

1 **ALCOHOLIC BEVERAGE CONTROL ACT SAMPLING**

2 **AMENDMENTS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ross I. Romero**

6 House Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill modifies the Alcoholic Beverage Control Act to address sampling of liquor.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ allows sampling of liquor by retail licensees under certain circumstances; and
- 14 ▶ makes technical and conforming amendments.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill takes effect on July 1, 2011.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **32B-1-102 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

22 **32B-4-705 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

23 **32B-4-708 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

24

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

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



28 **32B-1-102 (Effective 07/01/11). Definitions.**

29 As used in this title:

30 (1) "Airport lounge" means a business location:

31 (a) at which an alcoholic product is sold at retail for consumption on the premises; and

32 (b) that is located at an international airport with a United States Customs office on the
33 premises of the international airport.

34 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,
35 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

36 (3) "Alcoholic beverage" means the following:

37 (a) beer; or

38 (b) liquor.

39 (4) (a) "Alcoholic product" means a product that:

40 (i) contains at least .5% of alcohol by volume; and

41 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
42 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
43 in an amount equal to or greater than .5% of alcohol by volume.

44 (b) "Alcoholic product" includes an alcoholic beverage.

45 (c) "Alcoholic product" does not include any of the following common items that
46 otherwise come within the definition of an alcoholic product:

47 (i) except as provided in Subsection (4)(d), an extract;

48 (ii) vinegar;

49 (iii) cider;

50 (iv) essence;

51 (v) tincture;

52 (vi) food preparation; or

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

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

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

57 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

58 (b) described in Section 62A-15-401.

- 59 (6) "Banquet" means an event:
- 60 (a) that is held at one or more designated locations approved by the commission in or
- 61 on the premises of a:
 - 62 (i) hotel;
 - 63 (ii) resort facility;
 - 64 (iii) sports center; or
 - 65 (iv) convention center;
- 66 (b) for which there is a contract:
 - 67 (i) between a person operating a facility listed in Subsection (6)(a) and another person;
 - 68 and
 - 69 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to
 - 70 provide an alcoholic product at the event; and
 - 71 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.
- 72 (7) (a) Subject to Subsection (7)(b), "bar" means a counter or similar structure:
 - 73 (i) at which an alcoholic product is:
 - 74 (A) stored; or
 - 75 (B) dispensed; or
 - 76 (ii) from which an alcoholic product is served.
- 77 (b) For purposes of a full-service restaurant license or a limited-service restaurant
- 78 license, "bar structure" means a surface or structure on the premises of a restaurant if on or at
- 79 any place of the surface or structure an alcoholic product is:
 - 80 (i) stored; or
 - 81 (ii) dispensed.
- 82 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:
 - 83 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by
 - 84 volume or 3.2% by weight; and
 - 85 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 86 (b) "Beer" may or may not contain hops or other vegetable products.
- 87 (c) "Beer" includes a product that:
 - 88 (i) contains alcohol in the percentages described in Subsection (8)(a); and
 - 89 (ii) is referred to as:

- 90 (A) beer;
- 91 (B) ale;
- 92 (C) porter;
- 93 (D) stout;
- 94 (E) lager; or
- 95 (F) a malt or malted beverage.
- 96 (d) "Beer" does not include a flavored malt beverage.
- 97 (9) "Beer retailer" means a business:
- 98 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,
- 99 whether for consumption on or off the business premises; and
- 100 (b) to whom a license is issued:
- 101 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise
- 102 Beer Retailer Local Authority; or
- 103 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,
- 104 and Chapter 6, Part 7, On-premise Beer Retailer License.
- 105 (10) "Beer wholesaling license" means a license:
- 106 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and
- 107 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
- 108 retail licensees or off-premise beer retailers.
- 109 (11) "Billboard" means a public display used to advertise, including:
- 110 (a) a light device;
- 111 (b) a painting;
- 112 (c) a drawing;
- 113 (d) a poster;
- 114 (e) a sign;
- 115 (f) a signboard; or
- 116 (g) a scoreboard.
- 117 (12) "Brewer" means a person engaged in manufacturing:
- 118 (a) beer;
- 119 (b) heavy beer; or
- 120 (c) a flavored malt beverage.

121 (13) "Brewery manufacturing license" means a license issued in accordance with
122 Chapter 11, Part 5, Brewery Manufacturing License.

123 (14) "Certificate of approval" means a certificate of approval obtained from the
124 department under Subsection 32B-11-201(4).

125 (15) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
126 a bus company to a group of persons pursuant to a common purpose:

127 (a) under a single contract;

128 (b) at a fixed charge in accordance with the bus company's tariff; and

129 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
130 motor vehicle, and a driver to travel together to one or more specified destinations.

131 (16) "Church" means a building:

132 (a) set apart for worship;

133 (b) in which religious services are held;

134 (c) with which clergy is associated; and

135 (d) that is tax exempt under the laws of this state.

136 (17) (a) "Club license" means a license issued in accordance with Chapter 5, Retail
137 License Act, and Chapter 6, Part 4, Club License.

138 (b) "Club license" includes:

139 (i) a dining club license;

140 (ii) an equity club license;

141 (iii) a fraternal club license; or

142 (iv) a social club license.

143 (18) "Commission" means the Alcoholic Beverage Control Commission created in
144 Section 32B-2-201.

145 (19) "Commissioner" means a member of the commission.

146 (20) "Community location" means:

147 (a) a public or private school;

148 (b) a church;

149 (c) a public library;

150 (d) a public playground; or

151 (e) a public park.

- 152 (21) "Community location governing authority" means:
153 (a) the governing body of the community location; or
154 (b) if the commission does not know who is the governing body of a community
155 location, a person who appears to the commission to have been given on behalf of the
156 community location the authority to prohibit an activity at the community location.
- 157 (22) "Convention center" means a facility that is:
158 (a) in total at least 30,000 square feet; and
159 (b) otherwise defined as a "convention center" by the commission by rule.
- 160 (23) For purposes of a full-service restaurant license or limited-service restaurant
161 license:
162 (a) subject to Subsection (23)(b), "counter" means a surface or structure in a dining
163 area of a restaurant where seating is provided to a patron for service of food; and
164 (b) "counter" does not include a surface or structure if on or at any point of the surface
165 or structure an alcoholic product is:
166 (i) stored; or
167 (ii) dispensed.
- 168 (24) "Department" means the Department of Alcoholic Beverage Control created in
169 Section 32B-2-203.
- 170 (25) "Department compliance officer" means an individual who is:
171 (a) an auditor or inspector; and
172 (b) employed by the department.
- 173 (26) "Department sample" means liquor that is placed in the possession of the
174 department for testing, analysis, and sampling.
- 175 (27) "Dining club license" means a license issued in accordance with Chapter 5, Retail
176 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
177 dining club license.
- 178 (28) "Director," unless the context requires otherwise, means the director of the
179 department.
- 180 (29) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
181 title:
182 (a) against a person subject to administrative action; and

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

184 (30) For purposes of a full-service restaurant license or a limited-service restaurant
185 license, "dispense" means:

186 (a) drawing of an alcoholic product:

187 (i) from an area where it is stored; or

188 (ii) as provided in Subsection 32B-6-205(12)(b)(ii) or 32B-6-305(12)(b)(ii); and

189 (b) using the alcoholic product described in Subsection (29)(a) on the premises of the
190 restaurant to mix or prepare an alcoholic product to be furnished to a patron of the restaurant.

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

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

195 (33) "Educational facility" includes:

196 (a) a nursery school;

197 (b) an infant day care center; and

198 (c) a trade and technical school.

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

202 (35) "Event permit" means:

203 (a) a single event permit; or

204 (b) a temporary beer event permit.

205 (36) (a) "Flavored malt beverage" means a beverage:

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

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

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

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

- 214 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
- 215 (b) "Flavored malt beverage" is considered liquor for purposes of this title.
- 216 (37) "Fraternal club license" means a license issued in accordance with Chapter 5,
217 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
218 as a fraternal club license.
- 219 (38) "Full-service restaurant license" means a license issued in accordance with
220 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.
- 221 (39) (a) "Furnish" means by any means to provide with, supply, or give an individual
222 an alcoholic product, by sale or otherwise.
- 223 (b) "Furnish" includes to:
 - 224 (i) serve;
 - 225 (ii) deliver; or
 - 226 (iii) otherwise make available.
- 227 (40) "Guest" means an individual who meets the requirements of Subsection
228 32B-6-407(9).
- 229 (41) "Health care practitioner" means:
 - 230 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - 231 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
 - 232 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
 - 233 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapist
234 Practice Act;
 - 235 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
236 Nurse Practice Act;
 - 237 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
238 Practice Act;
 - 239 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
240 Therapy Practice Act;
 - 241 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
 - 242 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
243 Professional Practice Act;
 - 244 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

- 245 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
- 246 Practice Act;
- 247 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
- 248 Hygienist Practice Act; and
- 249 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.
- 250 (42) (a) "Heavy beer" means a product that:
- 251 (i) contains more than 4% alcohol by volume; and
- 252 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 253 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 254 (43) "Hotel" is as defined by the commission by rule.
- 255 (44) "Identification card" means an identification card issued under Title 53, Chapter 3,
- 256 Part 8, Identification Card Act.
- 257 (45) "Industry representative" means an individual who is compensated by salary,
- 258 commission, or other means for representing and selling an alcoholic product of a
- 259 manufacturer, supplier, or importer of liquor.
- 260 (46) "Industry representative sample" means liquor that is placed in the possession of
- 261 the department for testing, analysis, and sampling by a local industry representative on the
- 262 premises of the department to educate the local industry representative of the quality and
- 263 characteristics of the product.
- 264 (47) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing
- 265 of an alcoholic product is prohibited by:
- 266 (a) law; or
- 267 (b) court order.
- 268 (48) "Intoxicated" means that a person:
- 269 (a) is significantly impaired as to the person's mental or physical functions as a result of
- 270 the use of:
- 271 (i) an alcoholic product;
- 272 (ii) a controlled substance;
- 273 (iii) a substance having the property of releasing toxic vapors; or
- 274 (iv) a combination of Subsections (48)(a)(i) through (iii); and
- 275 (b) exhibits plain and easily observed outward manifestations of behavior or physical

276 signs produced by the over consumption of an alcoholic product.

277 (49) "Investigator" means an individual who is:

278 (a) a department compliance officer; or

279 (b) a nondepartment enforcement officer.

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

281 (51) "License" means:

282 (a) a retail license;

283 (b) a license issued in accordance with Chapter 11, Manufacturing and Related

284 Licenses Act;

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

286 or

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

288 (52) "Licensee" means a person who holds a license.

289 (53) "Limited-service restaurant license" means a license issued in accordance with

290 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

291 (54) "Limousine" means a motor vehicle licensed by the state or a local authority, other

292 than a bus or taxicab:

293 (a) in which the driver and a passenger are separated by a partition, glass, or other

294 barrier;

295 (b) that is provided by a business entity to one or more individuals at a fixed charge in

296 accordance with the business entity's tariff; and

297 (c) to give the one or more individuals the exclusive use of the limousine and a driver

298 to travel to one or more specified destinations.

299 (55) (a) (i) "Liquor" means a liquid that:

300 (A) is:

301 (I) alcohol;

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

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

304 (IV) other drink or drinkable liquid; and

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

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

- 307 (ii) "Liquor" includes:
- 308 (A) heavy beer;
- 309 (B) wine; and
- 310 (C) a flavored malt beverage.
- 311 (b) "Liquor" does not include beer.
- 312 (56) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.
- 313 (57) "Liquor warehousing license" means a license that is issued:
- 314 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- 315 (b) to a person, other than a licensed manufacturer, who engages in the importation for
- 316 storage, sale, or distribution of liquor regardless of amount.
- 317 (58) "Local authority" means:
- 318 (a) for premises that are located in an unincorporated area of a county, the governing
- 319 body of a county; or
- 320 (b) for premises that are located in an incorporated city or a town, the governing body
- 321 of the city or town.
- 322 (59) "Lounge or bar area" is as defined by rule made by the commission.
- 323 (60) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
- 324 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 325 (61) "Member" means an individual who, after paying regular dues, has full privileges
- 326 in an equity club licensee or fraternal club licensee.
- 327 (62) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
- 328 or homeport facility for a ship:
- 329 (i) (A) under the control of the United States Department of Defense; or
- 330 (B) of the National Guard;
- 331 (ii) that is located within the state; and
- 332 (iii) including a leased facility.
- 333 (b) "Military installation" does not include a facility used primarily for:
- 334 (i) civil works;
- 335 (ii) a rivers and harbors project; or
- 336 (iii) a flood control project.
- 337 (63) "Minor" means an individual under the age of 21 years.

- 338 (64) "Nondepartment enforcement agency" means an agency that:
- 339 (a) (i) is a state agency other than the department; or
- 340 (ii) is an agency of a county, city, or town; and
- 341 (b) has a responsibility to enforce one or more provisions of this title.
- 342 (65) "Nondepartment enforcement officer" means an individual who is:
- 343 (a) a peace officer, examiner, or investigator; and
- 344 (b) employed by a nondepartment enforcement agency.
- 345 (66) (a) "Off-premise beer retailer" means a beer retailer who is:
- 346 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local
- 347 Authority; and
- 348 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
- 349 premises.
- 350 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 351 (67) "On-premise banquet license" means a license issued in accordance with Chapter
- 352 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.
- 353 (68) "On-premise beer retailer" means a beer retailer who is:
- 354 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
- 355 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer
- 356 License; and
- 357 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
- 358 premises, regardless of whether the beer retailer sells beer for consumption off the licensed
- 359 premises.
- 360 (69) "Package" means any of the following containing an alcoholic product:
- 361 (a) a container;
- 362 (b) a bottle;
- 363 (c) a vessel; or
- 364 (d) other receptacle.
- 365 (70) "Package agency" means a retail liquor location operated:
- 366 (a) under an agreement with the department; and
- 367 (b) by a person:
- 368 (i) other than the state; and

369 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package
370 Agency, to sell packaged liquor for consumption off the premises of the package agency.

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

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

374 (a) a customer;

375 (b) a member;

376 (c) a guest;

377 (d) an attendee of a banquet or event;

378 (e) an individual who receives room service;

379 (f) a resident of a resort;

380 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;

381 or

382 (h) an invitee.

383 (73) "Permittee" means a person issued a permit under:

384 (a) Chapter 9, Event Permit Act; or

385 (b) Chapter 10, Special Use Permit Act.

386 (74) "Person subject to administrative action" means:

387 (a) a licensee;

388 (b) a permittee;

389 (c) a manufacturer;

390 (d) a supplier;

391 (e) an importer;

392 (f) an out-of-state brewer holding a certificate of approval; or

393 (g) staff of:

394 (i) a person listed in Subsections (74)(a) through (g); or

395 (ii) a package agent.

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

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

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

402 (b) the order is made in the course of that health care practitioner's professional
403 practice; and

404 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.

405 (77) (a) "Private event" means a specific social, business, or recreational event:

406 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
407 group; and

408 (ii) that is limited in attendance to people who are specifically designated and their
409 guests.

410 (b) "Private event" does not include an event to which the general public is invited,
411 whether for an admission fee or not.

412 (78) (a) "Proof of age" means:

413 (i) an identification card;

414 (ii) an identification that:

415 (A) is substantially similar to an identification card;

416 (B) is issued in accordance with the laws of a state other than Utah in which the
417 identification is issued;

418 (C) includes date of birth; and

419 (D) has a picture affixed;

420 (iii) a valid driver license certificate that:

421 (A) includes date of birth;

422 (B) has a picture affixed; and

423 (C) is issued:

424 (I) under Title 53, Chapter 3, Uniform Driver License Act; or

425 (II) in accordance with the laws of the state in which it is issued;

426 (iv) a military identification card that:

427 (A) includes date of birth; and

428 (B) has a picture affixed; or

429 (v) a valid passport.

430 (b) "Proof of age" does not include a driving privilege card issued in accordance with

431 Section 53-3-207.

432 (79) (a) "Public building" means a building or permanent structure that is:

433 (i) owned or leased by:

434 (A) the state; or

435 (B) a local government entity; and

436 (ii) used for:

437 (A) public education;

438 (B) transacting public business; or

439 (C) regularly conducting government activities.

440 (b) "Public building" does not include a building owned by the state or a local

441 government entity when the building is used by a person, in whole or in part, for a proprietary
442 function.

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

446 (81) (a) "Record" means information that is:

447 (i) inscribed on a tangible medium; or

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

449 (b) "Record" includes:

450 (i) a book;

451 (ii) a book of account;

452 (iii) a paper;

453 (iv) a contract;

454 (v) an agreement;

455 (vi) a document; or

456 (vii) a recording in any medium.

457 (82) "Residence" means a person's principal place of abode within Utah.

458 (83) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

459 (84) "Resort" is as defined in Section 32B-8-102.

460 (85) "Resort facility" is as defined by the commission by rule.

461 (86) "Resort license" means a license issued in accordance with Chapter 5, Retail

462 License Act, and Chapter 8, Resort License Act.

463 (87) "Restaurant" means a business location:

464 (a) at which a variety of foods are prepared;

465 (b) at which complete meals are served to the general public; and

466 (c) that is engaged primarily in serving meals to the general public.

467 (88) "Retail license" means one of the following licenses issued under this title:

468 (a) a full-service restaurant license;

469 (b) a limited-service restaurant license;

470 (c) a club license;

471 (d) an airport lounge license;

472 (e) an on-premise banquet license; or

473 (f) an on-premise beer license.

474 (89) "Retail licensee sample" means liquor that is used for testing, analysis, and
475 sampling by a retail licensee in accordance with Subsection 32B-4-705(7).

476 [~~89~~] (90) "Room service" means furnishing an alcoholic product to a person in a
477 guest room of a:

478 (a) hotel; or

479 (b) resort facility.

480 [~~90~~] (91) "Serve" means to place an alcoholic product before an individual.

481 [~~91~~] (92) (a) "School" means a building used primarily for the general education of
482 minors.

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

484 [~~92~~] (93) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby,
485 for consideration, an alcoholic product is either directly or indirectly transferred, solicited,
486 ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether
487 done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or
488 the rules made by the commission.

489 [~~93~~] (94) "Sexually oriented entertainer" means a person who while in a state of
490 seminudity appears at or performs:

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

492 (b) on the premises of:

- 493 (i) a social club licensee; or
- 494 (ii) a tavern;
- 495 (c) on behalf of or at the request of the licensee described in Subsection [~~93~~] (94)(b);
- 496 (d) on a contractual or voluntary basis; and
- 497 (e) whether or not the person is designated as:
 - 498 (i) an employee;
 - 499 (ii) an independent contractor;
 - 500 (iii) an agent of the licensee; or
 - 501 (iv) a different type of classification.
- 502 [~~94~~] (95) "Single event permit" means a permit issued in accordance with Chapter 9,
- 503 Part 3, Single Event Permit.
- 504 [~~95~~] (96) "Small brewer" means a brewer who manufactures less than 60,000 barrels
- 505 of beer, heavy beer, and flavored malt beverages per year.
- 506 [~~96~~] (97) "Social club license" means a license issued in accordance with Chapter 5,
- 507 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
- 508 as a social club license.
- 509 [~~97~~] (98) "Special use permit" means a permit issued in accordance with Chapter 10,
- 510 Special Use Permit Act.
- 511 [~~98~~] (99) (a) "Spirituos liquor" means liquor that is distilled.
- 512 (b) "Spirituos liquor" includes an alcoholic product defined as a "distilled spirit" by
- 513 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.
- 514 [~~99~~] (100) "Sports center" is as defined by the commission by rule.
- 515 [~~100~~] (101) (a) "Staff" means an individual who engages in activity governed by this
- 516 title:
 - 517 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
 - 518 holder;
 - 519 (ii) at the request of the business, including a package agent, licensee, permittee, or
 - 520 certificate holder; or
 - 521 (iii) under the authority of the business, including a package agent, licensee, permittee,
 - 522 or certificate holder.
 - 523 (b) "Staff" includes:

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

531 [~~(101)~~] (102) "State of nudity" means:

- 532 (a) the appearance of:
 - 533 (i) the nipple or areola of a female human breast;
 - 534 (ii) a human genital;
 - 535 (iii) a human pubic area; or
 - 536 (iv) a human anus; or
- 537 (b) a state of dress that fails to opaquely cover:
 - 538 (i) the nipple or areola of a female human breast;
 - 539 (ii) a human genital;
 - 540 (iii) a human pubic area; or
 - 541 (iv) a human anus.

542 [~~(102)~~] (103) "State of seminudity" means a state of dress in which opaque clothing
543 covers no more than:

- 544 (a) the nipple and areola of the female human breast in a shape and color other than the
545 natural shape and color of the nipple and areola; and
- 546 (b) the human genitals, pubic area, and anus:
 - 547 (i) with no less than the following at its widest point:
 - 548 (A) four inches coverage width in the front of the human body; and
 - 549 (B) five inches coverage width in the back of the human body; and
 - 550 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

551 [~~(103)~~] (104) (a) "State store" means a facility for the sale of packaged liquor:

- 552 (i) located on premises owned or leased by the state; and
- 553 (ii) operated by a state employee.
- 554 (b) "State store" does not include:

- 555 (i) a package agency;
- 556 (ii) a licensee; or
- 557 (iii) a permittee.

558 [~~(104)~~] (105) For purposes of a full-service restaurant license or a limited-service
 559 restaurant license:

560 (a) "Storage area" means an area on licensed premises where the licensee stores an
 561 alcoholic product.

562 (b) "Store" means to place or maintain in a location an alcoholic product from which a
 563 person draws to prepare an alcoholic product to be furnished to a patron of the restaurant,
 564 except as provided in Subsection 32B-6-205(12)(b)(ii) or 32B-6-305(12)(b)(ii).

565 [~~(105)~~] (106) "Sublicense" is as defined in Section 32B-8-102.

566 [~~(106)~~] (107) "Supplier" means a person who sells an alcoholic product to the
 567 department.

568 [~~(107)~~] (108) "Tavern" means an on-premise beer retailer who is:

569 (a) issued a license by the commission in accordance with Chapter 5, Retail License
 570 Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

571 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,
 572 On-premise Beer Retailer License.

573 [~~(108)~~] (109) "Temporary beer event permit" means a permit issued in accordance with
 574 Chapter 9, Part 4, Temporary Beer Event Permit.

575 [~~(109)~~] (110) "Temporary domicile" means the principal place of abode within Utah of
 576 a person who does not have a present intention to continue residency within Utah permanently
 577 or indefinitely.

578 [~~(110)~~] (111) "Unsaleable liquor merchandise" means a package that:

- 579 (a) is unsaleable because the package is:
 - 580 (i) unlabeled;
 - 581 (ii) leaky;
 - 582 (iii) damaged;
 - 583 (iv) difficult to open; or
 - 584 (v) partly filled;
- 585 (b) (i) has faded labels or defective caps or corks;

586 (ii) has contents that are:

587 (A) cloudy;

588 (B) spoiled; or

589 (C) chemically determined to be impure; or

590 (iii) contains:

591 (A) sediment; or

592 (B) a foreign substance; or

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

594 [~~(112)~~] (112) (a) "Wine" means an alcoholic product obtained by the fermentation of
595 the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or
596 not another ingredient is added.

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

599 [~~(112)~~] (113) "Winery manufacturing license" means a license issued in accordance
600 with Chapter 11, Part 3, Winery Manufacturing License.

601 Section 2. Section **32B-4-705 (Effective 07/01/11)** is amended to read:

602 **32B-4-705 (Effective 07/01/11). Exclusions from tied house prohibitions.**

603 (1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an
604 industry member to a retailer under the conditions and within the limitations prescribed in:

605 (a) this section; and

606 (b) the applicable federal laws cited in this section.

607 (2) The following may be furnished by an industry member:

608 (a) a product display as provided in 27 C.F.R. Sec. 6.83;

609 (b) point of sale advertising material or a consumer advertising specialty as provided in
610 27 C.F.R. Sec. 6.84;

611 (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;

612 (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;

613 (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;

614 (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;

615 (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;

616 (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;

- 617 (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
- 618 (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and
- 619 (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.
- 620 (3) The following exceptions provided in federal law are not applicable:
- 621 (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
- 622 (b) the exception for a consumer tasting or sampling at a retail establishment as
- 623 provided in 27 C.F.R. Sec. 6.95; and
- 624 (c) the exception for participation in a retailer association activity provided in 27
- 625 C.F.R. Sec. 6.100.
- 626 (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain
- 627 a record:
- 628 (a) of an item furnished to a retailer;
- 629 (b) on the premises of the industry member; and
- 630 (c) for a three-year period.
- 631 (5) A sample of liquor may be provided to the department under the following
- 632 conditions:
- 633 (a) With the department's permission, an industry member may submit a department
- 634 sample to the department for product testing, analysis, and sampling.
- 635 (b) No more than two department samples of a particular type, vintage, and production
- 636 lot of a particular branded product may be submitted to the department for department testing,
- 637 analysis, and sampling within a consecutive 120-day period.
- 638 (c) (i) A department sample may not exceed 1 liter.
- 639 (ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may
- 640 not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a
- 641 larger size, not to exceed 5 liters:
- 642 (A) wine;
- 643 (B) heavy beer; or
- 644 (C) a flavored malt beverage.
- 645 (d) A department sample submitted to the department:
- 646 (i) shall be shipped prepaid by the industry member by common carrier; and
- 647 (ii) may not be shipped by United States mail directly to the department's central

648 administrative warehouse office.

649 (e) A department sample may not be shipped to any other location within the state.

650 (f) The industry member shall submit with a department sample submitted to the
651 department a letter from the industry member that clearly:

652 (i) identifies the product as a "department sample"; and

653 (ii) states the FOB case price of the product.

654 (g) (i) The department may transfer a listed item from current stock:

655 (A) for use as a comparison control sample; or

656 (B) to verify product spoilage as considered appropriate.

657 (ii) The department shall charge back a sample transferred under this Subsection (5)(g)
658 to the respective industry member.

659 (h) The department shall:

660 (i) account for, label, and record a department sample received or transferred;

661 (ii) account for the department sample's disposition; and

662 (iii) maintain a record of the sample and its disposition for a two-year period.

663 (i) The department shall affix to each package of a department sample a label clearly
664 identifying the product as a "department sample."

665 (j) The department shall dispose of a department sample delivered to the department or
666 transferred from the department's current stock in one of the following ways as chosen by the
667 department:

668 (i) test and analyze the department sample, with the remaining contents destroyed
669 under controlled and audited conditions established by the department;

670 (ii) destroy the entire contents of the department sample under controlled and audited
671 conditions established by the department; or

672 (iii) add the department sample to the inventory of the department for sale to the
673 public.

674 (k) A person other than an authorized department official may not be in possession of a
675 department sample except as otherwise provided.

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

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

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

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

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

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

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

690 (7) (a) A retail licensee may taste and analyze a retail licensee sample under the
691 conditions listed in this Subsection (7).

692 (b) (i) Only an industry representative may purchase a retail licensee sample.

693 (ii) An industry representative shall purchase a retail licensee sample from the
694 department from a particular type, vintage, and production lot:

695 (A) listed on the department's sales list; or

696 (B) special ordered by the department.

697 (iii) An industry representative may not purchase more than two retail licensee samples
698 of a particular type, vintage, and production lot of a particular branded product within a
699 consecutive 120-day period.

700 (c) (i) An industry representative shall ensure that before a retail licensee sample is
701 used for tasting and analysis, the department affixes to the retail licensee sample a label clearly
702 identifying the product as a "retail licensee sample."

703 (ii) The department shall assess a reasonable handling, labeling, and storage fee for a
704 retail licensee sample.

705 (d) (i) A retail licensee sample of liquor may not exceed one liter.

706 (ii) Notwithstanding Subsection (7)(d)(i), a retail licensee sample of the following may
707 not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size,
708 not to exceed 5 liters:

709 (A) wine;

710 (B) heavy beer; or

711 (C) a flavored malt beverage.

712 (e) (i) An industry representative of the manufacturer, supplier, or importer whose
713 product is being tasted and analyzed shall oversee a tasting and analysis of a retail licensee
714 sample by a retail licensee at the licensed premises of the retail licensee.

715 (ii) An industry representative described in Subsection (7)(e)(i) may participate in the
716 tasting and analysis of a retail licensee sample at the licensed premises of a retail licensee.

717 (iii) Only an owner, manager, or other individual who purchases an alcoholic product
718 for a retail licensee may on behalf of the retail licensee taste and analyze one or more retail
719 licensee samples on the licensed premises of the retail licensee.

720 (f) (i) An alcoholic product may not be consumed during the time that the individual
721 tastes and analyzes liquor.

722 (ii) An individual described in Subsection (7)(e) may taste and analyze no more than
723 the following of a retail licensee sample:

724 (A) 1.5 ounces of a particular type, vintage, and production lot of a particular branded
725 product of wine, heavy beer, or flavored malt beverage; or

726 (B) .5 ounces of a particular type, vintage, and production lot of a particular branded
727 product of spirituous liquor.

728 (g) An industry representative may bring food to taste with a retail licensee sample
729 being tasted and analyzed under this Subsection (7).

730 (h) An industry representative may add another alcoholic product to the amount of a
731 retail licensee sample being tasted and analyzed under this Subsection (7) if:

732 (i) the other alcoholic product:

733 (A) is used as a secondary flavoring ingredient;

734 (B) is used in conjunction with the primary liquor;

735 (C) is not the only liquor in the beverage; and

736 (D) is purchased from the department; and

737 (ii) an individual has no more than 2.5 ounces of spirituous liquor at a time before the
738 individual.

739 (i) An industry representative shall:

740 (i) account for and record each retail licensee sample received;

741 (ii) account for each retail licensee sample's disposition; and
 742 (iii) maintain a record of the retail licensee sample and its disposition for a two-year
 743 period.

744 (j) After a tasting and analysis under this Subsection (7) is completed, an industry
 745 representative shall remove from the retail licensee's licensed premises the retail licensee
 746 samples brought by the industry representative, including the unused contents of an opened
 747 product remaining after a product is tasted and analyzed.

748 ~~[(7)]~~ (8) An educational seminar may involve an industry member under the conditions
 749 listed in this Subsection ~~[(7)]~~ (8).

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

751 (i) involving:

752 (A) the department;

753 (B) a retailer;

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

755 (D) another industry member; or

756 (E) an employee of a person listed in Subsections ~~[(7)]~~ (8)(a)(i)(A) through (D); and

757 (ii) regarding a topic such as:

758 (A) merchandising and product knowledge;

759 (B) use of equipment; and

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

761 (b) An industry member may not pay the expenses of or compensate a person who is a
 762 department employee, a retailer, or a permittee for attending a seminar or tour described in
 763 Subsection ~~[(7)]~~ (8)(a).

764 ~~[(8)]~~ (9) (a) A liquor industry member may conduct a tasting of a liquor product of the
 765 industry member:

766 (i) for the department, at the department's request; ~~[and]~~

767 (ii) for a licensed industry representative, but only at the department's central
 768 administrative warehouse office~~[-]; and~~

769 (iii) for a retail licensee, through an industry representative in accordance with
 770 Subsection (7).

771 (b) A liquor industry member may only use a department sample or industry

772 representative sample when conducting a tasting of the industry member's liquor product under
773 this Subsection (9).

774 (c) [~~A~~] Subject to Subsection (6), a beer industry member may conduct a tasting of a
775 beer product for a beer retailer either at:

- 776 (i) the industry member's premises; or
- 777 (ii) a retail establishment.

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

- 780 (i) a retailer; or
- 781 (ii) a member of the general public.

782 [~~9~~] (10) A beer industry member may participate in a beer retailer association activity
783 to the extent authorized by 27 C.F.R. Sec. 6.100.

784 [~~10~~] (11) (a) An industry member may contribute to a charitable, civic, religious,
785 fraternal, educational, or community activity, except the contribution may not be given to
786 influence a retailer in the selection of a product that may be sold at the activity.

787 (b) An industry member or retailer violates this Subsection [~~10~~] (11) if:

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

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

791 [~~11~~] (12) (a) An industry member may lease or furnish equipment listed in
792 Subsection [~~11~~] (12)(b) to a retailer if:

- 793 (i) the equipment is leased or furnished for a special event;
- 794 (ii) a reasonable rental or service fee is charged for the equipment; and
- 795 (iii) the period for which the equipment is leased or furnished does not exceed 30 days.

796 (b) This Subsection [~~11~~] (12) applies to the following equipment:

- 797 (i) a picnic pump;
- 798 (ii) a cold plate;
- 799 (iii) a tub;
- 800 (iv) a keg box;
- 801 (v) a refrigerated trailer;
- 802 (vi) a refrigerated van; or

803 (vii) a refrigerated draft system.

804 [~~(12)~~] (13) (a) A liquor industry member may assist the department in:

805 (i) ordering, shipping, and delivering merchandise;

806 (ii) new product notification;

807 (iii) listing and delisting information;

808 (iv) price quotations;

809 (v) product sales analysis;

810 (vi) shelf management; and

811 (vii) an educational seminar.

812 (b) (i) A liquor industry member may, to acquire a new listing:

813 (A) solicit an order from the department; and

814 (B) submit to the department a sample of the liquor industry member's products under

815 Subsection (5) and price lists.

816 (ii) (A) An industry member is confined to the customer areas when the industry

817 member visits a state store or package agency unless otherwise approved.

818 (B) An industry member is confined to the office area of a state warehouse when the

819 industry member visits a state warehouse unless otherwise approved.

820 [~~(13)~~] (14) A beer industry member may assist a beer retailer in:

821 (a) ordering, shipping, and delivering beer merchandise;

822 (b) new product notification;

823 (c) listing and delisting information;

824 (d) price quotations;

825 (e) product sales analysis;

826 (f) shelf management; and

827 (g) an educational seminar.

828 [~~(14)~~] (15) A beer industry member may, to acquire a new listing:

829 (a) solicit an order from a beer retailer; and

830 (b) submit to a beer retailer a sample of the beer industry member's beer products under

831 Subsection (5) and price lists.

832 Section 3. Section **32B-4-708 (Effective 07/01/11)** is amended to read:

833 **32B-4-708 (Effective 07/01/11). Unlawful act involving consumers.**

834 (1) (a) It is unlawful for an industry member, directly or indirectly, or through an
835 affiliate, to give away any of its product to a person except for testing, analysis, and sampling
836 purposes by the [~~department or local industry representative licensee~~] following, to the extent
837 authorized by this title[-]:

- 838 (i) the department;
- 839 (ii) a retail licensee;
- 840 (iii) a beer retailer; or
- 841 (iv) a local industry representative licensee.

842 (b) This Subsection (1) does not preclude an industry member from serving its product
843 to others at a private event hosted by the industry member in the industry member's home or
844 elsewhere so long as the product is not served:

- 845 (i) as part of a promotion of the industry member's product; or
- 846 (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or
847 sampling purposes.

848 (2) It is unlawful for an industry member or retailer, directly or indirectly, or through
849 an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or
850 sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a
851 promotion, program, or other activity.

852 (3) It is unlawful for an industry member or retailer, directly or indirectly, or through
853 an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a
854 rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an
855 alcoholic product.

856 (4) It is unlawful for an industry member or retailer to sponsor or underwrite an
857 athletic, theatrical, scholastic, artistic, or scientific event that:

- 858 (a) overtly promotes the consumption of a product;
- 859 (b) offers a product to the general public without charge; or
- 860 (c) takes place on the premises of a school, college, university, or other educational
861 institution.

862 Section 4. **Effective date.**

863 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 2-10-11 11:08 AM

Office of Legislative Research and General Counsel