c) a known interdicted person; or

1269 (d) a known habitual drunkard.

1270 (4) (a) A state store employee may not:

1271 (i) consume an alcoholic product on the premises of a state store; or

1272 (ii) allow any person to consume an alcoholic product on the premises of a state store.

1273 (b) A violation of this Subsection (4) is a class B misdemeanor.

1274 (5) (a) Sale or delivery of liquor may not be made on or from the premises of a state
1275 store, and a state store may not be kept open for the sale of liquor:

1276 (i) on Sunday; or

1277 (ii) on a state or federal legal holiday.

1278 (b) Sale or delivery of liquor may be made on or from the premises of a state store, and
1279 a state store may be open for the sale of liquor, only on a day and during hours that the
1280 commission directs by rule or order.

1281 (6) (a) A minor may not be admitted into, or be on the premises of a state store unless
1282 accompanied by a person who is:

1283 (i) 21 years of age or older; and

1284 (ii) the minor's parent, legal guardian, or spouse.

1285 (b) A state store employee that has reason to believe that a person who is on the
1286 premises of a state store is under the age of 21 and is not accompanied by a person described in
1287 Subsection (6)(a) may:

1288 (i) ask the suspected minor for proof of age;

1289 (ii) ask the person who accompanies the suspected minor for proof of age; and

Enrolled Copy

S.B. 314

1290 (iii) ask the suspected minor or the person who accompanies the suspected minor for
1291 proof of parental, guardianship, or spousal relationship.

1292 (c) A state store employee shall refuse to sell liquor to the suspected minor and to the
1293 person who accompanies the suspected minor into the state store if the suspected minor or
1294 person fails to provide information specified in Subsection (6)(b).

1295 (d) A state store employee shall require a suspected minor and the person who
1296 accompanies the suspected minor into the state store to immediately leave the premises of the
1297 state store if the suspected minor or person fails to provide information specified in Subsection
1298 (6)(b).

1299 (7) (a) A state store may not sell, offer for sale, or furnish liquor except in a sealed
1300 ~~[package]~~ container.

1301 (b) A person may not open a sealed ~~[package]~~ container on the premises of a state
1302 store.

1303 (8) On or after October 1, 2011, a state store may not sell, offer for sale, or furnish
1304 heavy beer in a sealed container that exceeds two liters.

1305 Section 14. Section **32B-2-504 (Effective 07/01/11)** is amended to read:

1306 **32B-2-504 (Effective 07/01/11). Delivery of liquor to state store.**

1307 (1) Liquor to be sold from a state store may be transported from a warehouse
1308 authorized by the department to the state store if transported by a person authorized by the
1309 department to transport the liquor to the state store, including a common carrier.

1310 (2) A person, while in or about a vehicle in which liquor is being transported, may not
1311 open, break, or allow to be opened or broken, a ~~[package]~~ container containing liquor.

1312 (3) A person may not drink, use, or allow to be drunk or used, liquor while it is in
1313 transit under this section.

1314 Section 15. Section **32B-2-602 (Effective 07/01/11)** is amended to read:

1315 **32B-2-602 (Effective 07/01/11). Application requirements for a package agency.**

1316 (1) Before a person may store, sell, offer for sale, or furnish liquor in a sealed
1317 ~~[package]~~ container on its premises under a package agency, the person shall first obtain a

S.B. 314

Enrolled Copy

1318 package agency issued by the commission in accordance with this part.

1319 (2) To obtain a package agency, a person seeking to be the package agent under this
1320 part shall submit to the department:

1321 (a) a written application in a form prescribed by the department;

1322 (b) a nonrefundable application fee of [~~\$100~~] \$125;

1323 (c) written consent of the local authority;

1324 (d) evidence of proximity to any community location, with proximity requirements
1325 being governed by Section 32B-1-202;

1326 (e) a bond as specified by Section 32B-2-604;

1327 (f) a floor plan of the premises, including a description and highlighting of that part of
1328 the premises in which the person proposes that the package agency be located;

1329 (g) evidence that the package agency is carrying public liability insurance in an amount
1330 and form satisfactory to the department;

1331 (h) a signed consent form stating that the package agent permits any authorized
1332 representative of the commission, department, or any law enforcement officer to have
1333 unrestricted right to enter the premises of the package agency;

1334 (i) if the person applying is an entity, verification that a person who signs the package
1335 agency application is authorized to sign on behalf of the entity; and

1336 (j) any other information the commission or department may require.

1337 (3) The commission may not issue a package agency to a person who is disqualified
1338 under Section 32B-1-304.

1339 (4) The commission may not issue a package agency for premises that do not meet the
1340 proximity requirements of Section 32B-1-202.

1341 Section 16. Section **32B-2-605 (Effective 07/01/11)** is amended to read:

1342 **32B-2-605 (Effective 07/01/11). Operational requirements for package agency.**

1343 (1) (a) A person may not operate a package agency until a package agency agreement is
1344 entered into by the package agent and the department.

1345 (b) A package agency agreement shall state the conditions of operation by which the

Enrolled Copy

S.B. 314

1346 package agent and the department are bound.

1347 (c) (i) If a package agent or staff of the package agent violates this title, rules under this
1348 title, or the package agency agreement, the department may take any action against the package
1349 agent that is allowed by the package agency agreement.

1350 (ii) An action against a package agent is governed solely by its package agency
1351 agreement and may include suspension or revocation of the package agency.

1352 (iii) Notwithstanding that this part refers to "package agency" or "package agent," staff
1353 of the package agency or package agent is subject to the same requirement or prohibition.

1354 (2) (a) A package agency shall be operated by an individual who is either:

1355 (i) the package agent; or

1356 (ii) an individual designated by the package agent.

1357 (b) An individual who is a designee under this Subsection (2) shall be:

1358 (i) an employee of the package agent; and

1359 (ii) responsible for the operation of the package agency.

1360 (c) The conduct of the designee is attributable to the package agent.

1361 (d) A package agent shall submit the name of the person operating the package agency
1362 to the department for the department's approval.

1363 (e) A package agent shall state the name and title of a designee on the application for a
1364 package agency.

1365 (f) A package agent shall:

1366 (i) inform the department of a proposed change in the individual designated to operate
1367 a package agency; and

1368 (ii) receive prior approval from the department before implementing the change
1369 described in this Subsection (2)(f).

1370 (g) Failure to comply with the requirements of this Subsection (2) may result in the
1371 immediate termination of a package agency agreement.

1372 (3) (a) A package agent shall display in a prominent place in the package agency[~~:(a)~~]
1373 the record issued by the commission that designates the package agency[~~;~~and].

S.B. 314

Enrolled Copy

1374 (b) A package agent that displays or stores liquor at a location visible to the public
1375 shall display in a prominent place in the package agency a sign in large letters [stating:
1376 "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted
1377 aggressively in Utah."] that consists of text in the following order:

1378 (i) a header that reads: "WARNING";

1379 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
1380 can cause birth defects and permanent brain damage for the child.";

1381 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
1382 [insert most current toll-free number] with questions or for more information.";

1383 (iv) a header that reads: "WARNING"; and

1384 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
1385 serious crime that is prosecuted aggressively in Utah."

1386 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different
1387 font style than the text described in Subsections (3)(b)(iv) and (v).

1388 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
1389 same font size.

1390 (d) The Department of Health shall work with the commission and department to
1391 facilitate consistency in the format of a sign required under this section.

1392 (4) A package agency may not display liquor or a price list in a window or showcase
1393 that is visible to passersby.

1394 (5) (a) A package agency may not purchase liquor from a person except from the
1395 department.

1396 (b) At the discretion of the department, liquor may be provided by the department to a
1397 package agency for sale on consignment.

1398 (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place
1399 other than as designated in the package agent's application, unless the package agent first
1400 applies for and receives approval from the department for a change of location within the
1401 package agency premises.

Enrolled Copy

S.B. 314

- 1402 (7) A package agency may not sell, offer for sale, or furnish liquor except at a price
1403 fixed by the commission.
- 1404 (8) A package agency may not sell, offer for sale, or furnish liquor to:
1405 (a) a minor;
1406 (b) a person actually, apparently, or obviously intoxicated;
1407 (c) a known interdicted person; or
1408 (d) a known habitual drunkard.
- 1409 (9) (a) A package agency may not employ a minor to handle liquor.
1410 (b) (i) Staff of a package agency may not:
1411 (A) consume an alcoholic product on the premises of a package agency; or
1412 (B) allow any person to consume an alcoholic product on the premises of a package
1413 agency.
- 1414 (ii) Violation of this Subsection (9)(b) is a class B misdemeanor.
- 1415 (10) (a) A package agency may not close or cease operation for a period longer than 72
1416 hours, unless:
1417 (i) the package agency notifies the department in writing at least seven days before the
1418 closing; and
1419 (ii) the closure or cessation of operation is first approved by the department.
- 1420 (b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package
1421 agency shall immediately notify the department by telephone.
- 1422 (c) (i) The department may authorize a closure or cessation of operation for a period
1423 not to exceed 60 days.
1424 (ii) The department may extend the initial period an additional 30 days upon written
1425 request of the package agency and upon a showing of good cause.
- 1426 (iii) A closure or cessation of operation may not exceed a total of 90 days without
1427 commission approval.
- 1428 (d) The notice required by Subsection (10)(a) shall include:
1429 (i) the dates of closure or cessation of operation;

S.B. 314**Enrolled Copy**

- 1430 (ii) the reason for the closure or cessation of operation; and
- 1431 (iii) the date on which the package agency will reopen or resume operation.
- 1432 (e) Failure of a package agency to provide notice and to obtain department
- 1433 authorization before closure or cessation of operation results in an automatic termination of the
- 1434 package agency agreement effective immediately.
- 1435 (f) Failure of a package agency to reopen or resume operation by the approved date
- 1436 results in an automatic termination of the package agency agreement effective on that date.
- 1437 (11) A package agency may not transfer its operations from one location to another
- 1438 location without prior written approval of the commission.
- 1439 (12) (a) A person, having been issued a package agency, may not sell, transfer, assign,
- 1440 exchange, barter, give, or attempt in any way to dispose of the package agency to another
- 1441 person, whether for monetary gain or not.
- 1442 (b) A package agency has no monetary value for any type of disposition.
- 1443 (13) (a) Subject to the other provisions of this Subsection (13):
- 1444 (i) sale or delivery of liquor may not be made on or from the premises of a package
- 1445 agency, and a package agency may not be kept open for the sale of liquor:
- 1446 (A) on Sunday; or
- 1447 (B) on a state or federal legal holiday.
- 1448 (ii) Sale or delivery of liquor may be made on or from the premises of a package
- 1449 agency, and a package agency may be open for the sale of liquor, only on a day and during
- 1450 hours that the commission directs by rule or order.
- 1451 ~~[(b) Subsection (13)(a) governs unless:]~~
- 1452 (b) A package agency located at a manufacturing facility is not subject to Subsection
- 1453 (13)(a) if:
- 1454 (i) the package agency is located at a [winery] manufacturing facility licensed in
- 1455 accordance with Chapter 11, Manufacturing and Related Licenses Act;
- 1456 (ii) the [winery] manufacturing facility licensed in accordance with Chapter 11,
- 1457 Manufacturing and Related Licenses Act, holds:

Enrolled Copy

S.B. 314

- 1458 (A) a full-service restaurant license; [~~or~~]
1459 (B) a limited-service restaurant license; or
1460 (C) a beer-only restaurant license;
1461 (iii) the restaurant is located at the [~~winery~~] manufacturing facility;
1462 (iv) the restaurant sells [~~wines~~] an alcoholic product produced at the [~~winery~~]
1463 manufacturing facility;
1464 (v) the [~~winery~~] manufacturing facility:
1465 (A) owns the restaurant; or
1466 (B) operates the restaurant;
1467 (vi) the package agency only sells [~~wine~~] an alcoholic product produced at the [~~winery~~]
1468 manufacturing facility; and
1469 (vii) the package agency's days and hours of sale are the same as the days and hours of
1470 sale at the restaurant.
1471 (c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if
1472 the package agent that holds the package agency to sell liquor at the resort does not sell liquor
1473 in a manner similar to a state store.
1474 (ii) The commission may by rule define what constitutes a package agency that sells
1475 liquor "in a manner similar to a state store."
1476 (14) (a) Except to the extent authorized by commission rule, a minor may not be
1477 admitted into, or be on the premises of a package agency unless accompanied by a person who
1478 is:
1479 (i) 21 years of age or older; and
1480 (ii) the minor's parent, legal guardian, or spouse.
1481 (b) A package agent or staff of a package agency that has reason to believe that a
1482 person who is on the premises of a package agency is under the age of 21 and is not
1483 accompanied by a person described in Subsection (14)(a) may:
1484 (i) ask the suspected minor for proof of age;
1485 (ii) ask the person who accompanies the suspected minor for proof of age; and

S.B. 314**Enrolled Copy**

1486 (iii) ask the suspected minor or the person who accompanies the suspected minor for
1487 proof of parental, guardianship, or spousal relationship.

1488 (c) A package agent or staff of a package agency shall refuse to sell liquor to the
1489 suspected minor and to the person who accompanies the suspected minor into the package
1490 agency if the minor or person fails to provide any information specified in Subsection (14)(b).

1491 (d) A package agent or staff of a package agency shall require the suspected minor and
1492 the person who accompanies the suspected minor into the package agency to immediately leave
1493 the premises of the package agency if the minor or person fails to provide information specified
1494 in Subsection (14)(b).

1495 (15) (a) A package agency [~~may not~~] shall sell, offer for sale, or furnish liquor [~~except~~]
1496 in a sealed [~~package~~] container.

1497 (b) A person may not open a sealed [~~package~~] container on the premises of a package
1498 agency.

1499 (c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or
1500 furnish liquor in other than a sealed container:

1501 (i) if the package agency is the type of package agency that authorizes the package
1502 agency to sell, offer for sale, or furnish the liquor as part of room service;

1503 (ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

1504 (iii) subject to:

1505 (A) staff of the package agency providing the liquor in person only to an adult guest in
1506 the guest room;

1507 (B) staff of the package agency not leaving the liquor outside a guest room for retrieval
1508 by a guest; and

1509 (C) the same limits on the portions in which an alcoholic product may be sold by a
1510 retail licensee under Section 32B-5-304.

1511 (16) On or after October 1, 2011, a package agency may not sell, offer for sale, or
1512 furnish heavy beer in a sealed container that exceeds two liters.

1513 [~~(16)~~] (17) The department may pay or otherwise remunerate a package agent on any

Enrolled Copy

S.B. 314

1514 basis, including sales or volume of business done by the package agency.

1515 [(+7)] (18) The commission may prescribe by policy or rule general operational
1516 requirements of a package agency that are consistent with this title and relate to:

1517 (a) physical facilities;

1518 (b) conditions of operation;

1519 (c) hours of operation;

1520 (d) inventory levels;

1521 (e) payment schedules;

1522 (f) methods of payment;

1523 (g) premises security; and

1524 (h) any other matter considered appropriate by the commission.

1525 Section 17. Section **32B-2-606 (Effective 07/01/11)** is amended to read:

1526 **32B-2-606 (Effective 07/01/11). Delivery of liquor to package agency.**

1527 (1) Liquor to be sold from a package agency may be transported from a warehouse or
1528 state store authorized by the department to the package agency if transported by a person
1529 authorized by the department to transport the liquor to the package agency, including a
1530 common carrier.

1531 (2) A person, while in or about a vehicle in which liquor is being transported, may not
1532 open, break, or allow to be opened or broken, a [~~package~~] container containing liquor.

1533 (3) A person may not drink, use, or allow to be drunk or used, any liquor while the
1534 liquor is in transit under this section.

1535 Section 18. Section **32B-4-203 (Effective 07/01/11)** is amended to read:

1536 **32B-4-203 (Effective 07/01/11). Authority to inspect.**

1537 (1) (a) This Subsection (1) applies to:

1538 (i) a commissioner;

1539 (ii) an authorized representative of the commission or department; or

1540 (iii) a law enforcement or peace officer.

1541 (b) An individual described in Subsection (1)(a):

S.B. 314

Enrolled Copy

1542 (i) shall be given access, ingress, and egress to and from premises or a conveyance
1543 used in the storage, sale, furnishing, manufacture, or transportation of an alcoholic product;

1544 (ii) may open a [~~package~~] container containing, or supposed to contain, an article sold,
1545 or exposed for sale, held in possession, or manufactured with intent to sell in violation of this
1546 title or commission rules; and

1547 (iii) may inspect the contents and take samples of the contents for analysis from a
1548 [~~package~~] container described in this Subsection (1).

1549 (2) The following shall assist, when requested by a person described in Subsection (1),
1550 in tracing, finding, or discovering the presence of an article prohibited by this title or
1551 commission rules to the extent assistance would not infringe upon the person's federal and state
1552 constitutional rights:

1553 (a) a dealer;

1554 (b) a clerk;

1555 (c) a bookkeeper;

1556 (d) an express agent;

1557 (e) a railroad or airline official;

1558 (f) a common or other carrier; and

1559 (g) an employee of a person listed in this Subsection (2).

1560 Section 19. Section **32B-4-206 (Effective 07/01/11)** is amended to read:

1561 **32B-4-206 (Effective 07/01/11). Searches, seizures, forfeitures, and fines.**

1562 (1) The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah
1563 Uniform Forfeiture Procedures Act:

1564 (a) an alcoholic product possessed, purchased, used, stored, sold, offered for sale,
1565 furnished, given, received, warehoused, manufactured, distributed, shipped, carried,
1566 transported, or adulterated in violation of this title or commission rules;

1567 (b) a [~~package~~] container or property used or intended for use as a [~~package~~] container
1568 for an alcoholic product in violation of this title or commission rules;

1569 (c) raw materials, products, and equipment used, or intended for use, in manufacturing,

Enrolled Copy

S.B. 314

1570 processing, delivering, importing, exporting, or adulterating an alcoholic product in violation
1571 of this title or commission rules;

1572 (d) implements, furniture, fixtures, or other personal property used or kept for a
1573 violation of this title or commission rules;

1574 (e) conveyances including an aircraft, vehicle, or vessel used or intended for use, to
1575 transport or in any manner facilitate the transportation, sale, receipt, possession, or
1576 concealment of property described in Subsection (1)(a), (b), (c), or (d); and

1577 (f) a record used or intended for use in violation of this title or commission rules.

1578 (2) (a) Property subject to forfeiture under this title may be seized by a peace officer of
1579 this state or any other person authorized by law upon process issued by a court having
1580 jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating
1581 to search warrants or administrative warrants.

1582 (b) Notwithstanding Subsection (2)(a), seizure without process may be made when:

1583 (i) the seizure is incident to an arrest or search under a search warrant or an inspection
1584 under an administrative inspection warrant;

1585 (ii) the property subject to seizure has been the subject of a prior judgment in favor of
1586 the state in a criminal injunction or forfeiture proceeding under this title;

1587 (iii) the peace officer or other person authorized by law has probable cause to believe
1588 that the property is directly or indirectly dangerous to health or safety; or

1589 (iv) the peace officer or other person authorized by law has probable cause to believe
1590 that the property is being or has been used, intended to be used, held, or kept in violation of this
1591 title or commission rules.

1592 (3) If property is seized pursuant to a search or administrative warrant, a peace officer
1593 or other person authorized by law shall comply with the requirements of the Utah Rules of
1594 Criminal Procedure.

1595 (4) (a) If property is seized without process:

1596 (i) the peace officer or other person authorized by law shall make a return of the peace
1597 officer's or person's acts without delay directly to the district court of the county in which the

S.B. 314

Enrolled Copy

1598 property was located; and
1599 (ii) the district court shall have jurisdiction of the case.
1600 (b) A return shall describe:
1601 (i) the property seized;
1602 (ii) the place where the property is seized; and
1603 (iii) any person in apparent possession of the property.
1604 (c) A peace officer or other person described in Subsection (4)(a) shall promptly:
1605 (i) deliver a written inventory of anything seized to any person in apparent authority at
1606 the premises where the seizure is made; or
1607 (ii) post a written inventory of anything seized in a conspicuous place at the premises.
1608 (d) A written inventory under this Subsection (4) shall state the place where the
1609 property is being held.
1610 (5) Property taken or detained under this section is not repleviable but is considered in
1611 custody of the law enforcement agency making the seizure subject only to the orders of the
1612 court or the official having jurisdiction. When property is seized under this title, the
1613 appropriate person or agency may:
1614 (a) place the property under seal;
1615 (b) remove the property to a place designated by:
1616 (i) the person or agency; or
1617 (ii) the warrant under which the property is seized; or
1618 (c) take custody of the property and remove the property to an appropriate location for
1619 disposition in accordance with law.
1620 (6) When property is subject to forfeiture under this section, a proceeding shall be
1621 instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.
1622 (7) When property is ordered forfeited under Title 24, Chapter 1, Utah Uniform
1623 Forfeiture Procedures Act, by a finding of a court that no person is entitled to recover the
1624 property, the property, if an alcohol [~~package~~] container or product used as a [~~package~~]
1625 container for an alcoholic product, shall be disposed of as follows:

Enrolled Copy

S.B. 314

1626 (a) An alcoholic product shall be sold in accordance with Section 24-1-17 if the
1627 alcoholic product is:

1628 (i) unadulterated, pure, and free from crude, unrectified, or impure form of ethylic
1629 alcohol, or any other deleterious substance or liquid; and

1630 (ii) otherwise in saleable condition.

1631 (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the
1632 department shall destroy the alcoholic product and its [~~package~~] container under competent
1633 supervision.

1634 (8) Except when otherwise provided, a fine or forfeiture levied under this title shall be
1635 paid to the county treasurer of the county in which the prosecution occurred.

1636 Section 20. Section **32B-4-208 (Effective 07/01/11)** is amended to read:

1637 **32B-4-208 (Effective 07/01/11). Nuisances.**

1638 (1) As used in this section, "nuisance" means:

1639 (a) a room, house, building, structure, place, aircraft, vehicle, vessel, or other
1640 conveyance where an alcoholic product is possessed, purchased, used, kept, stored, sold,
1641 offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped,
1642 carried, transported, or adulterated in violation of this title; or

1643 (b) an alcoholic product, [~~package~~] container, equipment, or other property kept or
1644 used in maintaining an item or property described in Subsection (1)(a).

1645 (2) A person who maintains or assists in maintaining a nuisance is guilty of a class B
1646 misdemeanor.

1647 (3) If a person has knowledge that, or has reason to believe that the person's room,
1648 house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or
1649 used as a nuisance, or allows it to be occupied or used as a nuisance, the nuisance property is
1650 subject to a lien for and may be sold to pay the fines and costs assessed against the person
1651 guilty of the common nuisance. This lien may be enforced by action in a court having
1652 jurisdiction.

1653 (4) (a) The department shall bring an action to abate a nuisance in the name of the

S.B. 314

Enrolled Copy

1654 department in a court having jurisdiction.

1655 (b) An action brought under this Subsection (4) is an action in equity.

1656 (c) The department may not be required to post a bond to initiate an action under this
1657 Subsection (4).

1658 (d) A court may issue:

1659 (i) if it appears that a nuisance exists, a temporary writ of injunction restraining the
1660 defendant from conducting or permitting the continuance of the nuisance until the conclusion
1661 of the trial; and

1662 (ii) an order restraining the defendant and any other person from removing or
1663 interfering with an alcoholic product, [~~package~~] container, equipment, or other property kept or
1664 used in violation of this title or commission rules.

1665 (e) In an action to abate or enjoin a nuisance, the court need not find that the property
1666 involved is being unlawfully used at the time of the hearing.

1667 (f) On finding that a material allegation of a petition or complaint is true, the court
1668 shall order that an alcoholic product may not be possessed, purchased, used, kept, stored, sold,
1669 offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped,
1670 carried, transported, or adulterated, in any portion of the room, house, building, structure,
1671 place, aircraft, vehicle, vessel, or other conveyance.

1672 (g) Upon judgment of a court ordering abatement of the nuisance, the court may order
1673 that the premises or conveyance in question may not be occupied or used for any purpose for
1674 one year, except under Subsection (4)(h).

1675 (h) A court may permit premises or conveyance described in Subsection (4)(g) to be
1676 occupied or used:

1677 (i) if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with
1678 sufficient surety, approved by the court, payable to the state;

1679 (ii) on the condition that an alcoholic product will not be present in or on the premises
1680 or the conveyance; and

1681 (iii) on the condition that payment of the fines, costs, and damages assessed for

Enrolled Copy

S.B. 314

1682 violation of this title or commission rules will be made.

1683 (5) If a tenant of the premises uses the premises or any part of the premises in
1684 maintaining a nuisance, or knowingly permits use by another, the lease is void and the right to
1685 possession reverts to the owner or lessor who is entitled to the remedy provided by law for
1686 forcible detention of the premises.

1687 (6) A person is guilty of assisting in maintaining a nuisance as provided in Section
1688 76-10-804, if that person:

1689 (a) knowingly permits a building or premises owned or leased by the person, or under
1690 the person's control, or any part of a building or premises, to be used in maintaining a nuisance;
1691 or

1692 (b) after being notified in writing by a prosecutor or other citizen of the unlawful use,
1693 fails to take all proper measures to:

1694 (i) abate the nuisance; or

1695 (ii) remove the one or more persons from the premises.

1696 Section 21. Section **32B-4-406 (Effective 07/01/11)** is amended to read:

1697 **32B-4-406 (Effective 07/01/11). Unlawful sale, offer for sale, or furnishing of an**
1698 **alcoholic product.**

1699 (1) Except as provided in Subsection (2):

1700 (a) a person may not sell, offer for sale, or furnish beer to the general public in a
1701 [package] container that exceeds two liters; and

1702 (b) a person may not purchase or possess beer in a [package] container that exceeds
1703 two liters.

1704 (2) (a) A retail licensee may sell, offer for sale, or furnish beer on draft subject to the
1705 requirements of Section 32B-5-304.

1706 (b) A retail licensee may purchase or possess beer in a [package] container that exceeds
1707 two liters to be dispensed on draft for consumption subject to the requirements of Section
1708 32B-5-304.

1709 (c) A beer wholesaler licensee may sell, offer for sale, or furnish beer in a [package]

S.B. 314

Enrolled Copy

1710 container that exceeds two liters to a retail licensee described in Subsection (2)(a).

1711 (3) On or after October 1, 2011:

1712 (a) A person may not sell, offer for sale, or furnish heavy beer in a container that
1713 exceeds two liters.

1714 (b) A person may not purchase or possess heavy beer in a container that exceeds two
1715 liters.

1716 Section 22. Section **32B-4-420 (Effective 07/01/11)** is amended to read:

1717 **32B-4-420 (Effective 07/01/11). Unlawful adulteration.**

1718 (1) For purposes of this section, "tamper" means to do one or more of the following to
1719 the contents of a [~~package~~] container:

1720 (a) fortify;

1721 (b) adulterate;

1722 (c) contaminate;

1723 (d) dilute;

1724 (e) change its character or purity; or

1725 (f) otherwise change.

1726 (2) A person may not, for any purpose, mix or allow to be mixed with an alcoholic
1727 product sold or supplied by the person as a beverage any of the following:

1728 (a) a drug;

1729 (b) methylic alcohol;

1730 (c) a crude, unrectified, or impure form of ethylic alcohol; or

1731 (d) another deleterious substance.

1732 (3) (a) The following may not engage in an act listed in Subsection (3)(b):

1733 (i) a package agent;

1734 (ii) a retail licensee;

1735 (iii) a permittee;

1736 (iv) a beer wholesaler licensee;

1737 (v) a liquor warehouser licensee;

Enrolled Copy**S.B. 314**

- 1738 (vi) a supplier; or
- 1739 (vii) an importer.
- 1740 (b) A person listed in Subsection (3)(a) may not:
- 1741 (i) tamper with the contents of a [~~package~~] container of alcoholic product as originally
- 1742 marketed by a manufacturer;
- 1743 (ii) refill or partly refill with any substance the contents of an original [~~package~~]
- 1744 container of alcoholic product as originally marketed by a manufacturer;
- 1745 (iii) misrepresent the brand of an alcoholic product sold or offered for sale; or
- 1746 (iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a
- 1747 purchaser without first advising the purchaser of the difference.
- 1748 Section 23. Section **32B-4-705 (Effective 07/01/11)** is amended to read:
- 1749 **32B-4-705 (Effective 07/01/11). Exclusions from tied house prohibitions.**
- 1750 (1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an
- 1751 industry member to a retailer under the conditions and within the limitations prescribed in:
- 1752 (a) this section; and
- 1753 (b) the applicable federal laws cited in this section.
- 1754 (2) The following may be furnished by an industry member:
- 1755 (a) a product display as provided in 27 C.F.R. Sec. 6.83;
- 1756 (b) point of sale advertising material or a consumer advertising specialty as provided in
- 1757 27 C.F.R. Sec. 6.84;
- 1758 (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;
- 1759 (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;
- 1760 (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;
- 1761 (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;
- 1762 (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;
- 1763 (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;
- 1764 (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
- 1765 (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and

S.B. 314

Enrolled Copy

- 1766 (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.
- 1767 (3) The following exceptions provided in federal law are not applicable:
- 1768 (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
- 1769 (b) the exception for a consumer tasting or sampling at a retail establishment as
- 1770 provided in 27 C.F.R. Sec. 6.95; and
- 1771 (c) the exception for participation in a retailer association activity provided in 27
- 1772 C.F.R. Sec. 6.100.
- 1773 (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain
- 1774 a record:
- 1775 (a) of an item furnished to a retailer;
- 1776 (b) on the premises of the industry member; and
- 1777 (c) for a three-year period.
- 1778 (5) A sample of liquor may be provided to the department under the following
- 1779 conditions:
- 1780 (a) With the department's permission, an industry member may submit a department
- 1781 sample to the department for product testing, analysis, and sampling.
- 1782 (b) No more than two department samples of a particular type, vintage, and production
- 1783 lot of a particular branded product may be submitted to the department for department testing,
- 1784 analysis, and sampling within a consecutive 120-day period.
- 1785 (c) (i) A department sample may not exceed 1 liter.
- 1786 (ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may
- 1787 not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a
- 1788 larger size, not to exceed 5 liters:
- 1789 (A) wine;
- 1790 (B) heavy beer; or
- 1791 (C) a flavored malt beverage.
- 1792 (d) A department sample submitted to the department:
- 1793 (i) shall be shipped prepaid by the industry member by common carrier; and

Enrolled Copy

S.B. 314

- 1794 (ii) may not be shipped by United States mail directly to the department's central
1795 administrative warehouse office.
- 1796 (e) A department sample may not be shipped to any other location within the state.
- 1797 (f) The industry member shall submit with a department sample submitted to the
1798 department a letter from the industry member that clearly:
- 1799 (i) identifies the product as a "department sample"; and
1800 (ii) states the FOB case price of the product.
- 1801 (g) (i) The department may transfer a listed item from current stock:
1802 (A) for use as a comparison control sample; or
1803 (B) to verify product spoilage as considered appropriate.
- 1804 (ii) The department shall charge back a sample transferred under this Subsection (5)(g)
1805 to the respective industry member.
- 1806 (h) The department shall:
- 1807 (i) account for, label, and record a department sample received or transferred;
1808 (ii) account for the department sample's disposition; and
1809 (iii) maintain a record of the sample and its disposition for a two-year period.
- 1810 (i) The department shall affix to each [~~package~~] container of a department sample a
1811 label clearly identifying the product as a "department sample."
- 1812 (j) The department shall dispose of a department sample delivered to the department or
1813 transferred from the department's current stock in one of the following ways as chosen by the
1814 department:
- 1815 (i) test and analyze the department sample, with the remaining contents destroyed
1816 under controlled and audited conditions established by the department;
- 1817 (ii) destroy the entire contents of the department sample under controlled and audited
1818 conditions established by the department; or
- 1819 (iii) add the department sample to the inventory of the department for sale to the
1820 public.
- 1821 (k) A person other than an authorized department official may not be in possession of a

S.B. 314

Enrolled Copy

1822 department sample except as otherwise provided.

1823 (l) The department shall handle a liquor item received by the department from a
1824 supplier that is not designated as a sample by the supplier, but that is an item not specifically
1825 listed on a department purchase order, in accordance with this Subsection (5).

1826 (m) The department may not use its money to pay freight or charges on a sample or a
1827 liquor item:

1828 (i) shipped to the department by a supplier; and

1829 (ii) not listed on a department purchase order.

1830 (6) A sample of beer may be provided by a beer industry member to a retailer under the
1831 conditions listed in this Subsection (6).

1832 (a) A sample of beer may be provided by an industry member only to a retailer who has
1833 not purchased the brand of beer from that industry member within the last 12 months.

1834 (b) For each retailer, the industry member may give not more than three gallons of any
1835 brand of beer, except that if a particular product is not available in a size within the quantity
1836 limitation, an industry member may furnish the next largest size.

1837 (7) An educational seminar may involve an industry member under the conditions
1838 listed in this Subsection (7).

1839 (a) An industry member may provide or participate in an educational seminar:

1840 (i) involving:

1841 (A) the department;

1842 (B) a retailer;

1843 (C) a holder of a scientific or educational special use permit;

1844 (D) another industry member; or

1845 (E) an employee of a person listed in Subsections (7)(a)(i)(A) through (D); and

1846 (ii) regarding a topic such as:

1847 (A) merchandising and product knowledge;

1848 (B) use of equipment; and

1849 (C) a tour of an alcoholic product manufacturing facility.

Enrolled Copy

S.B. 314

1850 (b) An industry member may not pay the expenses of or compensate a person who is a
1851 department employee, a retailer, or a permittee for attending a seminar or tour described in
1852 Subsection (7)(a).

1853 (8) (a) A liquor industry member may conduct a tasting of a liquor product of the
1854 industry member:

1855 (i) for the department, at the department's request; and

1856 (ii) for a licensed industry representative, but only at the department's central
1857 administrative warehouse office.

1858 (b) A liquor industry member may only use a department sample or industry
1859 representative sample when conducting a tasting of the industry member's liquor product.

1860 (c) A beer industry member may conduct a tasting of a beer product for a beer retailer
1861 either at:

1862 (i) the industry member's premises; or

1863 (ii) a retail establishment.

1864 (d) Except to the extent authorized by commission rule, an alcoholic product industry
1865 member may not conduct tasting or sampling activities with:

1866 (i) a retailer; or

1867 (ii) a member of the general public.

1868 (9) A beer industry member may participate in a beer retailer association activity to the
1869 extent authorized by 27 C.F.R. Sec. 6.100.

1870 (10) (a) An industry member may contribute to a charitable, civic, religious, fraternal,
1871 educational, or community activity, except the contribution may not be given to influence a
1872 retailer in the selection of a product that may be sold at the activity.

1873 (b) An industry member or retailer violates this Subsection (10) if:

1874 (i) the industry member's contribution influences, directly or indirectly, the retailer in
1875 the selection of a product; and

1876 (ii) a competitor's product is excluded in whole or in part from sale at the activity.

1877 (11) (a) An industry member may lease or furnish equipment listed in Subsection

S.B. 314

Enrolled Copy

- 1878 (11)(b) to a retailer if:
- 1879 (i) the equipment is leased or furnished for a special event;
- 1880 (ii) a reasonable rental or service fee is charged for the equipment; and
- 1881 (iii) the period for which the equipment is leased or furnished does not exceed 30 days.
- 1882 (b) This Subsection (11) applies to the following equipment:
- 1883 (i) a picnic pump;
- 1884 (ii) a cold plate;
- 1885 (iii) a tub;
- 1886 (iv) a keg box;
- 1887 (v) a refrigerated trailer;
- 1888 (vi) a refrigerated van; or
- 1889 (vii) a refrigerated draft system.
- 1890 (12) (a) A liquor industry member may assist the department in:
- 1891 (i) ordering, shipping, and delivering merchandise;
- 1892 (ii) new product notification;
- 1893 (iii) listing and delisting information;
- 1894 (iv) price quotations;
- 1895 (v) product sales analysis;
- 1896 (vi) shelf management; and
- 1897 (vii) an educational seminar.
- 1898 (b) (i) A liquor industry member may, to acquire a new listing:
- 1899 (A) solicit an order from the department; and
- 1900 (B) submit to the department a sample of the liquor industry member's products under
- 1901 Subsection (5) and price lists.
- 1902 (ii) (A) An industry member is confined to the customer areas when the industry
- 1903 member visits a state store or package agency unless otherwise approved.
- 1904 (B) An industry member is confined to the office area of a state warehouse when the
- 1905 industry member visits a state warehouse unless otherwise approved.

Enrolled Copy

S.B. 314

- 1906 (13) A beer industry member may assist a beer retailer in:
- 1907 (a) ordering, shipping, and delivering beer merchandise;
- 1908 (b) new product notification;
- 1909 (c) listing and delisting information;
- 1910 (d) price quotations;
- 1911 (e) product sales analysis;
- 1912 (f) shelf management; and
- 1913 (g) an educational seminar.
- 1914 (14) A beer industry member may, to acquire a new listing:
- 1915 (a) solicit an order from a beer retailer; and
- 1916 (b) submit to a beer retailer a sample of the beer industry member's beer products under
- 1917 Subsection (5) and price lists.

1918 Section 24. Section **32B-5-301 (Effective 07/01/11)** is amended to read:

1919 **32B-5-301 (Effective 07/01/11). General operational requirements.**

1920 (1) (a) A retail licensee and staff of a retail licensee shall comply with this title and the

1921 rules of the commission, including the relevant part under Chapter 6, Specific Retail License

1922 Act, for the specific type of retail license.

1923 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action

1924 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- 1925 (i) a retail licensee;
- 1926 (ii) individual staff of a retail licensee; or
- 1927 (iii) both a retail licensee and staff of the retail licensee.

1928 (2) (a) If there is a conflict between this part and the relevant part under Chapter 6,

1929 Specific Retail License Act, for the specific type of retail license, the relevant part under

1930 Chapter 6 governs.

1931 (b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail

1932 licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product

1933 specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.

S.B. 314**Enrolled Copy**

1934 (c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail
 1935 License Act, refers to "retail licensee," staff of the retail licensee is subject to the same
 1936 requirement or prohibition.

1937 (3) (a) A retail licensee shall display in a prominent place in the licensed premises[
 1938 ~~(a)~~] the retail license that is issued by the department[~~;~~ and].

1939 (b) A retail licensee shall display in a prominent place a sign in large letters [stating:
 1940 ~~"Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted~~
 1941 ~~aggressively in Utah."~~] that consists of text in the following order:

1942 (i) a header that reads: "WARNING";

1943 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
 1944 can cause birth defects and permanent brain damage for the child.";

1945 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
 1946 [insert most current toll-free number] with questions or for more information.";

1947 (iv) a header that reads: "WARNING"; and

1948 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
 1949 serious crime that is prosecuted aggressively in Utah."

1950 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different
 1951 font style than the text described in Subsections (3)(b)(iv) and (v).

1952 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
 1953 same font size.

1954 (d) The Department of Health shall work with the commission and department to
 1955 facilitate consistency in the format of a sign required under this section.

1956 (4) A retail licensee may not on the licensed premises:

1957 (a) engage in or permit any form of gambling, as defined and proscribed in Title 76,
 1958 Chapter 10, Part 11, Gambling;

1959 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
 1960 Part 11, Gambling; or

1961 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires

Enrolled Copy

S.B. 314

1962 the risking of something of value for a return or for an outcome when the return or outcome is
1963 based upon an element of chance, excluding the playing of an amusement device that confers
1964 only an immediate and unrecorded right of replay not exchangeable for value.

1965 (5) A retail licensee may not knowingly allow a person on the licensed premises to, in
1966 violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
1967 Paraphernalia Act:

1968 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
1969 58-37-2; or

1970 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
1971 Section 58-37a-3.

1972 (6) Upon the presentation of credentials, at any time during which a retail licensee is
1973 open for the transaction of business, the retail licensee shall immediately:

1974 (a) admit a commissioner, authorized department employee, or law enforcement officer
1975 to the retail licensee's premises; and

1976 (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to
1977 inspect completely:

1978 (i) the entire premises of the retail licensee; and

1979 (ii) the records of the retail licensee.

1980 (7) An individual may not consume an alcoholic product on the licensed premises of a
1981 retail licensee on any day during the period:

1982 (a) beginning one hour after the time of day that the period during which a retail
1983 licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises
1984 begins; and

1985 (b) ending at the time specified in the relevant part under Chapter 6, Specific Retail
1986 License Act, for the type of retail license when the retail licensee may first sell, offer for sale,
1987 or furnish an alcoholic product on the licensed premises on that day.

1988 Section 25. Section **32B-5-304 (Effective 07/01/11)** is amended to read:

1989 **32B-5-304 (Effective 07/01/11). Portions in which alcoholic product may be sold.**

S.B. 314

Enrolled Copy

1990 (1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only
1991 in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated
1992 metered dispensing system approved by the department in accordance with commission rules
1993 adopted under this title, except that:

1994 (a) spirituous liquor need not be dispensed through a calibrated metered dispensing
1995 system if used as a secondary flavoring ingredient in a beverage subject to the following
1996 requirements:

1997 (i) the secondary ingredient may be dispensed only in conjunction with the purchase of
1998 a primary spirituous liquor;

1999 (ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

2000 (iii) the retail licensee shall designate a location where flavorings are stored on the
2001 floor plan submitted to the department; and

2002 (iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

2003 (b) spirituous liquor need not be dispensed through a calibrated metered dispensing
2004 system if used:

2005 (i) as a flavoring on a dessert; and

2006 (ii) in the preparation of a flaming food dish, drink, or dessert; and

2007 (c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.

2008 (2) (a) (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an
2009 individual portion that does not exceed 5 ounces per glass or individual portion.

2010 (ii) A retail licensee may sell, offer for sale, or furnish an individual portion of wine to
2011 a patron in more than one glass if the total amount of wine does not exceed 5 ounces.

2012 (b) (i) A retail licensee may sell, offer for sale, or furnish wine in a ~~[package]~~ container
2013 not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

2014 (ii) A retail licensee may sell, offer for sale, or furnish wine in a ~~[package]~~ container
2015 not to exceed 750 milliliters at a price fixed by the commission to a table of less than four
2016 persons.

2017 (3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original

Enrolled Copy**S.B. 314**

2018 [package] container at a price fixed by the commission, except that the original [package]
2019 container may not exceed one liter.

2020 (4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an
2021 original [package] container at a price fixed by the commission, except that the original
2022 [package] container may not exceed one liter.

2023 (5) (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish
2024 beer for on-premise consumption:

2025 (i) in an open original [package] container; and

2026 (ii) in a [package] container on draft.

2027 (b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):

2028 (i) in a size of [package] container that exceeds two liters; or

2029 (ii) to an individual patron in a size of [package] container that exceeds one liter.

2030 Section 26. Section **32B-5-305 (Effective 07/01/11)** is amended to read:

2031 **32B-5-305 (Effective 07/01/11). Pricing of alcoholic product -- Other charge.**

2032 (1) (a) A retail licensee may sell, offer for sale, or furnish liquor only at a price fixed by
2033 the commission.

2034 (b) A retail licensee may not sell [liquor] an alcoholic product at a discount price on
2035 any date or at any time.

2036 (2) (a) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at
2037 less than the cost of the alcoholic product to the retail licensee.

2038 (b) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a
2039 special or reduced price that encourages over consumption or intoxication.

2040 (c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a
2041 special or reduced price for only certain hours of the retail licensee's business day, such as a
2042 "happy hour."

2043 (d) A retail licensee may not sell, offer for sale, or furnish more than one alcoholic
2044 product for the price of a single alcoholic product.

2045 (e) A retail licensee may not sell, offer for sale, or furnish an indefinite or unlimited

S.B. 314

Enrolled Copy

2046 number of alcoholic products during a set period for a fixed price.

2047 (f) A retail licensee may not engage in a promotion involving or offering a free
2048 alcoholic product to the general public.

2049 (3) As authorized by commission rule, a retail licensee may charge a patron for
2050 providing:

2051 (a) a service related to liquor purchased at the licensed premises; or

2052 (b) wine service performed for wine carried in by a patron in accordance with Section
2053 32B-5-307.

2054 Section 27. Section **32B-5-307 (Effective 07/01/11)** is amended to read:

2055 **32B-5-307 (Effective 07/01/11). Bringing onto or removing alcoholic product**
2056 **from premises.**

2057 (1) Except as provided in Subsection (3):

2058 (a) A person may not bring onto the licensed premises of a retail licensee an alcoholic
2059 product for on-premise consumption.

2060 (b) A retail licensee may not allow a person to:

2061 (i) bring onto licensed premises an alcoholic product for on-premise consumption; or

2062 (ii) consume an alcoholic product brought onto the licensed premises by a person other
2063 than the retail licensee.

2064 (2) Except as provided in Subsection (3):

2065 (a) A person may not carry from a licensed premises of a retail licensee an open
2066 [package] container that:

2067 (i) is used primarily for drinking purposes; and

2068 (ii) contains an alcoholic product.

2069 (b) A retail licensee may not permit a patron to carry from the licensed premises an
2070 open [package] container described in Subsection (2)(a).

2071 (3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for
2072 on-premise consumption if:

2073 (i) permitted by the retail licensee; and

Enrolled Copy**S.B. 314**

2074 (ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

2075 (b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the
 2076 patron shall deliver the bottled wine to a server or other representative of the retail licensee
 2077 upon entering the licensed premises.

2078 (c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a
 2079 wine service for a bottled wine carried onto the licensed premises in accordance with this
 2080 Subsection (3).

2081 (d) A patron may remove from a licensed premises the unconsumed contents of a bottle
 2082 of wine purchased in the licensed premises, or brought onto the licensed premises in
 2083 accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

2084 Section 28. Section **32B-5-309 (Effective 07/01/11)** is amended to read:

2085 **32B-5-309 (Effective 07/01/11). Ceasing operation.**

2086 (1) ~~[(a)]~~ Except as provided in Subsection ~~[(1)(a)]~~ (8), a retail licensee may not close
 2087 or cease operation for a period longer than 240 hours, unless:

2088 ~~[(i)]~~ (a) the retail licensee notifies the department in writing at least seven days before
 2089 the day on which the retail licensee closes or ceases operation; and

2090 ~~[(ii)]~~ (b) the closure or cessation of operation is first approved by the department.

2091 ~~[(b)]~~ (2) Notwithstanding Subsection (1)~~[(a)]~~, in the case of emergency closure, a retail
 2092 licensee shall immediately notify the department by telephone.

2093 ~~[(c)-(i)]~~ (3) (a) The department may authorize a closure or cessation of operation of a
 2094 retail licensee for a period not to exceed 60 days.

2095 ~~[(ii)]~~ (b) The department may extend the initial period an additional 30 days upon:

2096 ~~[(A)]~~ (i) written request of the retail licensee; and

2097 ~~[(B)]~~ (ii) a showing of good cause.

2098 ~~[(d)]~~ (4) A closure or cessation of operation may not exceed a total of 90 days without
 2099 commission approval.

2100 ~~[(e)]~~ (5) A notice required under this ~~[Subsection (1)]~~ section shall include:

2101 ~~[(i)]~~ (a) the dates of closure or cessation of operation;

S.B. 314**Enrolled Copy**

2102 ~~[(ii)]~~ (b) the reason for the closure or cessation of operation; and

2103 ~~[(iii)]~~ (c) the date on which the retail licensee will reopen or resume operation.

2104 ~~[(f)]~~ (6) Failure of a retail licensee to provide notice and to obtain department approval

2105 before closure or cessation of operation results in an automatic forfeiture of:

2106 ~~[(i)]~~ (a) the retail license; and

2107 ~~[(ii)]~~ (b) the unused portion of the retail license fee for the remainder of the retail

2108 license year effective immediately.

2109 ~~[(g)]~~ (7) Failure of a retail licensee to reopen or resume operation by the approved date

2110 results in an automatic forfeiture of:

2111 ~~[(i)]~~ (a) the retail license; and

2112 ~~[(ii)]~~ (b) the unused portion of the retail license fee for the remainder of the retail

2113 license year.

2114 ~~[(h) This Subsection (1)]~~

2115 (8) This section does not apply to:

2116 ~~[(i)]~~ (a) an on-premise beer retailer who is not a tavern; or

2117 ~~[(ii)]~~ (b) an airport lounge licensee.

2118 ~~[(2) A retail licensee may not transfer a retail license from one location to another~~

2119 ~~location, without prior written approval of the commission.]~~

2120 ~~[(3) (a) A person, having been issued a retail license may not sell, transfer, assign,~~

2121 ~~exchange, barter, give, or attempt in any way to dispose of the retail license to another person~~

2122 ~~whether for monetary gain or not.]~~

2123 ~~[(b) A retail license has no monetary value for any type of disposition.]~~

2124 Section 29. Section **32B-6-102 (Effective 07/01/11)** is amended to read:

2125 **32B-6-102 (Effective 07/01/11). Definitions.**

2126 ~~[As used in this chapter:]~~

2127 ~~[(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a~~

2128 ~~full-service restaurant licensee or limited-service restaurant licensee that:]~~

2129 ~~[(i) as of May 11, 2009, has:]~~

Enrolled Copy**S.B. 314**

2130 ~~[(A) patron seating at the bar structure;]~~

2131 ~~[(B) a partition at one or more locations on the bar structure that is along:]~~

2132 ~~[(F) the width of the bar structure; or]~~

2133 ~~[(H) the length of the bar structure; and]~~

2134 ~~[(C) facilities for the dispensing or storage of an alcoholic product:]~~

2135 ~~[(F) on the portion of the bar structure that is separated by the partition described in~~

2136 ~~Subsection (1)(a)(i)(B); or]~~

2137 ~~[(H) if the partition is described in Subsection (1)(a)(i)(B)(H), adjacent to the bar~~

2138 ~~structure in a manner visible to a patron sitting at the bar structure;]~~

2139 ~~[(ii) is not operational as of May 12, 2009, if:]~~

2140 ~~[(A) a person applying for a full-service restaurant license or limited-service restaurant~~

2141 ~~license:]~~

2142 ~~[(F) has as of May 12, 2009, a building permit to construct the restaurant;]~~

2143 ~~[(H) is as of May 12, 2009, actively engaged in the construction of the restaurant, as~~

2144 ~~defined by rule made by the commission; and]~~

2145 ~~[(H) is issued the full-service restaurant license or limited-service restaurant license by~~

2146 ~~no later than December 31, 2009; and]~~

2147 ~~[(B) once constructed, the licensed premises has a bar structure described in Subsection~~

2148 ~~(1)(a)(i);]~~

2149 ~~[(iii) as of May 12, 2009, has no patron seating at the bar structure; or]~~

2150 ~~[(iv) is not operational as of May 12, 2009, if:]~~

2151 ~~[(A) a person applying for a full-service restaurant license or limited-service restaurant~~

2152 ~~license:]~~

2153 ~~[(F) has as of May 12, 2009, a building permit to construct the restaurant;]~~

2154 ~~[(H) is as of May 12, 2009, actively engaged in the construction of the restaurant, as~~

2155 ~~defined by rule made by the commission; and]~~

2156 ~~[(H) is issued a full-service restaurant license or limited-service restaurant license by~~

2157 ~~no later than December 31, 2009; and]~~

S.B. 314

Enrolled Copy

2158 ~~[(B) once constructed, the licensed premises has a bar structure with no patron seating.]~~

2159 ~~[(b) "Grandfathered bar structure" does not include a grandfathered bar structure~~

2160 ~~described in Subsection (1)(a) on or after the day on which a restaurant remodels the~~

2161 ~~grandfathered bar structure, as defined by rule made by the commission.]~~

2162 ~~[(c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered~~

2163 ~~bar structure notwithstanding whether a restaurant undergoes a change of ownership.]~~

2164 ~~[(2) "Seating grandfathered bar structure" means a grandfathered bar structure~~

2165 ~~described in Subsection (1)(a)(i) or (ii).]~~

2166 Reserved

2167 Section 30. Section **32B-6-202 (Effective 07/01/11)** is amended to read:

2168 **32B-6-202 (Effective 07/01/11). Definitions.**

2169 [Reserved]

2170 As used in this part:

2171 (1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a

2172 full-service restaurant licensee that:

2173 (i) as of May 11, 2009, has:

2174 (A) patron seating at the bar structure;

2175 (B) a partition at one or more locations on the bar structure that is along:

2176 (I) the width of the bar structure; or

2177 (II) the length of the bar structure; and

2178 (C) facilities for the dispensing or storage of an alcoholic product:

2179 (I) on the portion of the bar structure that is separated by the partition described in

2180 Subsection (1)(a)(i)(B); or

2181 (II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar

2182 structure in a manner visible to a patron sitting at the bar structure;

2183 (ii) is not operational as of May 12, 2009, if:

2184 (A) a person applying for a full-service restaurant license:

2185 (I) has as of May 12, 2009, a building permit to construct the restaurant;

Enrolled Copy

S.B. 314

2186 (II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
2187 defined by rule made by the commission; and
2188 (III) is issued the full-service restaurant license by no later than December 31, 2009;
2189 and
2190 (B) once constructed, the licensed premises has a bar structure described in Subsection
2191 (1)(a)(i);
2192 (iii) as of May 12, 2009, has no patron seating at the bar structure; or
2193 (iv) is not operational as of May 12, 2009, if:
2194 (A) a person applying for a full-service restaurant license:
2195 (I) has as of May 12, 2009, a building permit to construct the restaurant;
2196 (II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
2197 defined by rule made by the commission; and
2198 (III) is issued a full-service restaurant license by no later than December 31, 2009; and
2199 (B) once constructed, the licensed premises has a bar structure with no patron seating.
2200 (b) "Grandfathered bar structure" does not include a grandfathered bar structure
2201 described in Subsection (1)(a) on or after the day on which a restaurant remodels the
2202 grandfathered bar structure, as defined by rule made by the commission.
2203 (c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered
2204 bar structure notwithstanding whether a restaurant undergoes a change of ownership.
2205 (2) "Seating grandfathered bar structure" means:
2206 (a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or
2207 (b) a bar structure grandfathered under Section 32B-6-409.
2208 Section 31. Section **32B-6-203 (Effective 07/01/11)** is amended to read:
2209 **32B-6-203 (Effective 07/01/11). Commission's power to issue full-service**
2210 **restaurant license.**
2211 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
2212 an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a
2213 full-service restaurant license from the commission in accordance with this part.

S.B. 314

Enrolled Copy

2214 (2) The commission may issue a full-service restaurant license to establish full-service
2215 restaurant licensed premises at places and in numbers the commission considers proper for the
2216 storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises
2217 operated as a full-service restaurant.

2218 (3) Subject to Section 32B-1-201:

2219 [~~(3)~~] (a) The commission may not issue a total number of full-service restaurant
2220 licenses that at any time exceeds the number determined by dividing the population of the state
2221 by [~~5,200~~] 4,925.

2222 (b) The commission may issue a seasonal full-service restaurant license in accordance
2223 with Section 32B-5-206.

2224 (c) (i) If the location, design, and construction of a hotel may require more than one
2225 full-service restaurant sales location within the hotel to serve the public convenience, the
2226 commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as
2227 many as three full-service restaurant locations within the hotel under one full-service restaurant
2228 license if:

2229 (A) the hotel has a minimum of 150 guest rooms; and

2230 (B) the locations under the full-service restaurant license are:

2231 (I) within the same hotel; and

2232 (II) on premises that are managed or operated, and owned or leased, by the full-service
2233 restaurant licensee.

2234 (ii) A facility other than a hotel shall have a separate full-service restaurant license for
2235 each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

2236 (4) (a) Except as provided in Subsection (4)(b), the commission may not issue a
2237 full-service restaurant license for premises that do not meet the proximity requirements of
2238 Section 32B-1-202.

2239 (b) With respect to the premises of a full-service restaurant license issued by the
2240 commission that undergoes a change of ownership, the commission shall waive or vary the
2241 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a

Enrolled Copy**S.B. 314**

2242 full-service restaurant license to the new owner of the premises if:

2243 (i) when a full-service restaurant license was issued to a previous owner, the premises
2244 met the proximity requirements of Subsection 32B-1-202(2);

2245 (ii) the premises has had a full-service restaurant license at all times since the
2246 full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance;
2247 and

2248 (iii) the community location was located within the proximity requirements of
2249 Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in
2250 Subsection (4)(b)(i) was issued.

2251 Section 32. Section **32B-6-204 (Effective 07/01/11)** is amended to read:

2252 **32B-6-204 (Effective 07/01/11). Specific licensing requirements for full-service**
2253 **restaurant license.**

2254 (1) To obtain a full-service restaurant license a person shall comply with Chapter 5,
2255 Part 2, Retail Licensing Process.

2256 (2) (a) A full-service restaurant license expires on October 31 of each year.

2257 (b) To renew a person's full-service restaurant license, a person shall comply with the
2258 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than
2259 September 30.

2260 (3) (a) The nonrefundable application fee for a full-service restaurant license is [~~\$250~~]
2261 \$300.

2262 (b) The initial license fee for a full-service restaurant license is [~~\$1,750~~] \$2,000.

2263 (c) The renewal fee for a full-service restaurant license is in the following amount:

2264 Gross Cost of Liquor in Previous License Year for the Licensee	Renewal Fee
2265 under \$5,000	[\$750] <u>\$850</u>
2266 equals or exceeds \$5,000 but less than \$10,000	[\$900] <u>\$1,050</u>
2267 equals or exceeds \$10,000 but less than \$25,000	[\$1,250] <u>\$1,500</u>
2268 equals or exceeds \$25,000	[\$1,500] <u>\$1,750</u>

2269 (4) The bond amount required for a full-service restaurant license is the penal sum of

S.B. 314

Enrolled Copy

2270 \$10,000.

2271 Section 33. Section **32B-6-205 (Effective 07/01/11)** is amended to read:

2272 **32B-6-205 (Effective 07/01/11). Specific operational requirements for a**
2273 **full-service restaurant license.**

2274 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
2275 Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee
2276 shall comply with this section.

2277 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
2278 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

2279 (i) a full-service restaurant licensee;

2280 (ii) individual staff of a full-service restaurant licensee; or

2281 (iii) both a full-service restaurant licensee and staff of the full-service restaurant
2282 licensee.

2283 (2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant
2284 licensee shall display in a prominent place in the restaurant a list of the types and brand names
2285 of liquor being furnished through the full-service restaurant licensee's calibrated metered
2286 dispensing system.

2287 (3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee
2288 shall store an alcoholic product in a storage area described in Subsection (12)(a).

2289 (4) (a) An individual who serves an alcoholic product in a full-service restaurant
2290 licensee's premises shall make a written beverage tab for each table or group that orders or
2291 consumes an alcoholic product on the premises.

2292 (b) A beverage tab required by this Subsection (4) shall list the type and amount of an
2293 alcoholic product ordered or consumed.

2294 (5) A person's willingness to serve an alcoholic product may not be made a condition
2295 of employment as a server with a full-service restaurant licensee.

2296 (6) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at
2297 the licensed premises on any day during the period that:

Enrolled Copy

S.B. 314

- 2298 (i) begins at midnight; and
2299 (ii) ends at [~~11:59~~] 11:29 a.m.
- 2300 (b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the
2301 hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer,
2302 except that a full-service restaurant licensee may not sell, offer for sale, or furnish beer before
2303 11:30 a.m. on any day.
- 2304 (7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant
2305 business from the sale of food, which does not include:
- 2306 (a) mix for an alcoholic product; or
2307 (b) a service charge.
- 2308 (8) (a) A full-service restaurant may not sell, offer for sale, or furnish an alcoholic
2309 product except in connection with an order for food prepared, sold, and furnished at the
2310 licensed premises.
- 2311 (b) A full-service restaurant shall maintain on the licensed premises adequate culinary
2312 facilities for food preparation and dining accommodations.
- 2313 (9) (a) Subject to the other provisions of this Subsection (9), a patron may not have
2314 more than two alcoholic products of any kind at a time before the patron.
- 2315 (b) A patron may not have more than one spirituous liquor drink at a time before the
2316 patron.
- 2317 (c) An individual portion of wine is considered to be one alcoholic product under
2318 Subsection (9)(a).
- 2319 (10) A patron may consume an alcoholic product only:
- 2320 (a) at:
- 2321 (i) the patron's table;
2322 (ii) a counter; or
2323 (iii) a seating grandfathered bar structure; and
2324 (b) where food is served.
- 2325 (11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an

S.B. 314

Enrolled Copy

2326 alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar
2327 structure that is not a seating grandfathered bar structure.

2328 (b) At a seating grandfathered bar structure a patron who is 21 years of age or older
2329 may:

2330 (i) sit;

2331 (ii) be furnished an alcoholic product; and

2332 (iii) consume an alcoholic product.

2333 (c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a
2334 full-service restaurant licensee may not permit a minor to, and a minor may not:

2335 (i) sit; or

2336 (ii) consume food or beverages.

2337 (d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed
2338 by a full-service restaurant licensee:

2339 (A) as provided in Subsection 32B-5-308(2); or

2340 (B) to perform maintenance and cleaning services during an hour when the full-service
2341 restaurant licensee is not open for business.

2342 (ii) A minor may momentarily pass by a seating grandfathered bar structure without
2343 remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's
2344 premises in which the minor is permitted to be.

2345 (12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee
2346 may dispense an alcoholic product only if:

2347 (a) the alcoholic product is dispensed from:

2348 (i) a grandfathered bar structure;

2349 (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at
2350 the grandfathered bar structure if that area is used to dispense an alcoholic product as of May
2351 12, 2009; or

2352 (iii) an area that is:

2353 (A) separated from an area for the consumption of food by a patron by a solid,

Enrolled Copy

S.B. 314

2354 ~~[opaque]~~ translucent, permanent structural barrier such that the facilities for the storage or
2355 dispensing of an alcoholic product are:

2356 (I) not readily visible to a patron; and

2357 (II) not accessible by a patron; and

2358 (B) apart from an area used:

2359 (I) for dining;

2360 (II) for staging; or

2361 (III) as a lobby or waiting area;

2362 (b) the full-service restaurant licensee uses an alcoholic product that is:

2363 (i) stored in an area described in Subsection (12)(a); or

2364 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:

2365 (A) immediately before the alcoholic product is dispensed it is in an unopened

2366 ~~[package]~~ container;

2367 (B) the unopened ~~[package]~~ container is taken to an area described in Subsection

2368 (12)(a) before it is opened; and

2369 (C) once opened, the ~~[package]~~ container is stored in an area described in Subsection

2370 (12)(a); and

2371 (c) any instrument or equipment used to dispense alcoholic product is located in an

2372 area described in Subsection (12)(a).

2373 (13) A full-service restaurant licensee may state in a food or alcoholic product menu a

2374 charge or fee made in connection with the sale, service, or consumption of liquor including:

2375 (a) a set-up charge;

2376 (b) a service charge; or

2377 (c) a chilling fee.

2378 Section 34. Section **32B-6-302 (Effective 07/01/11)** is amended to read:

2379 **32B-6-302 (Effective 07/01/11). Definitions.**

2380 ~~[For purposes of this part, wine]~~

2381 As used in this part:

S.B. 314

Enrolled Copy

2382 (1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a
2383 limited-service restaurant licensee that:
2384 (i) as of May 11, 2009, has:
2385 (A) patron seating at the bar structure;
2386 (B) a partition at one or more locations on the bar structure that is along:
2387 (I) the width of the bar structure; or
2388 (II) the length of the bar structure; and
2389 (C) facilities for the dispensing or storage of an alcoholic product:
2390 (I) on the portion of the bar structure that is separated by the partition described in
2391 Subsection (1)(a)(i)(B); or
2392 (II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar
2393 structure in a manner visible to a patron sitting at the bar structure;
2394 (ii) is not operational as of May 12, 2009, if:
2395 (A) a person applying for a limited-service restaurant license:
2396 (I) has as of May 12, 2009, a building permit to construct the restaurant;
2397 (II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
2398 defined by rule made by the commission; and
2399 (III) is issued the limited-service restaurant license by no later than December 31,
2400 2009; and
2401 (B) once constructed, the licensed premises has a bar structure described in Subsection
2402 (1)(a)(i);
2403 (iii) as of May 12, 2009, has no patron seating at the bar structure; or
2404 (iv) is not operational as of May 12, 2009, if:
2405 (A) a person applying for a limited-service restaurant license:
2406 (I) has as of May 12, 2009, a building permit to construct the restaurant;
2407 (II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as
2408 defined by rule made by the commission; and
2409 (III) is issued a limited-service restaurant license by no later than December 31, 2009;

Enrolled Copy**S.B. 314**2410 and2411 (B) once constructed, the licensed premises has a bar structure with no patron seating.2412 (b) "Grandfathered bar structure" does not include a grandfathered bar structure2413 described in Subsection (1)(a) on or after the day on which a restaurant remodels the2414 grandfathered bar structure, as defined by rule made by the commission.2415 (c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered2416 bar structure notwithstanding whether a restaurant undergoes a change of ownership.2417 (2) "Seating grandfathered bar structure" means:2418 (a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or2419 (b) a bar structure grandfathered under Section 32B-6-409.2420 (3) "Wine" includes an alcoholic beverage defined as wine under 27 U.S.C. Sec. 2112421 and 27 C.F.R. Sec. 4.10, including the following alcoholic beverages made in the manner of2422 wine containing not less than 7% and not more than 24% of alcohol by volume:2423 [~~(1)~~] (a) sparkling and carbonated wine;2424 [~~(2)~~] (b) wine made from condensed grape must;2425 [~~(3)~~] (c) wine made from other agricultural products than the juice of sound, ripe2426 grapes;2427 [~~(4)~~] (d) imitation wine;2428 [~~(5)~~] (e) compounds sold as wine;2429 [~~(6)~~] (f) vermouth;2430 [~~(7)~~] (g) cider;2431 [~~(8)~~] (h) perry; and2432 [~~(9)~~] (i) sake.2433 Section 35. Section **32B-6-303 (Effective 07/01/11)** is amended to read:2434 **32B-6-303 (Effective 07/01/11). Commission's power to issue limited-service**2435 **restaurant license.**

2436 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of

2437 wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first

S.B. 314

Enrolled Copy

2438 obtain a limited-service restaurant license from the commission in accordance with this part.

2439 (2) (a) The commission may issue a limited-service restaurant license to establish
2440 limited-service restaurant licensed premises at places and in numbers the commission considers
2441 proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or
2442 beer on premises operated as a limited-service restaurant.

2443 (b) A person may not sell, offer for sale, furnish, or allow the consumption of the
2444 following on the licensed premises of a limited-service restaurant licensee:

- 2445 (i) spirituous liquor; or
- 2446 (ii) a flavored malt beverage.

2447 (3) Subject to Section 32B-1-201:

2448 [~~(3)~~] (a) The commission may not issue a total number of limited-service restaurant
2449 licenses that at any time exceeds the number determined by dividing the population of the state
2450 by [~~9,300~~] 8,373.

2451 (b) The commission may issue a seasonal limited-service restaurant license in
2452 accordance with Section 32B-5-206.

2453 (c) (i) If the location, design, and construction of a hotel may require more than one
2454 limited-service restaurant sales location within the hotel to serve the public convenience, the
2455 commission may authorize the sale of wine, heavy beer, and beer at as many as three
2456 limited-service restaurant locations within the hotel under one limited-service restaurant license
2457 if:

2458 (A) the hotel has a minimum of 150 guest rooms; and

2459 (B) the locations under the limited-service restaurant license are:

2460 (I) within the same hotel; and

2461 (II) on premises that are managed or operated, and owned or leased by the
2462 limited-service restaurant licensee.

2463 (ii) A facility other than a hotel shall have a separate limited-service restaurant license
2464 for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or
2465 furnished.

Enrolled Copy

S.B. 314

2466 (4) (a) Except as provided in Subsection (4)(b), the commission may not issue a
2467 limited-service restaurant license for premises that do not meet the proximity requirements of
2468 Section 32B-1-202.

2469 (b) With respect to the premises of a limited-service restaurant license issued by the
2470 commission that undergoes a change of ownership, the commission shall waive or vary the
2471 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a
2472 limited-service restaurant license to the new owner of the premises if:

2473 (i) when a limited-service restaurant license was issued to a previous owner, the
2474 premises met the proximity requirements of Subsection 32B-1-202(2);

2475 (ii) the premises has had a limited-service restaurant license at all times since the
2476 limited-service restaurant license described in Subsection (4)(b)(i) was issued without a
2477 variance; and

2478 (iii) the community location was located within the proximity requirements of
2479 Subsection 32B-1-202(2) after the day on which the limited-service restaurant license
2480 described in Subsection (4)(b)(i) was issued.

2481 Section 36. Section **32B-6-304 (Effective 07/01/11)** is amended to read:

2482 **32B-6-304 (Effective 07/01/11). Specific licensing requirements for limited-service**
2483 **restaurant license.**

2484 (1) To obtain a limited-service restaurant license a person shall comply with Chapter 5,
2485 Part 2, Retail Licensing Process.

2486 (2) (a) A limited-service restaurant license expires on October 31 of each year.

2487 (b) To renew a person's limited-service restaurant license, a person shall comply with
2488 the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than
2489 September 30.

2490 (3) (a) The nonrefundable application fee for a limited-service restaurant license is
2491 [~~\$250~~] \$300.

2492 (b) The initial license fee for a limited-service restaurant license is [~~\$500~~] \$750.

2493 (c) The renewal fee for a limited-service restaurant license is [~~\$300~~] \$550.

S.B. 314

Enrolled Copy

2494 (4) The bond amount required for a limited-service restaurant license is the penal sum
2495 of \$5,000.

2496 Section 37. Section **32B-6-305 (Effective 07/01/11)** is amended to read:

2497 **32B-6-305 (Effective 07/01/11). Specific operational requirements for a**
2498 **limited-service restaurant license.**

2499 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
2500 Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant
2501 licensee shall comply with this section.

2502 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
2503 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

2504 (i) a limited-service restaurant licensee;

2505 (ii) individual staff of a limited-service restaurant licensee; or

2506 (iii) both a limited-service restaurant licensee and staff of the limited-service restaurant
2507 licensee.

2508 (2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer
2509 for sale, furnish, or allow consumption of:

2510 (i) spirituous liquor; or

2511 (ii) a flavored malt beverage.

2512 (b) A product listed in Subsection (2)(a) may not be on the premises of a
2513 limited-service restaurant licensee except for use:

2514 (i) as a flavoring on a dessert; and

2515 (ii) in the preparation of a flaming food dish, drink, or dessert.

2516 (3) In addition to complying with Section 32B-5-303, a limited-service restaurant
2517 licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

2518 (4) (a) An individual who serves an alcoholic product in a limited-service restaurant
2519 licensee's premises shall make a written beverage tab for each table or group that orders or
2520 consumes an alcoholic product on the premises.

2521 (b) A beverage tab required by this Subsection (4) shall list the type and amount of an

Enrolled Copy

S.B. 314

2522 alcoholic product ordered or consumed.

2523 (5) A person's willingness to serve an alcoholic product may not be made a condition
2524 of employment as a server with a limited-service restaurant licensee.

2525 (6) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish wine
2526 or heavy beer at the licensed premises on any day during the period that:

2527 (i) begins at midnight; and

2528 (ii) ends at [~~11:59~~] 11:29 a.m.

2529 (b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during
2530 the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer,
2531 except that a limited-service restaurant licensee may not sell, offer for sale, or furnish beer
2532 before 11:30 a.m. on any day.

2533 (7) A limited-service restaurant licensee shall maintain at least 70% of its total
2534 restaurant business from the sale of food, which does not include a service charge.

2535 (8) (a) A limited-service restaurant may not sell, offer for sale, or furnish an alcoholic
2536 product except in connection with an order for food prepared, sold, and furnished at the
2537 licensed premises.

2538 (b) A limited-service restaurant shall maintain on the licensed premises adequate
2539 culinary facilities for food preparation and dining accommodations.

2540 (9) (a) Subject to the other provisions of this Subsection (9), a patron may not have
2541 more than two alcoholic products of any kind at a time before the patron.

2542 (b) An individual portion of wine is considered to be one alcoholic product under
2543 Subsection (9)(a).

2544 (10) A patron may consume an alcoholic product only:

2545 (a) at:

2546 (i) the patron's table;

2547 (ii) a counter; or

2548 (iii) a seating grandfathered bar structure; and

2549 (b) where food is served.

S.B. 314

Enrolled Copy

2550 (11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an
2551 alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar
2552 structure that is not a seating grandfathered bar structure.

2553 (b) At a seating grandfathered bar structure a patron who is 21 years of age or older
2554 may:

2555 (i) sit;

2556 (ii) be furnished an alcoholic product; and

2557 (iii) consume an alcoholic product.

2558 (c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a
2559 limited-service restaurant licensee may not permit a minor to, and a minor may not:

2560 (i) sit; or

2561 (ii) consume food or beverages.

2562 (d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed
2563 by a limited-service restaurant licensee:

2564 (A) as provided in Subsection 32B-5-308(2); or

2565 (B) to perform maintenance and cleaning services during an hour when the
2566 limited-service restaurant licensee is not open for business.

2567 (ii) A minor may momentarily pass by a seating grandfathered bar structure without
2568 remaining or sitting at the bar structure en route to an area of a limited-service restaurant
2569 licensee's premises in which the minor is permitted to be.

2570 (12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant
2571 licensee may dispense an alcoholic product only if:

2572 (a) the alcoholic product is dispensed from:

2573 (i) a grandfathered bar structure;

2574 (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at
2575 the grandfathered bar structure if that area is used to dispense an alcoholic product as of May
2576 12, 2009; or

2577 (iii) an area that is:

Enrolled Copy

S.B. 314

2578 (A) separated from an area for the consumption of food by a patron by a solid,
2579 [~~opaque~~] translucent, permanent structural barrier such that the facilities for the storage or
2580 dispensing of an alcoholic product are:

2581 (I) not readily visible to a patron; and

2582 (II) not accessible by a patron; and

2583 (B) apart from an area used:

2584 (I) for dining;

2585 (II) for staging; or

2586 (III) as a lobby or waiting area;

2587 (b) the limited-service restaurant licensee uses an alcoholic product that is:

2588 (i) stored in an area described in Subsection (12)(a); or

2589 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:

2590 (A) immediately before the alcoholic product is dispensed it is in an unopened

2591 [~~package~~] container;

2592 (B) the unopened [~~package~~] container is taken to an area described in Subsection

2593 (12)(a) before it is opened; and

2594 (C) once opened, the [~~package~~] container is stored in an area described in Subsection

2595 (12)(a); and

2596 (c) any instrument or equipment used to dispense alcoholic product is located in an
2597 area described in Subsection (12)(a).

2598 (13) A limited-service restaurant licensee may state in a food or alcoholic product

2599 menu a charge or fee made in connection with the sale, service, or consumption of wine or

2600 heavy beer including:

2601 (a) a set-up charge;

2602 (b) a service charge; or

2603 (c) a chilling fee.

2604 Section 38. Section **32B-6-403 (Effective 07/01/11)** is amended to read:

2605 **32B-6-403 (Effective 07/01/11). Commission's power to issue club license.**

S.B. 314

Enrolled Copy

2606 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
2607 an alcoholic product on its premises as a club licensee, the person shall first obtain a club
2608 license from the commission in accordance with this part.

2609 (2) The commission may issue a club license to establish club licensed premises at
2610 places and in numbers the commission considers proper for the storage, sale, offer for sale,
2611 furnishing, and consumption of an alcoholic product on premises operated by a club licensee.

2612 (3) Subject to Section 32B-1-201:

2613 [~~3~~] (a) The commission may not issue a total number of club licenses that at any time
2614 exceeds the number determined by dividing the population of the state by 7,850.

2615 (b) The commission may issue a seasonal club license in accordance with Section
2616 32B-5-206 to:

2617 (i) a dining club licensee; or

2618 (ii) a social club licensee.

2619 (c) (i) If the location, design, and construction of a hotel may require more than one
2620 dining club license or social club license location within the hotel to serve the public
2621 convenience, the commission may authorize as many as three club license locations within the
2622 hotel under one club license if:

2623 (A) the hotel has a minimum of 150 guest rooms; and

2624 (B) all locations under the club license are:

2625 (I) within the same hotel; and

2626 (II) on premises that are managed or operated, and owned or leased, by the club
2627 licensee.

2628 (ii) A facility other than a hotel shall have a separate club license for each club license
2629 location where an alcoholic product is sold, offered for sale, or furnished.

2630 Section 39. Section **32B-6-404 (Effective 07/01/11)** is amended to read:

2631 **32B-6-404 (Effective 07/01/11). Types of club license.**

2632 (1) To obtain an equity club license, in addition to meeting the other requirements of
2633 this part, a person shall:

Enrolled Copy

S.B. 314

- 2634 (a) whether incorporated or unincorporated:
- 2635 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal
- 2636 purpose;
- 2637 (ii) have members;
- 2638 (iii) limit access to its licensed premises to a member or a guest of the member; and
- 2639 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold
- 2640 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;
- 2641 (b) own, maintain, or operate a substantial recreational facility in conjunction with a
- 2642 club house such as:
- 2643 (i) a golf course; or
- 2644 (ii) a tennis facility;
- 2645 (c) have at least 50% of the total membership having:
- 2646 (i) full voting rights; and
- 2647 (ii) an equal share of the equity of the club; and
- 2648 (d) if there is more than one class of membership, have at least one class of
- 2649 membership that entitles each member in that class to:
- 2650 (i) full voting rights; and
- 2651 (ii) an equal share of the equity of the club.
- 2652 (2) To obtain a fraternal club license, in addition to meeting the other requirements of
- 2653 this part, a person shall:
- 2654 (a) whether incorporated or unincorporated:
- 2655 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal
- 2656 purpose;
- 2657 (ii) have members;
- 2658 (iii) limit access to its licensed premises to a member or a guest of the member; and
- 2659 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold
- 2660 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;
- 2661 (b) have no capital stock;

S.B. 314**Enrolled Copy**

- 2662 (c) exist solely for:
- 2663 (i) the benefit of its members and their beneficiaries; and
- 2664 (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
- 2665 patriotic, or religious purpose for the benefit of its members or the public, carried on through
- 2666 voluntary activity of its members in their local lodges;
- 2667 (d) have a representative form of government;
- 2668 (e) have a lodge system in which:
- 2669 (i) there is a supreme governing body;
- 2670 (ii) subordinate to the supreme governing body are local lodges, however designated,
- 2671 into which individuals are admitted as members in accordance with the laws of the fraternal;
- 2672 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
- 2673 least monthly; and
- 2674 (iv) the local lodges regularly engage in one or more programs involving member
- 2675 participation to implement the purposes of Subsection (2)(c); and
- 2676 (f) own or lease a building or space in a building used for lodge activities.
- 2677 (3) To obtain a dining club license, in addition to meeting the other requirements of
- 2678 this part, a person shall:
- 2679 (a) maintain at least ~~[50%]~~ the following percentages of its total club business from the
- 2680 sale of food, not including ~~[(i)]~~ mix for alcoholic products~~;~~, or ~~[(ii)]~~ service charges~~;~~ ~~and~~;
- 2681 (i) for a dining club license that is issued an original license on or after July 1, 2011,
- 2682 60%;
- 2683 (ii) for a dining club license that is issued on or before June 30, 2011:
- 2684 (A) 50% on or before June 30, 2012; and
- 2685 (B) 60% on and after July 1, 2012; and
- 2686 (b) obtain a determination by the commission that the person will operate as a dining
- 2687 club licensee, as part of which the commission may consider:
- 2688 (i) the square footage and seating capacity of the premises;
- 2689 (ii) what portion of the square footage and seating capacity will be used for a dining

Enrolled Copy

S.B. 314

2690 area in comparison to the portion that will be used as a lounge or bar area;

2691 (iii) whether full meals including appetizers, main courses, and desserts are served;

2692 (iv) whether the person will maintain adequate on-premise culinary facilities to prepare

2693 full meals, except a person who is located on the premise of a hotel or resort facility may use

2694 the culinary facilities of the hotel or resort facility;

2695 (v) whether the entertainment provided at the club is suitable for minors; and

2696 (vi) the club management's ability to manage and operate a dining club license

2697 including:

2698 (A) management experience;

2699 (B) past dining club licensee or restaurant management experience; and

2700 (C) the type of management scheme used by the dining club license.

2701 (4) To obtain a social club license, a person is required to meet the requirements of this

2702 part except those listed in Subsection (1), (2), or (3).

2703 (5) (a) At the time that the commission issues a club license, the commission shall

2704 designate the type of club license for which the person qualifies.

2705 (b) If requested by a club licensee, the commission may approve a change in the type of

2706 club license in accordance with rules made by the commission.

2707 (6) To the extent not prohibited by law, this part does not prevent a dining club

2708 licensee or social club licensee from restricting access to the club's licensed premises on the

2709 basis of an individual:

2710 (a) paying a fee; or

2711 (b) agreeing to being on a list of individuals who have access to the club's licensed

2712 premises.

2713 Section 40. Section **32B-6-405 (Effective 07/01/11)** is amended to read:

2714 **32B-6-405 (Effective 07/01/11). Specific licensing requirements for club license.**

2715 (1) To obtain a club license, in addition to complying with Chapter 5, Part 2, Retail

2716 Licensing Process, a person shall submit with the written application:

2717 (a) (i) a statement as to whether the person is seeking to qualify as:

S.B. 314

Enrolled Copy

2718 (A) an equity club licensee;
2719 (B) a fraternal club licensee;
2720 (C) a dining club licensee; or
2721 (D) a social club licensee; and
2722 (ii) evidence that the person meets the requirements for the type of club license for
2723 which the person is applying;
2724 (b) evidence that the person operates club premises where a variety of food is prepared
2725 and served in connection with dining accommodations; and
2726 (c) if the person is applying for an equity club license or fraternal club license, a copy
2727 of the club's bylaws or house rules, and an amendment to those records.
2728 (2) The commission may refuse to issue a club license to a person for an equity club
2729 license or fraternal club license if the commission determines that a provision of the person's
2730 bylaws or house rules, or amendments to those records is not:
2731 (a) reasonable; and
2732 (b) consistent with:
2733 (i) the declared nature and purpose of the club licensee; and
2734 (ii) the purposes of this part.
2735 (3) (a) A club license expires on June 30 of each year.
2736 (b) To renew a club license, a person shall comply with the requirements of Chapter 5,
2737 Part 2, Retail Licensing Process, by no later than May 31.
2738 (4) (a) The nonrefundable application fee for a club license is [~~\$250~~] \$300.
2739 (b) The initial license fee for a club license is [~~\$2,500~~] \$2,750.
2740 (c) The renewal fee for a club license is [~~\$1,600~~] \$2,000.
2741 (5) The bond amount required for a [~~full-service restaurant~~] club license is the penal
2742 sum of \$10,000.
2743 Section 41. Section **32B-6-406 (Effective 07/01/11)** is amended to read:
2744 **32B-6-406 (Effective 07/01/11). Specific operational requirements for a club**
2745 **license.**

Enrolled Copy

S.B. 314

- 2746 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
2747 Requirements, a club licensee and staff of the club licensee shall comply with this section.
- 2748 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
2749 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
- 2750 (i) a club licensee;
- 2751 (ii) individual staff of a club licensee; or
- 2752 (iii) both a club licensee and staff of the club licensee.
- 2753 (2) In addition to complying with Subsection 32B-5-301(3), a club licensee shall
2754 display in a prominent place in the club licensed premises a list of the types and brand names of
2755 liquor being furnished through the club licensee's calibrated metered dispensing system.
- 2756 (3) (a) In addition to complying with Section 32B-5-302, a club licensee shall maintain
2757 for a minimum of three years:
- 2758 (i) a record required by Section 32B-5-302; and
- 2759 (ii) a record maintained or used by the club licensee, as the department requires.
- 2760 (b) Section 32B-1-205 applies to a record required to be made, maintained, or used in
2761 accordance with this Subsection (3).
- 2762 (c) The department shall audit the records of a club licensee at least once annually.
- 2763 (4) (a) A club licensee may not sell, offer for sale, or furnish liquor on the licensed
2764 premises on any day during a period that:
- 2765 (i) begins at 1 a.m.; and
- 2766 (ii) ends at 9:59 a.m.
- 2767 (b) A club licensee may sell, offer for sale, or furnish beer during the hours specified in
2768 Part 7, On-premise Beer Retailer License, for an on-premise beer retailer license.
- 2769 (c) (i) Notwithstanding Subsections (4)(a) and (b), a club licensee shall keep its
2770 licensed premises open for one hour after the club licensee ceases the sale and furnishing of an
2771 alcoholic product during which time a patron of the club licensee may finish consuming:
- 2772 (A) a single drink containing spirituous liquor;
- 2773 (B) a single serving of wine not exceeding five ounces;

S.B. 314

Enrolled Copy

- 2774 (C) a single serving of heavy beer;
- 2775 (D) a single serving of beer not exceeding 26 ounces; or
- 2776 (E) a single serving of a flavored malt beverage.
- 2777 (ii) A club licensee is not required to remain open:
- 2778 (A) after all patrons have vacated the premises; or
- 2779 (B) during an emergency.
- 2780 [~~(d) A club licensee may not allow a patron to remain on the licensed premises of the~~
- 2781 ~~club licensee to consume an alcoholic product on the licensed premises during a period that:]~~
- 2782 [~~(i) begins at 2 a.m.; and]~~
- 2783 [~~(ii) ends at 9:59 a.m.]~~
- 2784 (5) (a) A minor may not be admitted into, use, or be in:
- 2785 (i) a lounge or bar area of the premises of:
- 2786 (A) an equity club licensee;
- 2787 (B) a fraternal club licensee; or
- 2788 (C) a dining club licensee; or
- 2789 (ii) the premises of:
- 2790 (A) a dining club licensee unless accompanied by an individual who is 21 years of age
- 2791 or older; or
- 2792 (B) a social club licensee, except to the extent provided for under Section 32B-6-406.1.
- 2793 (b) Notwithstanding Section 32B-5-308, a club licensee may not employ a minor to:
- 2794 (i) work in a lounge or bar area of an equity club licensee, fraternal club licensee, or
- 2795 dining club licensee; or
- 2796 (ii) handle an alcoholic product.
- 2797 (c) Notwithstanding Section 32B-5-308, a minor may not be employed on the licensed
- 2798 premises of a social club licensee.
- 2799 (d) Nothing in this part or Section 32B-5-308 precludes a local authority from being
- 2800 more restrictive of a minor's admittance to, use of, or presence on the licensed premises of a
- 2801 club licensee.

Enrolled Copy

S.B. 314

2802 (6) A club licensee shall have food available at all times when an alcoholic product is
2803 sold, offered for sale, furnished, or consumed on the licensed premises.

2804 (7) (a) Subject to the other provisions of this Subsection (7), a patron may not have
2805 more than two alcoholic products of any kind at a time before the patron.

2806 (b) A patron may not have two spirituous liquor drinks before the club licensee patron
2807 if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other
2808 spirituous liquor drink.

2809 (c) An individual portion of wine is considered to be one alcoholic product under
2810 Subsection (7)(a).

2811 (8) A club licensee shall have available on the premises for a patron to review at the
2812 time that the patron requests it, a written alcoholic product price list or a menu containing the
2813 price of an alcoholic product sold, offered for sale, or furnished by the club licensee including:

2814 (a) a set-up charge;

2815 (b) a service charge; or

2816 (c) a chilling fee.

2817 (9) Subject to Section 32B-5-309, a club licensee may not temporarily rent or
2818 otherwise temporarily lease its premises to a person unless:

2819 (a) the person to whom the club licensee rents or leases the premises agrees in writing
2820 to comply with this title as if the person is the club licensee, except for a requirement related to
2821 making or maintaining a record; and

2822 (b) the club licensee takes reasonable steps to ensure that the person complies with this
2823 section as provided in Subsection (9)(a).

2824 (10) If a club licensee is an equity club licensee or fraternal club licensee, the club
2825 licensee shall comply with Section 32B-6-407.

2826 (11) If a club licensee is a dining club licensee or social club licensee, the club licensee
2827 shall comply with Section 32B-1-407.

2828 (12) (a) A club licensee shall own or lease premises suitable for the club licensee's
2829 activities.

S.B. 314

Enrolled Copy

2830 (b) A club licensee may not maintain licensed premises in a manner that barricades or
2831 conceals the club licensee's operation.

2832 Section 42. Section **32B-6-409** is enacted to read:

2833 **32B-6-409. Conversion from dining club license to different type of retail license.**

2834 (1) In accordance with this section, a dining club licensee may convert its dining club
2835 license to a different type of retail license, including a different type of club license during the
2836 time period:

2837 (a) beginning on July 1, 2011; and

2838 (b) ending on June 30, 2013.

2839 (2) A dining club licensee may convert its dining license only to a retail license for
2840 which the dining club licensee qualifies.

2841 (3) The commission shall provide a procedure for a dining club to convert to a different
2842 type of retail license as provided in this section by rule made in accordance with Title 63G,
2843 Chapter 3, Utah Administrative Rulemaking Act.

2844 (4) After a dining club license is converted to another type of retail license, the retail
2845 licensee shall operate under the provisions relevant to the type of retail license held by the retail
2846 licensee, except that, in accordance with Section 32B-1-201, the retail license is not considered
2847 in determining the total number of licenses available for that type of retail license.

2848 (5) If a dining club license is converted to full-service restaurant license,
2849 limited-service restaurant license, or beer-only restaurant license, the bar structure of the dining
2850 club is considered:

2851 (a) a seating grandfathered bar structure for purposes of a full-service restaurant license
2852 or a limited-service restaurant license; or

2853 (b) a grandfathered bar structure for purposes of a beer-only restaurant license.

2854 Section 43. Section **32B-6-502 (Effective 07/01/11)** is amended to read:

2855 **32B-6-502 (Effective 07/01/11). Definitions.**

2856 [Reserved]

2857 As used in this chapter, "total passengers" means the number of total passengers in a

Enrolled Copy

S.B. 314

2858 calendar year that is reported in the most current comprehensive annual financial report for the
2859 airport in which an airport lounge is located.

2860 Section 44. Section **32B-6-503 (Effective 07/01/11)** is amended to read:

2861 **32B-6-503 (Effective 07/01/11). Commission's power to issue airport lounge**
2862 **license.**

2863 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
2864 an alcoholic product on its premises as an airport lounge licensee, the person shall first obtain
2865 an airport lounge license from the commission in accordance with this part.

2866 (2) The commission may issue an airport lounge license to establish airport lounge
2867 licensed premises beyond the security point at an international airport and in the numbers the
2868 commission considers proper for the storage, sale, offer for sale, furnishing, and consumption
2869 of an alcoholic product on licensed premises operated as an airport lounge.

2870 (3) (a) The commission may not issue a total number of airport lounge licenses for an
2871 international airport that at any time exceed one [~~lounge per terminal plus one lounge per~~
2872 ~~concourse located beyond the security point at that international airport]~~ airport lounge license
2873 for each 2,500,000 of total passengers at the international airport.

2874 (b) Notwithstanding Subsection (3)(a), the commission may not reduce the total
2875 number of airport lounge licenses unless:

2876 (i) the commission determines that the number of total passengers is reduced by more
2877 than 25% from the last day on which the commission determined the total number of airport
2878 lounge licenses allowed for that international airport under this Subsection (3); and

2879 (ii) the reduction can be accomplished without the international airport terminating a
2880 lease for an airport lounge before:

2881 (A) the expiration of the lease;

2882 (B) the airport lounge undergoes a change of ownership; or

2883 (C) the airport lounge ceases operations.

2884 Section 45. Section **32B-6-504 (Effective 07/01/11)** is amended to read:

2885 **32B-6-504 (Effective 07/01/11). Specific licensing requirements for airport lounge**

S.B. 314

Enrolled Copy

2886 **license.**

2887 (1) To obtain an airport lounge license, in addition to complying with Chapter 5, Part
2888 2, Retail Licensing Process, a person shall submit with the written application:

2889 (a) both the written consent of the local authority and the written consent of the airport
2890 authority; and

2891 (b) a copy of the sign proposed to be used by the airport lounge licensee on its licensed
2892 premises to inform the public that alcoholic products are sold and consumed on the licensed
2893 premises.

2894 (2) (a) An airport lounge license expires on October 31 of each year.

2895 (b) To renew a person's airport lounge license, a person shall comply with the renewal
2896 requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

2897 (3) (a) The nonrefundable application fee for an airport lounge license is [~~\$250~~] \$300.

2898 (b) The initial license fee for an airport lounge license is [~~\$7,000~~] \$8,000.

2899 (c) The renewal fee for an airport lounge license is [~~\$5,000~~] \$6,000.

2900 (4) The bond amount required for an airport lounge license is the penal sum of
2901 \$10,000.

2902 (5) An airport lounge license is not subject to the proximity requirements of Section
2903 32B-1-202.

2904 Section 46. Section **32B-6-603 (Effective 07/01/11)** is amended to read:

2905 **32B-6-603 (Effective 07/01/11). Commission's power to issue on-premise banquet**
2906 **license -- Contracts as host.**

2907 (1) (a) Before a person may store, sell, offer for sale, furnish, or allow the consumption
2908 of an alcoholic product in connection with the person's banquet and room service activities at
2909 one of the following, the person shall first obtain an on-premise banquet license in accordance
2910 with this part:

2911 (i) a hotel;

2912 (ii) a resort facility;

2913 (iii) a sports center; or

Enrolled Copy

S.B. 314

2914 (iv) a convention center.

2915 (b) This part does not prohibit an alcoholic product on the premises of a person listed
2916 in Subsection (1)(a) to the extent otherwise permitted by this title.

2917 (c) This section does not prohibit a person who applies for an on-premise banquet
2918 license to also apply for a package agency if otherwise qualified.

2919 (2) The commission may issue an on-premise banquet license to establish on-premise
2920 banquet licensees in the numbers the commission considers proper for the storage, sale, offer
2921 for sale, furnishing, and consumption of an alcoholic product at a banquet or as part of room
2922 service activities operated by an on-premise banquet licensee.

2923 (3) ~~[The]~~ Subject to Section 32B-1-201, the commission may not issue a total number
2924 of on-premise banquet licenses that at any time exceed the number determined by dividing the
2925 population of the state by 30,000.

2926 ~~[(4) (a) As used in this Subsection (4), "grandfathered facility" means a facility:]~~

2927 ~~[(i) for which the commission issued an on-premise banquet license that is in effect on
2928 May 11, 2009, on the basis that the facility is a convention center; and]~~

2929 ~~[(ii) that no longer qualifies as a convention center as defined in Section 32B-1-102
2930 solely because it is in total less than 30,000 square feet.]~~

2931 ~~[(b) Notwithstanding the definition of "convention center" in Section 32B-1-102, an
2932 on-premise banquet license applicable to a grandfathered facility may be renewed until October
2933 31, 2011, if the on-premise banquet licensee is qualified for an on-premise banquet license
2934 except for the requirement that the facility be in total at least 30,000 square feet.]~~

2935 ~~[(5)]~~ (4) Pursuant to a contract between the host of a banquet and an on-premise
2936 banquet licensee:

2937 (a) the host of the banquet may request an on-premise banquet licensee to provide an
2938 alcoholic product served at the banquet; and

2939 (b) an on-premise banquet licensee may provide an alcoholic product served at the
2940 banquet.

2941 ~~[(6)]~~ (5) At a banquet, an on-premise banquet licensee may furnish an alcoholic

S.B. 314

Enrolled Copy

2942 product:

2943 (a) without charge to a patron at a banquet, except that the host of the banquet shall pay
2944 for an alcoholic product furnished at the banquet; or

2945 (b) with a charge to a patron at the banquet.

2946 Section 47. Section **32B-6-604 (Effective 07/01/11)** is amended to read:

2947 **32B-6-604 (Effective 07/01/11). Specific licensing requirements for an on-premise**
2948 **banquet license.**

2949 (1) To obtain an on-premise banquet license a person shall comply with Chapter 5, Part
2950 2, Retail Licensing Process.

2951 (2) (a) An on-premise banquet license expires on October 31 of each year.

2952 (b) To renew a person's on-premise banquet license, a person shall comply with the
2953 requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

2954 (3) (a) The nonrefundable application fee for an on-premise banquet license is [~~\$250~~]
2955 \$300.

2956 (b) The initial license fee for an on-premise banquet license is [~~\$500~~] \$750.

2957 (c) The renewal fee for an on-premise banquet license is [~~\$500~~] \$750.

2958 (4) The bond amount required for an on-premise banquet license is the penal sum of
2959 \$10,000.

2960 (5) Notwithstanding the other provisions of this part, if an applicant is a state agency or
2961 political subdivision of the state it is not required to:

2962 (a) pay an application fee, initial license fee, or renewal fee;

2963 (b) obtain the written consent of the local authority;

2964 (c) submit a copy of the applicant's current business license; or

2965 (d) post a bond as specified by Section 32B-5-204.

2966 (6) Notwithstanding Subsection 32B-5-303(3), the department may approve an
2967 additional location in or on the licensed premises of an on-premise banquet licensee from
2968 which the on-premise banquet licensee may store, sell, offer for sale, furnish, or allow the
2969 consumption of an alcoholic product that is not included in its original application only:

Enrolled Copy

S.B. 314

2970 (a) upon proper application by an on-premise banquet licensee; and

2971 (b) in accordance with guidelines approved by the commission.

2972 Section 48. Section **32B-6-605 (Effective 07/01/11)** is amended to read:

2973 **32B-6-605 (Effective 07/01/11). Specific operational requirements for on-premise**
2974 **banquet license.**

2975 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
2976 Requirements, an on-premise banquet licensee and staff of the on-premise banquet licensee
2977 shall comply with this section.

2978 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
2979 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

2980 (i) an on-premise banquet licensee;

2981 (ii) individual staff of an on-premise banquet licensee; or

2982 (iii) both an on-premise banquet licensee and staff of the on-premise banquet licensee.

2983 (2) An on-premise banquet licensee shall comply with Subsections 32B-5-301(4) and
2984 (5) for the entire premises of the hotel, resort facility, sports center, or convention center that is
2985 the basis for the on-premise banquet license.

2986 (3) (a) For the purpose described in Subsection (3)(b), an on-premise banquet licensee
2987 shall provide the department with advance notice of a scheduled banquet in accordance with
2988 rules made by the commission.

2989 (b) Any of the following may conduct a random inspection of a banquet:

2990 (i) an authorized representative of the commission or the department; or

2991 (ii) a law enforcement officer.

2992 (4) (a) An on-premise banquet licensee is not subject to Section 32B-5-302, but shall
2993 make and maintain the records the commission or department requires.

2994 (b) Section 32B-1-205 applies to a record required to be made or maintained in
2995 accordance with this Subsection (4).

2996 (5) (a) Except as otherwise provided in this title, an on-premise banquet licensee may
2997 sell, offer for sale, or furnish an alcoholic product at a banquet only for consumption at the

S.B. 314

Enrolled Copy

2998 location of the banquet.

2999 (b) A host of a banquet, a patron, or a person other than the on-premise banquet
3000 licensee or staff of the on-premise banquet licensee, may not remove an alcoholic product from
3001 the premises of the banquet.

3002 (c) Notwithstanding Section 32B-5-307, a patron at a banquet may not bring an
3003 alcoholic product into or onto, or remove an alcoholic product from the premises of a banquet.

3004 (6) (a) An on-premise banquet licensee may not leave an unsold alcoholic product at
3005 the banquet following the conclusion of the banquet.

3006 (b) At the conclusion of a banquet, an on-premise banquet licensee shall:

3007 (i) destroy an opened and unused alcoholic product that is not saleable, under
3008 conditions established by the department; and

3009 (ii) return to the on-premise banquet licensee's approved locked storage area any:

3010 (A) opened and unused alcoholic product that is saleable; and

3011 (B) unopened [~~package~~] container of an alcoholic product.

3012 (c) Except as provided in Subsection (6)(b) with regard to an open or sealed [~~package~~]
3013 container of an alcoholic product not sold or consumed at a banquet, an on-premise banquet
3014 licensee:

3015 (i) shall store the alcoholic product in the on-premise banquet licensee's approved
3016 locked storage area; and

3017 (ii) may use the alcoholic product at more than one banquet.

3018 (7) Notwithstanding Section 32B-5-308, an on-premise banquet licensee may not
3019 employ a minor to sell, furnish, or dispense an alcoholic product in connection with the
3020 on-premise banquet licensee's banquet and room service activities.

3021 (8) An on-premise banquet licensee may not sell, offer for sale, or furnish an alcoholic
3022 product at a banquet or in connection with room service any day during a period that:

3023 (a) begins at 1 a.m.; and

3024 (b) ends at 9:59 a.m.

3025 (9) An on-premise banquet licensee shall maintain at least 50% of its total annual

Enrolled Copy

S.B. 314

3026 banquet gross receipts from the sale of food, not including:

3027 (a) mix for an alcoholic product; and

3028 (b) a charge in connection with the furnishing of an alcoholic product.

3029 (10) (a) Subject to the other provisions of this Subsection (10), a patron may not have
3030 more than two alcoholic products of any kind at a time before the patron.

3031 (b) A patron may not have more than one spirituous liquor drink at a time before the
3032 patron.

3033 (c) An individual portion of wine is considered to be one alcoholic product under
3034 Subsection (10)(a).

3035 (11) (a) An on-premise banquet licensee shall supervise and direct a person involved in
3036 the sale, offer for sale, or furnishing of an alcoholic product.

3037 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product
3038 shall complete an alcohol training and education seminar.

3039 (12) A staff person of an on-premise banquet licensee shall remain at the banquet at all
3040 times when an alcoholic product is sold, offered for sale, furnished, or consumed at the
3041 banquet.

3042 (13) (a) Room service of an alcoholic product to a guest room of a hotel or resort
3043 facility shall be provided in person by staff of an on-premise banquet licensee only to an adult
3044 guest in the guest room.

3045 (b) An alcoholic product may not be left outside a guest room for retrieval by a guest.

3046 [~~(c) An on-premise banquet licensee may only provide an alcoholic product for room
3047 service in a sealed package.~~]

3048 Section 49. Section **32B-6-702 (Effective 07/01/11)** is amended to read:

3049 **32B-6-702 (Effective 07/01/11). Definitions.**

3050 [Reserved]

3051 As used in this part, "recreational amenity" is defined by the commission by rule made
3052 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made
3053 under this section shall define "recreational amenity" to be one or more of the following or an

S.B. 314

Enrolled Copy

3054 activity substantially similar to one of the following:

3055 (1) a billiard parlor;

3056 (2) a pool parlor;

3057 (3) a bowling facility;

3058 (4) a golf course;

3059 (5) miniature golf;

3060 (6) a golf driving range;

3061 (7) a tennis club;

3062 (8) a sports facility that hosts professional sporting events and has a seating capacity

3063 equal to or greater than 6,500;

3064 (9) a concert venue that has a seating capacity equal to or greater than 6,500;

3065 (10) one of the following if owned by a government agency:

3066 (a) a convention center;

3067 (b) a fair facility;

3068 (c) an equestrian park;

3069 (d) a theater; or

3070 (e) a concert venue;

3071 (11) an amusement park:

3072 (a) with one or more permanent amusement rides; and

3073 (b) located on at least 50 acres;

3074 (12) a ski resort; or

3075 (13) a venue for live entertainment if the venue:

3076 (a) is not regularly open for more than five hours on any day;

3077 (b) is operated so that food is available whenever beer is sold, offered for sale, or

3078 furnished at the venue; and

3079 (c) is operated so that no more than 15% of its total annual receipts are from the sale of

3080 beer.

3081 Section 50. Section **32B-6-703 (Effective 07/01/11)** is amended to read:

Enrolled Copy

S.B. 314

3082 **32B-6-703 (Effective 07/01/11). Commission's power to issue on-premise beer**
3083 **retailer license.**

3084 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
3085 beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise
3086 beer retailer license from the commission in accordance with this part.

3087 (2) (a) The commission may issue an on-premise beer retailer license to establish
3088 on-premise beer retailer licensed premises at places and in numbers as the commission
3089 considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on
3090 premises operated as an on-premise beer retailer.

3091 (b) At the time that the commission issues an on-premise beer retailer license, the
3092 commission shall designate whether the on-premise beer retailer is a tavern.

3093 (c) The commission may change its designation of whether an on-premise beer retailer
3094 is a tavern in accordance with rules made by the commission.

3095 (d) (i) In determining whether an on-premise beer retailer is a tavern, the commission
3096 shall determine whether the on-premise beer retailer will engage primarily in the retail sale of
3097 beer for consumption on the establishment's premises.

3098 (ii) In making a determination under this Subsection (2)(d), the commission shall
3099 consider:

3100 (A) whether the on-premise beer retailer will operate as one of the following:

3101 (I) a beer bar;

3102 (II) a parlor;

3103 (III) a lounge;

3104 (IV) a cabaret; or

3105 (V) a nightclub;

3106 (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

3107 (I) whether the on-premise beer retailer will sell food in the establishment; and

3108 (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer
3109 will exceed the revenue of the sale of food;

S.B. 314

Enrolled Copy

3110 (C) whether full meals including appetizers, main courses, and desserts will be served;

3111 (D) the square footage and seating capacity of the premises;

3112 (E) what portion of the square footage and seating capacity will be used for a dining

3113 area in comparison to the portion that will be used as a lounge or bar area;

3114 (F) whether the person will maintain adequate on-premise culinary facilities to prepare

3115 full meals, except a person that is located on the premises of a hotel or resort facility may use

3116 the culinary facilities of the hotel or resort facility;

3117 (G) whether the entertainment provided on the premises of the beer retailer will be

3118 suitable for minors; and

3119 (H) the beer retailer management's ability to manage and operate an on-premise beer

3120 retailer license including:

3121 (I) management experience;

3122 (II) past beer retailer management experience; and

3123 (III) the type of management scheme that will be used by the beer retailer.

3124 (e) On or after March 1, 2012:

3125 (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall

3126 maintain at least 70% of its total gross revenues from business directly related to a recreational

3127 amenity on or directly adjoining the licensed premises of the beer retailer.

3128 (ii) The commission may not license a person as an on-premise beer retailer if the

3129 person does not:

3130 (A) meet the requirements of Subsection (2)(e); or

3131 (B) operate as a tavern.

3132 (iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July

3133 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1,

3134 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an

3135 on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

3136 (B) If an on-premise beer retailer fails to notify the department as required by

3137 Subsection (2)(e)(i)(A), the on-premise beer retailer's license expires as of February 29, 2012.

Enrolled Copy

S.B. 314

3138 and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer
3139 retailer is required to apply as a new licensee.

3140 (3) Subject to Section 32B-1-201:

3141 [~~3~~] (a) The commission may not issue a total number of on-premise beer retailer
3142 licenses that are taverns that at any time exceeds the number determined by dividing the
3143 population of the state by [~~30,500~~] 54,147.

3144 (b) The commission may issue a seasonal on-premise beer retailer license for a tavern
3145 in accordance with Section 32B-5-206.

3146 (4) (a) Unless otherwise provided in Subsection (4)(b):

3147 (i) only one on-premise beer retailer license is required for each building or resort
3148 facility owned or leased by the same person; and

3149 (ii) a separate license is not required for each retail beer dispensing location in the
3150 same building or on the same resort premises owned or operated by the same person.

3151 (b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the
3152 building or resort facility operates in the same manner.

3153 (ii) If each retail beer dispensing location does not operate in the same manner:

3154 (A) one on-premise beer retailer license designated as a tavern is required for the
3155 locations in the same building or on the same resort premises that operate as a tavern; and

3156 (B) one on-premise beer retailer license is required for the locations in the same
3157 building or on the same resort premises that do not operate as a tavern.

3158 Section 51. Section **32B-6-705 (Effective 07/01/11)** is amended to read:

3159 **32B-6-705 (Effective 07/01/11). Specific licensing requirements for on-premise**
3160 **beer retailer license.**

3161 (1) To obtain an on-premise beer retailer license a person shall comply with Chapter 5,
3162 Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to carry
3163 dramshop insurance coverage in accordance with Section 32B-5-201 only if the on-premise
3164 beer retailer sells more than \$5,000 of beer annually.

3165 (2) (a) An on-premise beer retailer license expires on the last day of February each

S.B. 314

Enrolled Copy

3166 year.

3167 (b) To renew a person's on-premise beer retailer license, a person shall comply with the
3168 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January
3169 31.

3170 (3) (a) The nonrefundable application fee for an on-premise beer retailer license is
3171 [~~\$250~~] \$300.

3172 (b) (i) The initial license fee for an on-premise beer retailer license that is not a tavern
3173 is [~~\$150~~] \$300.

3174 (ii) The initial license fee for an on-premise beer retailer license that is a tavern is
3175 [~~\$1,250~~] \$1,500.

3176 (c) (i) The renewal fee for an on-premise beer retailer license that is not a tavern is
3177 [~~\$200~~] \$350.

3178 (ii) The renewal fee for an on-premise beer retailer license that is a tavern is [~~\$1,000~~]
3179 \$1,250.

3180 (4) The bond amount required for an on-premise beer retailer license is the penal sum
3181 of \$2,000.

3182 (5) Notwithstanding the other provisions of this part, if an applicant is a state agency or
3183 political subdivision of the state it is not required to:

3184 (a) pay an application fee, initial license fee, or renewal fee;

3185 (b) obtain the written consent of the local authority;

3186 (c) submit a copy of the applicant's current business license; or

3187 (d) post a bond as specified by Section 32B-5-204.

3188 Section 52. Section **32B-6-706 (Effective 07/01/11)** is amended to read:

3189 **32B-6-706 (Effective 07/01/11). Specific operational requirements for on-premise**
3190 **beer retailer license.**

3191 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
3192 Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply
3193 with this section.

Enrolled Copy

S.B. 314

3194 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
3195 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

3196 (i) an on-premise beer retailer;

3197 (ii) individual staff of an on-premise beer retailer; or

3198 (iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

3199 (2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make
3200 and maintain the records the department requires.

3201 (b) Section 32B-1-205 applies to a record required to be made or maintained in
3202 accordance with this Subsection (2).

3203 (3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or
3204 sell liquor on its licensed premises.

3205 (4) Beer sold in a sealed ~~[package]~~ container by an on-premise beer retailer may be
3206 removed from the on-premise beer retailer premises in the sealed ~~[package]~~ container.

3207 (5) ~~[(a)]~~ Only an on-premise beer retailer that operates as a tavern is subject to
3208 ~~[Subsection]~~ Section 32B-5-309~~[(1)]~~.

3209 ~~[(b) An on-premise beer retailer is subject to Subsections 32B-5-309(2) and (3)~~
3210 ~~regardless of whether it operates as a tavern.]~~

3211 (6) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its
3212 licensed premises during a period that:

3213 (i) begins at 1 a.m.; and

3214 (ii) ends at 9:59 a.m.

3215 (b) (i) Notwithstanding Subsection ~~[(5)]~~ (6)(a), a tavern shall remain open for one hour
3216 after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern
3217 may finish consuming a single serving of beer not exceeding 26 ounces.

3218 (ii) A tavern is not required to remain open:

3219 (A) after all patrons have vacated the premises; or

3220 (B) during an emergency.

3221 ~~[(c) A tavern may not allow a patron to remain on the licensed premises to consume~~

S.B. 314

Enrolled Copy

3222 ~~beer on the licensed premises during a period that:]~~

3223 ~~[(i) begins at 2 a.m.; and]~~

3224 ~~[(ii) ends at 9:59 a.m.]~~

3225 (7) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a
3226 tavern.

3227 (8) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the
3228 purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases
3229 from:

3230 (A) a beer wholesaler licensee; or

3231 (B) a small brewer that manufactures the beer.

3232 (ii) Violation of Subsection (8)(a) is a class A misdemeanor.

3233 (b) (i) If an on-premise beer retailer purchases beer under this Subsection (8) from a
3234 beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer
3235 wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area
3236 in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by
3237 the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

3238 (ii) Violation of Subsection (8)(b)(i) is a class B misdemeanor.

3239 (9) A tavern shall comply with Section 32B-1-407.

3240 Section 53. Section **32B-6-801** is enacted to read:

3241 **Part 8. Reception Center License**

3242 **32B-6-801. Title.**

3243 This part is known as "Reception Center License."

3244 Section 54. Section **32B-6-802** is enacted to read:

3245 **32B-6-802. Definitions.**

3246 Reserved

3247 Section 55. Section **32B-6-803** is enacted to read:

3248 **32B-6-803. Commission's power to issue reception center license.**

3249 (1) Before a person may store, sell, offer for sale, or furnish an alcoholic product on its

Enrolled Copy

S.B. 314

3250 premises as a reception center, the person shall first obtain a reception center license from the
3251 commission in accordance with this part.

3252 (2) The commission may issue a reception center license to establish reception center
3253 licensed premises at places and in numbers the commission considers proper for the storage,
3254 sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated
3255 as a reception center.

3256 (3) Subject to Section 32B-1-201, the commission may not issue a total number of
3257 reception center licenses that at any time exceeds the number determined by dividing the
3258 population of the state by 56,313.

3259 (4) The commission may not issue a reception center license for premises that do not
3260 meet the proximity requirements of Section 32B-1-202.

3261 Section 56. Section **32B-6-804** is enacted to read:

3262 **32B-6-804. Specific licensing requirements for reception center license.**

3263 (1) To obtain a reception center license a person shall comply with Chapter 5, Part 2,
3264 Retail Licensing Process.

3265 (2) (a) A reception center license expires on October 31 of each year.

3266 (b) To renew a person's reception center license, a person shall comply with the
3267 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than
3268 September 30.

3269 (3) (a) The nonrefundable application fee for a reception center license is \$300.

3270 (b) The initial license fee for a reception center license is \$750.

3271 (c) The renewal fee for a reception center license is \$750.

3272 (4) The bond amount required for a reception center license is the penal sum of
3273 \$10,000.

3274 Section 57. Section **32B-6-805** is enacted to read:

3275 **32B-6-805. Specific operational requirements for a reception center license.**

3276 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
3277 Requirements, a reception center licensee and staff of the reception center licensee shall

S.B. 314

Enrolled Copy

3278 comply with this section.

3279 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
3280 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

3281 (i) a reception center licensee;

3282 (ii) individual staff of a reception center licensee; or

3283 (iii) both a reception center licensee and staff of the reception center licensee.

3284 (2) In addition to complying with Section 32B-5-303, a reception center licensee shall
3285 store an alcoholic product in a storage area described in Subsection (15)(a).

3286 (3) (a) For the purpose described in Subsection (3)(b), a reception center licensee shall
3287 provide the following with advance notice of a scheduled event in accordance with rules made
3288 by the commission:

3289 (i) the department; and

3290 (ii) the local law enforcement agency responsible for the enforcement of this title in the
3291 jurisdiction where the reception center is located.

3292 (b) Any of the following may conduct a random inspection of an event:

3293 (i) an authorized representative of the commission or the department; or

3294 (ii) a law enforcement officer.

3295 (4) (a) Except as otherwise provided in this title, a reception center licensee may sell,
3296 offer for sale, or furnish an alcoholic product at an event only for consumption at the reception
3297 center's licensed premises.

3298 (b) A host of an event, a patron, or a person other than the reception center licensee or
3299 staff of the reception center licensee, may not remove an alcoholic product from the reception
3300 center's licensed premises.

3301 (c) Notwithstanding Section 32B-5-307, a patron at an event may not bring an
3302 alcoholic product into or onto, or remove an alcoholic product from, the reception center.

3303 (5) (a) A reception center licensee may not leave an unsold alcoholic product at an
3304 event following the conclusion of the event.

3305 (b) At the conclusion of an event, a reception center licensee shall:

Enrolled Copy

S.B. 314

- 3306 (i) destroy an opened and unused alcoholic product that is not saleable, under
3307 conditions established by the department; and
- 3308 (ii) return to the reception center licensee's approved locked storage area any:
3309 (A) opened and unused alcoholic product that is saleable; and
3310 (B) unopened container of an alcoholic product.
- 3311 (c) Except as provided in Subsection (5)(b) with regard to an open or sealed container
3312 of an alcoholic product not sold or consumed at an event, a reception center licensee:
- 3313 (i) shall store the alcoholic product in accordance with Subsection (2); and
3314 (ii) may use the alcoholic product at more than one event.
- 3315 (6) Notwithstanding Section 32B-5-308, a reception center licensee may not employ a
3316 minor in connection with an event at the reception center at which food is not made available.
- 3317 (7) A person's willingness to serve an alcoholic product may not be made a condition
3318 of employment as a server with a reception center licensee.
- 3319 (8) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
3320 product at the licensed premises on any day during the period that:
- 3321 (a) begins at 1 a.m.; and
3322 (b) ends at 9:59 a.m.
- 3323 (9) A reception center licensee may not maintain in excess of 30% of its total annual
3324 receipts from the sale of an alcoholic product, which includes:
- 3325 (a) mix for an alcoholic product; or
3326 (b) a charge in connection with the furnishing of an alcoholic product.
- 3327 (10) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
3328 product at an event at which a minor is present unless the reception center licensee makes food
3329 available at all times when an alcoholic product is sold, offered for sale, furnished, or
3330 consumed during the event.
- 3331 (11) (a) Subject to the other provisions of this Subsection (11), a patron may not have
3332 more than two alcoholic products of any kind at a time before the patron.
- 3333 (b) An individual portion of wine is considered to be one alcoholic product under

S.B. 314

Enrolled Copy

3334 Subsection (11)(a).

3335 (12) (a) A reception center licensee shall supervise and direct a person involved in the
3336 sale, offer for sale, or furnishing of an alcoholic product.

3337 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product
3338 shall complete an alcohol training and education seminar.

3339 (13) A staff person of a reception center licensee shall remain at an event at all times
3340 when an alcoholic product is sold, offered for sale, furnished, or consumed at the event.

3341 (14) A reception center licensee may not sell, offer for sale, or furnish an alcoholic
3342 product to a patron, and a patron may not consume an alcoholic product at a bar structure.

3343 (15) Except as provided in Subsection (16), a reception center licensee may dispense
3344 an alcoholic product only if:

3345 (a) the alcoholic product is dispensed from an area that is:

3346 (i) separated from an area for the consumption of food by a patron by a solid,
3347 translucent, permanent structural barrier such that the facilities for the storage or dispensing of
3348 an alcoholic product are:

3349 (A) not readily visible to a patron; and

3350 (B) not accessible by a patron; and

3351 (ii) apart from an area used:

3352 (A) for staging; or

3353 (B) as a lobby or waiting area;

3354 (b) the reception center licensee uses an alcoholic product that is:

3355 (i) stored in an area described in Subsection (15)(a); or

3356 (ii) in an area not described in Subsection (15)(a) on the licensed premises and:

3357 (A) immediately before the alcoholic product is dispensed it is in an unopened
3358 container;

3359 (B) the unopened container is taken to an area described in Subsection (15)(a) before it
3360 is opened; and

3361 (C) once opened, the container is stored in an area described in Subsection (15)(a); and

Enrolled Copy

S.B. 314

3362 (c) any instrument or equipment used to dispense an alcoholic product is located in an
3363 area described in Subsection (15)(a).

3364 (16) A reception center licensee may dispense an alcoholic product from a mobile
3365 servicing area that:

3366 (a) is moved only by staff of the reception center licensee;

3367 (b) is capable of being moved by only one individual; and

3368 (c) is no larger than 6 feet long and 30 inches wide.

3369 (17) (a) A reception center licensee may not have an event on the licensed premises
3370 except pursuant to a contract between a third party host of the event and the reception center
3371 licensee under which the reception center licensee provides an alcoholic product sold, offered
3372 for sale, or furnished at an event.

3373 (b) At an event, a reception center licensee may furnish an alcoholic product:

3374 (i) without charge to a patron, except that the third party host of the event shall pay for
3375 an alcoholic product furnished at the event; or

3376 (ii) with a charge to a patron at the event.

3377 (18) A reception center licensee shall have culinary facilities that are:

3378 (a) adequate to prepare a full meal; and

3379 (b) (i) located on the licensed premises; or

3380 (ii) under the same control as the reception center licensee.

3381 Section 58. Section **32B-6-901** is enacted to read:

3382 **Part 9. Beer-only Restaurant License**

3383 **32B-6-901. Title.**

3384 This part is known as "Beer-only Restaurant License."

3385 Section 59. Section **32B-6-902** is enacted to read:

3386 **32B-6-902. Definitions.**

3387 (1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a
3388 licensed premises of a beer-only restaurant licensee that:

3389 (i) as of January 1, 2011;

S.B. 314

Enrolled Copy

3390 (A) is operational; and
3391 (B) has facilities for the dispensing or storage of an alcoholic product that do not meet
3392 the requirements of Subsection 32B-6-905(12)(a)(ii);
3393 (ii) is not operational as of January 1, 2011, if a person applying for the beer-only
3394 restaurant license;
3395 (A) has as of January 1, 2011, a building permit to construct the restaurant;
3396 (B) is as of January 1, 2011, actively engaged in the construction of the restaurant, as
3397 defined by rule made by the commission;
3398 (C) is issued the beer-only license by no later than December 31, 2011; and
3399 (D) once constructed, will have a bar structure that does not meet the requirements of
3400 Subsection 32B-6-905(12)(a)(ii); or
3401 (iii) is a bar structure grandfathered under Section 32B-6-409.
3402 (b) "Grandfathered bar structure" does not include a grandfathered bar structure
3403 described in Subsection (1)(a) on or after the day on which a restaurant remodels the
3404 grandfathered bar structure, as defined by rule made by the commission.
3405 (2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered
3406 bar structure notwithstanding whether a restaurant undergoes a change of ownership.
3407 Section 60. Section **32B-6-903** is enacted to read:
3408 **32B-6-903. Commission's power to issue beer-only restaurant license.**
3409 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
3410 beer on its premises as a beer-only restaurant, the person shall first obtain a beer-only
3411 restaurant license from the commission in accordance with this part.
3412 (2) (a) The commission may issue a beer-only restaurant license to establish beer-only
3413 restaurant licensed premises at places and in numbers the commission considers proper for the
3414 storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as a
3415 beer-only restaurant.
3416 (b) A person may not sell, offer for sale, furnish, or allow the consumption of liquor on
3417 the licensed premises of a beer-only restaurant licensee.

Enrolled Copy

S.B. 314

3418 (3) (a) Only one beer-only restaurant license is required for each building or resort
3419 facility owned or leased by the same person.

3420 (b) A separate license is not required for each beer-only restaurant license dispensing
3421 location in the same building or on the same resort premises owned or operated by the same
3422 person.

3423 (4) (a) Except as provided in Subsection (4)(b) or (c), the commission may not issue a
3424 beer-only restaurant license for premises that do not meet the proximity requirements of
3425 Section 32B-1-202.

3426 (b) With respect to the premises of a beer-only restaurant license issued by the
3427 commission that undergoes a change of ownership, the commission shall waive or vary the
3428 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a
3429 beer-only restaurant license to the new owner of the premises if:

3430 (i) when a beer-only restaurant license was issued to a previous owner, the premises
3431 met the proximity requirements of Subsection 32B-1-202(2);

3432 (ii) the premises has had a beer-only restaurant license at all times since the beer-only
3433 restaurant license described in Subsection (4)(b)(i) was issued without a variance; and

3434 (iii) the community location was located within the proximity requirements of
3435 Subsection 32B-1-202(2) after the day on which the beer-only restaurant license described in
3436 Subsection (4)(b)(i) was issued.

3437 (c) The location of the licensed premises of an on-premise beer retailer who is licensed
3438 as of July 1, 2011, is grandfathered and not required to meet the proximity requirements of
3439 Section 32B-1-202 if the on-premise beer retailer obtains a beer-only restaurant license by not
3440 later than March 1, 2012. A location grandfathered under this Subsection (4)(c) is considered
3441 grandfathered notwithstanding that the beer-only restaurant license undergoes a change of
3442 ownership.

3443 Section 61. Section **32B-6-904** is enacted to read:

3444 **32B-6-904. Specific licensing requirements for beer-only restaurant license.**

3445 (1) To obtain a beer-only restaurant license a person shall comply with Chapter 5, Part

S.B. 314

Enrolled Copy

3446 2, Retail Licensing Process.

3447 (2) (a) A beer-only restaurant license expires the last day of February of each year.

3448 (b) To renew a person's beer-only restaurant license, a person shall comply with the
3449 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January
3450 31.

3451 (3) (a) The nonrefundable application fee for a beer-only restaurant license is \$300.

3452 (b) The initial license fee for a beer-only restaurant license is \$750.

3453 (c) The renewal fee for a beer-only restaurant license is \$550.

3454 (4) The bond amount required for a beer-only restaurant license is the penal sum of
3455 \$5,000.

3456 Section 62. Section **32B-6-905** is enacted to read:

3457 **32B-6-905. Specific operational requirements for a beer-only restaurant license.**

3458 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
3459 Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee
3460 shall comply with this section.

3461 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
3462 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

3463 (i) a beer-only restaurant licensee;

3464 (ii) individual staff of a beer-only restaurant licensee; or

3465 (iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

3466 (2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for
3467 sale, furnish, or allow consumption of liquor.

3468 (b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

3469 (i) as a flavoring on a dessert; and

3470 (ii) in the preparation of a flaming food dish, drink, or dessert.

3471 (3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee
3472 shall store beer in a storage area described in Subsection (12)(a).

3473 (4) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall

Enrolled Copy

S.B. 314

3474 make a written beverage tab for each table or group that orders or consumes an alcoholic
3475 product on the premises.

3476 (b) A beverage tab required by this Subsection (4) shall list the type and amount of
3477 beer ordered or consumed.

3478 (5) A person's willingness to serve beer may not be made a condition of employment as
3479 a server with a beer-only restaurant licensee.

3480 (6) A beer-only restaurant licensee may sell, offer for sale, or furnish beer during the
3481 hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer,
3482 except that a beer-only restaurant licensee may not sell, offer for sale, or furnish beer before
3483 11:30 a.m. on any day.

3484 (7) A beer-only restaurant licensee shall maintain at least 70% of its total restaurant
3485 business from the sale of food, which does not include a service charge.

3486 (8) (a) A beer-only restaurant may not sell, offer for sale, or furnish beer except in
3487 connection with an order for food prepared, sold, and furnished at the licensed premises.

3488 (b) A beer-only restaurant shall maintain on the licensed premises adequate culinary
3489 facilities for food preparation and dining accommodations.

3490 (9) A patron may not have more than two beers at a time before the patron.

3491 (10) A patron may consume a beer only:

3492 (a) at:

3493 (i) the patron's table;

3494 (ii) a grandfathered bar structure; or

3495 (iii) a counter; and

3496 (b) where food is served.

3497 (11) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish a beer to
3498 a patron, and a patron may not consume an alcoholic product at a bar structure.

3499 (b) Notwithstanding Subsection (11)(a), at a grandfathered bar structure, a patron who
3500 is 21 years of age or older may:

3501 (i) sit;

S.B. 314

Enrolled Copy

3502 (ii) be furnished a beer; and
3503 (iii) consume a beer.
3504 (c) Except as provided in Subsection (11)(d), at a grandfathered bar structure, a
3505 beer-only restaurant licensee may not permit a minor to, and a minor may not:
3506 (i) sit; or
3507 (ii) consume food or beverages.
3508 (d) (i) A minor may be at a grandfathered bar structure if the minor is employed by a
3509 beer-only restaurant licensee:
3510 (A) as provided in Subsection 32B-5-308(2); or
3511 (B) to perform maintenance and cleaning services during an hour when the beer-only
3512 restaurant licensee is not open for business.
3513 (ii) A minor may momentarily pass by a grandfathered bar structure without remaining
3514 or sitting at the bar structure en route to an area of a beer-only restaurant licensee's premises in
3515 which the minor is permitted to be.
3516 (12) A beer-only restaurant licensee may dispense a beer only if:
3517 (a) the beer is dispensed from an area that is:
3518 (i) a grandfathered bar structure; or
3519 (ii) separated from an area for the consumption of food by a patron by a solid,
3520 translucent, permanent structural barrier such that the facilities for the storage or dispensing of
3521 an alcoholic product are not readily visible to a patron, not accessible by a patron, and apart
3522 from an area used for dining, for staging, or as a lobby or waiting area;
3523 (b) the beer-only restaurant licensee uses a beer that is:
3524 (i) stored in an area described in Subsection (12)(a); or
3525 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
3526 (A) immediately before the beer is dispensed it is in an unopened container;
3527 (B) the unopened container is taken to an area described in Subsection (12)(a) before it
3528 is opened; and
3529 (C) once opened, the container is stored in an area described in Subsection (12)(a); and

Enrolled Copy

S.B. 314

3530 (c) any instrument or equipment used to dispense the beer is located in an area
3531 described in Subsection (12)(a).
3532 Section 63. Section **32B-8-202 (Effective 07/01/11)** is amended to read:
3533 **32B-8-202 (Effective 07/01/11). Specific licensing requirements for resort license.**
3534 (1) To obtain a resort license, in addition to complying with Chapter 5, Part 2, Retail
3535 Licensing Process, a person shall submit with the written application:
3536 (a) the current business license for each sublicense, if the business license is separate
3537 from the person's business license;
3538 (b) evidence:
3539 (i) of proximity of the resort building to any community location, with proximity
3540 requirements being governed by Section 32B-1-202;
3541 (ii) that each of the four or more sublicense premises is entirely within the boundaries
3542 of the resort building; and
3543 (iii) that the building designated in the application as the resort building qualifies as a
3544 resort building;
3545 (c) a description and boundary map of the resort building;
3546 (d) a description, floor plan, and boundary map of each sublicense premises
3547 designating:
3548 (i) any location at which the person proposes that an alcoholic product be stored; and
3549 (ii) a designated location on the sublicense premises from which the person proposes
3550 that an alcoholic product be sold, furnished, or consumed;
3551 (e) evidence that the resort license person carries dramshop insurance coverage equal
3552 to the sum of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate to cover both
3553 the general resort license and each sublicense; and
3554 (f) a signed consent form stating that the person will permit any authorized
3555 representative of the commission, department, or any law enforcement officer to have
3556 unrestricted right to enter the boundary of the resort building and each sublicense premises.
3557 (2) (a) A resort license expires on October 31 of each year.

S.B. 314

Enrolled Copy

3558 (b) To renew a person's resort license, the person shall comply with the requirements of
3559 Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

3560 (3) (a) The nonrefundable application fee for a resort license is [~~\$250~~] \$300.

3561 (b) The initial license fee for a resort license is calculated as follows:

3562 (i) \$10,000 if four sublicenses are being applied for under the resort license; or

3563 (ii) if more than four sublicenses are being applied for under the resort license, the sum

3564 of:

3565 (A) \$10,000; and

3566 (B) \$2,000 for each sublicense in excess of four sublicenses for which the person is

3567 applying.

3568 (c) The renewal fee for a resort license is \$1,000 for each sublicense under the resort
3569 license.

3570 (4) (a) The bond amount required for a resort license is the penal sum of \$25,000.

3571 (b) A resort licensee is not required to have a separate bond for each sublicense, except
3572 that the aggregate of the bonds posted by the resort licensee shall cover each sublicense under
3573 the resort license.

3574 (5) The commission may not issue a resort license for a resort building that does not
3575 meet the proximity requirements of Section 32B-1-202.

3576 Section 64. Section **32B-8-204 (Effective 07/01/11)** is amended to read:

3577 **32B-8-204 (Effective 07/01/11). Commission and department duties before issuing**
3578 **resort license.**

3579 (1) Before the issuance of a resort license, the department shall comply with the
3580 requirements of Subsection [~~32B-8-202~~] 32B-5-203(1) in relation to the resort license and each
3581 sublicense.

3582 (2) Before issuing a resort license, in addition to considering the factors described in
3583 Section 32B-8-202, the commission shall:

3584 (a) consider the resort license person's ability to manage and operate a resort license
3585 and the ability of any individual who will act in a supervisory or managerial capacity for a

Enrolled Copy

S.B. 314

3586 sublicense, including:

3587 (i) past management experience;

3588 (ii) past alcoholic product license experience; and

3589 (iii) the type of management scheme to be used by the resort license person;

3590 (b) consider the nature or type of:

3591 (i) the person's business operation of the resort license; and

3592 (ii) the business operation of each sublicense; and

3593 (c) subject to Subsection (3), determine that each sublicense meets the requirements

3594 imposed under the provisions applicable to each sublicense.

3595 (3) (a) Subject to Subsection (3)(b), notwithstanding the requirements to obtain a retail

3596 license under the provisions applicable to a sublicense, a sublicense of a resort license is not

3597 subject to:

3598 (i) a requirement to submit an application or renewal application that is separate from

3599 the resort license application;

3600 (ii) a requirement to carry public liability insurance or dramshop insurance coverage

3601 that is separate from that carried by the resort licensee; or

3602 (iii) a requirement to post a bond that is separate from the bond posted by the resort

3603 licensee.

3604 (b) If a resort licensee seeks to add a sublicense after its resort license is issued, the

3605 resort licensee shall file with the department:

3606 (i) a nonrefundable [~~\$250~~] \$300 application fee;

3607 (ii) an initial license fee of [~~\$2,000~~] \$2,250, which is refundable if the sublicense is not

3608 issued;

3609 (iii) written consent of the local authority;

3610 (iv) a copy of:

3611 (A) the resort licensee's current business license; and

3612 (B) the current business license for the sublicense, if the business licensee is separate

3613 from the resort licensee's business license;

S.B. 314

Enrolled Copy

3614 (v) evidence that the sublicense premises is entirely within the boundary of the resort
3615 building;

3616 (vi) a description, floor plan, and boundary map of the sublicense premises
3617 designating:

3618 (A) any location at which the person proposes that an alcoholic product be stored; and

3619 (B) any designated location on the sublicense premises from which the person proposes
3620 that an alcoholic product be sold, furnished, or consumed;

3621 (vii) evidence that the person carries public liability insurance in an amount and form
3622 satisfactory to the department;

3623 (viii) evidence that the person carries dramshop insurance coverage in the amount
3624 required by Section 32B-8-202 that covers the sublicense to be added;

3625 (ix) a signed consent form stating that the resort licensee will permit any authorized
3626 representative of the commission, department, or any law enforcement officer to have
3627 unrestricted right to enter the sublicense premises;

3628 (x) if the resort licensee is an entity, proper verification evidencing that a person who
3629 signs the application is authorized to sign on behalf of the entity; and

3630 (xi) any other information the commission or department may require.

3631 Section 65. Section **32B-8-304 (Effective 07/01/11)** is amended to read:

3632 **32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa**
3633 **sublicense.**

3634 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
3635 Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a
3636 resort spa sublicense shall comply with this section.

3637 (b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a)
3638 may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and
3639 Enforcement Act, against:

3640 (i) a retail licensee;

3641 (ii) staff of the retail licensee;

Enrolled Copy

S.B. 314

3642 (iii) a person otherwise related to a resort spa sublicense; or

3643 (iv) any combination of the persons listed in this Subsection (1)(b).

3644 [~~(2)~~ A person operating under a resort spa sublicense shall display in a prominent place
3645 in the resort spa a list of the types and brand names of liquor being furnished through its
3646 calibrated metered dispensing system.]

3647 [~~(3)~~ (2)] (a) For purposes of the resort spa sublicense, the resort licensee shall ensure
3648 that a record required by this title is maintained, and a record is maintained or used for the
3649 resort spa sublicense:

3650 (i) as the department requires; and

3651 (ii) for a minimum period of three years.

3652 (b) A record is subject to inspection by an authorized representative of the commission
3653 and the department.

3654 (c) A resort licensee shall allow the department, through an auditor or examiner of the
3655 department, to audit the records for a resort spa sublicense at the times the department
3656 considers advisable.

3657 (d) The department shall audit the records for a resort spa sublicense at least once
3658 annually.

3659 (e) Section 32B-1-205 applies to a record required to be made, maintained, or used in
3660 accordance with this Subsection [~~(3)~~ (2)].

3661 [~~(4)~~ (3)] (a) A person operating under a resort spa sublicense may not sell, offer for
3662 sale, or furnish liquor at a resort spa during a period that:

3663 (i) begins at 1 a.m.; and

3664 (ii) ends at 9:59 a.m.

3665 (b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish
3666 beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an
3667 on-premise beer retailer.

3668 (c) (i) Notwithstanding Subsections [~~(4)~~ (3)](a) and (b), a resort spa shall remain open
3669 for one hour after the resort spa ceases the sale and furnishing of an alcoholic product during

S.B. 314

Enrolled Copy

3670 which time a person at the resort spa may finish consuming:

3671 (A) a single drink containing spirituous liquor;

3672 (B) a single serving of wine not exceeding five ounces;

3673 (C) a single serving of heavy beer;

3674 (D) a single serving of beer not exceeding 26 ounces; or

3675 (E) a single serving of a flavored malt beverage.

3676 (ii) A resort spa is not required to remain open:

3677 (A) after all persons have vacated the resort spa sublicense premises; or

3678 (B) during an emergency.

3679 [~~(d)~~ A person operating under a resort spa sublicense may not allow a person to remain

3680 on the resort spa sublicense premises to consume an alcoholic product on the resort spa

3681 sublicense premises during a period that:]

3682 [(i) begins at 2 a.m.; and]

3683 [(ii) ends at 9:59 a.m.]

3684 [~~(5)~~] (4) A minor may not be admitted into, use, or be on:

3685 (a) the sublicense premises of a resort spa unless accompanied by a person 21 years of
3686 age or older; or

3687 (b) a lounge or bar area of the resort spa sublicense premises.

3688 [~~(6)~~] (5) A resort spa shall have food available at all times when an alcoholic product is
3689 sold, offered for sale, furnished, or consumed on the resort spa sublicense premises.

3690 [~~(7)~~] (6) (a) Subject to the other provisions of this Subsection [~~(7)~~] (6), a patron may
3691 not have more than two alcoholic products of any kind at a time before the patron.

3692 (b) A resort spa patron may not have two spirituous liquor drinks before the resort spa
3693 patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for
3694 the other spirituous liquor drink.

3695 (c) An individual portion of wine is considered to be one alcoholic product under this
3696 Subsection [~~(7)~~] (6).

3697 [~~(8)~~] (7) (a) An alcoholic product may only be consumed at a table or counter.

Enrolled Copy

S.B. 314

3698 (b) An alcoholic product may not be served to or consumed by a patron at a bar.
3699 [~~(9)~~] (8) (a) A person operating under a resort spa sublicense shall have available on
3700 the resort spa sublicense premises for a patron to review at the time that the patron requests it, a
3701 written alcoholic product price list or a menu containing the price of an alcoholic product sold
3702 or furnished by the resort spa including:
3703 (i) a set-up charge;
3704 (ii) a service charge; or
3705 (iii) a chilling fee.
3706 (b) A charge or fee made in connection with the sale, service, or consumption of liquor
3707 may be stated in food or alcoholic product menus including:
3708 (i) a set-up charge;
3709 (ii) a service charge; or
3710 (iii) a chilling fee.
3711 [~~(10)~~] (9) (a) A resort licensee shall own or lease premises suitable for the resort spa's
3712 activities.
3713 (b) A resort licensee may not maintain premises in a manner that barricades or conceals
3714 the resort spa sublicense's operation.
3715 [~~(11)~~] (10) Subject to the other provisions of this section, a person operating under a
3716 resort spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or
3717 use the resort spa sublicense premises other than:
3718 (a) a resident;
3719 (b) a public customer who holds a valid customer card issued under Subsection [~~(13)~~]
3720 (12); or
3721 (c) an invitee.
3722 [~~(12)~~] (11) A person operating under a resort spa sublicense may allow an individual to
3723 be admitted to or use the resort spa sublicense premises as an invitee subject to the following
3724 conditions:
3725 (a) the individual must be previously authorized by one of the following who agrees to

S.B. 314

Enrolled Copy

3726 host the individual as an invitee into the resort spa:

3727 (i) a resident; or

3728 (ii) a public customer as described in Subsection [~~(11)~~] (10);

3729 (b) the individual has only those privileges derived from the individual's host for the
3730 duration of the invitee's visit to the resort spa; and

3731 (c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter
3732 into an agreement or arrangement with a resident or public customer to indiscriminately host a
3733 member of the general public into the resort spa as an invitee.

3734 [~~(13)~~] (12) A person operating under a resort spa sublicense may issue a customer card
3735 to allow an individual to enter and use the resort spa sublicense premises on a temporary basis
3736 under the following conditions:

3737 (a) the resort spa may not issue a customer card for a time period that exceeds three
3738 weeks;

3739 (b) the resort spa shall assess a fee to a public customer for a customer card;

3740 (c) the resort spa may not issue a customer card to a minor; and

3741 (d) a public customer may not host more than seven invitees at one time.

3742 Section 66. Section **32B-8-401 (Effective 07/01/11)** is amended to read:

3743 **32B-8-401 (Effective 07/01/11). Specific operational requirements for resort**
3744 **license.**

3745 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
3746 Requirements, a resort licensee, staff of the resort licensee, and a person otherwise operating
3747 under a sublicense shall comply with this section.

3748 (b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a)
3749 may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and
3750 Enforcement Act, against:

3751 (i) a resort licensee;

3752 (ii) individual staff of a resort licensee;

3753 (iii) a person otherwise operating under a sublicense;

Enrolled Copy

S.B. 314

- 3754 (iv) individual staff of a person otherwise operating under a sublicense; or
3755 (v) any combination of the persons listed in this Subsection (1)(b).
3756 (2) (a) A resort licensee may not sell, offer for sale, or furnish an alcoholic product
3757 except:
3758 (i) on a sublicense premises;
3759 (ii) pursuant to a permit issued under this title; or
3760 (iii) under a package agency agreement with the department, subject to Chapter 2, Part
3761 6, Package Agency.
3762 (b) A resort licensee who sells, offers for sale, or furnishes an alcoholic product as
3763 provided in Subsection (2)(a), shall sell, offer for sale, or furnish the alcoholic product:
3764 (i) if on a sublicense premises, in accordance with the operational requirements under
3765 the provisions applicable to the sublicense, except as provided in Section 32B-8-402;
3766 (ii) if under a permit issued under this title, in accordance with the operational
3767 requirements under the provisions applicable to the permit; and
3768 (iii) if as a package agency, in accordance with the contract with the department and
3769 Chapter 2, Part 6, Package Agency.
3770 (3) A resort licensee shall comply with Subsections 32B-5-301(4) and (5) within the
3771 boundary of the resort building.
3772 (4) [~~(a) Subject to Subsection (4)(b), a~~] A resort licensee shall operate in a manner so
3773 that at least 70% of the annual aggregate of the gross receipts related to the sale of food or
3774 beverages for the resort license and each of its sublicenses is from the sale of food, not
3775 including:
3776 [(i)] (a) mix for an alcoholic product; and
3777 [(ii)] (b) a charge in connection with the service of an alcoholic product.
3778 [~~(b) In calculating the annual aggregate of the gross receipts described in Subsection~~
3779 ~~(4)(a), a resort licensee is not required to include in the calculation money from the sale of a~~
3780 ~~bottle of wine by the resort licensee or under a sublicense in excess of \$250.]
3781 (5) (a) A resort licensee shall supervise and direct a person involved in the sale, offer~~

S.B. 314

Enrolled Copy

3782 for sale, or furnishing of an alcoholic product under a resort license.

3783 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product
3784 under a resort license shall complete the alcohol training and education seminar.

3785 (6) (a) Room service of an alcoholic product to a lodging accommodation of a resort
3786 licensee shall be provided in person by staff of a resort licensee only to an adult occupant in the
3787 lodging accommodation.

3788 (b) An alcoholic product may not be left outside a lodging accommodation for retrieval
3789 by an occupant.

3790 ~~[(c) A resort licensee may only provide an alcoholic product for room service in a~~
3791 ~~sealed package.]~~

3792 Section 67. Section **32B-8-402 (Effective 07/01/11)** is amended to read:

3793 **32B-8-402 (Effective 07/01/11). Specific operational requirements for a**
3794 **sublicense.**

3795 (1) A person operating under a sublicense is subject to the operational requirements
3796 under the provisions applicable to the sublicense except that[-];

3797 (a) notwithstanding a requirement in the provisions applicable to the sublicense, a
3798 person operating under the sublicense is not subject to a requirement that a certain percentage
3799 of the gross receipts for the sublicense be from the sale of food, except to the extent that the
3800 gross receipts for the sublicense are included in calculating the percentages under Subsection
3801 32B-8-401(4)[-]; and

3802 (b) notwithstanding Section 32B-6-202 or 32B-6-302, a bar structure in a licensed
3803 premises operated under a full-service restaurant sublicense or limited-service restaurant
3804 sublicense is considered a grandfathered bar structure if the resort license that includes the
3805 full-service restaurant sublicense or limited-service restaurant sublicense is issued by no later
3806 than December 31, 2010.

3807 (2) Subject to Section 32B-8-502, for purposes of interpreting an operational
3808 requirement imposed by the provisions applicable to a sublicense:

3809 (a) a requirement imposed on a person operating under a sublicense applies to the

Enrolled Copy

S.B. 314

3810 resort licensee; and

3811 (b) a requirement imposed on staff of a person operating under a sublicense applies to
3812 staff of the resort licensee.

3813 Section 68. Section **32B-8a-101** is enacted to read:

3814 **CHAPTER 8a. TRANSFER OF RETAIL LICENSE ACT**

3815 **Part 1. General Provisions**

3816 **32B-8a-101. Title.**

3817 This chapter is known as the "Transfer of Retail License Act."

3818 Section 69. Section **32B-8a-102** is enacted to read:

3819 **32B-8a-102. Definitions.**

3820 As used in this chapter:

3821 (1) "Business entity" means a corporation, partnership, limited liability company, sole
3822 proprietorship, or similar entity.

3823 (2) "Transfer fee" means a fee described in Section 32B-8a-303.

3824 (3) "Transferee" means a person who intends to hold a retail license after the transfer of
3825 the retail license if the transfer is approved by the commission under this chapter.

3826 (4) "Transferor" means a retail licensee who intends to transfer a retail license held by
3827 the retail licensee if the transfer is approved by the commission under this chapter.

3828 Section 70. Section **32B-8a-201** is enacted to read:

3829 **Part 2. Transferability of Retail License**

3830 **32B-8a-201. Transferability of retail license.**

3831 (1) (a) A retail license is separate from other property of a retail licensee.

3832 (b) Notwithstanding Subsection (1)(a), the Legislature may terminate or modify the
3833 existence of any type of retail license.

3834 (c) Except as provided in this chapter, a person may not:

3835 (i) transfer a retail license from one location to another location; or

3836 (ii) sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the
3837 retail license to another person whether for monetary gain or not.

S.B. 314

Enrolled Copy

3838 (d) If approved by the commission and subject to the requirements of this chapter, a
3839 retail licensee may transfer a retail license:

3840 (i) from the retail licensee to another person, regardless of whether it is for the same
3841 premises; and

3842 (ii) from one premises of the retail licensee to another premises of the retail licensee.

3843 (2) (a) The commission may not approve the transfer of a retail license that results in a
3844 transferee holding a different type of retail license than is held by the transferor.

3845 (b) The commission may not approve the transfer of a retail license from one location
3846 to another location, if the location of the premises to which the retail license would be
3847 transferred is in a different county than the location of the licensed premises of the retail license
3848 being transferred.

3849 (3) The commission may not approve the transfer of a retail license if the transferee:

3850 (a) is not eligible to hold the same type of retail license as the retail license to be
3851 transferred at the premises to which the retail license would be transferred; or

3852 (b) is delinquent in the payment of any of the following that arises in full or in part out
3853 of the operation of a retail license:

3854 (i) a tax, fee, or charge due under this title or Title 59, Revenue and Taxation; or

3855 (ii) an amount due under Title 35A, Chapter 4, Employment Security Act.

3856 Section 71. Section **32B-8a-202** is enacted to read:

3857 **32B-8a-202. Effect of transfer of ownership of business entity.**

3858 (1) (a) When the ownership of 51% or more of the shares of stock of a corporation is
3859 acquired by or transferred to one or more persons who did not hold the ownership of 51% of
3860 those shares of stock on the date a retail license is issued to the corporation, the corporation
3861 shall comply with this chapter to transfer the retail license to the corporation as if the
3862 corporation is newly constituted.

3863 (b) When there is a new general partner or when the ownership of 51% or more of the
3864 capital or profits of a limited partnership is acquired by or transferred to one or more persons as
3865 general or limited partners and who did not hold ownership of 51% or more of the capital or

Enrolled Copy

S.B. 314

3866 profits of the limited partnership on the date a retail license is issued to the limited partnership,
3867 the limited partnership shall comply with this chapter to transfer the retail license to the limited
3868 partnership as if the limited partnership is newly constituted.

3869 (c) When the ownership of 51% or more of the interests in a limited liability company
3870 is acquired by or transferred to one or more persons as members who did not hold ownership of
3871 51% or more of the interests in the limited liability company on the date a retail license is
3872 issued to the limited liability company, the limited liability company shall comply with this
3873 chapter to transfer the retail license to the limited liability company as if the limited liability
3874 company is newly constituted.

3875 (2) A business entity may not transfer a retail license under this section unless, before
3876 the filing of the transfer application with the department, the business entity initiating the
3877 transfer complies with Section 32B-8a-301.

3878 (3) If a business entity fails to comply with this section within 30 days of the day on
3879 which the event described in Subsection (1) occurs, the business entity's retail license is
3880 automatically forfeited.

3881 Section 72. Section **32B-8a-203** is enacted to read:

3882 **32B-8a-203. Operational requirements for transferee.**

3883 (1) A transferee shall begin operations of the retail license within 30 days from the day
3884 on which a transfer is approved by the commission, except that the department may grant an
3885 extension of this time period not to exceed 30 days.

3886 (2) If a transferee fails to begin operations of the retail license within the time period
3887 required by Subsection (1), the retail license is forfeited and the commission may issue the
3888 retail license to another person.

3889 (3) A transferee shall begin operations of the retail license at the location to which the
3890 transfer applies before the transferee may seek a transfer of the retail license to a different
3891 location.

3892 Section 73. Section **32B-8a-301** is enacted to read:

3893 **Part 3. Process for Transferring a Retail License**

S.B. 314

Enrolled Copy

3894 **32B-8a-301. Notice of intended transfer.**

3895 (1) To transfer a retail license, at least 10 days before the filing of a transfer application
3896 with the department, the transferee shall file a notice of intended transfer with the department
3897 that states the following:

3898 (a) the name and address of the transferor;

3899 (b) the name and address of the transferee;

3900 (c) the type of retail license intended to be transferred;

3901 (d) the address of the premises to which the retail license is issued;

3902 (e) the address of the premises to which the retail license will be transferred;

3903 (f) an agreement between the transferor and the transferee that the consideration for the
3904 transfer of the retail license, if any, is to be paid only after the transfer is approved by the
3905 commission; and

3906 (g) any other information the commission or department may require.

3907 (2) Notwithstanding Subsection (1), a notice of intended transfer filed by a business
3908 entity for a transfer under Section 32B-8a-202, shall state the following:

3909 (a) the name and address of the business entity;

3910 (b) the name and address of the one or more persons acquiring ownership of 51% or
3911 more of the:

3912 (i) stock of the corporation;

3913 (ii) capital or profits of the limited partnership; or

3914 (iii) interest in a limited liability company;

3915 (c) the kind of retail license intended to be transferred;

3916 (d) the address of the one or more premises to which a retail license:

3917 (i) has been issued; and

3918 (ii) will be transferred; and

3919 (e) any other information the commission or department may require.

3920 Section 74. Section **32B-8a-302** is enacted to read:

3921 **32B-8a-302. Application -- Approval process.**

Enrolled Copy

S.B. 314

3922 (1) To obtain the transfer of a retail license from a retail licensee, the transferee shall
3923 file a transfer application with the department that includes:
3924 (a) an application in the form provided by the department;
3925 (b) a statement as to whether the consideration, if any, to be paid to the transferor
3926 includes payment for any or all of the following:
3927 (i) inventory;
3928 (ii) fixtures; and
3929 (iii) transfer of the retail license;
3930 (c) a copy of the notice of intended transfer; and
3931 (d) (i) an application fee of \$300; and
3932 (ii) a transfer fee determined in accordance with Section 32B-8a-303.
3933 (2) (a) (i) Before the commission may approve the transfer of a retail license, the
3934 department shall conduct an investigation and may hold public hearings to gather information
3935 and make recommendations to the commission as to whether the transfer of the retail license
3936 should be approved.
3937 (ii) The department shall forward the information and recommendations described in
3938 this Subsection (2)(a) to the commission to aid in the commission's determination.
3939 (b) Before approving a transfer, the commission shall:
3940 (i) determine that the transferee filed a complete application;
3941 (ii) determine that the transferee is eligible to hold the type of retail license that is to be
3942 transferred at the premises to which the retail license would be transferred;
3943 (iii) determine that the transferee is not delinquent in the payment of an amount
3944 described in Subsection 32B-8a-201(3);
3945 (iv) determine that the transferee is not disqualified under Section 32B-1-304;
3946 (v) consider the locality within which the proposed licensed premises is located,
3947 including the factors listed in Section 32B-5-206 for the issuance of a retail license;
3948 (vi) consider the transferee's ability to manage and operate the retail license to be
3949 transferred, including the factors listed in Section 32B-5-202 for the issuance of a retail license;

S.B. 314

Enrolled Copy

3950 (vii) consider the nature or type of retail licensee operation of the transferee, including
3951 the factors listed in Section 32B-5-202 for the issuance of a retail license;

3952 (viii) if the transfer involves consideration, determine that the transferee and transferor
3953 have complied with Part 4, Protection of Creditors; and

3954 (ix) consider any other factor the commission considers necessary.

3955 (3) (a) Except as provided in Subsection (3)(b), the commission may not approve the
3956 transfer of a retail license to premises that do not meet the proximity requirements of Section
3957 32B-1-202.

3958 (b) If after a transfer of a retail license the transferee operates the same type of retail
3959 license at the same location as did the transferor, the commission may waive or vary the
3960 proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the
3961 transfer under the same circumstances that the commission may waive or vary the proximity
3962 requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a
3963 retail license.

3964 Section 75. Section **32B-8a-303** is enacted to read:

3965 **32B-8a-303. Transfer fees.**

3966 (1) Except as otherwise provided in this section, the department shall charge the
3967 following transfer fees:

3968 (a) for a transfer of a retail license from a retail licensee to another person, the transfer
3969 fee equals the initial license fee amount specified in the relevant part under Chapter 6, Specific
3970 Retail License Act, for the type of retail license that is being transferred;

3971 (b) for the transfer of a retail license from one premises to another premises of the
3972 same retail licensee, the transfer fee equals the renewal fee amount specified in the relevant
3973 part under Chapter 6, Specific Retail License Act, for the type of retail license that is being
3974 transferred;

3975 (c) subject to Subsections (1)(d) and (2), for a transfer described in Section
3976 32B-8a-202, the transfer fee equals the renewal fee amount specified in the relevant part under
3977 Chapter 6, Specific Retail License Act, for the type of retail license that is being transferred;

Enrolled Copy

S.B. 314

3978 (d) for a transfer of a retail license to include the parent or child of a retail licensee,
3979 when no consideration is given for the transfer, the transfer fee is one-half of the amount
3980 described in Subsection (1)(a); and

3981 (e) for one of the following transfers, the transfer fee is one-half of the amount
3982 described in Subsection (1)(a):

3983 (i) a retail license of one spouse to the other spouse when the transfer application is
3984 made before the entry of a final decree of divorce;

3985 (ii) a retail license of a deceased retail licensee to:

3986 (A) the one or more surviving partners of the deceased retail licensee;

3987 (B) the executor, administrator, or conservator of the estate of the deceased retail
3988 licensee; or

3989 (C) the surviving spouse of the deceased retail licensee, if the deceased retail licensee
3990 leaves no estate to be administered;

3991 (iii) a retail license of a minor ward, incompetent person, or conservatee by or to the
3992 conservator or guardian for the minor ward, incompetent person, or conservatee who is the
3993 retail licensee;

3994 (iv) a retail license of a debtor in a bankruptcy case by or to the trustee of a bankrupt
3995 estate of the retail licensee;

3996 (v) a retail license of a person for whose estate a receiver is appointed may be
3997 transferred by or to a receiver of the estate of the retail licensee;

3998 (vi) a retail license of an assignor for the benefit of creditors by or to an assignee for
3999 the benefit of creditors of a licensee with the consent of the assignor;

4000 (vii) a retail license transferred to a revocable living trust if the retail licensee is the
4001 trustee of the revocable living trust;

4002 (viii) a retail license transferred between partners when no new partner is being
4003 licensed;

4004 (ix) a retail license transferred between corporations whose outstanding shares of stock
4005 are owned by the same individuals;

S.B. 314

Enrolled Copy

4006 (x) upon compliance with Section 32B-8a-202, a retail license to a corporation whose
4007 entire stock is owned by:

4008 (A) the transferor; or

4009 (B) the spouse of the transferor;

4010 (xi) upon compliance with Section 32B-8a-202, a retail license to a limited liability
4011 company whose entire membership consists of:

4012 (A) the transferor; or

4013 (B) the spouse of the transferor; or

4014 (xii) a retail license transferred from a corporation to a person who owns, or whose
4015 spouse owns, the entire stock of the corporation.

4016 (2) If there are multiple and simultaneous transfers of retail licenses under Section
4017 32B-8a-202, a transfer fee described in Subsection (1)(c) is required for only one of the retail
4018 licenses being transferred.

4019 (3) (a) Except as provided in Subsection (3)(b), a transfer fee required under
4020 Subsection (1) is due for a transfer subsequent to a transfer under Subsection (1)(e)(xiii) if the
4021 subsequent transfer is of 51% of the stock in a corporation to which a retail license is
4022 transferred by a retail licensee or the spouse of a retail licensee.

4023 (b) If the transfer of stock described in Subsection (3)(a) is from a parent to the parent's
4024 child or grandchild, the transfer fee is one-half of the amount described in Subsection (1)(a).

4025 (4) Money collected from a transfer fee shall be deposited in the Liquor Control Fund.
4026 Section 76. Section **32B-8a-401** is enacted to read:

Part 4. Protection of Creditors

4028 **32B-8a-401. Notification of creditors -- Escrow -- Priority of payments.**

4029 (1) Before the filing of a transfer application with the department, if the intended
4030 transfer of a retail license involves consideration:

4031 (a) the transferor shall provide the transferee a list of creditors who have a claim
4032 against the transferor;

4033 (b) the transferee shall provide a copy of the notice of intended transfer to each creditor

Enrolled Copy

S.B. 314

4034 on the list provided under Subsection (1)(a):

4035 (c) the transferor and the transferee shall establish an escrow with a person who is not a
4036 party to the transfer to act as escrow holder;

4037 (d) the transferee shall deposit with the escrow holder the full amount of the
4038 consideration; and

4039 (e) the transferor and transferee shall enter into an agreement that:

4040 (i) the consideration is deposited with the escrow holder;

4041 (ii) requires the escrow holder to distribute the consideration within a reasonable time
4042 after the completion of the transfer of the retail license; and

4043 (iii) directs the escrow holder to distribute the consideration in accordance with
4044 Subsection (2).

4045 (2) Subject to the other requirements of this section, if a creditor with a claim against
4046 the transferor files the claim with the escrow holder before the escrow holder is notified by the
4047 department that the transfer is approved, the escrow holder shall distribute the consideration in
4048 the following order:

4049 (a) to the payment of:

4050 (i) the United States for a claim based on income or withholding taxes; and

4051 (ii) a claim based on a tax other than specified in Subsection 32B-8a-201(3);

4052 (b) to the payment of a claim for wages, salaries, or fringe benefits earned or accrued
4053 by an employee of the transferor before the transfer or opening of the escrow for the transfer of
4054 the retail license;

4055 (c) to the payment of a claim of a secured creditor to the extent of the proceeds that
4056 arise from the sale of the security;

4057 (d) to the payment of a claim on a mechanics lien;

4058 (e) to the payment of:

4059 (i) escrow fees;

4060 (ii) a claim for prevailing brokerage fees for services rendered; and

4061 (iii) a claim for reasonable attorney fees for services rendered;

S.B. 314

Enrolled Copy

- 4062 (f) to the payment of claims:
4063 (i) of a landlord, to the extent of proceeds on past due rent or lease requirements;
4064 (ii) for goods sold and delivered to the retail licensee for resale at the transferor's
4065 licensed premises; and
4066 (iii) for services rendered, performed, or supplied in connection with the operation of
4067 the transferor's licensed business;
4068 (g) to the payment of other types of claims that are reduced to court-ordered judgments,
4069 including a claim for court-ordered support of a minor child; and
4070 (h) to the payment of all other claims.
4071 Section 77. Section **32B-8a-402** is enacted to read:
4072 **32B-8a-402. Duties of escrow holder.**
4073 (1) To act as an escrow holder under Section 32B-8a-401, a person shall comply with
4074 Title 7, Chapter 22, Regulation of Independent Escrow Agents.
4075 (2) Not more than 10 days after receiving a claim from a creditor, an escrow holder
4076 shall acknowledge receipt of the claim.
4077 (3) (a) Not more than 10 days after a retail license is transferred and before the
4078 distribution of the consideration held by an escrow holder, the escrow holder shall advise each
4079 creditor who files a claim against the escrow whether there is sufficient consideration in the
4080 escrow to pay all creditors in full.
4081 (b) If the consideration in an escrow is sufficient to pay all creditors in full, the escrow
4082 holder shall advise each creditor of the date on or before which payment will be made.
4083 (c) If there are not sufficient assets to pay all creditors in full, the escrow holder shall
4084 advise each creditor who filed a claim of the following:
4085 (i) the total assets placed in escrow with the escrow holder;
4086 (ii) the nature of each asset;
4087 (iii) the name of each creditor who filed a claim against the escrow and the amount of
4088 the claim;
4089 (iv) the amount the escrow holder proposes to pay each creditor; and

Enrolled Copy

S.B. 314

4090 (v) the date on or before which the escrow holder will pay each creditor.
4091 (4) An escrow holder may not release money in the escrow in exchange for:
4092 (a) a promissory note; or
4093 (b) any other consideration of less value to the creditors than the money exchanged.
4094 (5) If sufficient assets are not available in the escrow for the payment of the claims in
4095 full, the escrow holder shall pay the claims pro rata.

4096 (6) If the retail licensee who transfers the retail license disputes a claim, the escrow
4097 holder shall:

4098 (a) notify the creditor making the claim;
4099 (b) retain the amount to be paid to the creditor under this section for a period of 25
4100 days; and

4101 (c) to the extent that creditors do not successfully recover the amount described in
4102 Subsection (6)(b) in accordance with this part, pay the amount to the retail licensee.

4103 (7) An escrow holder shall distribute the money in the escrow account after the
4104 payments made under Subsections 32B-8a-401(2) and this section within a reasonable time
4105 after the completion of the transfer of the retail license.

4106 Section 78. Section **32B-8a-403** is enacted to read:

4107 **32B-8a-403. Statement by transferee.**

4108 (1) Within 30 days after the filing of a transfer application under Section 32B-8a-302
4109 for transfer of a retail license, the transferee shall file with the department a statement executed
4110 under penalty of perjury that the consideration as set forth in the escrow agreement required by
4111 Section 32B-8a-401 is deposited with the escrow holder.

4112 (2) At the time the statement described in Subsection (1) is filed with the department,
4113 the transferee shall submit a copy of the statement to:

4114 (a) the transferor; and

4115 (b) the escrow holder.

4116 (3) The department may extend the 30-day period specified by this section for a period
4117 not to exceed an additional 30 days, except that a retail license may not be transferred until the

S.B. 314

Enrolled Copy

4118 statement required by this section is received by the department.

4119 (4) This section does not apply to a transfer for which a guaranty of payment is filed
4120 pursuant to Section 32B-8a-404.

4121 Section 79. Section **32B-8a-404** is enacted to read:

4122 **32B-8a-404. When escrow not required.**

4123 (1) Notwithstanding the other provisions of this part, an escrow is not required to be
4124 established in connection with the transfer of a retail license if:

4125 (a) a business entity files with the department a guaranty of full, prompt, and faithful
4126 payment of all claims of a creditor of the retail licensee; and

4127 (b) the guaranty described in Subsection (1)(a) is accepted in writing by the creditors
4128 listed in Subsection 32B-8a-401(2).

4129 (2) A transfer of a retail license described in Subsection (1) is not considered complete
4130 until:

4131 (a) the guarantor pays all creditors' claims in full; and

4132 (b) the guarantor files with the department a statement executed under penalty of
4133 perjury that all conditions of the transfer have been satisfied.

4134 (3) Payment of a claim by a guarantor shall be made in United States currency or by
4135 certified check in a manner acceptable to the creditors.

4136 (4) This section applies only in the case of a transfer in which the guarantor business
4137 entity has a net worth on a consolidated basis, according to its most recent audited financial
4138 statement, of not less than \$5,000,000.

4139 Section 80. Section **32B-8a-501** is enacted to read:

4140 **Part 5. Prohibited Activities**

4141 **32B-8a-501. License not to be pledged as security -- Prohibited transfers.**

4142 (1) A retail licensee may not enter into any agreement under which the retail licensee
4143 pledges the retail license as security for a loan or as security for the fulfillment of any
4144 agreement.

4145 (2) A retail licensee may not transfer a retail license if the transfer is to:

Enrolled Copy

S.B. 314

4146 (a) satisfy a loan or to fulfill an agreement entered into more than 90 days preceding
4147 the date on which the transfer application is filed;

4148 (b) gain or establish a preference to or for any creditor of the transferor, except as
4149 provided by Section 32B-8a-202; or

4150 (c) defraud or injure a creditor of the transferor.

4151 (3) A retail licensee may not transfer a retail license except in accordance with this
4152 chapter.

4153 Section 81. Section **32B-8a-502** is enacted to read:

4154 **32B-8a-502. Effect of transfer in violation of this chapter.**

4155 (1) If a retail license is transferred in violation of this chapter, the commission may:

4156 (a) void the transfer; and

4157 (b) require the retail license to be forfeited.

4158 (2) Subsection (1) is in addition to any other penalty under this title that is applicable to
4159 the person who violates this chapter.

4160 Section 82. Section **32B-9-204 (Effective 07/01/11)** is amended to read:

4161 **32B-9-204 (Effective 07/01/11). General operational requirements for an event**
4162 **permit.**

4163 (1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or
4164 furnishing of an alcoholic product at an event for which an event permit is issued, shall comply
4165 with this title and rules of the commission.

4166 (b) Failure to comply as provided in Subsection (1)(a):

4167 (i) may result in:

4168 (A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
4169 Enforcement Act, against:

4170 (I) an event permittee;

4171 (II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic
4172 product at the event; or

4173 (III) any combination of the persons listed in this Subsection (1)(b);

S.B. 314

Enrolled Copy

4174 (B) immediate revocation of the event permit;

4175 (C) forfeiture of a bond; or

4176 (D) immediate seizure of an alcoholic product present at the event; and

4177 (ii) if the event permit is revoked, disqualifies the event permittee from applying for an
4178 event permit for a period of three years from the date of revocation of the event permit.

4179 (c) An alcoholic product seized under this Subsection (1) shall be returned to the event
4180 permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

4181 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
4182 the specific type of special use permit held by the special use permittee, the relevant part
4183 governs.

4184 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an
4185 event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the
4186 relevant part under this chapter for the type of event permit that is held by the event permittee.

4187 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
4188 event permit held by an event permittee refers to "event permittee," a person involved in the
4189 storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the
4190 event permit is issued is subject to the same requirement or prohibition.

4191 (3) An event permittee shall display a copy of the event permit in a prominent place in
4192 the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

4193 (4) An event permittee may not on the premises of the event:

4194 (a) engage in or allow any form of gambling, as defined and proscribed in Title 76,
4195 Chapter 10, Part 11, Gambling;

4196 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
4197 Part 11, Gambling; or

4198 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
4199 the risking of something of value for a return or for an outcome when the return or outcome is
4200 based upon an element of chance, excluding the playing of an amusement device that confers
4201 only an immediate and unrecorded right of replay not exchangeable for value.

Enrolled Copy

S.B. 314

4202 (5) An event permittee may not knowingly allow a person at an event to, in violation of
4203 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
4204 Paraphernalia Act:

4205 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
4206 58-37-2; or

4207 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
4208 Section 58-37a-3.

4209 (6) An event permittee may not sell, offer for sale, or furnish beer except beer
4210 purchases from:

4211 (a) a beer wholesaler licensee;

4212 (b) a beer retailer; or

4213 (c) a small brewer.

4214 (7) An event permittee may not store, sell, offer for sale, furnish, or allow the
4215 consumption of an alcoholic product purchased for an event in a location other than that
4216 described in the application and designated on the event permit unless the event permittee first
4217 applies for and receives approval from the commission for a change of location.

4218 (8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or
4219 furnish beer for on-premise consumption:

4220 (i) in an open original [~~package~~] container; and

4221 (ii) in a [~~package~~] container on draft.

4222 (b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to
4223 Subsection (8)(a):

4224 (i) in a size of [~~package~~] container that exceeds two liters; or

4225 (ii) to an individual patron in a size of [~~package~~] container that exceeds one liter.

4226 (9) (a) An event permittee may not sell or offer for sale an alcoholic product at less
4227 than the cost of the alcoholic product to the event permittee.

4228 (b) An event permittee may not sell an alcoholic product at a discount price on any date
4229 or at any time.

S.B. 314

Enrolled Copy

4230 ~~[(b)]~~ (c) An event permittee may not sell or offer for sale an alcoholic product at a price
4231 that encourages over consumption or intoxication.

4232 ~~[(c)]~~ (d) An event permittee may not sell or offer for sale an alcoholic product at a
4233 special or reduced price for only certain hours of the day of an event.

4234 ~~[(d)]~~ (e) An event permittee may not sell, offer for sale, or furnish more than one
4235 alcoholic product at the price of a single alcoholic product.

4236 (f) An event permittee, or a person operating, selling, offering, or furnishing an
4237 alcoholic product under an event permit, may not sell, offer for sale, or furnish an indefinite or
4238 unlimited number of alcoholic products during a set period for a fixed price, unless:

4239 (i) the alcoholic product is served to a patron at a seated event;

4240 (ii) food is available whenever the alcoholic product is sold, offered for sale, or
4241 furnished; and

4242 (iii) no person advertises that at the event a person may be sold or furnished an
4243 indefinite or unlimited number of alcoholic products during a set period for a fixed price.

4244 ~~[(e)]~~ (g) An event permittee may not engage in a public promotion involving or
4245 offering a free alcoholic product to the general public.

4246 (10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

4247 (a) a minor;

4248 (b) a person actually, apparently, or obviously intoxicated;

4249 (c) a known interdicted person; or

4250 (d) a known habitual drunkard.

4251 (11) (a) An alcoholic product is considered under the control of the event permittee
4252 during an event.

4253 (b) A patron at an event may not bring an alcoholic product onto the premises of the
4254 event.

4255 (12) An event permittee may not permit a patron to carry from the premises an open
4256 ~~[package]~~ container that:

4257 (a) is used primarily for drinking purposes; and

Enrolled Copy

S.B. 314

4258 (b) contains an alcoholic product.

4259 (13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at
4260 an event is considered under the supervision and direction of the event permittee.

4261 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at
4262 an event may not, while on duty:

4263 (i) consume an alcoholic product; or

4264 (ii) be intoxicated.

4265 (14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an
4266 event.

4267 (15) The location specified in an event permit may not be changed without prior
4268 written approval of the commission.

4269 (16) An event permittee may not sell, transfer, assign, exchange, barter, give, or
4270 attempt in any way to dispose of the event permit to another person whether for monetary gain
4271 or not.

4272 (17) (a) An event permittee may not sell, offer for sale, furnish, or allow the
4273 consumption of an alcoholic product during a period that:

4274 (i) begins at 1 a.m.; and

4275 (ii) ends at 9:59 a.m.

4276 (b) This Subsection (17) does not preclude a local authority from being more restrictive
4277 with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic
4278 product at an event.

4279 (18) A patron may have no more than one alcoholic product of any kind at a time
4280 before the patron.

4281 (19) (a) An event permittee shall display, in a prominent place, a sign in large letters
4282 that consists of text in the following order:

4283 (i) a header that reads: "WARNING";

4284 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
4285 can cause birth defects and permanent brain damage for the child.";

S.B. 314

Enrolled Copy

4286 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
4287 [insert most current toll-free number] with questions or for more information.";

4288 (iv) a header that reads: "WARNING"; and

4289 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
4290 serious crime that is prosecuted aggressively in Utah."

4291 (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different
4292 font style than the text described in Subsections (19)(a)(iv) and (v).

4293 (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the
4294 same font size.

4295 (c) The Department of Health shall work with the commission and department to
4296 facilitate consistency in the format of a sign required under this section.

4297 Section 83. Section **32B-9-304 (Effective 07/01/11)** is amended to read:

4298 **32B-9-304 (Effective 07/01/11). Specific permitting requirements for single event**
4299 **permit.**

4300 (1) To obtain a single event permit, in addition to complying with Part 2, Event
4301 Permitting General Provisions, an entity described in Subsection 32B-9-303(2)(a) shall state in
4302 its written application:

4303 (a) the purpose of the entity described in Subsection 32B-9-303(2)(a);

4304 (b) the time period under Subsection 32B-9-303(3)(a)(i)(A) or (B) for which the entity
4305 is applying; and

4306 (c) if submitting the first request for a single event permit in a calendar year, whether it
4307 is requesting to be under Subsection 32B-9-303(4)(a) or (b).

4308 (2) The application fee for a single event permit is [~~\$100~~] \$125.

4309 (3) The bond amount required for a single event permit is the penal sum of \$1,000.

4310 Section 84. Section **32B-9-305 (Effective 07/01/11)** is amended to read:

4311 **32B-9-305 (Effective 07/01/11). Specific operational requirements for single event**
4312 **permit.**

4313 (1) (a) In addition to complying with Section 32B-9-204, a single event permittee or a

Enrolled Copy

S.B. 314

4314 person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the
4315 event shall comply with this section.

4316 (b) Failure to comply as provided in Subsection (1)(a):

4317 (i) may result in:

4318 (A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
4319 Enforcement Act, against:

4320 (I) a single event permittee;

4321 (II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic
4322 product at the event; or

4323 (III) any combination of persons listed in this Subsection (1)(b);

4324 (B) immediate revocation of the single event permit;

4325 (C) forfeiture of a bond; or

4326 (D) immediate seizure of an alcoholic product present at the event; and

4327 (ii) if the single event permit is revoked, disqualifies the single event permittee from
4328 applying for a single event permit or temporary beer event permit for a period of three years
4329 from the date of revocation of the single event permit.

4330 (c) An alcoholic product seized under this Subsection (1) shall be returned to the single
4331 event permittee after an event if forfeiture proceedings are not instituted under Section
4332 32B-4-206.

4333 (2) (a) A single event permittee shall make and maintain an expense and revenue
4334 ledger or record showing:

4335 (i) expenditures made for:

4336 (A) liquor;

4337 (B) beer;

4338 (C) set-ups; and

4339 (D) an ingredient or component of an alcoholic product other than a set-up; and

4340 (ii) the revenue from the sale of an alcoholic product.

4341 (b) Section 32B-1-205 applies to a record required to be made or maintained in

S.B. 314

Enrolled Copy

4342 accordance with this Subsection (2).

4343 (3) A single event permittee shall purchase liquor stored, sold, offered for sale,
4344 furnished, or consumed at an event from a state store or package agency.

4345 (4) (a) A single event permittee may not sell, offer for sale, or furnish a primary
4346 spirituous liquor in a quantity that exceeds 1.5 ounces per beverage, except that additional
4347 spirituous liquor may be used in a beverage if:

4348 (i) used as a secondary flavoring ingredient;

4349 (ii) used in conjunction with the primary spirituous liquor;

4350 (iii) the secondary ingredient is not the only spirituous liquor in the beverage; and

4351 (iv) subject to Subsection 32B-9-204(18):

4352 [~~(iv)~~] (A) a patron has no more than 2.5 ounces of spirituous liquor at a time before the
4353 patron; and

4354 [~~(v)~~] (B) a patron has no more than one spirituous liquor drink at a time before the
4355 patron.

4356 (b) Spirituous liquor need not be dispensed through a calibrated metered dispensing
4357 system.

4358 (5) (a) A single event permittee may sell, offer for sale, or furnish wine by the glass or
4359 an individual portion, except that a glass or individual portion may not exceed five ounces.

4360 (b) A single event permittee may furnish an individual portion served to a patron in
4361 more than one glass if the total amount of wine does not exceed five ounces.

4362 (c) An individual portion of wine is considered to be one alcoholic product under
4363 Subsection 32B-9-204[~~(12)~~](18).

4364 (d) A single event permittee may sell, offer for sale, or furnish wine in a [~~package~~]
4365 container not exceeding 1.5 liters at a price fixed by the commission.

4366 (6) A single event permittee may sell, offer for sale, or furnish heavy beer in an original
4367 [~~package~~] container at a price fixed by the commission, except that the original [~~package~~]
4368 container may not exceed one liter.

4369 (7) A single event permittee may sell, offer for sale, or furnish a flavored malt beverage

Enrolled Copy

S.B. 314

4370 in an original [~~package~~] container at a price fixed by the commission, except that the original
4371 [~~package~~] container may not exceed one liter.

4372 (8) [~~(a)~~] A single event permittee may sell liquor only at a price fixed by the
4373 commission.

4374 [~~(b) A single event permittee may not sell liquor at a discount price on any date or at~~
4375 ~~any time.~~]

4376 (9) A single event permittee may perform a service and assess a service charge as
4377 authorized by commission rule for liquor purchased at an event.

4378 Section 85. Section **32B-9-405 (Effective 07/01/11)** is amended to read:

4379 **32B-9-405 (Effective 07/01/11). Specific permitting requirements for temporary**
4380 **beer event permit issued by commission.**

4381 (1) To obtain a temporary beer event permit, in addition to complying with Part 2,
4382 Event Permitting General Provisions, a person shall state in the person's written application the
4383 purpose of the event for which the person seeks a temporary beer event permit.

4384 (2) The application fee for a beer permit is [~~\$75~~] \$100.

4385 (3) The bond amount required for a beer permit is the penal sum of \$500.

4386 Section 86. Section **32B-10-303 (Effective 07/01/11)** is amended to read:

4387 **32B-10-303 (Effective 07/01/11). Specific application and renewal requirements**
4388 **for public service permit.**

4389 (1) To obtain a public service permit, in addition to complying with Section
4390 32B-10-202, a person shall submit to the department:

4391 (a) a statement of the total of regularly numbered flights, trains, buses, boats, or other
4392 types of public conveyance for which the person plans to use the special use permit;

4393 (b) a floor plan of any room or facility in which the person plans to establish a
4394 hospitality room where the sale, offer for sale, or furnishing of an alcoholic product is made to
4395 a patron then in transit, using the host company's airline, railroad, bus, boat, or other public
4396 conveyance; and

4397 (c) evidence of proximity of a proposed hospitality room to the arrival and departure

S.B. 314

Enrolled Copy

4398 area used by a person traveling on the host company's airline, railroad, bus, boat, or other
4399 public conveyance.

4400 (2) (a) The nonrefundable application fee for a public service permit is [~~\$50~~] \$75.

4401 (b) The initial permit fee for a public service permit is [~~\$200~~] \$250.

4402 (c) The bond amount required for a public service permittee is the penal sum of \$1,000.

4403 (3) (a) To renew a public service permit, a person shall comply with Section
4404 32B-10-203.

4405 (b) The renewal fee for a public service permit is \$30 for each regularly numbered
4406 passenger airplane flight, passenger train, bus, boat, or any other regularly scheduled public
4407 conveyance upon which an alcoholic product is sold, offered for sale, or furnished.

4408 Section 87. Section **32B-10-304 (Effective 07/01/11)** is amended to read:

4409 **32B-10-304 (Effective 07/01/11). Specific operational requirements for a public**
4410 **service permit.**

4411 (1) (a) In addition to complying with Section 32B-10-206, a public service permittee
4412 and staff of the public service permittee shall comply with this section.

4413 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
4414 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

4415 (i) a public service permittee;

4416 (ii) individual staff of a public service permittee; or

4417 (iii) both a public service permittee and staff of the public service permittee.

4418 (2) (a) A public service permittee whose public conveyances operate on an interstate
4419 basis may do the following:

4420 (i) purchase an alcoholic product outside of the state;

4421 (ii) bring an alcoholic product purchased outside of the state into the state; and

4422 (iii) sell, offer for sale, and furnish an alcoholic product purchased outside of the state
4423 to a passenger traveling on the public service permittee's public conveyance for consumption
4424 while en route on the public conveyance.

4425 (b) A public service permittee whose public conveyance operates solely within the

Enrolled Copy

S.B. 314

4426 state, to sell, offer for sale, or furnish to a passenger traveling on the public service permittee's
4427 public conveyance for consumption while en route on the public conveyance, shall purchase:

4428 (i) liquor from a state store or package agency; and

4429 (ii) beer from a beer wholesaler licensee.

4430 (3) (a) A public service permittee may establish a hospitality room in which an
4431 alcoholic product may be stored, sold, offered for sale, furnished, and consumed, if:

4432 (i) the room is located within a depot, terminal, or similar facility adjacent to and
4433 servicing the public service permittee's airline, railroad, bus, boat, or other public conveyance;

4434 (ii) the room is completely enclosed and the interior is not visible to the public;

4435 (iii) the sale, offer for sale, or furnishing of an alcoholic product is made only to a
4436 person:

4437 (A) then in transit using the host company's airline, railroad, bus line, or other public
4438 conveyance; and

4439 (B) holding a valid boarding pass or similar travel document issued by the host
4440 company; and

4441 (iv) (A) liquor is purchased from:

4442 (I) a state store; or

4443 (II) a package agency; and

4444 (B) beer is purchased from a beer wholesaler licensee.

4445 (b) (i) A public service permittee operating a hospitality room shall display in a
4446 prominent place in the hospitality room, a sign in large letters [~~stating: "Warning: Driving~~
4447 ~~under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in~~
4448 ~~Utah."~~] that consists of text in the following order:

4449 (A) a header that reads: "WARNING";

4450 (B) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
4451 can cause birth defects and permanent brain damage for the child.";

4452 (C) a statement in smaller font that reads: "Call the Utah Department of Health at
4453 [insert most current toll-free number] with questions or for more information.";

S.B. 314

Enrolled Copy

4454 (D) a header that reads: "WARNING"; and

4455 (E) a warning statement that reads: "Driving under the influence of alcohol or drugs is
4456 a serious crime that is prosecuted aggressively in Utah."

4457 (ii) (A) The text described in Subsections (3)(b)(i)(A) through (C) shall be in a
4458 different font style than the text described in Subsections (3)(b)(i)(D) and (E).

4459 (B) The warning statements in the sign described in Subsection (3)(b)(i) shall be in the
4460 same font size.

4461 (iii) The Department of Health shall work with the commission and department to
4462 facilitate consistency in the format of a sign required under this section.

4463 (c) A hospitality room shall be operated in accordance with this chapter and rules
4464 adopted by the commission.

4465 Section 88. Section **32B-10-403 (Effective 07/01/11)** is amended to read:

4466 **32B-10-403 (Effective 07/01/11). Specific application requirements for industrial**
4467 **or manufacturing use permit.**

4468 (1) To obtain an industrial or manufacturing use permit, in addition to complying with
4469 Section 32B-10-202, a person shall submit to the department:

4470 (a) a floor plan of the immediate area within the premises in which the person proposes
4471 that an alcoholic product be used, mixed, stored, sold, offered for sale, furnished, or consumed;
4472 and

4473 (b) if the person is applying for an industrial or manufacturing use permit to produce
4474 gasohol or any alcoholic product, evidence that the person has:

4475 (i) an approved Notice of Registration of Distilled Spirits Plant; and

4476 (ii) the appropriate permit from the federal Alcohol and Tobacco Tax and Trade
4477 Bureau.

4478 (2) (a) The nonrefundable application fee for an industrial or manufacturing use permit
4479 is [~~\$50~~] \$75.

4480 (b) The one-time special use permit fee for an industrial or manufacturing use permit is
4481 [~~\$200~~] \$250.

Enrolled Copy

S.B. 314

4482 (c) The bond amount required for an industrial or manufacturing use permit is the
4483 penal sum of \$1,000.

4484 Section 89. Section **32B-10-404 (Effective 07/01/11)** is amended to read:

4485 **32B-10-404 (Effective 07/01/11). Specific operational requirements for industrial**
4486 **or manufacturing use permit.**

4487 (1) (a) In addition to complying with Section 32B-10-206, an industrial or
4488 manufacturing use permittee and staff of the industrial or manufacturing use permittee shall
4489 comply with this section.

4490 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
4491 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

4492 (i) an industrial or manufacturing use permittee;

4493 (ii) individual staff of an industrial or manufacturing use permittee; or

4494 (iii) an industrial or manufacturing use permittee and staff of the industrial or
4495 manufacturing use permittee.

4496 (2) An industrial or manufacturing use permittee may produce for lawful use and sale
4497 the following:

4498 (a) vinegar;

4499 (b) preserved nonintoxicating cider;

4500 (c) a food preparation;

4501 (d) a United States Pharmacopoeia or national formulary preparation in conformity
4502 with Title 58, Chapters 17b, 37, 37a, 37b, and 37c, if the preparation:

4503 (i) conforms to standards established by:

4504 (A) the Department of Agriculture and Food; and

4505 (B) the Department of Health; and

4506 (ii) contains no more alcohol than is necessary to preserve or extract the medicinal,
4507 flavoring, or perfumed properties of the treated substances; and

4508 (e) wood and denatured alcohol if manufactured in compliance with the formulas and
4509 regulations under Title 27, C.F.R. Parts 19, 20, and 21.

S.B. 314

Enrolled Copy

4510 (3) (a) An industrial or manufacturing use permittee that produces patent or proprietary
4511 medicines containing alcohol may sell or offer for sale the medicines in the original and
4512 unbroken [~~package~~] container if the medicine contains sufficient medication to prevent its use
4513 as an alcoholic product.

4514 (b) An industrial or manufacturing use permittee described in this Subsection (3) shall,
4515 upon request by the department, provide a sufficient sample of the medicine to enable the
4516 department to have the medicine analyzed for purposes of this section.

4517 Section 90. Section **32B-10-503 (Effective 07/01/11)** is amended to read:

4518 **32B-10-503 (Effective 07/01/11). Specific application requirements for scientific**
4519 **or educational use permit.**

4520 (1) To obtain a scientific or educational use permit, a person shall comply with Section
4521 32B-10-202.

4522 (2) The one-time special use permit fee for a scientific or educational use permit is
4523 [~~\$100~~] \$125.

4524 Section 91. Section **32B-10-603 (Effective 07/01/11)** is amended to read:

4525 **32B-10-603 (Effective 07/01/11). Specific application requirements for religious**
4526 **wine use permit.**

4527 (1) To purchase an alcoholic product from the department at the department's cost plus
4528 freight charges, a religious organization shall obtain a religious wine use permit.

4529 (2) To obtain a religious wine permit, a person shall comply with Section 32B-10-202.

4530 (3) The one-time special use permit fee for a religious wine use permit is [~~\$100~~] \$125.

4531 Section 92. Section **32B-11-201 (Effective 07/01/11)** is amended to read:

4532 **32B-11-201 (Effective 07/01/11). Commission's power to issue a manufacturing**
4533 **license -- Certificates of approval.**

4534 (1) (a) Except as provided in Section 32B-11-202, before a person may manufacture an
4535 alcoholic product in this state, the person shall obtain an alcoholic product manufacturing
4536 license issued by the commission in accordance with this part.

4537 (b) A separate license is required for each place of storage, sale, and manufacture of an

Enrolled Copy

S.B. 314

4538 alcoholic product.

4539 (c) A violation of this Subsection (1) is a class B misdemeanor.

4540 (2) The commission may issue an alcoholic product manufacturing license to a
4541 manufacturer whose business is located in this state for the storage, sale, and manufacture of an
4542 alcoholic product for each type of manufacturing license provided by this chapter.

4543 (3) The types of manufacturing licenses issued under this chapter are known as:

4544 (a) a winery manufacturing license;

4545 (b) a distillery manufacturing license; and

4546 (c) a brewery manufacturing license.

4547 (4) (a) A brewer located outside the state is not required to be licensed under this
4548 chapter.

4549 (b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from
4550 the department before selling or delivering:

4551 (i) beer to a beer wholesaler licensee in this state;

4552 (ii) a flavored malt beverage to:

4553 (A) the department; or

4554 (B) a military installation; or

4555 (iii) if a small brewer, beer to one of the following in the state:

4556 (A) a beer wholesaler licensee;

4557 (B) a beer retailer; or

4558 (C) an event permittee.

4559 (c) To obtain a certificate of approval, a brewer shall submit to the department:

4560 (i) a written application in a form prescribed by the department;

4561 (ii) a nonrefundable [~~\$50~~] \$75 application fee;

4562 (iii) an initial certificate of approval fee of [~~\$250~~] \$300 that is refundable if a
4563 certificate of approval is not issued;

4564 (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau
4565 of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt

S.B. 314

Enrolled Copy

4566 beverage; and

4567 (v) any other information the commission or department may require.

4568 (d) (i) ~~[A]~~ One of the following shall sign and verify a written application under this

4569 Subsection (4) ~~[shall be signed and verified]~~ by oath or affirmation ~~[by]~~:

4570 (A) a partner if the brewer is a partnership; or

4571 (B) an executive officer, manager, or person specifically authorized by a corporation or
4572 limited liability company to sign the application.

4573 (ii) A brewer filing an application shall attach to the application written evidence of the
4574 authority of the person described in Subsection (4)(d)(i) to sign the application.

4575 (e) (i) A certificate of approval under this Subsection (4) expires on December 31 of
4576 each year.

4577 (ii) A brewer desiring to renew its certificate of approval shall submit to the
4578 department by no later than November 30 of the year the certificate of approval expires:

4579 (A) a completed renewal application in the form prescribed by the department; and

4580 (B) a renewal ~~[fee]~~ fee of ~~[\$200]~~ \$250.

4581 (iii) Failure to meet the renewal requirements results in an automatic forfeiture of the
4582 certificate of approval effective on the date the existing certificate of approval expires.

4583 (5) (a) An importer or supplier of beer, heavy beer, or flavored malt beverages who is
4584 not required to be licensed under this title shall obtain a certificate of approval from the
4585 department before selling or delivering:

4586 (i) beer to a beer wholesaler licensee in this state; or

4587 (ii) heavy beer or a flavored malt beverage to:

4588 (A) the department; or

4589 (B) a military installation.

4590 (b) To obtain a certificate of approval, an importer or supplier described in Subsection
4591 (5)(a) shall submit to the department:

4592 (i) a written application in a form prescribed by the department;

4593 (ii) a nonrefundable \$75 application fee;

Enrolled Copy

S.B. 314

4594 (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of
4595 approval is not issued;

4596 (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau
4597 of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt
4598 beverage; and

4599 (v) any other information the commission or department may require.

4600 (c) (i) One of the following shall sign and verify a written application under this
4601 Subsection (5) by oath or affirmation:

4602 (A) a partner if the importer or supplier is a partnership; or

4603 (B) an executive officer, manager, or person specifically authorized by a corporation or
4604 limited liability company to sign the application.

4605 (ii) An importer or supplier filing an application under this Subsection (5) shall attach
4606 to the application written evidence of the authority of the person described in Subsection
4607 (5)(c)(i) to sign the application.

4608 (d) (i) A certificate of approval under this Subsection (5) expires on December 31 of
4609 each year.

4610 (ii) An importer or supplier desiring to renew its certificate of approval shall submit to
4611 the department by no later than November 30 of the year the certificate of approval expires:

4612 (A) a completed renewal application in the form prescribed by the department; and

4613 (B) a renewal fee of \$250.

4614 (iii) Failure to meet the renewal requirements results in an automatic forfeiture of the
4615 certificate of approval effective on the date the existing certificate of approval expires.

4616 (6) (a) Subject to Subsection (7), a brewer, importer, or supplier required to hold a
4617 certificate of approval under this section may not distribute beer in this state except under a
4618 written agreement with a beer wholesaler licensee in this state.

4619 (b) An agreement described in Subsection (6)(a) shall:

4620 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
4621 persons entering into the agreement;

S.B. 314

Enrolled Copy

4622 (ii) designate the one or more brands that may be distributed in the sales territory; and

4623 (iii) set forth the exact geographical area of the sales territory.

4624 (c) A brewer, importer of beer, or supplier of beer may have more than one agreement
4625 described in this Subsection (6) if each brand of the brewer, importer, or supplier distributed in
4626 the state is covered by one exclusive sales territory.

4627 (d) A brewer, importer of beer, or supplier of beer may not enter into an agreement
4628 with more than one beer wholesaler licensee to distribute the same brand of beer in the same
4629 sales territory or any portion of the sales territory.

4630 (7) A small brewer is not subject to the requirements of Subsection (6).

4631 Section 93. Section **32B-11-203 (Effective 07/01/11)** is amended to read:

4632 **32B-11-203 (Effective 07/01/11). Application requirements for a manufacturing**
4633 **license.**

4634 To obtain an alcoholic product manufacturing license, a person shall submit to the
4635 department:

4636 (1) a written application in a form prescribed by the department;

4637 (2) a nonrefundable application fee of [~~\$250~~] \$300;

4638 (3) an initial license fee of [~~\$3,250~~] \$3,800:

4639 (a) unless otherwise provided in this chapter; and

4640 (b) that is refundable if a license is not issued;

4641 (4) written consent of the local authority;

4642 (5) a statement of the purpose for which the person has applied for the manufacturing
4643 license;

4644 (6) evidence that the person is authorized by the United States to manufacture an
4645 alcoholic product;

4646 (7) a bond as specified by Section 32B-11-207;

4647 (8) evidence that the person is carrying public liability insurance in an amount and
4648 form satisfactory to the department;

4649 (9) a signed consent form stating that the manufacturing licensee will permit any

Enrolled Copy

S.B. 314

4650 authorized representative of the commission, department, or any law enforcement officer to
4651 have unrestricted right to enter the licensed premises;

4652 (10) if the person is an entity, proper verification evidencing that a person who signs
4653 the application is authorized to sign on behalf of the entity; and

4654 (11) any other information the commission or department may require.

4655 Section 94. Section **32B-11-204 (Effective 07/01/11)** is amended to read:

4656 **32B-11-204 (Effective 07/01/11). Renewal requirements for a manufacturing**
4657 **license.**

4658 (1) A manufacturing license expires on December 31 of each year.

4659 (2) To renew a manufacturing license, a person shall submit by no later than November
4660 30 of the year the license expires:

4661 (a) a completed renewal application to the department, in a form prescribed by the
4662 department; and

4663 (b) a renewal fee in the following amount of:

4664 (i) [~~\$2,500~~] \$2,900, except for a wine manufacturing license described in Subsection
4665 (2)(b)(ii); or

4666 (ii) [~~\$1,200~~] \$1,400 for a winery manufacturing license if the winery manufacturing
4667 licensee produces less than 20,000 gallons of wine in the calendar year preceding the year in
4668 which the manufacturing licensee seeks renewal.

4669 (3) Failure to meet the renewal requirements results in an automatic forfeiture of a
4670 manufacturing license effective on the date the existing manufacturing license expires.

4671 Section 95. Section **32B-11-503 (Effective 07/01/11)** is amended to read:

4672 **32B-11-503 (Effective 07/01/11). Specific authority and operational requirements**
4673 **for brewery manufacturing license.**

4674 (1) A brewery manufacturing license allows a brewery manufacturing licensee to:

4675 (a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt
4676 beverages;

4677 (b) sell heavy beer and a flavored malt beverage to:

S.B. 314

Enrolled Copy

- 4678 (i) the department;
- 4679 (ii) a military installation; or
- 4680 (iii) an out-of-state customer;
- 4681 (c) sell beer to a beer wholesaler licensee;
- 4682 (d) in the case of a small brewer, in accordance with Subsection (5), sell beer
- 4683 manufactured by the small brewer to:
- 4684 (i) a retail licensee;
- 4685 (ii) an off-premise beer retailer; or
- 4686 (iii) an event permittee; and
- 4687 (e) warehouse on its premises an alcoholic product that the brewery manufacturing
- 4688 licensee manufactures or purchases for manufacturing purposes.
- 4689 (2) A brewery manufacturing licensee may not sell the following to a person within the
- 4690 state except the department or a military installation:
- 4691 (a) heavy beer; or
- 4692 (b) a flavored malt beverage.
- 4693 (3) If considered necessary, the commission or department may require:
- 4694 (a) the alteration of the plant, equipment, or licensed premises;
- 4695 (b) the alteration or removal of any unsuitable alcoholic product-making equipment or
- 4696 material;
- 4697 (c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise
- 4698 improve the sanitary and working conditions of the plant, licensed premises, and equipment; or
- 4699 (d) that a record pertaining to the materials and ingredients used in the manufacture of
- 4700 an alcoholic product be available to the commission or department upon request.
- 4701 (4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored
- 4702 malt beverage to be consumed on the licensed premises, except under the circumstances
- 4703 described in this Subsection (4).
- 4704 (a) A brewery manufacturing licensee may allow its off-duty staff to consume beer,
- 4705 heavy beer, or a flavored malt beverage on its premises without charge.

Enrolled Copy

S.B. 314

4706 (b) A brewery manufacturing licensee may allow a person who can lawfully purchase
4707 the following for wholesale or retail distribution to consume a bona fide sample of the brewery
4708 manufacturing licensee's product on the licensed premises:

- 4709 (i) beer;
- 4710 (ii) heavy beer; or
- 4711 (iii) a flavored malt beverage.

4712 (c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail
4713 facility allowing consumption on premises of beer in a bottle or on draft if food is also
4714 available.

4715 (ii) A retail facility located on the licensed premises of a brewery manufacturing
4716 licensee shall be operated or supervised by the brewery manufacturing licensee.

4717 (iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing
4718 licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer
4719 Local Authority.

4720 (5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility
4721 located in this state for the storage of beer to be sold to a person described in Subsection (1)(d)
4722 if the small brewer:

- 4723 (i) (A) (I) is located in this state; and
- 4724 (II) holds a brewery manufacturing license; or
- 4725 (B) (I) is located outside this state; and
- 4726 (II) holds a certificate of approval to sell beer in this state; and

4727 (ii) sells beer manufactured by the small brewer directly to a person described in
4728 Subsection (1)(d).

4729 (b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless
4730 the beer:

- 4731 (i) is manufactured by the small brewer; and
- 4732 (ii) is first placed in the small brewer's warehouse facility in this state.

4733 (c) (i) A small brewer warehouse shall make and maintain complete beer importation,

S.B. 314

Enrolled Copy

4734 inventory, tax, distribution, sales records, and other records as the department and State Tax
4735 Commission may require.

4736 (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:

4737 (A) the department; and

4738 (B) the State Tax Commission.

4739 (iii) Section 32B-1-205 applies to a record required to be made or maintained in
4740 accordance with this Subsection (5), except that the provision is considered to include an action
4741 described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission,
4742 or an official or employee of the State Tax Commission.

4743 (6) Subject to Subsection (7):

4744 (a) A brewery manufacturing licensee may not sell beer in this state except under a
4745 written agreement with a beer wholesaler licensee in this state.

4746 (b) An agreement described in Subsection (6)(a) shall:

4747 (i) create a restricted exclusive sales territory that is mutually agreed upon by the
4748 persons entering into the agreement;

4749 (ii) designate the one or more brands that may be distributed in the sales territory; and

4750 (iii) set forth the exact geographical area of the sales territory.

4751 (c) A brewery manufacturing licensee may have more than one agreement described in
4752 this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one
4753 exclusive sales territory.

4754 (d) A brewery manufacturing licensee may not enter into an agreement with more than
4755 one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or
4756 any portion of the sales territory.

4757 (7) A small brewer is not subject to the requirements of Subsection (6).

4758 Section 96. Section **32B-11-604 (Effective 07/01/11)** is amended to read:

4759 **32B-11-604 (Effective 07/01/11). Application for local industry representative**
4760 **license.**

4761 (1) To obtain a local industry representative license, a person shall submit to the

Enrolled Copy

S.B. 314

4762 department:

4763 (a) a written application in a form prescribed by the department;

4764 (b) a nonrefundable [~~\$50~~] \$75 application fee;

4765 (c) an initial license fee of [~~\$100~~] \$125, which is refundable if a local industry

4766 representative license is not issued;

4767 (d) verification that the person is:

4768 (i) a resident of Utah;

4769 (ii) a Utah partnership;

4770 (iii) a Utah corporation; or

4771 (iv) a Utah limited liability company;

4772 (e) an affidavit stating the name and address of any manufacturer, supplier, or importer

4773 the person will represent;

4774 (f) a signed consent form stating that the local industry representative will permit any

4775 authorized representative of the commission, department, or any law enforcement officer to

4776 have an unrestricted right to enter, during normal business hours, the specific premises where

4777 the local industry representative conducts business;

4778 (g) if the person is an entity, proper verification evidencing that a person who signs the

4779 application is authorized to sign on behalf of the entity; and

4780 (h) any other information the commission or department may require.

4781 (2) A local industry representative licensee is not required to pay an additional license

4782 fee to represent more than one manufacturer, supplier, or importer.

4783 Section 97. Section **32B-11-605 (Effective 07/01/11)** is amended to read:

4784 **32B-11-605 (Effective 07/01/11). Renewal requirements for local industry**

4785 **representative license.**

4786 (1) A local industry representative license expires on December 31 of each year.

4787 (2) To renew a local industry representative license, a person shall submit to the

4788 department by no later than November 30 of the year the license expires:

4789 (a) a completed renewal application in a form prescribed by the department;

S.B. 314

Enrolled Copy

4790 (b) a renewal fee of [~~\$100~~] \$125; and

4791 (c) an affidavit stating the name and address of any manufacturer, supplier, or importer
4792 the local industry representative licensee represents at the time of submitting the renewal
4793 application.

4794 (3) Failure to meet the renewal requirements results in an automatic forfeiture of the
4795 local industry representative license effective on the date the existing local industry
4796 representative license expires.

4797 Section 98. Section **32B-11-608 (Effective 07/01/11)** is amended to read:

4798 **32B-11-608 (Effective 07/01/11). Operational requirements for local industry**
4799 **representative license.**

4800 (1) (a) A local industry representative licensee, staff of the local industry representative
4801 licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the
4802 state, shall comply with this title and rules of the commission.

4803 (b) If a person knowingly violates Subsection (1)(a):

4804 (i) the violation may result in disciplinary action in accordance with Chapter 3,
4805 Disciplinary Actions and Enforcement Act, against:

4806 (A) a local industry representative licensee;

4807 (B) individual staff of a local industry representative licensee; or

4808 (C) both a local industry representative licensee and staff of the local industry
4809 representative licensee; and

4810 (ii) if the conditions of Subsection (1)(c) are met, the commission may order:

4811 (A) the removal of the manufacturer's, supplier's, or importer's products from the
4812 department's sales list; and

4813 (B) a suspension of the department's purchase of those products for a period
4814 determined by the commission.

4815 (c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

4816 (i) directly commits the violation; or

4817 (ii) solicits, requests, commands, encourages, or intentionally aides another to engage

Enrolled Copy

S.B. 314

4818 in the violation.

4819 (2) A local industry representative licensee shall display its license in the local industry
4820 representative licensee's principal place of business.

4821 (3) (a) A local industry representative licensee shall maintain on file with the
4822 department a current accounts list of the names and addresses of the manufacturers, suppliers,
4823 and importers the local industry representative licensee represents.

4824 (b) A local industry representative licensee shall notify the department in writing of a
4825 change to its accounts list within 14 days from the date the local industry representative
4826 licensee:

4827 (i) acquires the account of a manufacturer, supplier, or importer; or

4828 (ii) loses the account of a manufacturer, supplier, or importer.

4829 (4) (a) A local industry representative licensee shall make and maintain the records the
4830 department requires for at least three years.

4831 (b) Section 32B-1-205 applies to a record required to be made or maintained in
4832 accordance with this Subsection (4).

4833 (5) Staff of a local industry representative licensee may not be:

4834 (a) a retail licensee that sells, offers for sale, or furnishes liquor;

4835 (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or

4836 (c) a minor.

4837 (6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter,
4838 give, or attempt in any way to dispose of the license to another person, whether for monetary
4839 gain or not.

4840 (b) A local industry representative license has no monetary value for any type of
4841 disposition.

4842 (7) A local industry representative licensee, staff of the local industry representative
4843 licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the
4844 state:

4845 (a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act,

S.B. 314

Enrolled Copy

- 4846 may:
- 4847 (i) assist the department in:
- 4848 (A) ordering, shipping, and delivering merchandise;
- 4849 (B) providing new product notification;
- 4850 (C) obtaining listing and delisting information;
- 4851 (D) receiving price quotations;
- 4852 (E) providing product sales analysis;
- 4853 (F) conducting shelf management; and
- 4854 (G) conducting educational seminars; and
- 4855 (ii) to acquire new listings:
- 4856 (A) solicit orders from the department; and
- 4857 (B) submit to the department price lists and samples of the products of the
- 4858 manufacturer, supplier, or importer;
- 4859 (b) may not sell liquor within the state except to:
- 4860 (i) the department; and
- 4861 (ii) a military installation;
- 4862 (c) may not ship or transport, or cause to be shipped or transported, liquor into this
- 4863 state or from one place to another within this state;
- 4864 (d) may not sell or furnish any liquor to any person within this state other than to:
- 4865 (i) the department; or
- 4866 (ii) a military installation;
- 4867 (e) except as otherwise provided, may not advertise a product the local industry
- 4868 representative licensee represents in violation of this title or any other federal or state law;
- 4869 (f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices
- 4870 Act; and
- 4871 (g) may only provide a sample of a product of the manufacturer, supplier, or importer
- 4872 for tasting and sampling purposes as provided in Section 32B-4-705 by the department.
- 4873 (8) A local industry representative licensee may, to become educated as to the quality

Enrolled Copy

S.B. 314

4874 and characteristics of a liquor that the licensee represents, taste and analyze an industry
4875 representative sample under the conditions listed in this Subsection (8).

4876 (a) A local industry representative licensee may not receive more than two industry
4877 representative samples of a particular type, vintage, and production lot of a particular branded
4878 product within a consecutive 120-day period.

4879 (b) (i) An industry representative sample of liquor may not exceed one liter.

4880 (ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the
4881 following may not exceed 1.5 liters unless that exact product is only commercially packaged in
4882 a larger size, not to exceed 5 liters:

4883 (A) wine;

4884 (B) heavy beer; or

4885 (C) a flavored malt beverage.

4886 (c) An industry representative sample may only be of a product not presently listed on
4887 the department's sales list.

4888 (d) (i) An industry representative sample shall be shipped:

4889 (A) prepaid by the manufacturer, supplier, or importer;

4890 (B) by common carrier and not via United States mail; and

4891 (C) directly to the department's central administrative warehouse office.

4892 (ii) An industry representative sample may not be shipped to any other location within
4893 the state.

4894 (e) An industry representative sample shall be accompanied by a letter from the
4895 manufacturer, supplier, or importer:

4896 (i) clearly identifying the product as an "industry representative sample"; and

4897 (ii) clearly stating:

4898 (A) the FOB case price of the product; and

4899 (B) the name of the local industry representative for whom it is intended.

4900 (f) The department shall assess a reasonable handling, labeling, and storage fee for
4901 each industry representative sample received.

S.B. 314

Enrolled Copy

4902 (g) The department shall affix to a [~~package~~] container a label clearly identifying the
4903 product as an "industry representative sample."

4904 (h) The department shall:

4905 (i) account for and record each industry representative sample received;

4906 (ii) account for the industry representative sample's disposition; and

4907 (iii) maintain a record of the industry representative sample and its disposition for a
4908 two-year period.

4909 (i) An industry representative sample may not leave the premises of the department's
4910 central administrative warehouse office.

4911 (j) A local industry representative licensee's and a local industry representative
4912 licensee's staff may, at regularly scheduled days and times established by the department, taste
4913 and analyze one or more industry representative samples on the premises of the department's
4914 central administrative warehouse office.

4915 (k) The department shall destroy the unused contents of an opened product remaining
4916 after a product is sampled under controlled and audited conditions established by the
4917 department.

4918 (l) An industry representative sample that is not tasted within 30 days of receipt by the
4919 department shall be disposed of at the discretion of the department in one of the following
4920 ways:

4921 (i) the contents destroyed under controlled and audited conditions established by the
4922 department; or

4923 (ii) added to the inventory of the department for sale to the public.

4924 Section 99. Section **32B-12-202 (Effective 07/01/11)** is amended to read:

4925 **32B-12-202 (Effective 07/01/11). Application requirements for liquor**
4926 **warehousing license.**

4927 To obtain a liquor warehousing license, a person shall submit to the department:

4928 (1) a written application in a form prescribed by the department;

4929 (2) a nonrefundable [~~\$250~~] \$300 application fee;

Enrolled Copy

S.B. 314

4930 (3) an initial license fee of [~~\$750~~] \$850, which is refundable if a liquor warehousing
4931 license is not issued;

4932 (4) written consent of the local authority;

4933 (5) a copy of the person's current business license;

4934 (6) a bond as specified by Section 32B-12-206;

4935 (7) a floor plan of the person's warehouse, including the area in which the person
4936 proposes that liquor be stored;

4937 (8) evidence that the person is carrying public liability insurance in an amount and
4938 form satisfactory to the department;

4939 (9) a signed consent form stating that the liquor warehousing licensee will permit any
4940 authorized representative of the commission, department, or any law enforcement officer to
4941 have unrestricted right to enter the licensed premises;

4942 (10) if the person is an entity, proper verification evidencing that a person who signs
4943 the application is authorized to sign on behalf of the entity; and

4944 (11) any other information the commission or department may require.

4945 Section 100. Section **32B-12-203 (Effective 07/01/11)** is amended to read:

4946 **32B-12-203 (Effective 07/01/11). Renewal requirements for liquor warehousing**
4947 **license.**

4948 (1) A liquor warehousing license expires on December 31 of each year.

4949 (2) To renew a liquor warehousing license, a person shall submit to the department by
4950 no later than November 30 of the year the license expires:

4951 (a) a completed renewal application in a form prescribed by the department; and

4952 (b) a renewal fee of [~~\$1,000~~] \$1,200.

4953 (3) Failure to meet the renewal requirements results in an automatic forfeiture of the
4954 liquor warehousing license effective on the date the existing liquor warehousing license
4955 expires.

4956 Section 101. Section **32B-13-201 (Effective 07/01/11)** is amended to read:

4957 **32B-13-201 (Effective 07/01/11). Commission's power to issue beer wholesaling**

S.B. 314

Enrolled Copy

4958 **license.**

4959 (1) (a) Before a person may purchase, store, sell, offer for sale, distribute, or import
4960 beer to a person who sells at retail or acts in any way as a beer wholesaler, the person shall first
4961 obtain a beer wholesaling license issued by the commission in accordance with this chapter.

4962 (b) A violation of Subsection (1)(a) is a class A misdemeanor.

4963 (2) (a) The commission may issue a beer wholesaling license for the purchase, storage,
4964 sale, distribution, transportation, and import of beer.

4965 (b) A beer wholesaling license entitles the beer wholesaler licensee to:

4966 (i) purchase and import beer into the state;

4967 (ii) store beer in an approved warehouse; and

4968 (iii) sell and distribute beer directly to:

4969 (A) a beer retailer; or

4970 (B) an event permittee.

4971 [~~(c) A violation of Subsection (2)(a) is a class A misdemeanor.~~]

4972 (3) Nothing in this section precludes a small brewer from selling beer the small brewer
4973 manufactures directly to:

4974 (a) a retail licensee;

4975 (b) an off-premise beer retailer; or

4976 (c) an event permittee.

4977 Section 102. Section **32B-13-202 (Effective 07/01/11)** is amended to read:

4978 **32B-13-202 (Effective 07/01/11). Application requirements for beer wholesaling**

4979 **license.**

4980 To obtain a beer wholesaling license, a person shall submit to the department:

4981 (1) a written application in a form prescribed by the department;

4982 (2) a nonrefundable [~~\$250~~] \$300 application fee;

4983 (3) an initial license fee of [~~\$2,000~~] \$2,300 that is refundable if a beer wholesaling
4984 license is not issued;

4985 (4) written consent of the local authority;

Enrolled Copy**S.B. 314**

- 4986 (5) a copy of the person's current business license;
- 4987 (6) a bond as specified in Section 32B-13-206;
- 4988 (7) a statement of the brands of beer the person is authorized to sell and distribute;
- 4989 (8) a statement of the ~~[geographical areas]~~ one or more sales territories in which the
- 4990 person is authorized ~~[by the beer manufacturer]~~ to sell and distribute beer under an agreement
- 4991 required by Section 32B-11-201 or 32B-11-503;
- 4992 (9) evidence that the person is carrying public liability insurance in an amount and
- 4993 form satisfactory to the department;
- 4994 (10) a signed consent form stating that the beer wholesaling licensee will permit any
- 4995 authorized representative of the commission, department, or any law enforcement officer to
- 4996 have unrestricted right to enter the licensed premises;
- 4997 (11) if the person is an entity, proper verification evidencing that a person who signs
- 4998 the application is authorized to sign on behalf of the entity; and
- 4999 (12) any other information that the commission or department may require.

5000 Section 103. Section **32B-13-203 (Effective 07/01/11)** is amended to read:

5001 **32B-13-203 (Effective 07/01/11). Renewal requirements for beer wholesaling**

5002 **license.**

- 5003 (1) A beer wholesaling license expires on December 31 of each year.
- 5004 (2) To renew a beer wholesaling license, a person shall submit to the department by no
- 5005 later than November 30 of the year the license expires:
- 5006 (a) a completed renewal application in a form prescribed by the department; and
- 5007 (b) a renewal fee in the following amount:

Case Sales in Previous License Year for the Licensee	Renewal Fee
5009 under 500,000 cases	[\$1,000] <u>\$1,200</u>
5010 equals or exceeds 500,000 cases but less than 1,000,000 cases	[\$2,000] <u>\$2,350</u>
5011 equals or exceeds 1,000,000 cases	[\$3,000] <u>\$3,500.</u>

- 5012 (3) Failure to meet the renewal requirements results in an automatic forfeiture of the
- 5013 beer wholesaling license effective on the date the existing beer wholesaling license expires.

S.B. 314

Enrolled Copy

5014 Section 104. Section **32B-13-301 (Effective 07/01/11)** is amended to read:
5015 **32B-13-301 (Effective 07/01/11). General operational requirements for beer**
5016 **wholesaling license.**

5017 (1) (a) A beer wholesaler licensee and staff of the beer wholesaler licensee shall
5018 comply with this title and the rules of the commission.

5019 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
5020 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

5021 (i) a beer wholesaler licensee;

5022 (ii) individual staff of a beer wholesaler licensee; or

5023 (iii) both a beer wholesaler licensee and staff of the beer wholesaler licensee.

5024 (2) (a) A beer wholesaler licensee shall make and maintain the records required by the
5025 department.

5026 (b) Section 32B-1-205 applies to a record required to be made or maintained in
5027 accordance with this Subsection (2).

5028 (3) A beer wholesaler licensee may not employ a minor to handle an alcoholic product.

5029 (4) A beer wholesaler licensee may not sell, transfer, assign, exchange, barter, give, or
5030 attempt in any way to dispose of the beer wholesaling license to a person, whether for monetary
5031 gain or not, unless it is done:

5032 (a) in accordance with the commission rules; and

5033 (b) after written consent is given by the commission.

5034 (5) A beer wholesaler licensee may not wholesale a beer manufactured within the state
5035 by a brewer who is not licensed by the commission as a brewery manufacturing licensee.

5036 (6) A beer wholesaler licensee may not wholesale a beer manufactured out of state by a
5037 brewer who has not obtained a certificate of approval from the department.

5038 (7) (a) A beer wholesaler licensee may not sell or distribute beer to a person within the
5039 state except to:

5040 (i) a retail licensee;

5041 (ii) an off-premise beer retailer; or

Enrolled Copy

S.B. 314

- 5042 (iii) an event permittee.
- 5043 (b) A violation of this Subsection (7) is a class A misdemeanor.
- 5044 (8) (a) A beer wholesaler licensee may not sell or distribute a beer to a person who sells
5045 the beer at retail outside of [~~the geographic area~~] a sales territory designated on its application
5046 and authorized by an agreement described in Subsection 32B-13-202(8), except that if a beer
5047 wholesaler licensee is temporarily unable to supply a person within the beer wholesaler
5048 licensee's authorized [~~geographical area~~] sales territory, the department may grant temporary
5049 authority to another beer wholesaler licensee who distributes the same brand in another [~~area~~]
5050 sales territory to supply:
- 5051 (i) a retail licensee; or
- 5052 (ii) an off-premise beer retailer.
- 5053 (b) A violation of this Subsection (8) is a class B misdemeanor.
- 5054 (9) (a) A beer wholesaler licensee shall own, lease, or otherwise control and maintain a
5055 warehouse facility located in this state for the receipt, storage, and further distribution of beer
5056 sold by the beer wholesaler licensee to a person within the state.
- 5057 (b) A beer wholesaler licensee may not sell beer to a person in this state, other than the
5058 department, unless the beer is first:
- 5059 (i) physically removed from the vehicle used to transport the beer from the supplier to
5060 the beer wholesaler licensee; and
- 5061 (ii) delivered into the actual possession and control of the beer wholesaler licensee in
5062 its warehouse or other facility.
- 5063 (10) A beer wholesaler licensee may not sell or distribute an alcoholic product that has
5064 not had its label and packaging approved by the department in accordance with Chapter 1, Part
5065 6, Malted Beverage Act.
- 5066 (11) The commission may prescribe by policy or rule, consistent with this title, the
5067 general operational requirements of a beer wholesaling licensee relating to:
- 5068 (a) physical facilities; and
- 5069 (b) the conditions of importation, purchase, storage, sale, offering for sale, distribution,

S.B. 314

Enrolled Copy

5070 or transportation of beer within the state.

5071 Section 105. Section **52-4-205** is amended to read:

5072 **52-4-205. Purposes of closed meetings.**

5073 (1) A closed meeting described under Section 52-4-204 may only be held for:

5074 (a) discussion of the character, professional competence, or physical or mental health
5075 of an individual;

5076 (b) strategy sessions to discuss collective bargaining;

5077 (c) strategy sessions to discuss pending or reasonably imminent litigation;

5078 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
5079 including any form of a water right or water shares, if public discussion of the transaction
5080 would:

5081 (i) disclose the appraisal or estimated value of the property under consideration; or

5082 (ii) prevent the public body from completing the transaction on the best possible terms;

5083 (e) strategy sessions to discuss the sale of real property, including any form of a water
5084 right or water shares, if:

5085 (i) public discussion of the transaction would:

5086 (A) disclose the appraisal or estimated value of the property under consideration; or

5087 (B) prevent the public body from completing the transaction on the best possible terms;

5088 (ii) the public body previously gave public notice that the property would be offered for
5089 sale; and

5090 (iii) the terms of the sale are publicly disclosed before the public body approves the
5091 sale;

5092 (f) discussion regarding deployment of security personnel, devices, or systems;

5093 (g) investigative proceedings regarding allegations of criminal misconduct;

5094 (h) as relates to the Independent Legislative Ethics Commission, conducting business
5095 relating to the receipt or review of ethics complaints;

5096 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
5097 Subsection 52-4-204(1)(a)(iii)(B);

Enrolled Copy

S.B. 314

5098 (j) as relates to a county legislative body, discussing commercial information as
5099 defined in Section 59-1-404; ~~or~~

5100 (k) as relates to the Alcoholic Beverage Control Commission issuing a retail license
5101 under Title 32B, Alcoholic Beverage Control Act, after receiving public input in a public
5102 meeting in support or opposition to the commission issuing the retail license, discussing one or
5103 more of the following factors in a closed meeting:

5104 (i) a factor the commission is required to consider under Section 32B-5-203 or that is
5105 specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail
5106 license at issue;

5107 (ii) the availability of a retail license under a quota;

5108 (iii) the length of time the applicant has waited for a retail license;

5109 (iv) an opening date for the applicant;

5110 (v) whether the applicant is a seasonal business;

5111 (vi) whether the location of the applicant has been previously licensed or is a new
5112 location;

5113 (vii) whether the application involves a change of ownership of an existing location;

5114 (viii) whether the applicant holds other alcohol licenses at any location;

5115 (ix) whether the applicant has a violation history or a pending violation;

5116 (x) projected alcohol sales for the applicant as it relates to the extent to which the retail
5117 license will be used;

5118 (xi) whether the applicant is a small or entrepreneurial business that would benefit the
5119 community in which it would be located;

5120 (xii) the nature of entertainment the applicant proposes; or

5121 (xiii) public input in support or opposition to granting the retail license; or

5122 ~~(k)~~ (l) a purpose for which a meeting is required to be closed under Subsection (2).

5123 (2) The following meetings shall be closed:

5124 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
5125 review report described in Subsection 62A-16-301(1)(a), and the responses to the report

S.B. 314

Enrolled Copy

5126 described in Subsections 62A-16-301(2) and (4); and

5127 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

5128 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
5129 responses to the report described in Subsections 62A-16-301(2) and (4); or

5130 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

5131 (3) A public body may not interview a person applying to fill an elected position in a
5132 closed meeting.

5133 Section 106. Section **62A-15-401 (Effective 07/01/11)** is amended to read:

5134 **62A-15-401 (Effective 07/01/11). Alcohol training and education seminar.**

5135 (1) As used in this part:

5136 (a) "Instructor" means a person that directly provides the instruction during an alcohol
5137 training and education seminar for a seminar provider.

5138 (b) "Licensee" means a person who is:

5139 (i) (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act;
5140 and

5141 (B) engaged in the retail sale of an alcoholic product for consumption on the premises
5142 of the licensee; or

5143 (ii) a business that is:

5144 (A) a new or renewing licensee licensed by a city, town, or county; and

5145 (B) engaged in the retail sale of beer for consumption off the premises of the licensee.

5146 (c) "Off-premise beer retailer" is as defined in Section 32B-1-102.

5147 (d) "Seminar provider" means a person other than the division who provides an alcohol
5148 training and education seminar meeting the requirements of this section.

5149 (2) (a) This section applies to an individual who, as defined by the ~~[board]~~ division by
5150 rule:

5151 (i) manages operations at the premises of a licensee engaged in the retail sale of an
5152 alcoholic product for consumption on the premises of the licensee;

5153 (ii) supervises the serving of an alcoholic product to a customer for consumption on the

Enrolled Copy

S.B. 314

5154 premises of a licensee;

5155 (iii) serves an alcoholic product to a customer for consumption on the premises of a

5156 licensee;

5157 (iv) directly supervises the sale of beer to a customer for consumption off the premises

5158 of an off-premise beer retailer; or

5159 (v) sells beer to a customer for consumption off the premises of an off-premise beer

5160 retailer.

5161 (b) If the individual does not have a valid record that the individual has completed an

5162 alcohol training and education seminar, an individual described in Subsection (2)(a) shall:

5163 (i) (A) complete an alcohol training and education seminar within 30 days of the

5164 following if the individual is described in Subsections (2)(a)(i) through (iii):

5165 (I) if the individual is an employee, the day the individual begins employment;

5166 (II) if the individual is an independent contractor, the day the individual is first hired;

5167 or

5168 (III) if the individual holds an ownership interest in the licensee, the day that the

5169 individual first engages in an activity that would result in that individual being required to

5170 complete an alcohol training and education seminar; or

5171 (B) complete an alcohol training and education seminar within the time periods

5172 specified in Subsection 32B-5-404(1) if the individual is described in Subsections (2)(a)(iv)

5173 and (v); and

5174 (ii) pay a fee:

5175 (A) to the seminar provider; and

5176 (B) that is equal to or greater than the amount established under Subsection (4)(h).

5177 (c) An individual shall have a valid record that the individual completed an alcohol

5178 training and education seminar within the time period provided in this Subsection (2) to engage

5179 in an activity described in Subsection (2)(a).

5180 (d) A record that an individual has completed an alcohol training and education

5181 seminar is valid for:

S.B. 314

Enrolled Copy

5182 (i) three years from the day on which the record is issued for an individual described in
5183 Subsection (2)(a)(i), (ii), or (iii); and

5184 (ii) five years from the day on which the record is issued for an individual described in
5185 Subsection (2)(a)(iv) or (v).

5186 (e) On and after July 1, 2011, to be considered as having completed an alcohol training
5187 and education seminar, an individual shall:

5188 (i) attend the alcohol training and education seminar and take any test required to
5189 demonstrate completion of the alcohol training and education seminar in the physical presence
5190 of an instructor of the seminar provider; or

5191 (ii) complete the alcohol training and education seminar and take any test required to
5192 demonstrate completion of the alcohol training and education seminar through an online course
5193 or testing program that meets the requirements described in Subsection (2)(f).

5194 (f) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah
5195 Administrative Rulemaking Act, establish one or more requirements for an online course or
5196 testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of
5197 the online course or testing program. In developing the requirements by rule the division shall
5198 consider whether to require:

5199 (i) authentication that the an individual accurately identifies the individual as taking the
5200 online course or test;

5201 (ii) measures to ensure that an individual taking the online course or test is focused on
5202 training material throughout the entire training period;

5203 (iii) measures to track the actual time an individual taking the online course or test is
5204 actively engaged online;

5205 (iv) a seminar provider to provide technical support, such as requiring a telephone
5206 number, email, or other method of communication that allows an individual taking the online
5207 course or test to receive assistance if the individual is unable to participate online because of
5208 technical difficulties;

5209 (v) a test to meet quality standards, including randomization of test questions and

Enrolled Copy

S.B. 314

5210 maximum time limits to take a test;

5211 (vi) a seminar provider to have a system to reduce fraud as to who completes an online
5212 course or test, such as requiring a distinct online certificate with information printed on the
5213 certificate that identifies the person taking the online course or test, or requiring measures to
5214 inhibit duplication of a certificate;

5215 (vii) measures for the division to audit online courses or tests;

5216 (viii) measures to allow an individual taking an online course or test to provide an
5217 evaluation of the online course or test;

5218 (ix) a seminar provider to track the Internet protocol address or similar electronic
5219 location of an individual who takes an online course or test;

5220 (x) an individual who takes an online course or test to use an e-signature; or

5221 (xi) a seminar provider to invalidate a certificate if the seminar provider learns that the
5222 certificate does not accurately reflect the individual who took the online course or test.

5223 (3) (a) A licensee may not permit an individual who is not in compliance with
5224 Subsection (2) to:

5225 (i) serve or supervise the serving of an alcoholic product to a customer for
5226 consumption on the premises of the licensee;

5227 (ii) engage in any activity that would constitute managing operations at the premises of
5228 a licensee that engages in the retail sale of an alcoholic product for consumption on the
5229 premises of the licensee;

5230 (iii) directly supervise the sale of beer to a customer for consumption off the premises
5231 of an off-premise beer retailer; or

5232 (iv) sell beer to a customer for consumption off the premises of an off-premise beer
5233 retailer.

5234 (b) A licensee that violates Subsection (3)(a) is subject to Section 32B-5-403.

5235 (4) The division shall:

5236 (a) (i) provide alcohol training and education seminars; or

5237 (ii) certify one or more seminar providers;

S.B. 314

Enrolled Copy

5238 (b) establish the curriculum for an alcohol training and education seminar that includes
5239 the following subjects:

5240 (i) (A) alcohol as a drug; and

5241 (B) alcohol's effect on the body and behavior;

5242 (ii) recognizing the problem drinker or signs of intoxication;

5243 (iii) an overview of state alcohol laws related to responsible beverage sale or service,
5244 as determined in consultation with the Department of Alcoholic Beverage Control;

5245 (iv) dealing with the problem customer, including ways to terminate sale or service;

5246 and

5247 (v) for those supervising or engaging in the retail sale of an alcoholic product for
5248 consumption on the premises of a licensee, alternative means of transportation to get the
5249 customer safely home;

5250 (c) recertify each seminar provider every three years;

5251 (d) monitor compliance with the curriculum described in Subsection (4)(b);

5252 (e) maintain for at least five years a record of every person who has completed an
5253 alcohol training and education seminar;

5254 (f) provide the information described in Subsection (4)(e) on request to:

5255 (i) the Department of Alcoholic Beverage Control;

5256 (ii) law enforcement; or

5257 (iii) a person licensed by the state or a local government to sell an alcoholic product;

5258 (g) provide the Department of Alcoholic Beverage Control on request a list of any
5259 seminar provider certified by the division; and

5260 (h) establish a fee amount for each person attending an alcohol training and education
5261 seminar that is sufficient to offset the division's cost of administering this section.

5262 (5) The ~~[board]~~ division shall by rule made in accordance with Title 63G, Chapter 3,
5263 Utah Administrative Rulemaking Act:

5264 (a) define what constitutes under this section an individual who:

5265 (i) manages operations at the premises of a licensee engaged in the retail sale of an

Enrolled Copy

S.B. 314

5266 alcoholic product for consumption on the premises of the licensee;

5267 (ii) supervises the serving of an alcoholic product to a customer for consumption on the

5268 premises of a licensee;

5269 (iii) serves an alcoholic product to a customer for consumption on the premises of a

5270 licensee;

5271 (iv) directly supervises the sale of beer to a customer for consumption off the premises

5272 of an off-premise beer retailer; or

5273 (v) sells beer to a customer for consumption off the premises of an off-premise beer

5274 retailer;

5275 (b) establish criteria for certifying and recertifying a seminar provider; and

5276 (c) establish guidelines for the manner in which an instructor provides an alcohol

5277 education and training seminar.

5278 (6) A seminar provider shall:

5279 (a) obtain recertification by the division every three years;

5280 (b) ensure that an instructor used by the seminar provider:

5281 (i) follows the curriculum established under this section; and

5282 (ii) conducts an alcohol training and education seminar in accordance with the

5283 guidelines established by rule;

5284 (c) ensure that any information provided by the seminar provider or instructor of a

5285 seminar provider is consistent with:

5286 (i) the curriculum established under this section; and

5287 (ii) this section;

5288 (d) provide the division with the names of all persons who complete an alcohol training

5289 and education seminar provided by the seminar provider;

5290 (e) (i) collect a fee for each person attending an alcohol training and education seminar

5291 in accordance with Subsection (2); and

5292 (ii) forward to the division the portion of the fee that is equal to the amount described

5293 in Subsection (4)(h); and

S.B. 314

Enrolled Copy

5294 (f) issue a record to an individual that completes an alcohol training and education
5295 seminar provided by the seminar provider.

5296 (7) (a) If after a hearing conducted in accordance with Title 63G, Chapter 4,
5297 Administrative Procedures Act, the division finds that a seminar provider violates this section
5298 or that an instructor of the seminar provider violates this section, the division may:

5299 (i) suspend the certification of the seminar provider for a period not to exceed 90 days;

5300 (ii) revoke the certification of the seminar provider;

5301 (iii) require the seminar provider to take corrective action regarding an instructor; or

5302 (iv) prohibit the seminar provider from using an instructor until such time that the
5303 seminar provider establishes to the satisfaction of the division that the instructor is in
5304 compliance with Subsection (6)(b).

5305 (b) The division may certify a seminar provider whose certification is revoked:

5306 (i) no sooner than 90 days from the date the certification is revoked; and

5307 (ii) if the seminar provider establishes to the satisfaction of the division that the
5308 seminar provider will comply with this section.

5309 Section 107. Section **63J-1-201** is amended to read:

5310 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**
5311 **Appropriations based on current tax laws and not to exceed estimated revenues.**

5312 (1) The governor shall deliver, not later than 30 days before the date the Legislature
5313 convenes in the annual general session, a confidential draft copy of the governor's proposed
5314 budget recommendations to the Office of the Legislative Fiscal Analyst.

5315 (2) (a) The governor shall, within the first three days of the annual general session of
5316 the Legislature, submit to the presiding officer of each house of the Legislature:

5317 (i) a proposed budget for the ensuing fiscal year;

5318 (ii) a schedule for all of the proposed appropriations of the budget, with each
5319 appropriation clearly itemized and classified;

5320 (iii) the statement described in Subsection (2)(c); and

5321 (iv) as applicable, a document showing proposed expenditures and estimated revenues

Enrolled Copy

S.B. 314

5322 that are based on changes in state tax laws or rates.

5323 (b) The proposed budget shall include:

5324 (i) a projection of estimated revenues and expenditures for the next fiscal year;

5325 (ii) the source of all direct, indirect, and in-kind matching funds for all federal grants or

5326 assistance programs included in the budget;

5327 (iii) a complete plan of proposed expenditures and estimated revenues for the next

5328 fiscal year that is based upon the current fiscal year state tax laws and rates;

5329 (iv) an itemized estimate of the proposed appropriations for:

5330 (A) the Legislative Department as certified to the governor by the president of the

5331 Senate and the speaker of the House;

5332 (B) the Executive Department;

5333 (C) the Judicial Department as certified to the governor by the state court

5334 administrator;

5335 (D) payment and discharge of the principal and interest of the indebtedness of the state;

5336 (E) the salaries payable by the state under the Utah Constitution or under law for the

5337 lease agreements planned for the next fiscal year;

5338 (F) other purposes that are set forth in the Utah Constitution or under law; and

5339 (G) all other appropriations;

5340 (v) for each line item, the average annual dollar amount of staff funding associated

5341 with all positions that were vacant during the last fiscal year; and

5342 (vi) deficits or anticipated deficits.

5343 (c) The budget shall be accompanied by a statement showing:

5344 (i) the revenues and expenditures for the last fiscal year;

5345 (ii) the current assets, liabilities, and reserves, surplus or deficit, and the debts and

5346 funds of the state;

5347 (iii) an estimate of the state's financial condition as of the beginning and the end of the

5348 period covered by the budget;

5349 (iv) a complete analysis of lease with an option to purchase arrangements entered into

S.B. 314

Enrolled Copy

5350 by state agencies;

5351 (v) the recommendations for each state agency for new full-time employees for the
5352 next fiscal year, which shall also be provided to the State Building Board as required by
5353 Subsection 63A-5-103(2);

5354 (vi) any explanation that the governor may desire to make as to the important features
5355 of the budget and any suggestion as to methods for the reduction of expenditures or increase of
5356 the state's revenue; and

5357 (vii) information detailing certain fee increases as required by Section 63J-1-504.

5358 (3) (a) (i) For the purpose of preparing and reporting the proposed budget, the governor
5359 shall require the proper state officials, including all public and higher education officials, all
5360 heads of executive and administrative departments and state institutions, bureaus, boards,
5361 commissions, and agencies expending or supervising the expenditure of the state money, and
5362 all institutions applying for state money and appropriations, to provide itemized estimates of
5363 revenues and expenditures.

5364 (ii) The governor may also require other information under these guidelines and at
5365 times as the governor may direct, which may include a requirement for program productivity
5366 and performance measures, where appropriate, with emphasis on outcome indicators.

5367 (b) The governor may require representatives of public and higher education, state
5368 departments and institutions, and other institutions or individuals applying for state
5369 appropriations to attend budget meetings.

5370 (c) (i) (A) In submitting the budgets for the Departments of Health and Human
5371 Services and the Office of the Attorney General, the governor shall consider a separate
5372 recommendation in the governor's budget for funds to be contracted to:

5373 (I) local mental health authorities under Section 62A-15-110;

5374 (II) local substance abuse authorities under Section 62A-15-110;

5375 (III) area agencies under Section 62A-3-104.2;

5376 (IV) programs administered directly by and for operation of the Divisions of Substance
5377 Abuse and Mental Health and Aging and Adult Services;

Enrolled Copy

S.B. 314

5378 (V) local health departments under Title 26A, Chapter 1, Local Health Departments;
5379 and

5380 (VI) counties for the operation of Children's Justice Centers under Section 67-5b-102.

5381 (B) In the governor's budget recommendations under Subsections (3)(c)(i)(A)(I), (II),
5382 and (III), the governor shall consider an amount sufficient to grant local health departments,
5383 local mental health authorities, local substance abuse authorities, and area agencies the same
5384 percentage increase for wages and benefits that the governor includes in the governor's budget
5385 for persons employed by the state.

5386 (C) If the governor does not include in the governor's budget an amount sufficient to
5387 grant the increase described in Subsection (3)(c)(i)(B), the governor shall include a message to
5388 the Legislature regarding the governor's reason for not including that amount.

5389 (ii) (A) In submitting the budget for the Department of Agriculture, the governor shall
5390 consider an amount sufficient to grant local conservation districts and Utah Association of
5391 Conservation District employees the same percentage increase for wages and benefits that the
5392 governor includes in the governor's budget for persons employed by the state.

5393 (B) If the governor does not include in the governor's budget an amount sufficient to
5394 grant the increase described in Subsection (3)(c)(ii)(A), the governor shall include a message to
5395 the Legislature regarding the governor's reason for not including that amount.

5396 (iii) (A) In submitting the budget for the Utah State Office of Rehabilitation and the
5397 Division of Services for People with Disabilities, the Division of Child and Family Services,
5398 and the Division of Juvenile Justice Services within the Department of Human Services, the
5399 governor shall consider an amount sufficient to grant employees of corporations that provide
5400 direct services under contract with those divisions, the same percentage increase for
5401 cost-of-living that the governor includes in the governor's budget for persons employed by the
5402 state.

5403 (B) If the governor does not include in the governor's budget an amount sufficient to
5404 grant the increase described in Subsection (3)(c)(iii)(A), the governor shall include a message
5405 to the Legislature regarding the governor's reason for not including that amount.

S.B. 314

Enrolled Copy

5406 (iv) (A) The Families, Agencies, and Communities Together Council may propose a
5407 budget recommendation to the governor for collaborative service delivery systems operated
5408 under Section 63M-9-402, as provided under Subsection 63M-9-201(4)(e).

5409 (B) The Legislature may, through a specific program schedule, designate funds
5410 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

5411 (v) The governor shall include in the governor's budget the state's portion of the budget
5412 for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah
5413 Communications Agency Network Act.

5414 (vi) (A) The governor shall include a separate recommendation in the governor's
5415 budget for funds to maintain the operation and administration of the Utah Comprehensive
5416 Health Insurance Pool.

5417 (B) In making the recommendation, the governor may consider:

5418 (I) actuarial analysis of growth or decline in enrollment projected over a period of at
5419 least three years;

5420 (II) actuarial analysis of the medical and pharmacy claims costs projected over a period
5421 of at least three years;

5422 (III) the annual Medical Care Consumer Price Index;

5423 (IV) the annual base budget for the pool established by the Commerce and Revenue
5424 Appropriations Subcommittee for each fiscal year;

5425 (V) the growth or decline in insurance premium taxes and fees collected by the State
5426 Tax Commission and the Insurance Department; and

5427 (VI) the availability of surplus General Fund revenue under Section 63J-1-312 and
5428 Subsection 59-14-204(5)(b).

5429 (vii) (A) In submitting the budget for the Department of Public Safety, the governor
5430 shall include a separate recommendation in the governor's budget for maintaining a sufficient
5431 number of alcohol-related law enforcement officers to maintain the enforcement ratio equal to
5432 or below the number specified in Subsection 32B-1-201(2).

5433 (B) If the governor does not include in the governor's budget an amount sufficient to

Enrolled Copy**S.B. 314**

5434 maintain the number of alcohol-related law enforcement officers described in Subsection
5435 (3)(c)(vii)(A), the governor shall include a message to the Legislature regarding the governor's
5436 reason for not including that amount.

5437 (d) (i) The governor may revise all estimates, except those relating to the Legislative
5438 Department, the Judicial Department, and those providing for the payment of principal and
5439 interest to the state debt and for the salaries and expenditures specified by the Utah
5440 Constitution or under the laws of the state.

5441 (ii) The estimate for the Legislative Department, as certified by the presiding officers
5442 of both houses, shall be included in the budget without revision by the governor.

5443 (iii) The estimate for the Judicial Department, as certified by the state court
5444 administrator, shall also be included in the budget without revision, but the governor may make
5445 separate recommendations on the estimate.

5446 (e) The total appropriations requested for expenditures authorized by the budget may
5447 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
5448 fiscal year.

5449 (4) In considering the factors in Subsections (3)(c)(vi)(B)(I), (II), and (III) and
5450 Subsections (5)(b)(ii)(A), (B), and (C), the governor and the Legislature may consider the
5451 actuarial data and projections prepared for the board of the Utah Comprehensive Health
5452 Insurance Pool as it develops its financial statements and projections for each fiscal year.

5453 (5) (a) In adopting a budget for each fiscal year, the Legislature shall consider an
5454 amount sufficient to grant local health departments, local mental health authorities, local
5455 substance abuse authorities, area agencies on aging, conservation districts, and Utah
5456 Association of Conservation District employees the same percentage increase for wages and
5457 benefits that is included in the budget for persons employed by the state.

5458 (b) (i) In adopting a budget each year for the Utah Comprehensive Health Insurance
5459 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each
5460 fiscal year.

5461 (ii) When making a determination under Subsection (5)(b)(i), the Legislature shall

S.B. 314

Enrolled Copy

5462 consider factors it determines are appropriate, which may include:

5463 (A) actuarial analysis of growth or decline in enrollment projected over a period of at
5464 least three years;

5465 (B) actuarial analysis of the medical and pharmacy claims costs projected over a period
5466 of at least three years;

5467 (C) the annual Medical Care Consumer Price Index;

5468 (D) the annual base budget for the pool established by the Commerce and Revenue
5469 Appropriations Subcommittee for each fiscal year;

5470 (E) the growth or decline in insurance premium taxes and fees collected by the tax
5471 commission and the insurance department from the previous fiscal year; and

5472 (F) the availability of surplus General Fund revenue under Section 63J-1-312 and
5473 Subsection 59-14-204(5)(b).

5474 (iii) The funds appropriated by the Legislature to fund the Utah Comprehensive Health
5475 Insurance Pool as determined under Subsection (5)(b)(i):

5476 (A) shall be deposited into the fund established by Section 31A-29-120; and

5477 (B) are restricted and are to be used to maintain the operation, administration, and
5478 management of the Utah Comprehensive Health Insurance Pool created by Section
5479 31A-29-104.

5480 (6) If any item of the budget as enacted is held invalid upon any ground, the invalidity
5481 does not affect the budget itself or any other item in it.

5482 Section 108. **Repealer.**

5483 This bill repeals:

5484 Section **26-7-6 (Effective 07/01/11), Alcohol retailers to post warnings related to**
5485 **consumption of alcohol and pregnancy.**

5486 Section **32B-4-506 (Effective 07/01/11), Conflicting interests.**

5487 Section **32B-4-507 (Effective 07/01/11), Interfering with manufacturer, supplier, or**
5488 **importer.**

5489 Section 109. **Appropriation.**

Enrolled Copy**S.B. 314**

5490 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
 5491 following sums of money are appropriated from resources not otherwise appropriated out of the
 5492 funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30,
 5493 2012. These are additions to amounts previously appropriated for fiscal year 2012.

5494 To Department of Public Safety - Programs and Operations

5495 From General Fund, one-time \$83,600

5496 From General Fund (\$2,642,900)

5497 Schedule of Programs:

5498 Highway Patrol - Special Services (\$2,559,300)

5499 Section 110. **Effective date.**

5500 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2011.

5501 (2) (a) The repeal of Subsection 32B-6-603(4) (Effective 07/01/11) in this bill takes
 5502 effect on November 1, 2011.

5503 (b) Title 32B, Chapter 6, Part 8, Reception Center License, enacted by this bill takes
 5504 effect on November 1, 2011.

5505 (c) Title 32B, Chapter 6, Part 9, Beer-only Restaurant License, enacted by this bill
 5506 takes effect on March 1, 2012.

5507 (d) The following take effect on July 1, 2012:

5508 (i) Section 32B-5-309 (Effective 07/01/11) as amended by this bill; and

5509 (ii) Title 32B, Chapter 8a, Transfer of Retail License Act, enacted by this bill.



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

www.nhtsa.dot.gov
nhtsa
people saving people

DOT HS 809 878

Revised February 2005

Research Report

Preventing Over-consumption of Alcohol – Sales to the Intoxicated and “Happy Hour” (Drink Special) Laws

This publication is distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration, in the interest of information exchange. The opinions, findings and conclusions expressed in this publication are those of the author(s) and not necessarily those of the Department of Transportation or the National Highway Traffic Safety Administration. The United States Government assumes no liability for its content or use thereof. If trade or manufacturer's names or products are mentioned, it is because they are considered essential to the object of the publication and should not be construed as an endorsement. The United States Government does not endorse products or manufacturers.

**Research Report: Preventing Over-consumption of Alcohol—
Sales to the Intoxicated and “Happy Hour” (Drinks Specials) Laws**

Introduction: Statement of the Problem

The cost of alcohol-related harm to society is enormous, both in human and economic terms:

- At least 85,000 Americans die each year from alcohol-related causes, making alcohol-related problems the third-leading cause of death in the United States (Mokdad, et al., 2004).
- Drinking and driving is a significant cause of injuries and fatalities in the United States. Alcohol was involved in 40 percent of traffic crash fatalities and in 7 percent of all crashes in 2003, resulting in 17,013 fatalities and injuring an estimated 275,000 people (NHTSA, 2004).
- Almost one in four victims of violent crime report that the perpetrator had been drinking prior to committing the violence. Alcohol was involved in 32 to 50 percent of homicides (Spunt, et al., 1995; Goldstein, et al., 1992; Greenfeld, 1998).
- Thirty-nine percent of accidental deaths (including drowning, poisonings, falls, and fires) and 29 percent of suicides in the United States are linked to the consumption of alcohol (Smith, et al., 1999).
- The total monetary cost of alcohol-attributable consequences (including health care costs, productivity losses, and alcohol-related crime costs) in 1998 was estimated to be \$185 billion (USDHHS, 2000).

The problems listed above are often associated with the over-consumption of alcohol in episodes of heavy drinking. Studies that show that up to 50 percent of people driving under the influence had their last drinks at licensed establishments are a strong indication the enforcement and prosecution of laws governing the consumption and distribution of alcohol should have a significant impact on the reduction of injuries and fatalities resulting from the consumption of alcohol (O’Donnell, 1985; Anglin, 1997; Gallup, 2000). This report examines the following problem: There are existing laws regulating the service of alcohol that are designed to prevent the over-consumption of alcohol by either:

(1) Prohibiting the sale and service of alcohol to intoxicated people, or (2) prohibiting sales practices (including happy hours, drink specials, and other drink promotions) that effectively reduce the price of drinks and encourage excessive consumption of alcohol. Yet the research conducted in preparation for this report indicates that enforcement of these laws is often given a low priority relative to the magnitude of the problems resulting from over-consumption of alcohol. At least three factors contribute to the lack of adequate enforcement:

- alcohol enforcement agencies face diminishing budgets and resources;
- there is an absence of public and government support for the enforcement of such laws; and
- in the case of laws governing sales to intoxicated people, the statutes are difficult to enforce and adjudicate.

This report begins with a review of previous research documenting the association between over-consumption and serving practices. This research suggests that interventions and enforcement of

laws regulating serving practices can increase compliance and reduce alcohol-related problems. The report then presents findings from original research conducted pursuant to a contract with the National Highway Traffic Safety Administration.¹ The findings include:

- an analysis of State laws addressing service to intoxicated people and restrictions on happy hours and related serving practices;
- a review of the current status of enforcement and adjudication of these laws; and
- a presentation of promising enforcement strategies being implemented by State and local enforcement agencies.

The report concludes with a summary of the problem and proposed intervention strategies designed to improve compliance rates with laws restricting sales to intoxicated people and happy hour and other reduced-price promotions.

Review of Previous Research

The public health research literature has largely ignored the role of alcohol service laws in reducing problems related to alcohol intoxication. What little research is available strongly suggests that: (a) there is an association between serving practices and the over-consumption of alcohol, and (b) intervention in support of improved serving practices and the enforcement of laws governing these practices is associated with a decrease in alcohol-related harm.

Research of Happy Hour and Other Drink Specials Practices:

Previous research demonstrates that alcohol consumption, intoxication, and drinking/driving rates are sensitive to the price of alcoholic beverages (Chaloupka, et al., 2002). Underage people and young adults are particularly affected by the cost of alcohol. Studies show that increases in the price of alcohol significantly reduce the number of drinks consumed by this population (Grossman, et al., 1998; Chaloupka, et al., 2002). Happy hours, drinking contests, "all you can drink" specials, and the like encourage over-consumption by reducing prices, a potent inducement to drinking large amounts of alcohol in short time periods. The research offers strong evidence for the negative health outcomes of happy hour and other drink specials practices, thereby suggesting that policies restricting these practices could have a positive impact on public health.

In the 1970s, an experimental study was conducted in which a small group of subjects was tested in a clinical setting (Babor, et al., 1978). The subjects were divided into experimental and control groups. The experimental group was given a 50 percent price reduction for alcoholic beverages during a daily three-hour period in the afternoon, and the control group was offered drinks at full price. A significant increase in consumption was observed among both casual and heavy drinkers in the experimental group, with consumption returning to normal when happy hour price reductions were discontinued. Casual and heavy drinkers in the happy hour group drank about twice as much as those in the non-happy hour group.

Using data collected in 2001 by the Harvard School of Public Health College Alcohol Study, researchers examined the relationship between binge-drinking rates on college campuses and the availability of large volumes of alcohol, low sales prices, and frequent promotions and advertisements in the vicinity of campus (Kuo, et al., 2003). Binge-drinking rates for 119 colleges were determined using college students' self-reports on alcohol consumption. An assessment study of the alcohol environment surrounding each campus was conducted, which included the monitoring of on-site premises for serving sizes, prices, promotions, and so forth.

¹ NHTSA contract IQC DTNH22-98-D-35079.

The results demonstrated a significant correlation between lower drink prices and higher binge-drinking rates. The presence of weekend beer specials and alcohol promotions was also highly correlated with a higher binge-drinking rate. This same study demonstrated a reduction in self-reported drinking-and-driving rates when laws limited underage access to alcohol and high volume sales of alcohol (Wechsler, et al., 2003). The presence of these laws was associated with lower rates of drinking-and-driving among college students, a group at risk for both binge drinking and alcohol-related traffic fatalities (Wechsler, et al., 2003; NHTSA, 2002; NHTSA, 2004). This effect was enhanced when there was active enforcement of laws limiting underage access to alcohol and high-volume sales of alcohol.

Only one study has attempted to directly evaluate the efficacy of happy hour laws in lowering alcohol consumption. The banning of happy hour practices in Ontario, Canada, was studied by observation of drinking habits before and after the ban, supplemented with analyses of total per capita consumption in the city (Smart and Adlaf, 1986; Smart, 1996). No significant decline in alcohol consumption was observed following the ban. Given that there was little time (two days) allotted to observing pre-ban drinking habits, and given that aggregate consumption figures may not be that sensitive to changes in happy hour practices, the results were inconclusive as far as the overall effect on alcohol consumption of the presence or absence of happy hour practices.

Research on the Prohibition of Sales and Service of Alcohol to Intoxicated People:

Nearly every State prohibits sales and service of alcohol to obviously intoxicated people. Little research is available to determine how these laws are enforced, the extent with which they are complied with, and the impact enforcement and compliance might have on public health outcomes. One study that examined compliance rates found that 79 percent of alcohol establishments will serve alcohol to patrons who appear obviously intoxicated (Toomey, et al., 1999; Toomey, et al., 2004). Actors simulating intoxication attempted to make alcohol purchases at both on- and off-premise establishments in 11 communities in a large Midwestern metropolitan area. Seventy-six percent of the on-premise sites sold alcohol to the pseudo-intoxicated patrons, as did 83 percent of the off-premise establishments. The high non-compliance rates highlight the importance of further research into the effectiveness of enforcement of laws prohibiting sales to intoxicated people or other interventions designed to reduce over-consumption and subsequent driving.

A study that directly examined enforcement of these laws was conducted in Washtenaw County, Michigan. Compliance was observed before and after the implementation of a publicized campaign to enforce laws directed at sales to intoxicated individuals (Edwards, et al., 1994). Enforcement included the issuing of warnings to businesses that violated the law, followed by enforcement visits and citations. These actions were conducted in conjunction with education and training of bar and restaurant staff. Compliance with the law was measured before and during the enforcement program by the rate at which patrons simulating intoxication were refused service. Refusals of service rose from 17.5 percent before the enforcement program to a peak of 54.3 percent after the first three months of the enforcement intervention. Significantly, the percentage of impaired drivers arrested after leaving bars and restaurants declined from 31.7 percent to 23.3 percent during the same period. While refusals of service to pseudo-intoxicated people declined from the initial peak of 54.3 percent to 47.4 percent after six months, and 41.0 percent after one year of the program, these later refusal rates remained significantly higher than the baseline, indicating that the intervention had an enduring effect on server compliance with no-sale-to-intoxicated laws (McKnight and Streff, 1994).

A few studies have examined dram shop liability laws, which hold alcohol servers responsible for harm caused by intoxicated or underage patrons, another avenue toward curbing over-

intoxication.² Studies indicate that enforcement and prosecution of dram shop laws (and resulting case decisions) are associated with a substantial reduction in alcohol-related harm. The initiation of a dram shop liability lawsuit in Texas in 1983 resulted in 6.5 percent fewer single-vehicle nighttime injury crashes (which are associated with high percentages of alcohol involvement). After a second suit was filed the following year, an additional 5.3 percent decrease in such crashes resulted (Wagenaar and Holder, 1991). One study found that in States where servers have a relatively high level of exposure to liability, there are fewer low-price drink promotions and more servers check identifications for underage purchases. Both of these changes in serving practices can prevent alcohol-related traffic crashes (Holder, et al., 1993).

A study evaluating the effects of the Alcohol Risk Management (ARM) program highlights the benefits of promoting voluntary compliance with over-service laws. The ARM program is a five-session one-on-one consultation program for owners and managers of on-site alcohol outlets. The purpose of the program is to help owners and managers develop policies and practices that increase compliance with State alcohol laws and reduce the risk of alcohol-related problems (Toomey, et al., 2001). Pseudo-intoxicated and underage patrons were sent to test sites and control sites before and after the training sessions to determine the efficacy of the educational efforts at the intervention outlets. Underage sales declined by 11.5 percent after the intervention at the test sites, while sales to the pseudo-intoxicated patrons declined by 46 percent.

Another recent finding of a strong relationship between enforcement efforts and reduced alcohol-related harm comes from New South Wales, Australia (Wiggers, et al., 2001). The Linking Project was a collaborative effort between researchers and law enforcement officers. Law enforcement officers in selected districts of New South Wales identified licensed establishments that were listed as "last place of drink" by people apprehended for alcohol-related incidents (including drinking and driving, assault, domestic violence, and other criminal activities). A random sample of these establishments was chosen for intervention, which included giving the licensees feedback on incidents associated with their establishments, conducting audits of responsible alcohol service practices, and the offer of resources and assistance to the licensees for improvement in their service practices. Following these interventions, a follow-up workshop on responsible alcohol service was conducted. The number of alcohol-related incidents associated with the intervention sites decreased by 36 percent following the intervention actions, compared to a 21 percent decline for a control group of establishments. The results were a clear demonstration that enforcement efforts focused on alcohol serving practices could have a much larger impact on reducing crime, and therefore benefit the public and reduce the burden on law enforcement. These impressive findings have convinced political leaders and law enforcement agencies to expand the Linking Project to the entire enforcement system of New South Wales.

Enforcement and Adjudication of State Laws Restricting Over-consumption of Alcohol Methodology:

As the research reviewed in the previous section suggests, improving the rates of compliance with alcohol service laws is a promising strategy for reducing alcohol-related harm, including drinking and driving. However, there is little information regarding the nature of these laws or current enforcement practices. To address this gap in the research literature and to promote additional studies of the topic, NHTSA funded this project to collect detailed information about the statutes governing sales to intoxicated people and happy hour practices, and their enforcement and adjudication in the United States. The following methods were employed to collect this data.

² A "dram" refers to a unit of liquid measure used during colonial times in the United States. "Dram shops" refer to the establishments that served alcohol by the dram (Holder, et al., 1993).

- Legal research: Attorneys and staff working on the project reviewed State alcohol beverage control statutes and regulations to determine those statutes and regulations governing sales to intoxicated people and happy hour practices in 51 jurisdictions, including all 50 States and the District of Columbia. This legal research, current as of January 1, 2003, was completed using national legal databases and a variety of secondary sources. The research focused exclusively on existing State statutes and did not include local regulations.
- Interviews with alcohol enforcement representatives:³ To confirm the data collected in the legal research phase, Alcohol Beverage Control representatives from 45 States and the District of Columbia were interviewed about 12 key alcohol policies, including sales to intoxicated and happy hour regulations.⁴ Each interview also included questions about penalties, licensing systems, enforcement resources and strategies, data collection processes, and the adjudication of alcohol violations.
- Additional interviews and research about enforcement strategies: In 2003, additional research was conducted about promising State and local strategies employed for the enforcement of sales to intoxicated and happy hour laws. Representatives from the appropriate agencies (identified during the initial interview process) were interviewed and any available reports or documentation of the programs were collected.

Current Statutes and Regulations:

Nearly every State and the District of Columbia has a provision prohibiting sales to intoxicated people, and over one-half (27) of the States have laws that specifically prohibit happy hours, drink specials and other practices that encourage drinking to intoxication.

Sales to Intoxicated Statutes: A review of the statutes prohibiting sales and service of alcohol to intoxicated people revealed that 47 States and the District of Columbia have such laws as of January 1, 2003 (PIRE, 2003). Florida, Nevada, and Wyoming do not have comprehensive laws prohibiting sales to intoxicated people. (See Appendix A.) State provisions vary in terms of language used to describe the state of intoxication (*e.g.*, obviously intoxicated; visibly intoxicated; appears to be intoxicated; noticeably intoxicated; reason to believe is intoxicated; apparently under the influence of liquor), as well as that used to describe the provision of alcohol (*e.g.*, serving, selling, furnishing, giving, bartering, exchanging, providing, delivering, and procuring).

Interpretation of these statutes in court may vary, most notably regarding the level of proof required for a finding that the law has been violated. Most statutes state or imply that a violation occurs if the server acted negligently—the server failed to act in a manner expected of a reasonable person in like circumstances. Some statutes use language that could be interpreted to require proof that the server knew the person being served was intoxicated or was reckless rather than merely negligent in his or her actions. These are higher standards of proof, making findings of violation much more difficult. Requiring proof that the server knew that the patron was intoxicated is particularly difficult to establish since it requires evidence of the server’s state of mind. This requirement is rare in cases determining whether a violation has occurred. Courts have tended to interpret statutes as requiring only the negligent standard even when the language of the statute suggests a higher level of proof. The reckless standard in particular is more

³ These interviews were conducted between September 2001 and December 2002.

⁴ In the remaining five States, the researchers were either not able to locate a State agency that held the primary responsibility for enforcing alcohol laws, or the agency identified declined to participate in the interview. In addition, the enforcement of alcohol laws in Hawaii and Maryland is primarily conducted at the county level. In those States, interviews were conducted with representatives from one county, and therefore, the results are not applicable to the entire State.

common in dram shop liability lawsuits, which involve monetary compensation to those injured by the intoxicated patron. In the case of some older alcohol statutes, strict liability for the sale or service of alcohol to an intoxicated person is imposed; that is, no defense is allowed that encompasses knowledge or recognition of the signs of intoxication. If the person served is intoxicated, the establishment selling the alcohol to that person is liable, regardless of whether or not they were aware of the person's intoxication (Moore, 2003). Case law must be carefully reviewed to determine the level of proof issue and even a detailed analysis may result in inconclusive findings. Because of the ambiguities in the law and the difficulty of conducting comprehensive case law research, we have not attempted to report level of proof requirements in our State law review.

Statutes may also vary in terms of who can be held in violation. Most State statutes apply to both commercial and noncommercial servers, although in some cases the statutory language is vague and may be subject to an interpretation that it only applies to service in commercial establishments. Finally, statutes will vary in terms of the types of penalties that may be imposed on violators. For commercial servers, violations may be either civil or criminal. Civil offenses are handled administratively by the agency responsible for adjudicating violations of the Alcoholic Beverage Control (ABC) laws. As discussed below, penalties can include suspensions or revocations of licenses and/or fines. Civil offenses are more easily prosecuted because they are administrative in nature, requiring only that the preponderance of the evidence supports the finding of violation. Both commercial and noncommercial servers can be found criminally liable. Criminal liability suggests moral approbation, is adjudicated in courts of law, and can involve both fines and imprisonment. Because of the more serious consequences, a conviction must be proven by the prosecutor beyond a reasonable doubt, the highest legal standard of proof, and defendants are given the right to a jury trial.

Happy Hour and Drink Specials Statutes: As of January 1, 2003, 27 States had provisions expressly prohibiting excessive drinking practices, or “happy hour” types of promotions. (See Appendix B.) In addition, many communities have passed local ordinances prohibiting these practices. The following information refers to State legislation only.

Drinking practices referred to in these statutes include:

- Free beverages—10 States have happy hour provisions that contain specific prohibitions against the distribution of free alcoholic beverages.
- Additional servings—16 States prohibit an establishment from providing additional servings of alcoholic beverages until previous servings have been consumed.
- Reduced price – specified day or time—18 States prohibit the sale of alcoholic beverages at reduced prices during specified days or times.
- Unlimited beverages – fixed price, fixed time—23 States prohibit the sale of alcoholic beverages during a fixed period of time for a fixed price.
- Increased volume—12 States prohibit increasing the volume of alcoholic beverages in a drink without increasing the price.
- Prizes—15 States have happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes.

Most of the States prohibiting happy hour practices specifically proscribe two or more of the practices listed above. For example, the Texas State statute specifies 11 outlawed practices:

- “Two for one” or other discounted multiple alcoholic beverage sales;
- Increasing the volume of alcohol in a drink without increasing the price;
- Serving more than one free alcoholic beverage to any identifiable segment of the population;

- Fixed-price or “all you can drink” sales;
- Selling alcoholic beverages at a reduced price for a fixed “buy in” price;
- Selling alcoholic beverages at a price contingent on the amount consumed by an individual;
- Reduced drink prices after 11:00 p.m.;
- Selling more than two drinks to a single consumer at one time;
- Imposing an entry fee for the purpose of recovering financial losses incurred because of reduced drink prices;
- Drinking contests or awarding of alcoholic beverages as prizes;
- Any practice that is reasonably calculated to induce consumers to drink to excess, or that would impair the ability of the licensee to monitor or control the consumption of alcohol by their customers.⁵

Enforcement and Adjudication of Sales to Intoxicated and Happy Hour Statutes:

Limited information about the enforcement and adjudication of laws restricting the over-consumption of alcohol was collected during interviews with State alcohol enforcement officials. Reductions in budgets, decreasing available personnel, the absence of public and governmental support, and difficulties coordinating efforts with local law enforcement are some of the problems that affect enforcement of over-consumption policies. The representatives also reported that enforcement is hampered by the difficulties of proving that the patron being served was obviously intoxicated. Gathering such evidence usually involves undercover operations, which are both costly and time intensive.

The most commonly reported enforcement strategy (reported by 12 States) was the use of surveillance and undercover agents to identify violations of sales to intoxicated and drink specials laws. In many States, investigations are primarily complaint-driven. A few State agencies identified walk-through inspections as their primary method of identifying violations and enforcing these laws.

A promising strategy that is being implemented by some States (*e.g.*, Massachusetts, Oregon, Utah, and Washington) involves identifying the place of last drink for those arrested on driving under the influence/driving while intoxicated (DUI/DWI) charges. The collection of this data allows States to identify and target problem outlets that may be in violation of laws prohibiting sales to intoxicated people or drink specials that encourage over-consumption of alcohol.

The imposition of penalties for violations of the law is an integral part of the enforcement process and can play an important role in deterring future violations. As discussed above, laws addressing sales to intoxicated people and happy hour and drink specials can be adjudicated through administrative proceedings and can lead to fines and license suspensions and revocations.

Researchers examined the penalties specific to sales to intoxicated laws. The States vary widely in the range and severity of administrative penalties imposed for violations of sales to intoxicated laws. Most States increase the severity of the punishment as the number of offenses committed increase. There may be an increase in number of days of suspension, revocation may become more likely, and fines may increase. The suspension of a license is included as a potential maximum penalty for a first-time offense in most States. At least 36 States and the District of Columbia allow for the revocation of a liquor license as a potential maximum penalty for a first-time offense. However, interviews with enforcement officials reveal that revocations rarely

⁵ Texas statute §45.103. On-Premises Promotions.

occur, and are highly unlikely after a first offense. In a smaller number of States (seven, plus the District of Columbia), license revocation is the only allowable penalty for a licensee convicted of a fourth violation of sales to intoxicated laws. In at least 10 States, fines can be paid in lieu of license suspension, primarily for first offenses only. For an expanded chart of penalties imposed for sales to intoxicated violations by State, please see Appendix C.

Promising Enforcement Strategies:

Interviews were conducted with representatives from State and local law enforcement agencies regarding innovative programs to enforce sales to intoxicated people and happy hour statutes. The following examples illustrate some of the enforcement strategies being employed by these agencies in their efforts to reduce alcohol-related harm.

Enforcing Sales to Intoxicated Laws by Identifying “Place of Last Drink”: As indicated above, both Washington and Utah are using the “place of last drink” strategy, sometimes in conjunction with other enforcement efforts, to reduce sales to intoxicated people.

Washington: In 2002, the Washington State Liquor Control Board (WSLCB) launched an enforcement program with the goals of reducing the number of DUI arrests, and reducing the average blood alcohol concentration (BAC) level of those arrested. Despite the fact that Washington lowered the maximum allowable BAC level to 0.08 in 1999, high BAC levels continued to be involved in fatal traffic crashes. In 79 percent of fatal crashes, the BAC level of the driver at fault was over 0.15; 52 percent of these exceeded 0.20 (WSLCB, 2003).

In response, the WSLCB is conducting a monthly analysis of DUI arrest reports supplied by the Washington State Patrol, which include “last drink” locations as well as the BAC levels of arrested drivers. The Washington State Patrol administers the BAC Datamaster database, which contains every breath test administered statewide by every law enforcement agency. Law enforcement officers are required by Washington law⁶ to administer a breath test to individuals arrested for driving or being in physical control of a vehicle while under the influence. The location of the individual’s last drink is entered into a BAC Datamaster machine while the breath test is administered. All BAC test data and accompanying information (such as place of last drink) are uploaded to the State Patrol’s database.⁷

This comprehensive database provides the necessary information for the WSLCB to create a “worst offenders” list of establishments. These establishments are associated with the highest number of DUIs or highest BAC readings recorded among DUI arrestees. The board then executes a plan that begins with notifying the establishments that they have a high number of DUI arrestees who identified their establishment as the place where they had their last drink. The corrective plan includes educating the licensee and their employees in training sessions about responsible beverage service, signs of intoxication, and laws governing sales to intoxicated patrons. Routine premise checks and undercover operations are increased to monitor the establishment’s progress and to maintain an enforcement presence. If necessary, corrective actions, ranging from notification of infraction to administrative or criminal actions, are taken. The progress of each targeted location is monitored and evaluated. If their DUI count increases

⁶ Revised Code of Washington (RCW) 46.20.308. Note that arrested people have the right to refuse the breath test, but they face revocation of their driver’s licenses if they do so.

⁷ Data is stored in each BAC Datamaster machine until the machine is polled or automatically sends its stored information to the central database. Note that place of last drink data is recorded and stored even if the individual refuses the breath test.

or remains the same, the enforcement plan is continued. If the count has decreased, the enforcement focus shifts to the next worst offender, but routine premise checks continue.

Data collected to date has not only identified problem establishments, but has also provided valuable information about the relationships between type of licensee, DUI arrests, and average BAC levels. In addition to identifying specific problem licensees, the data provides enforcement agencies with an overview from which to plan the allocation of their resources and develop enforcement strategies. Analysis of the data is now in progress.

Utah: The Liquor Enforcement Section of the Utah Department of Public Safety conducts a statewide program called SIP (Serving Intoxicated Patrons) to enforce laws prohibiting sales to intoxicated people. SIP has targeted those establishments either identified by local law enforcement as problem locations, or those listed as place of last drink for individuals involved in traffic fatalities. Employing covert agents who observe the establishment's serving practices, SIP operations result in referrals to the State Alcohol Beverage Control agency when violations are observed. Licensees referred for disciplinary action are offered the opportunity to attend training sessions that review relevant laws and teach attendees how to identify signs of intoxication.

SIP operations will soon be enhanced by a statewide program to identify "place of last drink" for all DUI cases, not just those involving fatalities. Funded by a grant from the Utah Office of Highway Safety, DUI data gathered from drivers' license data will be used to identify problem outlets throughout the State. A pilot study recently completed in Salt Lake County collected and analyzed place of last drink data from DUI arrestees, demonstrating the viability of this strategy for identifying problem outlets. The SIP program will use the statewide data to target establishments for SIP interventions, and will track DUI data before and after SIP interventions to evaluate the program's effectiveness (Michaud, 2003).

Enforcing Happy Hour and Drink Specials Laws Through Observation, Surveillance, and Undercover Operations: A number of strategies may be employed to reduce the over-consumption of alcohol by enforcing happy hour and drink specials laws. In the following examples, emphasis was placed on identifying violations through observation, surveillance, and other undercover operations, in coordination with other concentrated enforcement efforts.

Champaign, Illinois: The Champaign, Illinois, Alcohol Enforcement Unit has conducted a successful campaign against over-service and happy hour practices as part of a larger effort to reduce underage drinking and alcohol-related harm (CPD, 2002; Friedlein, 2003). Champaign and its twin city, Urbana, share a large student population from the University of Illinois (attended by some 38,000 students) and a community college (UIUC, 2003). In conjunction with its focus on underage drinking, the unit has given special emphasis to those bars engaging in such practices as drinking contests, reducing the price of drinks at certain times of the day, and other promotions that encourage excessive drinking, particularly among younger patrons. Bar advertisements are reviewed on a daily basis and the unit conducts follow-up, observational visits to identify possible violations. If a violation is observed, the unit may notify the owners of the bar of a need to correct the problem or proceed to other actions, depending on the severity of the violation and past history of the establishment. If the problem is not corrected after notification, the unit initiates an undercover investigation that can conclude with enforcement actions if violations are observed. The enforcement program is part of a broader, community policing strategy that includes making regular visits to drinking establishments and building a cooperative relationship between law enforcement and the licensed alcohol establishment community.

To enhance its current program, the Unit is considering the implementation of a new local policy to reduce the allowable alcoholic beverage serving size. Some establishments serve mixed drinks in 48-ounce personal containers, allowing individuals to purchase a large volume of alcohol in one serving. This reduces the server's ability to gauge a patron's intoxication level and regulate the number of drinks served. Should this policy be put into practice, training for licensees and their employees would be integrated into the existing beverage service training offered by the Unit. This represents one more method in Champaign's multiple strategy approach, which combines observation, undercover work, direct enforcement, community policing, training, and altering serving practices.

Texas: The Texas Alcoholic Beverage Commission (TABC) Enforcement Division collaborated with researchers from the Pacific Institute for Research and Evaluation to field-test a model enforcement program, funded by a contract from NHTSA.⁸ The project was designed to assess the impact of proactive enforcement of laws restricting serving practices that encourage intoxication on compliance rates among commercial alcohol servers. As noted above, Texas has a comprehensive set of regulations restricting such serving practices, including prohibitions against serving pitchers to individuals and discounting the cost of drinks when served in double portions (prohibited by the statute against increasing the volume of alcohol in a drink without proportionately increasing the price).

The TABC identified 50 high-volume sales-on-premises establishments in two counties (a total of 100 establishments). TABC enforcement officers conducted a sales test (purchase survey) at all 100 sites to collect information on current serving practices. Officers entered the establishments and attempted to purchase a pitcher of beer, or a single and a double shot of spirits to determine if the server was complying with the relevant regulations regarding these serving practices. Focused and concentrated serving practice enforcement (including sending letters to all on-premise establishments in that county to notify them of increased enforcement actions) was implemented in both counties during separate time intervals. A final sales test was conducted at all 100 outlets to determine whether any changes in serving practices continued over time.

Preliminary analysis of the data indicates that this relatively modest intervention resulted in significant reductions in violation rates in both counties. In one county the number of violations fell by 100 percent at the end of four months of enforcement intervention. Even after a two-month interval of no intervention, the final sales test revealed that violations were still reduced by 100 percent. In the second county, the number of serving practice violations dropped 68 percent between the first and final sales tests. Since some on-premise alcohol outlets received multiple violations during one visit, the reduction in the number of outlets found in violation was also examined. Not surprisingly, the number of outlets found in violation dropped significantly in both counties—by 100 percent and 63 percent, respectively.

Discussion

Summary of the Problem and the Feasibility of Intervention:

Over-consumption of alcohol is linked to serious alcohol-related problems, including traffic crashes and fatalities, violence, injury, and alcohol-related disease. Existing research strongly suggests that laws that restrict sales to intoxicated patrons and happy hour and similar

⁸ NHTSA contract DTNH22-03-H-05134.

promotions can reduce alcohol-related harm if they are adequately enforced. Our research documents three major findings:

- (1) Relevant laws exist in most States. Statutes prohibiting the sale of alcoholic beverages to intoxicated people are already present in nearly every State, and over one-half prohibit happy hour practices. Some States, notably Texas, have comprehensive regulations restricting serving practices likely to lead to intoxication that can serve as models for other States. Nearly every State has established penalties for violations of sales to intoxicated laws.
- (2) Although the laws exist, compliance with them is low, caused at least in part by the lack of adequate enforcement and adjudication. Several factors contribute to the low priority given to these laws by State ABC agencies, including: inadequate funding and decreasing budgets, lack of public support, problems in coordinating efforts with local law enforcement agencies, and difficulties in establishing adequate evidence of violations. When agencies have implemented new enforcement programs, resources have not been available to conduct evaluations of their efficacy.
- (3) Increasing the enforcement of, and compliance with, these laws (and therefore reducing alcohol-related harm) is feasible. There are innovative enforcement programs being implemented by States and localities that should be evaluated and built upon as models.

In short, the legal and adjudicative systems for enforcing limits on over-consumption and deterring violations of these limits are already in existence. Furthermore, there are a number of programs being tested that could serve as models for enhancing enforcement.

Proposed Intervention Strategies:

Our analysis has identified the following strategies for encouraging the adoption of enforcement strategies designed to increase compliance with service to intoxicated patrons and happy hour laws, and addressing the barriers to implementation:

- Generate public and government support for making the enforcement of these laws a priority (as the enforcement of underage drinking laws is now a national priority) by publicizing its potential for reducing alcohol-related harm.
- Conduct studies that not only document the public health benefits but also the potential cost savings to enforcement agencies. The Linking Project in New South Wales, Australia, provides a model for such research, which resulted in widespread adoption of the program as a routine part of law enforcement activities.
- Design interventions in support of the enforcement of sales to intoxicated laws that build upon programs already in existence that use “place of last drink” data. The Linking Project serves as a model for such interventions, introducing the use of systematic data collection and analysis, randomized selection of test and control sites, and periodic evaluation of the program’s efficacy as methods for demonstrating scientifically to the public and policy makers that targeting problem outlets is a successful strategy for reducing alcohol-related harm.
- Combine well-publicized, targeted-enforcement campaigns targeting violations of sales to intoxicated patrons laws with education and training of licensees and their employees, and systematic testing of compliance using undercover or sting operations. The Washtenaw County, Michigan, program provides a model design for such a program.

- Encourage the implementation of regular inspections for compliance with happy hour laws as well as the use of undercover surveillance to support these laws. This requires increased funding of these enforcement efforts, media campaigns to increase the perception of enforcement of these laws, and educational and training programs to instruct licensees about the laws.
- Encourage private and public funding agencies and research organizations to support research to evaluate these enforcement and compliance programs. Assist States and localities with evaluation and analysis of their enforcement programs, so that the efficacy of these programs can be determined.
- Encourage collaboration between law enforcement agencies, policy makers, and research organizations. Such partnerships will foster innovative programs that can be evaluated and replicated, developing a more detailed understanding of the relevant laws, enforcement strategies, and compliance process.

Conclusion

Service to intoxicated people and happy hour laws provide important vehicles for reducing the devastation caused by impaired driving traffic crashes and other alcohol-related problems. As reported here, the laws and the framework for enforcing the laws exist in most States, but inadequate resources and the lack of attention from policy makers, researchers, and funders have undermined the effective enforcement of these laws. Any cost savings resulting from the reduction of enforcement resources are minimal by comparison to the human suffering and increased law enforcement costs associated with alcohol-related harm. If even a small portion of the over 17,000 lost lives and quarter of a million injuries attributable to alcohol-related traffic crashes in 2003 was prevented by increased attention to reducing the over-consumption of alcohol, the benefit to society would be priceless.

References

- Anglin L, Caverson R, Fennel R, Giesbrecht N, and Mann RE (1997). A Study of Impaired Drivers Stopped by Police in Sudbury, Ontario. Addiction Research Foundation: Toronto, Ontario.
- Babor, T., et al. (1978). Experimental Analysis of the 'Happy Hour': Effects of Purchase Price on Alcohol Consumption. *Psychopharmacology* 58: 35-41.
- Chaloupka, F., et al. (2002). The Effects of Price on Alcohol Consumption and Alcohol-Related Problems. *Alcohol Research & Health* 26(1): 22-34.
- Champaign Police Department. (2002) *2001 Alcohol Enforcement Summary*. Champaign, Illinois: Champaign Police Department.
- Edwards, G., et al. (1994) *Alcohol Policy and the Public Good*. Oxford: Oxford University Press, Oxford Medical Publications, World Health Organization Europe.
- Friedlein, S. (2003) Sergeant Scott Friedlein. Personal communications. September 8, 2003, September 12, 2003.
- Gallup Organization. (2000) - Volume I: Findings, Racial and Ethnic Group Comparisons, National Surveys of Drinking and Driving, June 2000, Attitudes and Behavior - 1993, 1995, and 1997. National Highway Traffic Safety Administration: Washington DC, DTNH22-96-C-05081
- Goldstein, P., Brownstein, H., and Ryan, P. (1992) Drug related homicide in New York: 1984 and 1988. *Crime Delinquency* 38:459-476.
- Greenfeld, L. (1998) *Alcohol and Crime: An analysis of national data on the prevalence of alcohol involvement in crime*. Prepared for the Assistant Attorney General's National Symposium on Alcohol Abuse and Crime, Washington DC
- Grossman, M., et al. (1998). An empirical analysis of alcohol addiction: Results from the Monitoring the Future Panels. *Economic Inquiry*. 36(1):39-48.
- Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., and Wagenaar, A. (1993) - Alcoholic beverage server liability and the reduction of alcohol-involved problems. *Journal of Studies on Alcohol* 54:23-26.
- Kuo, M, Wechsler, H, Greenberg, P, and Lee, H. (2003) The Marketing of Alcohol to College Students: The Role of Low Prices and Special Promotions. *American Journal of Preventive Medicine* 25(3):1-8.
- McKnight, A., and Streff, F. (1994) The effect of enforcement upon service of alcohol to intoxicated patrons of bars and restaurants. *Accidental Analysis and Prevention* 26 (1): 79-88.
- Michaud, E. (2003) Lieutenant Ed Michaud, telephone conversation, October 15, 2003.
- Mokdad, A., Marks, J., Stroup, D., and Gerberding, J. (2004) Actual Causes of Death in the United States, 2000. *JAMA* 291(10):1238-1245.

- Moore, A. (2003) "Don't Try to Read Between These Lines" *NLLEAgram* 14 (4):6-8.
- National Highway Traffic Safety Administration (2002). 2000 Youth Fatal Crash and Alcohol Facts. DOT HS 406. Available online:
<http://www.nhtsa.dot.gov/people/injury/alcohol/2002YFCAF/genfacts.html>.
- National Highway Traffic Safety Administration. (2004). Traffic Safety Facts 2003: Alcohol. DOT HS 809 761.
- O'Donnell, M. (1985). Research on drinking locations of alcohol-impaired drivers: Implications for prevention policies. *Journal of Public Health Policy*. Vol. 6: 510-525.
- Pacific Institute for Research and Evaluation. (2003) Alcohol Beverage Control Enforcement: Legal Research Report. Felton, CA: Pacific Institute for Research and Evaluation.
- Smart, R. (1996) - The happy hour experiment in North America. *Contemporary Drug Problems* 23: 291-300.
- Smart, R., and Adlaf, E. (1986). Banning Happy Hours: The Impact on Drinking and Impaired-Driving Charges in Ontario, Canada. *Journal of Studies in Alcohol*. 47(3): 256-258.
- Smith, G., et al. (1999). Fatal Non-Traffic Injuries Involving Alcohol: A Meta-Analysis. *Annals of Emergency Medicine*. 33(6): 659-668.
- Spunt, B., Brownstein, H., Goldstein, P., Fendrich, M., and Liberty, J. (1995) Drug use by homicide offenders. *Journal of Psychoactive Drugs* 27(2): 125-134.
- Toomey, T., et al. (1999) Characteristics and rates of illegal alcohol sales to pseudo-intoxicated patrons. Paper presented at the American Public Health Association's 127th Annual Meeting, Chicago, IL, November 7-11, 1999.
- Toomey, T., et al. (2001) Project ARM: Alcohol Risk Management to Prevent Sales to Underage and Intoxicated Patrons. *Health Education & Behavior* 28(2): 186-199.
- Toomey, T., et al. (2004) Illegal Alcohol Sales to Obviously Intoxicated Patrons at Licensed Establishments. *Alcoholism: Clinical and Experimental Research* 28(5): 769-774.
- U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism. (2000) Updating Estimates of the Economic Costs of Alcohol Abuse in the United States: Estimates, Update Methods, and Data. Rockville, MD: National Institutes of Health.
- University of Illinois at Urbana-Champaign (UIUC). Campus facts. March 29, 2003.
www.uiuc.edu
- Wagenaar, A. and Holder, H. (1991) Effects of alcoholic beverage server liability on traffic crash injuries. *Alcoholism: Clinical and Experimental Research* 15(6): 942-947.
- Washington State Liquor Control Board (WSLCB), Enforcement and Education Division, Tacoma Team. (2003) Accidents resulting in fatalities. Slide set 4 in *DUI Reduction Emphasis*. Tacoma, WA: Washington State Liquor Control Board, Enforcement and Education Division, Tacoma Team.

Wechsler, H., Lee, J., Nelson, T., and Lee, H. (2003) Drinking and Driving Among College Students: The Influence of Alcohol Control Policies. *American Journal of Preventive Medicine* 25(3): 212-218.

Wiggers, J., et al. (2001) The Linking Project: Pilot Project in the Hunter & Northern Metropolitan Policing Regions of NSW, Final Report. New South Wales, Australia: Hunter Centre for Health Advancement.

**Appendix A:
State Statutes or Regulations Prohibiting the
Furnishing of Alcohol to Intoxicated Individuals**

**State Statutes or Regulations Prohibiting the
Furnishing of Alcohol to Intoxicated Individuals⁹**

State	Prohibit Furnishing Alcohol to Intoxicated Individuals
Alabama	√
Alaska	√
Arizona	√
Arkansas	√
California	√
Colorado	√
Connecticut	√
Delaware	√
District of Columbia	√
Florida	
Georgia	√
Hawaii	√
Idaho	√
Illinois	√
Indiana	√
Iowa	√
Kansas	√
Kentucky	√
Louisiana	√
Maine	√
Maryland	√
Massachusetts	√
Michigan	√
Minnesota	√
Mississippi	√
Missouri	√
Montana	√
Nebraska	√
Nevada	
New Hampshire	√
New Jersey	√
New Mexico	√
New York	√
North Carolina	√
North Dakota	√
Ohio	√
Oklahoma	√
Oregon	√
Pennsylvania	√
Rhode Island	√
South Carolina	√
South Dakota	√
Tennessee	√
Texas	√

⁹ Source: PIRE, 2003. This chart contains data on State statutes or regulations that prohibit the furnishing of alcohol to intoxicated people. Checkmarks indicate the presence of a policy. The legal research is current as of January 1, 2003.

State	Prohibit Furnishing Alcohol to Intoxicated Individuals
Utah	√
Vermont	√
Virginia	√
Washington	√
West Virginia	√
Wisconsin	√
Wyoming ¹⁰	
State Totals	48

¹⁰ In Wyoming, §12-5-301 states that, “No order shall be received from nor delivery made to a person under twenty-one (21) years of age or an intoxicated person in the area.” Since this provision applies only to “Drive-In Areas,” we did not include this State as having a provision that prohibits furnishing alcohol to intoxicated individuals.

**Appendix B:
State Statutes or Regulations Prohibiting
Happy Hours and Other Drink Specials Promotions**

**State Statutes or Regulations Prohibiting
Happy Hours and Other Drink Specials Promotions¹¹**

	Prohibit Happy Hours and/or Drink Specials	Prohibit Free Beverages	Prohibit Additional Servings	Prohibit Reduced Price - Specified Day or Time	Prohibit Unlimited Beverages – Fixed Price, Fixed Time	Prohibit Increased Volume	Prohibit Prizes
Alabama	√			√	√		
Alaska	√	√	√	√	√		√
Arizona	√		√		√		
Arkansas							
California							
Colorado							
Connecticut	√		√		√		√
Delaware	√			√	√		√
District of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois	√		√	√	√	√	√
Indiana	√		√	√			
Iowa							
Kansas	√	√		√	√	√	√
Kentucky							
Louisiana ¹²	√				√		
Maine	√	√	√		√		√
Maryland							
Massachusetts	√	√	√	√	√	√	√
Michigan	√				√		√
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska	√				√		
Nevada							
New Hampshire							
New Jersey	√				√	√	√
New Mexico	√	√	√	√	√		√
New York	√	√			√		

¹¹ Source: PIRE, 2003. This chart contains data on State statutes and regulations that specifically target happy hour types of promotions. Although some States may have provisions that prohibit awarding alcohol as a prize or providing free beverages in other parts of statutory or regulatory codes as a stand-alone statute or regulation, the information in this chart focuses on States with provisions expressly prohibiting excessive-drinking practices. The categories in the chart are defined as follows: *Free beverages*—happy hour provisions that specifically prohibit the distribution of free alcoholic beverages; *Additional servings*—prohibitions against an establishment providing additional servings of alcoholic beverages before previous servings have been consumed; *Reduced price – specified day or time*—prohibitions against the sale of alcoholic beverages at reduced prices during a specified day or time; *Unlimited beverages – fixed price, fixed time*—prohibitions against the sale of alcoholic beverages during a fixed period of time for a fixed price; *Increased volume*—prohibitions against increasing the volume of alcoholic beverages in a drink without increasing the price; *Prizes*—happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes. Checkmarks indicate the presence of a policy. The legal research is current as of January 1, 2003

¹² In Louisiana, selling or serving alcoholic beverages at a fixed price after 10 p.m. is prohibited.

	Prohibit Happy Hours and/or Drink Specials	Prohibit Free Beverages	Prohibit Additional Servings	Prohibit Reduced Price - Specified Day or Time	Prohibit Unlimited Beverages – Fixed Price, Fixed Time	Prohibit Increased Volume	Prohibit Prizes
North Carolina	√			√	√		
North Dakota							
Ohio	√		√	√	√	√	√
Oklahoma	√		√	√	√	√	√
Oregon ¹³							
Pennsylvania	√		√	√	√	√	
Rhode Island	√	√	√	√	√	√	√
South Carolina	√	√		√			
South Dakota							
Tennessee	√	√	√	√	√	√	√
Texas	√		√	√	√	√	
Utah							
Vermont	√		√			√	
Virginia	√	√	√	√	√	√	√
Washington	√			√			
West Virginia							
Wisconsin							
Wyoming							
State Totals	27	10	16	18	23	12	15

¹³ Although Oregon has no happy hour statute per se, it does have a provision that prohibits providing alcohol as prizes.

**Appendix C:
Penalties for Violations of Sales to Intoxicated Laws**

Administrative Penalties for Sales and Service to Obviously Intoxicated People

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Alabama ¹⁶	\$1000 fine or up to 1 year suspension/revocation	No Guidelines			
Alaska	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000, and/or 45-day suspension	Suspension up to 45 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000. No revocation permitted.	Suspension up to 90 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$30,000. No revocation permitted.	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$50,000, and/or suspension/revocation	Not Specified
Arizona ¹⁷	Fine not greater than \$3,000 and/or suspension/revocation.	Fine of \$1,500 and/or up to 30-day suspension	Fine of \$2,000 - \$3,000 and/or up to 30-day suspension	Fine of \$3,000 or more and/or 30-day suspension up to revocation	Not Specified
Arkansas	Fine or suspension/revocation.	No Guidelines			
California	Suspension/revocation or \$3,000 fine in lieu of	Suspension/revocation or 50% estimated gross sales between \$750 - \$3,000	Same, but mandatory suspension	Revocation	N/A

¹⁴ This describes the maximum penalty allowed by statute for a given violation. It may include maximums set forth by a State's general administrative penalty statute or by specific statute. "No provision identified" indicates that legal researchers could not identify a law regarding the particular violation. "No max identified" indicates that a statute or a general administrative penalty that explicitly specifies a maximum penalty could not be identified.

¹⁵ The 1st-4th Offense Guideline categories describe the range of penalties recommended as per informal penalty guidelines, specific statutes, or general administrative penalties. Where "Same" is listed, please refer to the column at immediate left of "Same". "Not specified" indicates that the legal researchers could not identify if the State specifically lists a penalty guideline for the particular offense. "N/A" denotes not applicable, and "No Guidelines" indicates that the legal researchers were unable to identify any guidelines for the offense listed.

¹⁶ In Alabama, State law specifies that a license shall be revoked on a second or a subsequent offense. However, ABC Rules and Regulations state that a fine schedule will be established for use when a licensee wishes to plead guilty to a first or second offense charge. Researchers were unable to obtain a copy of this fine schedule.

¹⁷ In Arizona, suspension days and fines may be substituted for one another, at the discretion of the Compliance Officer, at the rate of one day of suspension equal to \$250.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Colorado	15-day suspension or fine 20% estimated gross revenue up to \$5,000 in lieu of	15-day suspension. 5 days served and 10-day abeyance, or fine 20% estimated gross revenue between \$200 - \$5,000	Not Specified	Not Specified	Not Specified
Connecticut	Suspension/ revocation and/or fine in lieu of	1-4-day suspension, and/or \$750-\$1,500 fine	1-7-day suspension, and/or \$750-\$2,000 fine	1-11-day suspension, and/or \$750-\$2,500 fine	Not Specified
Delaware	Suspension/ revocation and/or fine	No Guidelines			
District of Columbia	Suspension/ revocation and/or fine	Suspension/ revocation and/or at least a \$1,000 fine	Suspension/ revocation and/or at least \$2,000 fine, within 2 years	Suspension/ revocation and/or at least \$4,000 fine, within 3 years	Revocation
Florida ¹⁸	No provision identified	N/A			
Georgia	Suspension/ revocation	No Guidelines			
Hawaii (Maui)	No Max identified.	Fine \$1,000 - \$2,000	Fine of at least \$2,000 or up to 30-day suspension	Up to 30-day suspension or revocation	Revocation
Idaho	\$5,000 fine or suspension not greater than 6 months	10-day suspension or fine in lieu of	30-day suspension or fine in lieu of	60-day suspension or fine in lieu of	Not Specified
Iowa	Suspension/ revocation and/or \$1,000 fine	(21-day suspension) or (\$750 fine and 10-day suspension) or (\$1,000 fine and 7-day suspension)	Not Specified	Not Specified	Not Specified

¹⁸ In Florida, all administrative fines may be substituted with license suspensions using the ratio of 1 day of suspension for each \$50.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Illinois	\$1,000 fine and/or suspension/ revocation	Same	Fine up to \$1,500 and/or suspension/ revocation	Fine up to \$2,500 and/or suspension/ revocation	Same
Indiana	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Kansas	\$1,000 fine and/or suspension/ revocation	\$100 fine and/or 1-weekday suspension	\$200 fine and/or 1-weekend day suspension	\$300 fine per minor and/or suspension of one weekend day (Fri or Sat)	\$500 fine per minor and/or two weekend days suspension
Kentucky	Suspension/ revocation or \$50/ day suspension in lieu of	No Guidelines			
Louisiana	\$500 fine and/or suspension/ revocation	Same	\$250-\$1,000 fine, and/or suspension/ revocation	\$500-\$2,500 fine, and/or suspension/ revocation	Not Specified
Maine	\$1,500 fine and/or suspension/ revocation	No Guidelines			
Maryland	County specific	N/A			
Massachusetts	\$500 fine and/or 1 yr in jail and/or suspension/ revocation	No Guidelines			
Michigan ¹⁹	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Minnesota	\$2,000 fine and/or up to 60-day suspension/ revocation	No Guidelines			
Mississippi	\$1,000 fine and/or suspension/ revocation	\$500 fine and/or suspension/ revocation	\$900 fine and/or suspension/ revocation	\$1,000 fine and/or suspension/ revocation	Not Specified
Missouri	No Max Identified	No Guidelines			
Montana	\$250 fine and/or suspension/ revocation	Same	\$1,000 fine	\$1,500 fine and/or 20-day suspension	Revocation

¹⁹ In Michigan, a third or subsequent offense will result in a mandatory suspension/ revocation of license.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Nebraska	Suspension/revocation or \$50 fine per day issued suspension in lieu of	\$500 - \$1,000 Fine and/or 10-20-day suspension	\$2,000 - \$4,000 Fine and/or 20-50-day suspension	\$4,000 - \$6,000 and/or 25-60-day suspension	Revocation
Nevada	No provision identified.	N/A			
New Hampshire ²⁰	\$500 fine and/or 1-7 days suspension	Fine \$100 - \$500 and/or 10-17-day suspension	Fine \$250 - \$1,000 and/or 10-24-day suspension	Fine \$500 - \$1,500 and/or 10-30-day suspension	(Fine \$750 - \$3,000 and/or 10-40-day suspension) or (40-day suspension)
New Jersey	15-day suspension or ½ gross estimated profit per day suspension in lieu of	Same	30-day suspension or ½ gross estimated profit per day suspension	45-day suspension or ½ gross estimated profit per day suspension	Revocation.
New Mexico	\$10,000 fine and/or suspension/revocation	No Guidelines			
New York	\$10,000 fine and/or suspension/revocation	No Guidelines			
North Carolina ²¹	\$500 fine and/or up to 3-year suspension/revocation	Up to \$500 fine and/or up to 3-year suspension/revocation	Up to \$750 fine, and/or up to 3-year suspension/revocation	Up to \$1,000 fine, and/or up to 3-year suspension/revocation	Not Specified
North Dakota	Suspension/revocation	No Guidelines			
Ohio	Suspension/revocation or \$200 fine per day issued suspension in lieu of	No Guidelines			
Oklahoma	Revocation	N/A			
Oregon	30-day suspension/revocation and/or \$5,000 fine	Up to 10 days suspension or \$1,650 fine	Up to 30 days suspension or \$4,950 fine	Up to 30-day suspension	Revocation

²⁰ New Hampshire allows for reduction of suspension length for “good behavior.” “Good behavior” is defined as compliance with all commission administrative fine payment deadlines and/or orders issued under Liq. 206.03.

²¹ In North Carolina, the commission may accept an offer in compromise of an issued suspension, up to \$5,000.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Pennsylvania ²²	\$5,000 fine and/or suspension/ revocation	No Guidelines			
Rhode Island	\$500 fine and/or suspension/ revocation	Up to \$500 fine and/or suspension/ revocation	Up to \$1,000 fine and/or suspension/ revocation	Same	Same
South Carolina	\$1,500 fine and/or suspension/ revocation	\$400 fine and/or suspension/ revocation	\$800 fine and/or suspension/ revocation	45 days suspension and/or revocation	Revocation.
South Dakota	Suspension up to 60 days or revocation or up to \$75,000 offer in compromise	No Guidelines			
Tennessee	Suspension/ revocation or \$1,500 fine	Suspension/ revocation or \$200 - \$1,000 fine	Same	Same	Same
Texas ²³	60-day suspension, or fine in lieu of	7-day suspension or fine in lieu of	10-15-day suspension or fine in lieu of	25-day suspension – revocation or fine in lieu of	Not Specified
Utah	\$25,000 fine and/or suspension/ revocation	Fine \$1,000 - \$25,000 and/or 10 day suspension or revocation	15-day suspension or revocation	Same	Same
Vermont	Suspension/ revocation	No Guidelines			
Virginia ²⁴	No Max Identified	\$2,000 fine or 25-day suspension	Not Specified	Not Specified	Not Specified
Washington	No Max Identified	5-day suspension or \$100 fine in lieu of	10-day suspension or \$200 fine in lieu of	30-day suspension or \$400 fine in lieu of	Revocation
West Virginia	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Wisconsin	Suspension/ revocation	No Guidelines			
Wyoming	No provision identified	N/A			

²² In Pennsylvania, third and subsequent offenses will result in a mandatory suspension/revocation.

²³ In Texas, a fine may be issued in lieu of issued suspension in the amount of \$150-\$25,000 per day of issued suspension or fine of \$75-\$500.

²⁴ In Virginia, a second or subsequent offense will result in a mandatory suspension.

DOT HS 809 878
Revised February 2005



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

www.nhtsa.dot.gov
nhtsa 
people saving people