

1 **ALCOHOLIC BEVERAGE CONTROL LICENSE AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies the Alcoholic Beverage Control Act to provide for changes in the
9 number of available retail licenses.
10

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies the numerical restrictions on the number of retail licenses that may be
- 14 issued;
- 15 ▶ modifies the law enforcement ratio;
- 16 ▶ modifies provisions related to requirements to provide notice of closure;
- 17 ▶ modifies references to seasonal licenses;
- 18 ▶ repeals provisions related to conditional retail licenses; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill takes effect on July 1, 2012.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **32B-1-201**, as last amended by Laws of Utah 2011, Chapter 334

27 **32B-2-202**, as last amended by Laws of Utah 2011, Chapter 334



28 32B-2-206, as last amended by Laws of Utah 2011, Chapter 336

29 32B-5-309 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapter 334

30 32B-6-203, as last amended by Laws of Utah 2011, Chapter 334

31 32B-6-303, as last amended by Laws of Utah 2011, Chapter 334

32 REPEALS:

33 32B-5-205, as enacted by Laws of Utah 2010, Chapter 276



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

36 Section 1. Section 32B-1-201 is amended to read:

37 **32B-1-201. Restrictions on number of retail licenses that may be issued --**

38 **Determining population -- Exempt licenses.**

39 (1) As used in this section:

40 (a) "Alcohol-related law enforcement officer" means a law enforcement officer
41 employed by the Department of Public Safety that has as a primary responsibility:

42 (i) the enforcement of this title; or

43 (ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and
44 Reckless Driving.

45 (b) "Enforcement ratio" is the number calculated as follows:

46 (i) determine the quotient equal to the total number of quota retail licenses available
47 divided by the total number of alcohol-related law enforcement officers; and

48 (ii) round the number determined in accordance with Subsection (1)(b)(~~(ii)~~)(i) up to the
49 nearest whole number.

50 (c) "Quota retail license" means:

51 [~~(i) a full-service restaurant license;~~]

52 [~~(ii) a limited-service restaurant license;~~]

53 [~~(iii)~~] (i) a club license;

54 [~~(iv)~~] (ii) an on-premise banquet license;

55 [~~(v)~~] (iii) an on-premise beer retailer operating as a tavern; and

56 [~~(vi)~~] (iv) a reception center license.

57 (d) "Total number of alcohol-related law enforcement officers" means the total number
58 of positions designated as alcohol-related law enforcement officers that are funded as of a

59 specified date as certified by the Department of Public Safety to the department.

60 (e) "Total number of quota retail licenses available" means the number calculated by:

61 (i) determining as of a specified date for each quota retail license the number of
62 licenses that the commission may not exceed calculated by dividing the population of the state
63 by the number specified in the relevant provision for the quota retail license; and

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

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

67 (b) If, beginning on July 1, 2012, the enforcement ratio is greater than [52] 20, the
68 commission may not issue a quota retail license for the 12-month period beginning on the July
69 1 for which the enforcement ratio is greater than [52] 20.

70 (c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license
71 during the 12-month period described in Subsection (2)(b) beginning on the day on which a
72 sufficient number of alcohol-related law enforcement officers are employed so that if the
73 enforcement ratio is calculated, the enforcement ratio would be equal to or less than [52] 20.

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

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

81 (a) the most recent United States decennial or special census; or

82 (b) another population determination made by the United States or state governments.

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

86 (a) the retail license was issued to a club licensee designated as a dining club as of July
87 1, 2011; and

88 (b) the dining club license is converted to another type of retail license in accordance
89 with Section 32B-6-409.

90 Section 2. Section **32B-2-202** is amended to read:

91 **32B-2-202. Powers and duties of the commission.**

92 (1) The commission shall:

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

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

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

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

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

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

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

104 (i) a package agency;

105 (ii) a full-service restaurant license;

106 (iii) a limited-service restaurant license;

107 (iv) a club license;

108 (v) an airport lounge license;

109 (vi) an on-premise banquet license;

110 (vii) a resort license, under which four or more sublicenses may be included;

111 (viii) an on-premise beer retailer license;

112 (ix) a reception center license;

113 (x) a beer-only restaurant license;

114 (xi) a single event permit;

115 (xii) a temporary beer event permit;

116 (xiii) a special use permit;

117 (xiv) a manufacturing license;

118 (xv) a liquor warehousing license;

119 (xvi) a beer wholesaling license; and

120 (xvii) one of the following that holds a certificate of approval:

- 121 (A) an out-of-state brewer;
- 122 (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
- 123 (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- 124 ~~[(f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke one of the~~
- 125 ~~following conditional licenses for the purchase, storage, sale, furnishing, consumption,~~
- 126 ~~manufacture, and distribution of an alcoholic product:]~~
- 127 ~~[(i) a conditional full-service restaurant license; or]~~
- 128 ~~[(ii) a conditional limited-service restaurant license;]~~
- 129 ~~[(g)]~~ (f) prescribe the duties of the department in assisting the commission in issuing a
- 130 package agency, license, permit, or certificate of approval under this title;
- 131 ~~[(h)]~~ (g) to the extent a fee is not specified in this title, establish a fee allowed under
- 132 this title in accordance with Section 63J-1-504;
- 133 ~~[(i)]~~ (h) fix prices at which liquor is sold that are the same at all state stores, package
- 134 agencies, and retail licensees;
- 135 ~~[(j)]~~ (i) issue and distribute price lists showing the price to be paid by a purchaser for
- 136 each class, variety, or brand of liquor kept for sale by the department;
- 137 ~~[(k)]~~ (j) (i) require the director to follow sound management principles; and
- 138 (ii) require periodic reporting from the director to ensure that:
- 139 (A) sound management principles are being followed; and
- 140 (B) policies established by the commission are being observed;
- 141 ~~[(l)]~~ (k) (i) receive, consider, and act in a timely manner upon the reports,
- 142 recommendations, and matters submitted by the director to the commission; and
- 143 (ii) do the things necessary to support the department in properly performing the
- 144 department's duties;
- 145 ~~[(m)]~~ (l) obtain temporarily and for special purposes the services of an expert or person
- 146 engaged in the practice of a profession, or a person who possesses a needed skill if:
- 147 (i) considered expedient; and
- 148 (ii) approved by the governor;
- 149 ~~[(n)]~~ (m) prescribe the conduct, management, and equipment of premises upon which
- 150 an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- 151 ~~[(o)]~~ (n) make rules governing the credit terms of beer sales within the state to retail

152 licensees; and
153 ~~[(p)]~~ (o) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take
154 disciplinary action against a person subject to administrative action.

155 (2) The power of the commission to do the following is plenary, except as otherwise
156 provided by this title, and not subject to review:

- 157 (a) establish a state store;
- 158 (b) issue authority to act as a package agent or operate a package agency; and
- 159 (c) issue or deny a license, permit, or certificate of approval.

160 (3) If the commission is authorized or required to make a rule under this title, the
161 commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative
162 Rulemaking Act.

163 Section 3. Section **32B-2-206** is amended to read:

164 **32B-2-206. Powers and duties of the director.**

165 Subject to the powers and responsibilities of the commission under this title, the
166 director:

167 (1) (a) shall prepare and propose to the commission general policies, rules, and
168 procedures governing the administrative activities of the department; and

169 (b) may submit other recommendations to the commission as the director considers in
170 the interest of the commission's or the department's business;

171 (2) within the general policies, rules, and procedures of the commission, shall:

172 (a) provide day-to-day direction, coordination, and delegation of responsibilities in the
173 administrative activities of the department's business; and

174 (b) make internal department policies and procedures relating to:

- 175 (i) department personnel matters; and
- 176 (ii) the day-to-day operation of the department;

177 (3) subject to Section 32B-2-207, shall appoint or employ personnel as considered
178 necessary in the administration of this title, and with regard to the personnel shall:

- 179 (a) prescribe the conditions of employment;
- 180 (b) define the respective duties and powers; and
- 181 (c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel

182 Management Act;

- 183 (4) shall establish and secure adherence to a system of reports, controls, and
184 performance in matters relating to personnel, security, department property management, and
185 operation of:
- 186 (a) a department office;
 - 187 (b) a warehouse;
 - 188 (c) a state store; and
 - 189 (d) a package agency;
- 190 (5) within the policies, rules, and procedures approved by the commission and
191 provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale,
192 furnishing, transportation, or delivery of an alcoholic product;
- 193 (6) shall prepare for commission approval:
- 194 (a) recommendations regarding the location, establishment, relocation, and closure of a
195 state store or package agency;
 - 196 (b) recommendations regarding the issuance, denial, nonrenewal, suspension, or
197 revocation of a license, permit, or certificate of approval;
 - 198 (c) an annual budget, proposed legislation, and reports as required by law and sound
199 business principles;
 - 200 (d) plans for reorganizing divisions of the department and the functions of the
201 divisions;
 - 202 (e) manuals containing commission and department policies, rules, and procedures;
 - 203 (f) an inventory control system;
 - 204 (g) any other report or recommendation requested by the commission;
 - 205 (h) rules described in Subsection 32B-2-202(1)[~~(c)~~](n) governing the credit terms of
206 the sale of beer;
 - 207 (i) rules governing the calibration, maintenance, and regulation of a calibrated metered
208 dispensing system;
 - 209 (j) rules governing the display of a list of types and brand names of liquor furnished
210 through a calibrated metered dispensing system;
 - 211 (k) price lists issued and distributed showing the price to be paid for each class, variety,
212 or brand of liquor kept for sale at a state store, package agency, or retail licensee;
 - 213 (l) policies or rules prescribing the books of account maintained by the department and

214 by a state store, package agency, or retail licensee; and

215 (m) a policy prescribing the manner of giving and serving a notice required by this title
216 or rules made under this title;

217 (7) shall make available through the department to any person, upon request, a copy of
218 a policy made by the director;

219 (8) shall make and maintain a current copy of a manual that contains the rules and
220 policies of the commission and department available for public inspection;

221 (9) (a) after consultation with the governor, shall determine whether an alcoholic
222 product should not be sold, offered for sale, or otherwise furnished in an area of the state
223 during a period of emergency that is proclaimed by the governor to exist in that area; and

224 (b) shall issue a necessary public announcement or policy with respect to the
225 determination described in Subsection (9)(a); and

226 (10) shall perform any other duty required by the commission or by law.

227 Section 4. Section **32B-5-309 (Effective 07/01/12)** is amended to read:

228 **32B-5-309 (Effective 07/01/12). Ceasing operation.**

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

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

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

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

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

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

239 (i) written request of the retail licensee; and

240 (ii) a showing of good cause.

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

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

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

245 (b) the reason for the closure or cessation of operation; and
246 (c) the date on which the retail licensee will reopen or resume operation.

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

249 (a) the retail license; and
250 (b) the unused portion of the retail license fee for the remainder of the retail license
251 year effective immediately.

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

254 (a) the retail license; and
255 (b) the unused portion of the retail license fee for the remainder of the retail license
256 year.

257 (8) This section does not apply to:

- 258 (a) an on-premise beer retailer who is not a tavern; [or]
- 259 (b) an airport lounge licensee[-];
- 260 (c) a full-service restaurant licensee;
- 261 (d) a limited-service restaurant licensee; or
- 262 (e) a beer-only restaurant licensee.

263 Section 5. Section **32B-6-203** is amended to read:

264 **32B-6-203. Commission's power to issue full-service restaurant license.**

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

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

272 (3) (a) ~~[Subject to Section 32B-1-201: (a) The commission may not issue a total~~
273 ~~number of full-service restaurant licenses that at any time exceeds the number determined by~~
274 ~~dividing the population of the state by 4,925. (b) The commission may issue a seasonal~~
275 ~~full-service restaurant license in accordance with Section 32B-5-206. (c) (i)]~~ If the location,

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

280 [~~(A)~~] (i) the hotel has a minimum of 150 guest rooms; and

281 [~~(B)~~] (ii) the locations under the full-service restaurant license are:

282 [~~(H)~~] (A) within the same hotel; and

283 [~~(H)~~] (B) on premises that are managed or operated, and owned or leased, by the
284 full-service restaurant licensee.

285 [~~(H)~~] (b) A facility other than a hotel shall have a separate full-service restaurant
286 license for each full-service restaurant where an alcoholic product is sold, offered for sale, or
287 furnished.

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

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

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

297 (ii) the premises has had a full-service restaurant license at all times since the
298 full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance;
299 and

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

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

304 **32B-6-303. Commission's power to issue limited-service restaurant license.**

305 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
306 wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first

307 obtain a limited-service restaurant license from the commission in accordance with this part.

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

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

314 (i) spirituous liquor; or

315 (ii) a flavored malt beverage.

316 (3) ~~(a) [Subject to Section 32B-1-201: (a) The commission may not issue a total~~
317 ~~number of limited-service restaurant licenses that at any time exceeds the number determined~~
318 ~~by dividing the population of the state by 8,373. (b) The commission may issue a seasonal~~
319 ~~limited-service restaurant license in accordance with Section 32B-5-206. (c) (i)]~~ If the
320 location, design, and construction of a hotel may require more than one limited-service
321 restaurant sales location within the hotel to serve the public convenience, the commission may
322 authorize the sale of wine, heavy beer, and beer at as many as three limited-service restaurant
323 locations within the hotel under one limited-service restaurant license if:

324 ~~[(A)]~~ (i) the hotel has a minimum of 150 guest rooms; and

325 ~~[(B)]~~ (ii) the locations under the limited-service restaurant license are:

326 ~~[(F)]~~ (A) within the same hotel; and

327 ~~[(H)]~~ (B) on premises that are managed or operated, and owned or leased by the
328 limited-service restaurant licensee.

329 ~~[(i)]~~ (b) A facility other than a hotel shall have a separate limited-service restaurant
330 license for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for
331 sale, or furnished.

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

335 (b) With respect to the premises of a limited-service restaurant license issued by the
336 commission that undergoes a change of ownership, the commission shall waive or vary the
337 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a

338 limited-service restaurant license to the new owner of the premises if:

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

341 (ii) the premises has had a limited-service restaurant license at all times since the
342 limited-service restaurant license described in Subsection (4)(b)(i) was issued without a
343 variance; and

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

347 **Section 7. Repealer.**

348 This bill repeals:

349 Section **32B-5-205, Conditional retail license.**

350 **Section 8. Effective date.**

351 This bill takes effect on July 1, 2012.

Legislative Review Note
as of 1-13-12 7:04 PM

Office of Legislative Research and General Counsel