

# UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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## Beer Wholesaling License Summary

*Note: This is general information only and should not be considered conclusive. For further detail, please consult Title 32B of the Utah Code or the Rules of the Commission*



**A beer wholesaling license** allows for the import, purchase, storage, sale and distribution of beer (not to exceed 3.2% alcohol by weight or 4.0% alcohol by volume). The license holder may; purchase and import beer into Utah, store beer in approved warehouses, and sell and distribute beer directly to licensed beer retailers and holders of single event permits or temporary special event beer permits. Licenses run from January 1 to December 31.

### Beer Purchases

License holders may only:

- Purchase beer from brewers licensed in Utah, or
- Import or purchase beer from brewers located outside Utah who hold a certificate of approval from the Department of Alcoholic Beverage Control (DABC).

### Beer Sales

- Sales may only be made to licensed retailers or holders of temporary special event permits.
- A beer wholesaler may not sell or distribute an alcoholic beverage that has not has its label approved by the department under 32B-1, Part 6, Malted Beverages Act.

### Geographical Area

- A beer wholesaler must designate its authorized geographical area for sales and distribution of beer (assigned by its suppliers).
- The wholesaler may only sell and distribute beer to retailers within its authorized geographical area.
- If a beer wholesaler is temporarily unable to supply retailers within its area, the DABC may grant temporary authority for another wholesaler to supply the same brands of beer.

## Beer Storage

- A beer wholesaler must own, lease, or otherwise control and maintain a warehouse facility within Utah.
- The facility must be approved by and a current floor plan kept on file with the DABC.
- Beer must be physically removed from the vehicle used to transport the beer from the supplier into the beer wholesalers warehouse before it may be distributed and sold.



## Minors

A minor may not be:

- Granted a beer wholesaling license; or
- Employed to handle beer.

## Samples

Samples of beer may be provided to retailers under the following circumstances:

- The retailer has not purchased the brand within the last 12 months; and
- Not more than three gallons of any brand may be given to a retailer, except that if a particular product is not available in a size within the 3 gallon limit, the next larger size may be provided.

## Trade Practices

The following is a brief summary. For more detail, consult the "Trade Practices Act" Title 32B-4 Part 7, and the "Utah Beer Industry Distribution Act" 32B-14 U.C.A.



Beer wholesalers may not:

- Directly or indirectly hold a brewery license or a beer retailer license;
- Induce or coerce any retailer to engage in illegal conduct;
- Prohibit a retailer from selling the product of any other wholesaler;
- Fix the price at which the retailer may resell beer;
- Require any retailer to take delivery of any product not voluntarily ordered;
- Restrict the right of a retailer to participate in an organization representing the interests of retailers;
- Require a retailer to participate in or contribute to any advertising fund or promotional activity;
- Retaliate against a retailer that files a complaint with the DABC or a federal agency against the wholesaler;



- Refuse to deliver beer to a properly licensed retailer unless:
  - The retailer refuses to pay the wholesaler, or
  - There are other circumstances that prevent delivery such as a strike, embargo, bona fide shortage of materials, or unforeseeable events beyond the control of the wholesaler;
- Induce a retailer to purchase beer to the exclusion in whole or in part of any beer products sold by other persons by:
  - Violating the provisions of the tied house restrictions of the alcoholic beverage control act (see section 32b-4 703, 704, and 705 u.c.a.), such as:
    - Providing certain things of value to a licensed retailer, such as equipment, supplies, signs, services, paid advertising, money, etc., subject to certain exceptions;
    - Guaranteeing any loan or repayment of any financial obligation of a retailer;
    - Extending credit for a period in excess of 15 days. Payment must be received in cash or its equivalent by the 25<sup>th</sup> of the month if sold between the 1<sup>st</sup> and 15<sup>th</sup> of the month, or by 10<sup>th</sup> of the succeeding month if sold from the 16<sup>th</sup> through end of the month;



- Violate the commercial bribery prohibitions of the alcoholic beverage control act (see section 32b-4-706 u.c.a.).
- Violate the consignment sales prohibitions of the alcoholic beverage control act (see section 32b-4-707 u.c.a.).

## Prohibitions involving consumers

A wholesaler may not:

- Give away any of its alcoholic products except as samples to the extent indicated above, or to the extent authorized by section 32b-4-708 u.c.a.);
- Engage in a promotional scheme that requires the purchase or consumption of beer in order to participate;
- Give away things of value, such as money, prizes, rebates, or refunds based on the purchase, display, use, sale, or consumption of beer;
- Sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that;
  - Overtly promotes the consumption of beer;
  - Offers beer to the general public without charge;
  - or Takes place on the premises of a school, college, university, or educational institution.



## **Chapter 13**

### **Beer Wholesaling License Act**

#### **Part 1**

#### **General Provisions**

##### **32B-13-101 Title.**

This chapter is known as the "Beer Wholesaling License Act."

Enacted by Chapter 276, 2010 General Session

##### **32B-13-102 Definitions.**

Reserved

Enacted by Chapter 276, 2010 General Session

#### **Part 2**

#### **Beer Wholesaling License Process**

##### **32B-13-201 Commission's power to issue beer wholesaling license.**

- (1)
  - (a) Before a person may purchase, store, sell, offer for sale, distribute, or import beer to a person who sells at retail or acts in any way as a beer wholesaler, the person shall first obtain a beer wholesaling license issued by the commission in accordance with this chapter.
  - (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- (2)
  - (a) The commission may issue a beer wholesaling license for the purchase, storage, sale, distribution, transportation, and import of beer.
  - (b) A beer wholesaling license entitles the beer wholesaler licensee to:
    - (i) purchase and import beer into the state;
    - (ii) store beer in an approved warehouse; and
    - (iii) sell and distribute beer directly to:
      - (A) a beer retailer; or
      - (B) an event permittee.
- (3) Nothing in this section precludes a small brewer from selling beer the small brewer manufactures directly to:
  - (a) a retail licensee;
  - (b) an off-premise beer retailer; or
  - (c) an event permittee.

Amended by Chapter 334, 2011 General Session

##### **32B-13-202 Application requirements for beer wholesaling license.**

To obtain a beer wholesaling license, a person shall submit to the department:

- (1) a written application in a form prescribed by the department;
- (2) a nonrefundable \$300 application fee;



- (3) an initial license fee of \$2,300 that is refundable if a beer wholesaling license is not issued;
- (4) written consent of the local authority;
- (5) a copy of the person's current business license;
- (6) a bond as specified in Section 32B-13-206;
- (7) a statement of the brands of beer the person is authorized to sell and distribute;
- (8) a statement of the one or more sales territories in which the person is authorized to sell and distribute beer under an agreement required by Section 32B-11-201 or 32B-11-503;
- (9) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
- (10) a signed consent form stating that the beer wholesaling licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
- (11) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
- (12) any other information that the commission or department may require.

Amended by Chapter 334, 2011 General Session

**32B-13-203 Renewal requirements for beer wholesaling license.**

- (1) A beer wholesaling license expires on December 31 of each year.
- (2) To renew a beer wholesaling license, a person shall submit to the department by no later than November 30 of the year the license expires:
  - (a) a completed renewal application in a form prescribed by the department; and
  - (b) a renewal fee in the following amount:

Case Sales in Previous License Year for the Licensee		Renewal Fee
	under 500,000 cases	\$1,200
	equals or exceeds 500,000 cases but less than 1,000,000 cases	\$2,350
	equals or exceeds 1,000,000 cases	\$3,500.

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

Amended by Chapter 334, 2011 General Session

**32B-13-204 Specific qualifications for beer wholesaling license.**

- (1) The commission may not issue a beer wholesaling license to a person who:
  - (a) is disqualified under Section 32B-1-304; or
  - (b) does not meet any applicable federal requirement for beer wholesaling.
- (2)
  - (a) The commission may not issue one of the following licenses to a beer wholesaler licensee simultaneously with the beer wholesaling license, and a beer wholesaler licensee may not, directly or indirectly, hold, through a wholly or partially owned subsidiary or otherwise, one of the following licenses:
    - (i) a brewery manufacturing license; or
    - (ii) a beer retailer license.

- (b) The commission may not issue to a beer retailer, and a beer retailer, directly or indirectly, may not hold, through a wholly or partially owned subsidiary or otherwise, a beer wholesaling license.
- (3) If a person to whom a beer wholesaling license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that beer wholesaling license, the commission may suspend or revoke that beer wholesaling license.

Enacted by Chapter 276, 2010 General Session

**32B-13-205 Commission and department duties before issuing beer wholesaling license.**

- (1)
  - (a) Before the commission may issue a beer wholesaling license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a beer wholesaling license should be issued.
  - (b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.
- (2) Before issuing a beer wholesaling license, the commission shall:
  - (a) determine that the person filed a complete application and is in compliance with Sections 32B-13-202 and 32B-13-204;
  - (b) determine that the person is not disqualified under Section 32B-1-304;
  - (c) consider the physical characteristics of the licensed premises where it is proposed that beer be stored by the person, such as:
    - (i) location;
    - (ii) proximity to transportation; and
    - (iii) condition, size, and security of the licensed premises;
  - (d) consider the person's ability to manage and operate a beer wholesaling operation, including:
    - (i) management experience;
    - (ii) past wholesaling experience;
    - (iii) the brands the person intends to wholesale; and
    - (iv) the means the person intends to use to distribute beer; and
  - (e) consider any other factor that the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

**32B-13-206 Bond for a beer wholesaling license.**

- (1)
  - (a) A beer wholesaler licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.
  - (b) A beer wholesaler licensee shall procure and maintain a bond required by this section for as long as the beer wholesaler licensee continues to operate as a beer wholesaler licensee.
- (2) A bond posted under this section shall be:
  - (a) in a form approved by the attorney general; and
  - (b) conditioned upon a beer wholesaler licensee's faithful compliance with this title and the rules of the commission.
- (3) If a surety bond posted by a beer wholesaler licensee under this section is canceled due to a beer wholesaler licensee's negligence, the department may assess a \$300 reinstatement fee.

- (4) No part of a bond posted under this section may be withdrawn during the period the beer wholesaling license is in effect.
- (5)
  - (a) A bond posted under this section by a beer wholesaler licensee may be forfeited if the beer wholesaling license is revoked.
  - (b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a beer wholesaler licensee for money owed the department under this title without the commission first revoking the beer wholesaling license.

Enacted by Chapter 276, 2010 General Session

### **Part 3**

#### **Operational Requirements for Beer Wholesaling License**

##### **32B-13-301 General operational requirements for beer wholesaling license.**

- (1)
  - (a) A beer wholesaler licensee and staff of the beer wholesaler licensee shall comply with this title and the rules of the commission.
  - (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
    - (i) a beer wholesaler licensee;
    - (ii) individual staff of a beer wholesaler licensee; or
    - (iii) both a beer wholesaler licensee and staff of the beer wholesaler licensee.
- (2)
  - (a) A beer wholesaler licensee shall make and maintain the records required by the department.
  - (b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).
- (3) A beer wholesaler licensee may not employ a minor to handle an alcoholic product.
- (4) A beer wholesaler licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the beer wholesaling license to a person, whether for monetary gain or not, unless it is done:
  - (a) in accordance with the commission rules; and
  - (b) after written consent is given by the commission.
- (5) A beer wholesaler licensee may not wholesale a beer manufactured within the state by a brewer who is not licensed by the commission as a brewery manufacturing licensee.
- (6) A beer wholesaler licensee may not wholesale a beer manufactured out of state by a brewer who has not obtained a certificate of approval from the department.
- (7)
  - (a) A beer wholesaler licensee may not sell or distribute beer to a person within the state except to:
    - (i) a retail licensee;
    - (ii) an off-premise beer retailer; or
    - (iii) an event permittee.
  - (b) A violation of this Subsection (7) is a class A misdemeanor.
- (8)

- (a) A beer wholesaler licensee may not sell or distribute a beer to a person who sells the beer at retail outside of a sales territory designated on its application and authorized by an agreement described in Subsection 32B-13-202(8), except that if a beer wholesaler licensee is temporarily unable to supply a person within the beer wholesaler licensee's authorized sales territory, the department may grant temporary authority to another beer wholesaler licensee who distributes the same brand in another sales territory to supply:
    - (i) a retail licensee; or
    - (ii) an off-premise beer retailer.
  - (b) A violation of this Subsection (8) is a class B misdemeanor.
- (9)
- (a) A beer wholesaler licensee shall own, lease, or otherwise control and maintain a warehouse facility located in this state for the receipt, storage, and further distribution of beer sold by the beer wholesaler licensee to a person within the state.
  - (b) A beer wholesaler licensee may not sell beer to a person in this state, other than the department, unless the beer is first:
    - (i) physically removed from the vehicle used to transport the beer from the supplier to the beer wholesaler licensee; and
    - (ii) delivered into the actual possession and control of the beer wholesaler licensee in its warehouse or other facility.
- (10) A beer wholesaler licensee may not sell or distribute an alcoholic product that has not had its label and packaging approved by the department in accordance with Chapter 1, Part 6, Malted Beverage Act.
- (11) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of a beer wholesaling licensee relating to:
- (a) physical facilities; and
  - (b) the conditions of importation, purchase, storage, sale, offering for sale, distribution, or transportation of beer within the state.

Amended by Chapter 334, 2011 General Session

**32B-13-302 Notifying the department of a change of ownership.**

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

- (1) ownership of the beer wholesaler licensee;
- (2) for a corporate owner, the:
  - (a) corporate officers or directors; or
  - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation;or
- (3) for a limited liability company:
  - (a) managers; or
  - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session



# Rule R81-11. Beer Wholesaler Licenses.

As in effect on December 1, 2016

## Table of Contents

- [R81-11-1. Application.](#)
- [R81-11-2. Transfer of License.](#)
- [R81-11-3. Conditions of Transfer.](#)
- [R81-11-4. Change of Trade Name.](#)
- [R81-11-5. Change in Partners.](#)
- [KEY](#)
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### **R81-11-1. Application.**

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, -204 and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a beer wholesaler license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the department has inspected the beer wholesaler premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

### **R81-11-2. Transfer of License.**

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

**R81-11-3. Conditions of Transfer.**

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32B-1-304 and 32B-13-202 and -204.

**R81-11-4. Change of Trade Name.**

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

**R81-11-5. Change in Partners.**

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

## **Chapter 14**

### **Utah Beer Industry Distribution Act**

#### **Part 1**

#### **General Provisions**

#### **32B-14-101 Title -- Legislative intent.**

- (1) This chapter is known as the "Utah Beer Industry Distribution Act."
- (2)
  - (a) It is the policy of the Legislature to regulate and control the importation, sale, and distribution of beer within the state in the exercise of its powers under the Twenty-first Amendment to the Constitution of the United States and pursuant to the Utah Constitution.
  - (b) In furtherance of the policy described in Subsection (2)(a), this chapter is enacted to:
    - (i) promote good faith and fair dealing in the business relationships between suppliers, wholesalers, and retailers of beer; and
    - (ii) provide for the establishment and maintenance of an orderly system for the distribution of beer in accordance with the laws of the state regulating the sale and distribution of beer to the public.

Enacted by Chapter 276, 2010 General Session

#### **32B-14-102 Definitions.**

As used in this chapter:

- (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship agreement that a terminating party seeks to terminate or not renew.
- (2)
  - (a) "Distributorship agreement" means a written agreement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer manufactured, imported, or distributed by the supplier.
  - (b) For purposes of this chapter, a separate agreement between a supplier and a wholesaler is considered to be part of a distributorship agreement if it relates to:
    - (i) the relationship between the supplier and the wholesaler; or
    - (ii) the duties of either the supplier or the wholesaler under a distributorship agreement.
- (3) "Good cause" means the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct in accordance with Part 2, Termination.
- (4) "Good faith" is as defined in Subsection 70A-1a-201(2)(t).
- (5) "Retailer" means a beer retailer.
- (6) "Sales territory" means the geographic area of distribution and sale responsibility designated by a distributorship agreement.
- (7) "Supplier," notwithstanding Section 32B-1-102, means a brewer or other person who sells beer to a wholesaler for resale in this state.
- (8) "Terminating party" means a supplier or wholesaler who:
  - (a) is a party to a distributorship agreement; and
  - (b) seeks to terminate or not renew the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

**32B-14-103 Modifying statutory requirements not permitted.**

- (1) Nothing in this chapter is intended to restrict the right of a supplier to contractually require its wholesaler to comply with the supplier's operational standards of performance that are:
  - (a) consistent with this chapter; and
  - (b) uniformly established for its wholesalers according to the supplier's good faith business judgment.
- (2) Notwithstanding Subsection (1), the requirements of this chapter may not be modified by agreement.
- (3) An agreement that by its terms modifies the requirements of this chapter is void and unenforceable to the extent it attempts to modify the requirements of this chapter.

Enacted by Chapter 276, 2010 General Session

## **Part 2 Termination**

**32B-14-201 Termination of distributorship agreements.**

- (1) Except as provided in Subsection (2) or (3), a supplier or wholesaler may not:
  - (a) terminate a distributorship agreement; or
  - (b) fail to renew a distributorship agreement.
- (2) A supplier or wholesaler may take an action prohibited by Subsection (1) if:
  - (a) the supplier or wholesaler has good cause for the action; and
  - (b) if notification is required by Section 32B-14-202:
    - (i) the terminating party provides the affected party prior notification in accordance with Section 32B-14-202; and
    - (ii) the affected party has not eliminated the reasons specified in the notification as the reasons for the action within 90 days after the date the notification is mailed in accordance with Section 32B-14-202.
- (3) A supplier may take an action prohibited by Subsection (1) if:
  - (a) the supplier gives the wholesaler 30 days written notice before termination or nonrenewal;
  - (b) the supplier discontinues production or discontinues distribution throughout the state of all brands of beer sold by the supplier to the wholesaler; and
  - (c) the termination or nonrenewal does not violate the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

**32B-14-202 Notice of termination.**

- (1) Except as provided in Subsection (3), a terminating party may not take an action described in Subsection 32B-14-201(1) unless the terminating party provides prior notification in accordance with Subsection (2) to the affected party.
- (2)
  - (a) A terminating party shall provide the notification required under Subsection (1):
    - (i) in writing;

- (ii) by registered mail, return receipt requested; and
  - (iii) to the affected party not less than 90 days before the date on which the distributorship agreement will be terminated or not renewed.
- (b) A terminating party shall state in the notification required under Subsection (1):
  - (i) the intention to terminate or not renew;
  - (ii) the reasons for the termination or nonrenewal; and
  - (iii) the date, not less than 90 days from the date of mailing, on which the termination or nonrenewal shall take effect if the reasons for the action are not eliminated by that date.
- (3) A supplier or wholesaler may take an action described in Subsection 32B-14-201(1) without furnishing prior notification if:
  - (a) the affected party is insolvent, bankrupt, in dissolution, or in liquidation;
  - (b) the affected party makes an assignment for the benefit of creditors or similar disposition of substantially all of the assets of the affected party's business; or
  - (c) the affected party or a person owning more than 10% of the stock or other ownership interest in the affected party:
    - (i) is convicted of, pleads guilty to, or pleads no contest to a felony under federal law or a law of this state that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party;
    - (ii) has its license or permit revoked or suspended for a period of 31 days or more; or
    - (iii) engages in intentional fraudulent conduct in its dealings with the terminating party that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party.
- (4) Notwithstanding Subsection (3)(c)(i), a supplier may not take an action under Subsection (3)(c)
  - (i) because of a conviction or plea by an owner of the affected party, if:
    - (a) any other approved owner of the affected party purchases the ownership interest of the offending owner;
    - (b) the offending owner was not materially involved in the management of the affected party; and
    - (c) the purchase described in Subsection (4)(a) is completed within 90 days after the conviction or plea.
- (5) Subsection (3)(c)(iii) does not apply to conduct by a non-owner employee or representative of the affected party if the conduct occurred without the prior knowledge or consent of an owner of the affected party.

Enacted by Chapter 276, 2010 General Session

### **Part 3**

### **Operational Provisions**

#### **32B-14-301 Distributorship agreements in general.**

A distributorship agreement may be for a definite or indefinite period.

Enacted by Chapter 276, 2010 General Session

#### **32B-14-302 Prohibited conduct of supplier.**

- (1) A supplier may not:

- (a) induce or coerce, or attempt to induce or coerce, a wholesaler to engage in an illegal act or course of conduct;
  - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the supplier on similarly situated wholesalers;
  - (c) prohibit a wholesaler from selling a product of another supplier;
  - (d) fix or maintain the price at which a wholesaler may resell beer;
  - (e) fail to execute with each wholesaler of its brands a written distributorship agreement;
  - (f) require a wholesaler to accept delivery of beer or any other item that is not voluntarily ordered by the wholesaler;
  - (g) restrict or inhibit, directly or indirectly, the right of a wholesaler to participate in an organization representing interests of wholesalers for a lawful purpose;
  - (h) require a wholesaler to participate in or contribute to a local, regional, or national advertising fund or other promotional activity that:
    - (i) is not used for an advertising or promotional activity in the wholesaler's sales territory; or
    - (ii) would require a contribution by the wholesaler in excess of the amounts specified in the distributorship agreement;
  - (i) retaliate against a wholesaler that files a complaint with the department or the applicable federal agency regarding an alleged violation by the supplier of a state or federal statute or administrative rule;
  - (j) require without good cause a change in the manager of a wholesaler who has previously been approved by the supplier;
  - (k) if a wholesaler changes its approved manager, prohibit the change unless the new manager fails to meet the reasonable standards for similarly situated wholesalers of the supplier as stated in the distributorship agreement; or
  - (l) refuse to deliver a beer product covered by a distributorship agreement to the wholesaler:
    - (i) in a reasonable quantity; and
    - (ii) within a reasonable time after receipt of the wholesaler's order.
- (2) Notwithstanding Subsection (1)(l), the supplier may refuse to deliver a beer product if the refusal is due to:
- (a) the wholesaler's failure to pay the supplier pursuant to the distributorship agreement;
  - (b) an unforeseeable event beyond the supplier's control;
  - (c) a work stoppage or delay due to a strike or labor problem;
  - (d) a bona fide shortage of materials; or
  - (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

**32B-14-303 Prohibited conduct of wholesaler.**

- (1) A wholesaler may not:
- (a) induce or coerce, or attempt to induce or coerce, a retailer to engage in an illegal act or course of conduct;
  - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;
  - (c) prohibit a retailer from selling a product of another wholesaler;
  - (d) fix or maintain the price at which a retailer may resell beer;
  - (e) require a retailer to accept delivery of beer or any other item that is not voluntarily ordered by the retailer;



- (f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for a lawful purpose;
  - (g) require a retailer to participate in or contribute to a local, regional, or national advertising fund or other promotional activity;
  - (h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal statute or administrative rule; and
  - (i) refuse to deliver a beer product carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory:
    - (i) in a reasonable quantity; and
    - (ii) within a reasonable time after receipt of the retailer's order.
- (2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver a beer product if the refusal is due to:
- (a) the retailer's failure to pay the wholesaler pursuant to Subsection 32B-4-704(6);
  - (b) an unforeseeable event beyond the wholesaler's control;
  - (c) a work stoppage or delay due to a strike or labor problem;
  - (d) a bona fide shortage of materials; or
  - (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

**32B-14-304 Sale or transfer of business assets or ownership.**

- (1) Without the prior written approval of a sale or transfer by the supplier:
- (a) a wholesaler may not sell or transfer its business, or any portion of its business, including the distributorship agreement, to a successor in interest; and
  - (b) the owner of an interest in a wholesaler may not sell or transfer all or part of the owner's interest in the wholesaler to a successor in interest.
- (2) A supplier may not unreasonably withhold or delay its approval of a sale or transfer, including the wholesaler's rights and obligations under the terms of the distributorship agreement, if the person to be substituted meets reasonable standards that are imposed:
- (a) by the supplier pursuant to the distributorship agreement; and
  - (b) on other wholesalers of that supplier of the same general class, taking into account the size and location of the sales territory and market to be served.
- (3) Notwithstanding Subsection (1), a wholesaler may not violate Subsection 32B-13-301(8).

Enacted by Chapter 276, 2010 General Session

**32B-14-305 Sale or transfer of supplier's business.**

- (1)
- (a) For purposes of this section, "successor" means a supplier who obtains a distribution right of a brand that a wholesaler distributes in this state pursuant to a distributorship agreement with another supplier who previously had the distribution rights of the brand.
  - (b) For purposes of Subsection (1)(a), the successor may obtain a distribution right:
    - (i) by any means, including:
      - (A) merger;
      - (B) purchase of corporate shares; or
      - (C) purchase of assets; and
    - (ii) from:

- (A) a supplier; or
  - (B) a person acting in an official capacity who is not a supplier including a nominee, representative, or fiduciary.
- (2)
- (a) A successor to a supplier that acquires a supplier's product or brand in this state is bound by the terms and conditions of each distributorship agreement with a wholesaler in this state that was in effect on the date on which the successor receives the assets or rights of the previous supplier.
  - (b) Notwithstanding Subsection (2)(a), if the requirements of Subsection (2)(c) are met, a successor may contractually require the wholesaler to:
    - (i) execute a new distributorship agreement; and
    - (ii) comply with the successor's operational standards of performance.
  - (c) A successor may impose a requirement under Subsection (2)(b) if:
    - (i) the operational standards of performance being required are consistent with this chapter;
    - (ii) the operational standards of performance being required are uniformly imposed by the successor on similarly situated wholesalers; and
    - (iii) the successor provides the wholesaler at least one year to:
      - (A) execute a new distributorship agreement; and
      - (B) comply with the operational standards of performance.

Enacted by Chapter 276, 2010 General Session

## **Part 4 Remedies**

### **32B-14-401 Reasonable compensation -- Arbitration.**

- (1)
- (a) If a supplier violates Section 32B-14-201 or 32B-14-304, the supplier is liable to the wholesaler for the sum of:
    - (i) the laid-in cost of inventory of the affected brands; and
    - (ii) any diminution in the fair market value of the wholesaler's business with relation to an affected brand.
  - (b) In determining fair market value, consideration shall be given to all elements of value, including good will and going concern value.
- (2)
- (a) A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration.
  - (b) In the absence of an applicable arbitration provision in a distributorship agreement, either the supplier or the wholesaler may request arbitration if a supplier and a wholesaler are unable to mutually agree on:
    - (i) whether good cause exists for termination or nonrenewal;
    - (ii) whether the supplier unreasonably withheld approval of a sale or transfer under Section 32B-14-304; or
    - (iii) the reasonable compensation to be paid for the value of the wholesaler's business in accordance with Subsection (1).

- (c) If a supplier or wholesaler requests arbitration under Subsection (2)(b) and the other party agrees to submit the matter to arbitration, an arbitration panel shall be created with the following members:
  - (i) one member selected by the supplier in a writing delivered to the wholesaler within 10 business days of the date arbitration was requested under Subsection (2)(b);
  - (ii) one member selected by the wholesaler in a writing delivered to the supplier within 10 business days of the date arbitration was requested under Subsection (2)(b); and
  - (iii) one member selected by the two arbitrators appointed under Subsections (2)(c)(i) and (ii).
- (d) If the arbitrators fail to choose a third arbitrator under Subsection (2)(c)(iii) within 10 business days of the day on which the arbitrators under Subsections (2)(c)(i) and (ii) are selected, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator.
- (e) Arbitration costs shall be divided equally between the wholesaler and the supplier.
- (f) The award of the arbitration panel is binding on the parties unless appealed within 20 days from the date of the award.
- (g) Subject to the requirements of this chapter, arbitration and a proceeding on appeal are governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

Enacted by Chapter 276, 2010 General Session

**32B-14-402 Judicial remedies.**

- (1) A supplier or wholesaler who is a party to a distributorship agreement may maintain a civil action against the supplier or wholesaler in a court of competent jurisdiction in the county in which the wholesaler's principal place of business is located if:
  - (a) the supplier or wholesaler violates this chapter; or
  - (b)
    - (i) the supplier and wholesaler are not able to mutually agree on reasonable compensation under Section 32B-14-401; and
    - (ii) the parties do not agree to submit the matter to arbitration in accordance with Section 32B-14-401 before or within 20 days following service of process on the electing party in the civil action.
- (2)
  - (a) The prevailing party in an action under Subsection (1) shall recover:
    - (i) actual damages, including the value of the wholesaler's business as specified in Section 32B-14-401 if applicable; and
    - (ii) reasonable attorney fees and court costs.
  - (b) In addition to the amount awarded under Subsection (2)(a), the court may grant such relief in law or equity as the court determines to be necessary or appropriate considering the purposes of this chapter.
- (3) If either party elects arbitration under Subsection (1)(b)(ii) following service of process, the civil action is stayed pending a decision by the arbitration panel.

Enacted by Chapter 276, 2010 General Session

**Chapter 4**  
**Criminal Offenses and Procedure Act**  
  
**Part 1**  
**General Provisions**

**32B-4-101 Title.**

This chapter is known as the "Criminal Offenses and Procedure Act."

Enacted by Chapter 276, 2010 General Session

**32B-4-102 Definitions.**

As used in this chapter, "capitol hill complex" means the same as that term is defined in Section 63C-9-102.

Amended by Chapter 245, 2016 General Session

**Part 2**  
**Criminal Procedure**

**32B-4-201 Applicability of Utah Code of Criminal Procedure.**

Except as otherwise provided in this title, the procedure in a criminal case arising under this title is governed by Title 77, Utah Code of Criminal Procedure, and any other rules adopted by the Utah Supreme Court.

Enacted by Chapter 276, 2010 General Session

**32B-4-202 Duties to enforce this title.**

- (1) It is the duty of the following to diligently enforce this title in their respective capacities:
  - (a) the governor;
  - (b) a commissioner;
  - (c) the director;
  - (d) an official, inspector, or department employee;
  - (e) a prosecuting official of the state or its political subdivisions;
  - (f) a county, city, town, or metro township;
  - (g) a peace officer, sheriff, deputy sheriff, constable, marshal, or law enforcement official;
  - (h) a state health official; and
  - (i) a clerk of the court.
- (2) Immediately upon conviction of a person for violation of this title or of a local ordinance relating to an alcoholic product, it is the duty of the clerk of the court to notify the department of the conviction in writing on forms supplied by the department.

Amended by Chapter 176, 2016 General Session

**32B-4-203 Authority to inspect.**

- (1)

- (a) This Subsection (1) applies to:
  - (i) a commissioner;
  - (ii) an authorized representative of the commission or department; or
  - (iii) a law enforcement or peace officer.
- (b) An individual described in Subsection (1)(a):
  - (i) shall be given access, ingress, and egress to and from premises or a conveyance used in the storage, sale, furnishing, manufacture, or transportation of an alcoholic product;
  - (ii) may open a container containing, or supposed to contain, an article sold, or exposed for sale, held in possession, or manufactured with intent to sell in violation of this title or commission rules; and
  - (iii) may inspect the contents and take samples of the contents for analysis from a container described in this Subsection (1).
- (2) The following shall assist, when requested by a person described in Subsection (1), in tracing, finding, or discovering the presence of an article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights:
  - (a) a dealer;
  - (b) a clerk;
  - (c) a bookkeeper;
  - (d) an express agent;
  - (e) a railroad or airline official;
  - (f) a common or other carrier; and
  - (g) an employee of a person listed in this Subsection (2).

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

### **32B-4-204 Arrests.**

- (1) Except as otherwise provided in this chapter, an arrest of a person for a violation of this title shall be made in accordance with:
  - (a) Title 77, Chapter 7, Arrest, by Whom, and How Made; and
  - (b) Rules 6 and 7, Utah Rules of Criminal Procedure.
- (2) A summons in lieu of a warrant of arrest shall be in accordance with Rule 6, Utah Rules of Criminal Procedure.

Enacted by Chapter 276, 2010 General Session

### **32B-4-205 Prosecutions.**

- (1)
  - (a) A prosecution for a violation of this title shall be in the name of the state.
  - (b) A criminal action for violation of a county or municipal ordinance enacted in furtherance of this title shall be in the name of the governmental entity involved.
- (2)
  - (a) A prosecution for violation of this title shall be brought by the county attorney of the county or district attorney of the prosecution district where the violation occurs. If a county attorney or district attorney fails to initiate or diligently pursue a prosecution authorized and warranted under this title, the attorney general shall exercise supervisory authority over the county attorney or district attorney to ensure prosecution is initiated and diligently pursued.

- (b) If a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of a city attorney.
  - (c) A city or town prosecutor has the responsibility of initiating and diligently pursuing prosecutions for a violation of a local ordinance enacted in furtherance of this title or commission rules.
- (3)
- (a) A prosecution for a violation of this title shall be commenced by the return of an indictment or the filing of an information with the district court of the county in which the offense occurs or where the premises are located upon which an alcoholic product is seized, if the offense involves an alcoholic product.
  - (b) An offense prescribed by this title that is not described in Subsection (3)(a) shall be filed before a court having jurisdiction of the offense committed.
- (4)
- (a) Unless otherwise provided by law, an information may not be filed charging the commission of a felony or class A misdemeanor under this title unless authorized by a prosecuting attorney.
  - (b) This Subsection (4) does not apply if the magistrate has reasonable cause to believe that the person to be charged may avoid apprehension or escape before approval can be obtained.
- (5)
- (a) In describing an offense respecting the sale, keeping for sale, or other disposal of an alcoholic product, or the possessing, keeping, purchasing, consumption, or giving of an alcoholic product in an information, indictment, summons, judgment, warrant, or proceeding under this title, it is sufficient to state the possessing, purchasing, keeping, sale, keeping for sale, giving, consumption, or disposal of the alcoholic product without stating:
    - (i) the name or kind of alcoholic product;
    - (ii) the price of the alcoholic product;
    - (iii) any person to whom the alcoholic product is sold or disposed of;
    - (iv) by whom the alcoholic product is taken or consumed; or
    - (v) from whom the alcoholic product is purchased or received.
  - (b) It is not necessary to state the quantity of alcoholic product possessed, purchased, kept, kept for sale, sold, given, consumed, or disposed of, except in the case of an offense when the quantity is essential, and then it is sufficient to allege the sale or disposal of more or less than the quantity.
- (6) If an offense is committed under a local ordinance enacted to carry out this title, it is sufficient if the charging document refers to the chapter and section of the ordinance under which the offense is committed.

Enacted by Chapter 276, 2010 General Session

**32B-4-206 Disposition of fines and forfeitures.**

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

Amended by Chapter 394, 2013 General Session

**32B-4-207 Right of appeal.**

In a case arising under this title, the commission or the state has the right of appeal as to a question of law.



Enacted by Chapter 276, 2010 General Session

**32B-4-208 Nuisances.**

- (1) As used in this section, "nuisance" means:
  - (a) a room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance where an alcoholic product is possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title; or
  - (b) an alcoholic product, container, equipment, or other property kept or used in maintaining an item or property described in Subsection (1)(a).
- (2) A person who maintains or assists in maintaining a nuisance is guilty of a class B misdemeanor.
- (3) If a person has knowledge that, or has reason to believe that the person's room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used as a nuisance, or allows it to be occupied or used as a nuisance, the nuisance property is subject to a lien for and may be sold to pay the fines and costs assessed against the person guilty of the common nuisance. This lien may be enforced by action in a court having jurisdiction.
- (4)
  - (a) The department shall bring an action to abate a nuisance in the name of the department in a court having jurisdiction.
  - (b) An action brought under this Subsection (4) is an action in equity.
  - (c) The department may not be required to post a bond to initiate an action under this Subsection (4).
  - (d) A court may issue:
    - (i) if it appears that a nuisance exists, a temporary writ of injunction restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial; and
    - (ii) an order restraining the defendant and any other person from removing or interfering with an alcoholic product, container, equipment, or other property kept or used in violation of this title or commission rules.
  - (e) In an action to abate or enjoin a nuisance, the court need not find that the property involved is being unlawfully used at the time of the hearing.
  - (f) On finding that a material allegation of a petition or complaint is true, the court shall order that an alcoholic product may not be possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated, in any portion of the room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance.
  - (g) Upon judgment of a court ordering abatement of the nuisance, the court may order that the premises or conveyance in question may not be occupied or used for any purpose for one year, except under Subsection (4)(h).
  - (h) A court may permit premises or conveyance described in Subsection (4)(g) to be occupied or used:
    - (i) if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety, approved by the court, payable to the state;
    - (ii) on the condition that an alcoholic product will not be present in or on the premises or the conveyance; and

- (iii) on the condition that payment of the fines, costs, and damages assessed for violation of this title or commission rules will be made.
- (5) If a tenant of the premises uses the premises or any part of the premises in maintaining a nuisance, or knowingly permits use by another, the lease is void and the right to possession reverts to the owner or lessor who is entitled to the remedy provided by law for forcible detention of the premises.
- (6) A person is guilty of assisting in maintaining a nuisance as provided in Section 76-10-804, if that person:
  - (a) knowingly permits a building or premises owned or leased by the person, or under the person's control, or any part of a building or premises, to be used in maintaining a nuisance; or
  - (b) after being notified in writing by a prosecutor or other citizen of the unlawful use, fails to take all proper measures to:
    - (i) abate the nuisance; or
    - (ii) remove the one or more persons from the premises.

Amended by Chapter 307, 2011 General Session  
Amended by Chapter 334, 2011 General Session

### **32B-4-209 Lawful detention.**

- (1)
  - (a) To inform a peace officer of a suspected violation and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:
    - (i) detain a person; and
    - (ii) hold any form of identification presented by the person.
  - (b) The following may take an action described in Subsection (1)(a):
    - (i) a state store employee;
    - (ii) a package agent;
    - (iii) a licensee or permittee;
    - (iv) a beer retailer; or
    - (v) staff of a person described in Subsections (1)(b)(ii) through (iv).
  - (c) A person described in Subsection (1)(b) may take an action described in Subsection (1)(a) only:
    - (i) if that person has reason to believe that the person against whom the action is taken is:
      - (A) in a facility where liquor or beer is sold; and
      - (B) in violation of Section 32B-4-409, 32B-4-412, or 32B-4-413;
    - (ii) in a reasonable manner; and
    - (iii) for a reasonable length of time.
- (2) Unless the detention is unreasonable under all circumstances, the detention or failure to detain does not create criminal or civil liability for:
  - (a) false arrest;
  - (b) false imprisonment;
  - (c) slander; or
  - (d) unlawful detention.

Enacted by Chapter 276, 2010 General Session

## **Part 3**

### **Criminal Offenses in General**

#### **32B-4-301 Applicability of Utah Criminal Code.**

Except as otherwise provided, Title 76, Chapter 1, General Provisions, Chapter 2, Principles of Criminal Responsibility, Chapter 3, Punishments, and Chapter 4, Inchoate Offenses, apply to the prosecution of a criminal offense defined in this chapter or expressly identified as a criminal offense in this title.

Enacted by Chapter 276, 2010 General Session

#### **32B-4-302 Criminal responsibility for conduct of another.**

In addition to Title 76, Chapter 2, Part 2, Criminal Responsibility for Conduct of Another, the following principles apply to a violation of this title:

- (1)
  - (a) If a violation of this title is committed by a person in the employ of the occupant of premises in which the offense is committed, or by a person who is required by the occupant to be or remain in or upon the premises, or to act in any way for the occupant, notwithstanding the fact that the offense is committed by a person who is not proved to have committed it under or by the direction of the occupant, the occupant is:
    - (i) prima facie considered a party to the offense committed; and
    - (ii) liable as a principal offender.
  - (b) This section does not relieve the person actually committing the offense from liability.
- (2)
  - (a) If a violation of this title is committed by a corporation, association, partnership, or limited liability company, an officer or agent of the corporation or association, a partner of the partnership, or a manager or member of the limited liability company in charge of the premises in which the offense is committed is:
    - (i) prima facie considered a party to the offense committed; and
    - (ii) personally liable to the penalties prescribed for the offense as a principal offender.
  - (b) This section does not relieve the corporation, association, partnership, or limited liability company, or the person who actually committed the offense from liability.

Enacted by Chapter 276, 2010 General Session

#### **32B-4-303 Special burdens of proof -- Inferences and presumptions.**

- (1) In a prosecution of an offense defined in this title or in a proceeding brought to enforce this title:
  - (a) it is not necessary that the state or commission establish:
    - (i) the precise description or quantity of an alcoholic product; or
    - (ii) the precise consideration, if any, given or received for an alcoholic product;
  - (b) there is an inference, absent proof to the contrary, that an alcoholic product in question is an alcoholic product if the witness describes it:
    - (i) as an alcoholic product;
    - (ii) by a name that is commonly applied to an alcoholic product; or
    - (iii) as intoxicating;

- (c) if it is alleged that an entity for which a record is required to be filed with the Division of Corporations and Commercial Code to be organized or conduct business in this state has violated this title, the fact of the entity is presumed absent proof to the contrary;
  - (d) a record signed or purporting to be signed by a state chemist, assistant state chemist, or state crime laboratory chemist, as to the analysis or ingredients of an alcoholic product is:
    - (i) prima facie evidence:
      - (A) of the facts stated in that record; and
      - (B) of the authority of the person giving or making the record; and
    - (ii) admissible in evidence without proof of appointment or signature absent proof to the contrary; and
  - (e) a copy of an entry made in a record of the United States internal revenue collector, certified by the collector or a qualified notary public, showing the payment of the United States internal revenue special tax for the manufacture or sale of an alcoholic product is prima facie evidence of the manufacture or sale by the party named in the entry within the period set forth in the record.
- (2)
- (a) In proving the unlawful purchase, sale, gift, or disposal, gratuitous or otherwise, or consumption of an alcoholic product, it is not necessary that the state or commission establish that money or other consideration actually passed or that an alcoholic product is actually consumed if the court or trier of fact is satisfied that:
    - (i) a transaction in the nature of a purchase, sale, gift, or disposal actually occurs; or
    - (ii) consumption of an alcoholic product is about to occur.
  - (b) Proof of consumption or intended consumption of an alcoholic product on premises on which consumption is prohibited, by some person not authorized to consume an alcoholic product on those premises, is evidence that an alcoholic product is sold, given to, or purchased by the person consuming, about to consume, or carrying away the alcoholic product as against the occupant of the premises.
- (3) For purposes of a provision applicable under this chapter to a retail licensee or staff of a retail licensee, the provision is applicable to a resort licensee or hotel licensee or a person operating under a sublicense of the resort licensee or hotel licensee.
- (4) Notwithstanding the other provisions of this chapter, a criminal offense identified in this title as a criminal offense may not be enforced under this chapter if the criminal offense relates to a violation:
- (a) of a provision in this title related to intoxication or becoming intoxicated; and
  - (b) if the violation is first investigated by a law enforcement officer, as defined in Section 53-13-103, who has not received training regarding the requirements of this title related to responsible alcoholic product sale or furnishing.

Amended by Chapter 80, 2016 General Session

**32B-4-304 Violation of title a misdemeanor.**

- (1) Unless otherwise provided in this title, a person is guilty of a class B misdemeanor if that person violates:
  - (a) this chapter; or
  - (b) a provision of this title that is expressly identified as a criminal offense.
- (2) This section is not applicable to an adjudicative proceeding under Chapter 3, Disciplinary Actions and Enforcement Act, but only:
  - (a) makes a violation described in Subsection (1) a criminal offense; and

- (b) establishes a penalty for a violation described in Subsection (1) that is prosecuted criminally.

Enacted by Chapter 276, 2010 General Session

**32B-4-305 Additional criminal penalties.**

- (1)
  - (a) For purposes of this section, "business entity" means a corporation, partnership, association, limited liability company, or similar entity.
  - (b) In addition to the penalties provided in Title 76, Chapter 3, Punishments, this section applies.
- (2) Upon a defendant's conviction of an offense defined in this title, the court may order the defendant to make restitution or pay costs in accordance with Title 77, Chapter 32a, Defense Costs.
- (3)
  - (a) Upon a business entity's conviction of an offense defined in this title, and a failure of the business entity to pay a fine imposed upon it:
    - (i) if it is a domestic business entity, the powers, rights, and privileges of the business entity may be suspended or revoked; and
    - (ii) if it is a foreign business entity, it forfeits its right to do intrastate business in this state.
  - (b) The department shall transmit the name of a business entity described in Subsection (3)
    - (a) to the Division of Corporations and Commercial Code. Upon receipt of the information, the Division of Corporations and Commercial Code shall immediately record the action in a manner that makes the information available to the public.
  - (c) A suspension, revocation, or forfeiture under this Subsection (3) is effective from the day on which the Division of Corporations and Commercial Code records the information.
  - (d) A certificate of the Division of Corporations and Commercial Code is prima facie evidence of a suspension, revocation, or forfeiture.
  - (e) This section may not be construed as affecting, limiting, or restricting a proceeding that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.
- (4)
  - (a) Upon the conviction of a business entity required to have a business license to operate its business activities, or upon the conviction of any of its staff of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business license.
  - (b) A governmental entity that receives a copy of a judgment under this Subsection (4) may institute appropriate proceedings to revoke the business license.
  - (c) Upon revocation under this Subsection (4), a governmental entity may not issue a business license to the business entity for at least one year from the date of revocation.
  - (d) Upon the conviction for a second or other offense, the governmental entity may not issue a business license for at least two years from the date of revocation.
- (5)
  - (a) Upon conviction of one of the following of an offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of Occupational and Professional Licensing:
    - (i) a health care practitioner; or
    - (ii) an individual licensed as a veterinarian under Title 58, Chapter 28, Veterinary Practice Act.

- (b) The Division of Occupational and Professional Licensing may bring a proceeding in accordance with Title 58, Occupations and Professions, to revoke the license issued under Title 58, Occupations and Professions, of an individual described in Subsection (5)(a).
- (c) Upon revocation of a license under Subsection (5)(b):
  - (i) the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least one year from the date of revocation; and
  - (ii) if the individual is convicted of a second or subsequent offense, the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least two years from the date of revocation.

Enacted by Chapter 276, 2010 General Session

## **Part 4**

### **Sale, Purchase, Possession, and Consumption**

#### **32B-4-401 Unlawful sale or furnishing.**

- (1) It is unlawful for a retail licensee, a permittee, or staff of a retail licensee or permittee to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another, an alcoholic product, except as otherwise provided by this title.
- (2) It is unlawful for a person in the business of selling liquor, a manufacturer, a supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:
  - (a) the department;
  - (b) a military installation;
  - (c) a holder of a special use permit, to the extent authorized in the special use permit; or
  - (d) a liquor warehouser licensee licensed to distribute and transport liquor to:
    - (i) the department; or
    - (ii) an out-of-state wholesaler or retailer.
- (3)
  - (a) It is unlawful for a person in the business of selling beer, a manufacturer, a supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:
    - (i) a beer wholesaler licensee;
    - (ii) a military installation; or
    - (iii) a holder of a special use permit, to the extent authorized in the special use permit.
  - (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of approval from selling, shipping, or transporting beer to the extent authorized by Subsection 32B-11-503(5) directly to:
    - (i) a beer retailer; or
    - (ii) an event permittee.
- (4)
  - (a) It is unlawful for a manufacturer, supplier, or importer of liquor in this state, or staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or



transported liquor directly or indirectly to a person in this state except to the extent authorized by this title to:

- (i) the department;
- (ii) a military installation;
- (iii) a holder of a special use permit, to the extent authorized in the special use permit; or
- (iv) a liquor warehouser licensee who is licensed to distribute and transport liquor to:
  - (A) the department; or
  - (B) an out-of-state wholesaler or retailer.
- (b) Subsection (4)(a) does not preclude a winery manufacturing licensee located in this state from selling wine to a person on its winery premises:
  - (i) to the extent authorized by Subsection 32B-11-303(4); or
  - (ii) under a package agency issued by the commission on the winery premises.
- (c) Subsection (4)(a) does not preclude a distillery manufacturing licensee located in this state from selling liquor on its distillery premises:
  - (i) to the extent authorized in Subsection 32B-11-403(5); or
  - (ii) under a package agency issued by the commission on the distillery premises.
- (d) Subsection (4)(a) does not preclude a brewery manufacturing licensee located in this state from selling heavy beer or flavored malt beverages on its brewery premises:
  - (i) to the extent authorized under Subsection 32B-11-503(4); or
  - (ii) under a package agency issued by the commission on its brewery premises.
- (5)
  - (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer directly or indirectly to a person in this state except to the extent authorized by this title to:
    - (i) a beer wholesaler licensee;
    - (ii) a military installation; or
    - (iii) a holder of a special use permit, to the extent authorized in the special use permit.
  - (b) Subsection (5)(a) does not preclude:
    - (i) a small brewer who is a brewery manufacturing licensee located in this state from selling, shipping, and transporting beer to the extent authorized by Subsection 32B-11-503(5) directly to one of the following in this state:
      - (A) a beer retailer; or
      - (B) an event permittee; or
    - (ii) a brewery manufacturing licensee from selling beer to a person on its manufacturing premises under Subsection 32B-11-503(4)(c).
- (6) It is unlawful for a person other than a person described in Subsection (2) or (3) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product from an out-of-state location directly or indirectly into this state, except as otherwise provided by this title.
- (7) It is unlawful for a person in this state other than a person described in Subsection (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product directly or indirectly to another person in this state, except as otherwise provided by this title.
- (8)
  - (a) A violation of Subsection (1) is a class B misdemeanor, except when otherwise provided by this title.
  - (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.
  - (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

Amended by Chapter 266, 2016 General Session

**32B-4-402 Unauthorized sale, offer for sale, or furnishing.**

A person authorized by this title to sell an alcoholic product and staff of that person may not sell, offer for sale, or furnish, an alcoholic product in any place, or at any day or time other than as authorized by this title or the rules of the commission.

Enacted by Chapter 276, 2010 General Session

**32B-4-403 Unlawful sale, offer for sale, or furnishing to minor.**

- (1) A person may not sell, offer for sale, or furnish an alcoholic product to a minor.
- (2)
  - (a)
    - (i) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person who violates Subsection (1) negligently or recklessly fails to determine whether the recipient of the alcoholic product is a minor.
    - (ii) As used in this Subsection (2)(a), "negligently" means with simple negligence.
  - (b) Except as provided in Subsection (3), a person is guilty of a class A misdemeanor if the person who violates Subsection (1) knows the recipient of the alcoholic product is a minor.
- (3) This section does not apply to the furnishing of an alcoholic product to a minor in accordance with this title:
  - (a) for medicinal purposes by:
    - (i) the parent or guardian of the minor; or
    - (ii) the health care practitioner of the minor, if the health care practitioner is authorized by law to write a prescription; or
  - (b) as part of a religious organization's religious services.

Enacted by Chapter 276, 2010 General Session

**32B-4-404 Unlawful sale, offer for sale, or furnishing to intoxicated person.**

- (1) A person may not sell, offer for sale, or furnish an alcoholic product to:
  - (a) a person who is actually or apparently intoxicated; or
  - (b) a person whom the person furnishing the alcoholic product knows or should know from the circumstances is actually or apparently intoxicated.
- (2)
  - (a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.
  - (b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.
- (3) As used in Subsection (2)(a), "negligently" means with simple negligence.

Enacted by Chapter 276, 2010 General Session

**32B-4-405 Unlawful sale, offer for sale, or furnishing to interdicted person.**

- (1) A person may not sell, offer for sale, or furnish an alcoholic product to a known interdicted person.
- (2) This section does not apply to the sale, offer for sale, or furnishing of an alcoholic product to an interdicted person:
  - (a) under an order of a health care practitioner who is authorized by law to write a prescription; or

- (b) administered by a hospital or health care practitioner authorized by law to administer the alcoholic product for medicinal purposes.

Enacted by Chapter 276, 2010 General Session

**32B-4-406 Unlawful sale, offer for sale, or furnishing of an alcoholic product.**

- (1) Except as provided in Subsection (2):
  - (a) a person may not sell, offer for sale, or furnish beer to the general public in a container that exceeds two liters; and
  - (b) a person may not purchase or possess beer in a container that exceeds two liters.
- (2)
  - (a) A retail licensee may sell, offer for sale, or furnish beer on draft subject to the requirements of Section 32B-5-304.
  - (b) A retail licensee may purchase or possess beer in a container that exceeds two liters to be dispensed on draft for consumption subject to the requirements of Section 32B-5-304.
  - (c) A beer wholesaler licensee may sell, offer for sale, or furnish beer in a container that exceeds two liters to a retail licensee described in Subsection (2)(a).
- (3) On or after October 1, 2011:
  - (a) A person may not sell, offer for sale, or furnish heavy beer in a container that exceeds two liters.
  - (b) A person may not purchase or possess heavy beer in a container that exceeds two liters.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

**32B-4-407 Unlawful sale, offer for sale, or furnishing during emergency.**

During a period of emergency proclaimed by the governor to exist in an area of the state, it is unlawful for a person to sell, offer for sale, or furnish an alcoholic product in that area if the director publicly announces and directs that in that area a person may not sell, offer for sale, or furnish an alcoholic product in that area during the period of emergency.

Enacted by Chapter 276, 2010 General Session

**32B-4-408 Unlawful purchase or acceptance.**

- (1) It is unlawful for a person or the person's staff to purchase, take, or accept an alcoholic product from another person, except as provided by this title or the rules of the commission adopted under this title.
- (2) An act is unlawful under Subsection (1) if it is taken:
  - (a) directly or indirectly; or
  - (b) upon a pretense or device.

Enacted by Chapter 276, 2010 General Session

**32B-4-409 Unlawful purchase, possession, consumption by minor -- Measurable amounts in body.**

- (1) Unless specifically authorized by this title, it is unlawful for a minor to:
  - (a) purchase an alcoholic product;
  - (b) attempt to purchase an alcoholic product;

- (c) solicit another person to purchase an alcoholic product;
  - (d) possess an alcoholic product;
  - (e) consume an alcoholic product; or
  - (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.
- (2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic product for a minor for:
- (a) a minor to misrepresent the minor's age; or
  - (b) any other person to misrepresent the age of a minor.
- (3) It is unlawful for a minor to possess or consume an alcoholic product while riding in a limousine or chartered bus.
- (4)
- (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:
    - (i) order the minor to complete a screening as defined in Section 41-6a-501;
    - (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
    - (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
  - (b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:
    - (i) order the minor to complete a screening as defined in Section 41-6a-501;
    - (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
    - (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
- (5)
- (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.
  - (b) Notwithstanding the provision in Subsection (5)(a), the court may reduce the suspension period required under Section 53-3-219 if:
    - (i) the violation is the minor's first violation of this section; and
    - (ii)
      - (A) the minor completes an educational series as defined in Section 41-6a-501; or
      - (B) the minor demonstrates substantial progress in substance abuse treatment.
  - (c) Notwithstanding the requirement in Subsection (5)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:
    - (i) the violation is the minor's second or subsequent violation of this section;
    - (ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance abuse treatment; and
    - (iii)
      - (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (5)(a); or
      - (B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's

- knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (5)(a).
- (6) When a minor who is at least 13 years old, but younger than 18 years old, is found by the court to have violated this section, Section 78A-6-606 applies to the violation.
  - (7) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.
  - (8) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.
  - (9) This section does not apply to a minor's consumption of an alcoholic product in accordance with this title:
    - (a) for medicinal purposes if:
      - (i) the minor is at least 18 years old; or
      - (ii) the alcoholic product is furnished by:
        - (A) the parent or guardian of the minor; or
        - (B) the minor's health care practitioner, if the health care practitioner is authorized by law to write a prescription; or
    - (b) as part of a religious organization's religious services.

Amended by Chapter 165, 2015 General Session

**32B-4-410 Unlawful admittance or attempt to gain admittance by minor.**

- (1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:
  - (a) a tavern; or
  - (b) a social club licensee, except to the extent authorized by Section 32B-6-406.1.
- (2) A minor who violates this section is guilty of a class C misdemeanor.
- (3)
  - (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:
    - (i) order the minor to complete a screening as defined in Section 41-6a-501;
    - (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
    - (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
  - (b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:
    - (i) order the minor to complete a screening as defined in Section 41-6a-501;
    - (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
    - (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
- (4)
  - (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.
  - (b) Notwithstanding the provision in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:
    - (i) the violation is the minor's first violation of this section; and

- (ii)
  - (A) the minor completes an educational series as defined in Section 41-6a-501; or
  - (B) the minor demonstrates substantial progress in substance abuse treatment.
- (c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:
  - (i) the violation is the minor's second or subsequent violation of this section;
  - (ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance abuse treatment; and
- (iii)
  - (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or
  - (B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).
- (5) When a minor who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, Section 78A-6-606 applies to the violation.
- (6) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.
- (7) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Amended by Chapter 165, 2015 General Session

**32B-4-411 Minor's unlawful use of proof of age.**

- (1) As used in this section, "proof of age violation" means a violation by a minor of:
  - (a) Chapter 1, Part 4, Proof of Age Act; or
  - (b) if as part of the violation the minor uses a proof of age in violation of Chapter 1, Part 4, Proof of Age Act:
    - (i) Section 32B-4-409; or
    - (ii) Section 32B-4-410.
- (2) If a court finds a minor engaged in a proof of age violation, notwithstanding the penalties provided for in Subsection (1):
  - (a)
    - (i) for a first violation, the minor is guilty of a class B misdemeanor;
    - (ii) for a second violation, the minor is guilty of a class A misdemeanor; and
    - (iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor, except that the court may impose:
      - (A) a fine of up to \$5,000;
      - (B) screening, assessment, or substance abuse treatment, as defined in Section 41-6a-501;
      - (C) an educational series, as defined in Section 41-6a-501;
      - (D) alcoholic product related community service or compensatory service work program hours;
      - (E) fees for restitution and treatment costs;
      - (F) defensive driver education courses; or



- (G) a combination of these penalties; and
- (b)
  - (i) for a minor who is at least 13 years old, but younger than 18 years old:
    - (A) the court shall forward to the Driver License Division a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under this section; and
    - (B) the provisions regarding suspension of a driver license under Section 78A-6-606 apply; and
  - (ii) for a minor who is at least 18 years old, but younger than 21 years old:
    - (A) the court shall forward to the Driver License Division a record of conviction for a violation under this section; and
    - (B) the Driver License Division shall suspend the person's license under Section 53-3-220.
- (3)
  - (a) Notwithstanding the requirement in Subsection (2)(b), the court may reduce the suspension period under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d) if:
    - (i) the violation is the minor's first violation of Section 32B-4-411; and
    - (ii)
      - (A) the minor completes an educational series as defined in Section 41-6a-501; or
      - (B) the minor demonstrates substantial progress in substance abuse treatment.
  - (b) Notwithstanding the requirement in Subsection (2)(b), the court may reduce the suspension period under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d) if:
    - (i) the violation is the minor's second or subsequent violation of Section 32B-4-411;
    - (ii) the person has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance abuse treatment; and
    - (iii)
      - (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d); or
      - (B) the minor is under 18 years of age and has the minor's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d).
- (4) When the Department of Public Safety receives the arrest or conviction record of an individual for a driving offense committed while the individual's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.
- (5) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

Amended by Chapter 165, 2015 General Session

**32B-4-412 Unlawful purchase by intoxicated person.**

A person may not purchase an alcoholic product if the person is intoxicated.

Enacted by Chapter 276, 2010 General Session

**32B-4-413 Unlawful purchase by interdicted person.**

A person may not purchase or possess an alcoholic product if that person is an interdicted person, except:

- (1) under an order of a health care practitioner who is authorized by law to write a prescription; or
- (2) when administered by a hospital or health care practitioner authorized by law to administer the alcoholic product for medicinal purposes.

Enacted by Chapter 276, 2010 General Session

**32B-4-414 Unlawful possession -- Exceptions.**

- (1) A person may not possess liquor within this state unless authorized by this title or the rules of the commission, except that:
  - (a) a person who clears United States Customs when entering this country may possess for personal consumption and not for sale or resale, a maximum of two liters of liquor purchased from without the United States;
  - (b) a person who moves the person's residence to this state from outside of this state may possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move, if the person:
    - (i) obtains department approval before moving the liquor into the state; and
    - (ii) pays the department a reasonable administrative handling fee as determined by the commission;
  - (c) a person who inherits liquor as a beneficiary of an estate that is located outside the state, may possess the liquor and transport or cause the liquor to be transported into the state if the person:
    - (i) obtains department approval before moving the liquor into the state;
    - (ii) provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary; and
    - (iii) pays the department a reasonable administrative handling fee as determined by the commission; or
  - (d) a person may transport or possess liquor if:
    - (i) the person transports or possesses the liquor:
      - (A) for personal household use and consumption; and
      - (B) not for:
        - (I) sale;
        - (II) resale;
        - (III) gifting to another; or
        - (IV) consumption on premises licensed by the commission;
    - (ii) the liquor is purchased from a store or facility on a military installation; and
    - (iii) the maximum amount the person transports or possesses under this Subsection (1)(d) is:
      - (A) two liters of:
        - (I) spirituous liquor;
        - (II) wine; or
        - (III) a combination of spirituous liquor and wine; and
      - (B)
        - (I) one case of heavy beer that does not exceed 288 ounces; or
        - (II) one case of a flavored malt beverage that does not exceed 288 ounces.- (2)
  - (a) Approval under Subsection (1)(b) may be obtained by a person who:
    - (i) is transferring the person's permanent residence to this state; or

- (ii) maintains separate residences both in and out of this state.
- (b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more than one time.

Enacted by Chapter 276, 2010 General Session

**32B-4-415 Unlawful bringing onto premises for consumption.**

- (1) Except as provided in Subsection (4), a person may not bring an alcoholic product for on-premise consumption onto the premises of:
  - (a) a retail licensee or person required to be licensed under this title as a retail licensee;
  - (b) an establishment that conducts a business similar to a retail licensee;
  - (c) an event where an alcoholic product is sold, offered for sale, or furnished under a single event permit or temporary beer event permit issued under this title;
  - (d) an establishment open to the general public; or
  - (e) the capitol hill complex.
- (2) Except as provided in Subsection (4), the following may not allow a person to bring onto its premises an alcoholic product for on-premise consumption or allow consumption of an alcoholic product brought onto its premises in violation of this section:
  - (a) a retail licensee or a person required to be licensed under this title as a retail licensee;
  - (b) an establishment that conducts a business similar to a retail licensee;
  - (c) a single event permittee or temporary beer event permittee;
  - (d) an establishment open to the general public;
  - (e) the State Capitol Preservation Board created in Section 63C-9-201; or
  - (f) staff of a person listed in Subsections (2)(a) through (e).
- (3) Except as provided in Subsection (4)(c)(i)(A), a person may not consume an alcoholic product in a limousine or chartered bus if the limousine or chartered bus drops off a passenger at:
  - (a) a location from which the passenger departs in a private vehicle; or
  - (b) the capitol hill complex.
- (4)
  - (a) A person may bring bottled wine onto the premises of the following and consume the wine pursuant to Section 32B-5-307:
    - (i) a full-service restaurant licensee;
    - (ii) a limited restaurant licensee;
    - (iii) a club licensee; or
    - (iv) a person operating under a resort spa sublicense.
  - (b) A passenger of a limousine may bring onto, possess, and consume an alcoholic product in the limousine if:
    - (i) the travel of the limousine begins and ends at:
      - (A) the residence of the passenger;
      - (B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or
      - (C) the temporary domicile of the passenger;
    - (ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department; and
    - (iii) the limousine is not located on the capitol hill complex.
  - (c) A passenger of a chartered bus may bring onto, possess, and consume an alcoholic product on the chartered bus:
    - (i)

- (A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or
  - (B) if the travel of the chartered bus begins and ends at:
    - (I) the residence of the passenger;
    - (II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or
    - (III) the temporary domicile of the passenger;
  - (ii) if the chartered bus has a nondrinking designee other than the driver traveling on the chartered bus to monitor consumption; and
  - (iii) if the chartered bus is not located on the capitol hill complex.
- (5) A person may bring onto any premises, possess, and consume an alcoholic product at a private event.
- (6) Notwithstanding Subsection (5), private and public facilities may prohibit the possession or consumption of alcohol on their premises.
- (7) The restrictions of Subsections (2) and (3) apply to a resort licensee or hotel licensee or person operating under a sublicense in relationship to:
- (a) the boundary of a resort building or boundary of a hotel in an area that is open to the public; or
  - (b) except as provided in Subsection (4), a sublicense premises.

Amended by Chapter 80, 2016 General Session

Amended by Chapter 245, 2016 General Session

Amended by Chapter 348, 2016 General Session

**32B-4-416 Unlawful permitting of consumption by minor.**

- (1) A person may not permit a minor to consume an alcoholic product in a chartered bus or limousine of which the person is the owner or operator.
- (2) A violation of Subsection (1) is an infraction.

Enacted by Chapter 276, 2010 General Session

**32B-4-417 Unlawful possession by licensee or permittee.**

Except as authorized by Section 32B-4-415, other provisions of this title, or the rules of the commission, a licensee or permittee may not possess, store, or allow consumption of liquor on its premises if the liquor is not purchased from:

- (1) the department;
- (2) a state store; or
- (3) a package agency.

Enacted by Chapter 276, 2010 General Session

**32B-4-418 Unlawful storage.**

It is unlawful for a person to store liquor on premises for which the person is authorized to sell beer for on-premise consumption, but for which the person is not licensed under this title to sell liquor.

Enacted by Chapter 276, 2010 General Session

**32B-4-419 Unlawful permitting of intoxication.**

- (1) A person may not permit another person to become intoxicated or an intoxicated person to consume an alcoholic product in:
  - (a) premises of which the person is the owner, tenant, or occupant; or
  - (b) a chartered bus or limousine of which the person is the owner or operator.
- (2) A violation of Subsection (1) is a class C misdemeanor.

Enacted by Chapter 276, 2010 General Session

**32B-4-420 Unlawful adulteration.**

- (1) For purposes of this section, "tamper" means to do one or more of the following to the contents of a container:
  - (a) fortify;
  - (b) adulterate;
  - (c) contaminate;
  - (d) dilute;
  - (e) change its character or purity; or
  - (f) otherwise change.
- (2) A person may not, for any purpose, mix or allow to be mixed with an alcoholic product sold or supplied by the person as a beverage any of the following:
  - (a) a drug;
  - (b) methylic alcohol;
  - (c) a crude, unrectified, or impure form of ethylic alcohol; or
  - (d) another deleterious substance.
- (3)
  - (a) The following may not engage in an act listed in Subsection (3)(b):
    - (i) a package agent;
    - (ii) a retail licensee;
    - (iii) a permittee;
    - (iv) a beer wholesaler licensee;
    - (v) a liquor warehouser licensee;
    - (vi) a supplier; or
    - (vii) an importer.
  - (b) A person listed in Subsection (3)(a) may not:
    - (i) tamper with the contents of a container of alcoholic product as originally marketed by a manufacturer;
    - (ii) refill or partly refill with any substance the contents of an original container of alcoholic product as originally marketed by a manufacturer;
    - (iii) misrepresent the brand of an alcoholic product sold or offered for sale; or
    - (iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a purchaser without first advising the purchaser of the difference.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

**32B-4-421 Unlawful consumption in public place.**

- (1) A person may not consume liquor in a public building, park, or stadium, except as provided by this title.
- (2) A violation of this section is a class C misdemeanor.

Enacted by Chapter 276, 2010 General Session

**32B-4-422 Unlawful dispensing.**

- (1) For purposes of this section:
  - (a) "Primary spirituous liquor" means the main distilled spirit in a beverage.
  - (b) "Primary spirituous liquor" does not include a secondary alcoholic product used as a flavoring in conjunction with the primary distilled spirit in a beverage.
- (2) A retail licensee licensed under this title to sell, offer for sale, or furnish spirituous liquor for consumption on the licensed premises, or staff of the retail licensee may not:
  - (a) sell, offer for sale, or furnish a primary spirituous liquor to a person on the licensed premises except in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department;
  - (b) sell, offer for sale, or furnish more than a total of 2.5 ounces of spirituous liquor per beverage;
  - (c) allow a person on the licensed premises to have more than a total of 2.5 ounces of spirituous liquor at a time; or
  - (d)
    - (i) except as provided in Subsection (2)(d)(ii), allow a person to have more than two spirituous liquor beverages at a time; or
    - (ii) allow a person on the premises of the following to have more than one spirituous liquor beverage at a time:
      - (A) a full-service restaurant licensee;
      - (B) a person operating under a full-service restaurant sublicense;
      - (C) an on-premise banquet licensee;
      - (D) a person operating under an on-premise banquet sublicense; or
      - (E) a single event permittee.
- (3) A violation of this section is a class C misdemeanor.

Amended by Chapter 307, 2011 General Session

**32B-4-423 Immunity regarding alcohol consumption offenses when seeking emergency aid for another person.**

- (1) A law enforcement officer may not cite or arrest a person solely because of a person's violation of a provision under Subsection (2) if the officer came into contact with the person because:
  - (a) the person had requested or acted in concert with another person to request emergency medical assistance for a third party who reasonably appeared to be in need of medical care due to the consumption of alcohol;
  - (b) the officer was responding to the request for emergency medical assistance;
  - (c) the person provided to the officer the person's name and identifying information as requested by the officer;
  - (d) the person remained at the location where the third party was located until emergency medical response personnel arrived at the location; and
  - (e) the person cooperated with the emergency medical assistance personnel and law enforcement officers at the location.
- (2) Offenses referred to in Subsection (1) are violations of:
  - (a) Section 32B-4-403 regarding the unlawful sale, offer for sale, or furnishing of alcohol to a minor;

- (b) Subsection 32B-4-409(1) regarding the unlawful purchase, possession, or consumption of alcohol by a minor; and
- (c) Subsection 76-9-701(1) regarding intoxication when the offense involves consumption of alcohol.
- (3) An officer who declines to cite or arrest a person while acting in good faith under Subsection (1) is not civilly liable.

Enacted by Chapter 169, 2013 General Session

**32B-4-424 Powdered alcohol.**

- (1) As used in this section, "powdered alcohol" means a product that is in a powdered or crystalline form and contains any amount of alcohol.
- (2) It is unlawful for a person to use, offer for use, purchase, offer to purchase, sell, offer to sell, furnish, or possess powdered alcohol for human consumption.
- (3) It is unlawful for a holder of a retail license to use powdered alcohol as an alcoholic product.
- (4) This section does not apply to the use of powdered alcohol for a commercial use specifically approved by state law or bona fide research purposes by a:
  - (a) health care practitioner that operates primarily for the purpose of conducting scientific research;
  - (b) department, commission, board, council, agency, institution, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state, including a state institution of higher education listed in Section 53B-2-101;
  - (c) private college or university research facility; or
  - (d) pharmaceutical or biotechnology company.

Enacted by Chapter 54, 2015 General Session

## **Part 5 Operations**

**32B-4-501 Operating without a license or permit.**

- (1) A person may not operate the following businesses without first obtaining a license under this title if the business allows a person to purchase or consume an alcoholic product on the premises of the business:
  - (a) a restaurant;
  - (b) an airport lounge;
  - (c) a business operated in the same manner as a club licensee;
  - (d) a resort;
  - (e) a business operated to sell, offer for sale, or furnish beer for on-premise consumption;
  - (f) a business operated as an on-premise banquet licensee;
  - (g) a hotel; or
  - (h) a business similar to one listed in Subsections (1)(a) through (g).
- (2) A person conducting an event that is open to the general public may not directly or indirectly sell, offer for sale, or furnish an alcoholic product to a person attending the event without first obtaining an event permit under this title.

- (3) A person conducting a private event may not directly or indirectly sell or offer for sale an alcoholic product to a person attending the private event without first obtaining an event permit under this title.
- (4) A person may not operate the following businesses in this state without first obtaining a license under this title:
  - (a) a winery manufacturer;
  - (b) a distillery manufacturer;
  - (c) a brewery manufacturer;
  - (d) a local industry representative of:
    - (i) a manufacturer of an alcoholic product;
    - (ii) a supplier of an alcoholic product; or
    - (iii) an importer of an alcoholic product;
  - (e) a liquor warehouser; or
  - (f) a beer wholesaler.
- (5) A person may not operate a public conveyance in this state without first obtaining a public service permit under this title if that public conveyance allows a person to purchase or consume an alcoholic product:
  - (a) on the public conveyance; or
  - (b) on the premises of a hospitality room located within a depot, terminal, or similar facility at which a service is provided to a patron of the public conveyance.

Amended by Chapter 80, 2016 General Session

**32B-4-502 Storing or possessing pursuant to federal stamp.**

- (1) Except as otherwise provided by this title, it is unlawful for a person who holds a stamp issued by the Bureau of Internal Revenue of the United States as a retail dealer in fermented malt liquor, or the person's operator or staff, to possess, hold, or store liquor in or on premises described in the stamp while the stamp remains in effect unless that person is:
  - (a) acting for the commission; or
  - (b) licensed under this title.
- (2) This section may not be construed to prevent a person from possessing and consuming, but not storing, liquor on premises described by the fermented malt liquor stamp, if that person is not:
  - (a) an owner or operator of a retail dealer described in Subsection (1); or
  - (b) a staff member of either the owner or operator.

Enacted by Chapter 276, 2010 General Session

**32B-4-503 Tampering with a record.**

- (1) It is unlawful for a person who has custody of a record required to be filed or deposited with the commission or the department under this title to:
  - (a) steal, falsify, alter, willfully destroy, mutilate, deface, remove, or conceal in whole or in part that record; or
  - (b) knowingly permit another person to take an action described in Subsection (1)(a).
- (2)
  - (a) Except as provided in Subsection (2)(b), a person is guilty of a class B misdemeanor.
  - (b) A person who violates Subsection (1) is guilty of a third degree felony if that person is a commissioner, the director, or a department employee.



Enacted by Chapter 276, 2010 General Session

**32B-4-504 Making false statements.**

- (1)
  - (a) A person who makes a false material statement under oath or affirmation in an official proceeding before the commission or the department is guilty of a second degree felony.
  - (b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.
- (2) A person is guilty of a class B misdemeanor if that person knowingly:
  - (a) makes a false statement under oath or affirmation in an official proceeding before the commission or the department;
  - (b) makes a false statement with a purpose to mislead a public servant in performing that public servant's official functions under this title;
  - (c) makes a false statement and the statement is required by this title to be sworn or affirmed before a notary or other person authorized to administer oaths;
  - (d) makes a false written statement on or pursuant to a record required by this title;
  - (e) creates a false impression in a record required by this title by omitting information necessary to prevent a statement in them from being misleading;
  - (f) makes a false written statement with intent to deceive a public servant in the performance of that public servant's official functions under this title; or
  - (g) submits or invites reliance on a record required under this title which that person knows to lack authenticity.
- (3) A person is not guilty under Subsection (2) if that person retracts the falsification before it becomes apparent that the falsification is or will be exposed.

Enacted by Chapter 276, 2010 General Session

**32B-4-505 Obstructing a search, official proceeding, or investigation.**

- (1) A person who is in the premises or has charge over premises may not refuse or fail to admit to the premises or obstruct the entry of any of the following who demands entry when acting under this title:
  - (a) a commissioner;
  - (b) an authorized representative of the commission or department; or
  - (c) a law enforcement officer.
- (2) A person who is in the premises or has charge of the premises may not interfere with any of the following who is conducting an investigation under this title at the premises:
  - (a) a commissioner;
  - (b) an authorized representative of the commission or department; or
  - (c) a law enforcement officer.
- (3) A person is guilty of a second degree felony if, believing that an official proceeding or investigation is pending or about to be instituted under this title, that person:
  - (a) alters, destroys, conceals, or removes a record with a purpose to impair its verity or availability in the proceeding or investigation; or
  - (b) makes, presents, or uses anything that the person knows to be false with a purpose to deceive any of the following who may be engaged in a proceeding or investigation under this title:
    - (i) a commissioner;
    - (ii) an authorized representative of the commission or department;

- (iii) a law enforcement officer; or
- (iv) other person.

Enacted by Chapter 276, 2010 General Session

**32B-4-508 Offering or soliciting bribe, gift, or profits.**

- (1) If a person sold, sells, offered for sale, or offers to sell an alcoholic product to the commission or department, that person may not offer, make, tender, or in any way deliver or transfer to a commissioner, the director, a department employee, or a law enforcement officer responsible for the enforcement of this title the following:
  - (a) a bribe;
  - (b) a gift, as defined in Section 67-16-5; or
  - (c) a share of profits.
- (2) A commissioner, the director, a department employee, or a law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any of the following from a person who sold, sells, offered for sale, or offers to sell an alcoholic product:
  - (a) a commission;
  - (b) compensation, as defined in Section 67-16-3;
  - (c) a gift, as defined in Section 67-16-5; or
  - (d) a loan.
- (3) A violation of this section is punishable under Section 67-16-12.

Enacted by Chapter 276, 2010 General Session

**32B-4-509 Forgery.**

- (1)
  - (a) A person who with a purpose to defraud the commission or the department, or who with knowledge that the person is facilitating a fraud to be perpetrated by anyone, forges a record required under this title, is guilty of forgery as provided under Section 76-6-501.
  - (b) A violation of Subsection (1)(a) is a second degree felony.
- (2) A person who with intent to defraud the commission or the department knowingly possesses a record that is a forgery as defined in Section 76-6-501 is guilty of a third degree felony.

Enacted by Chapter 276, 2010 General Session

## **Part 6**

### **Transportation and Distribution**

**32B-4-601 Unlawful removal from conveyance or diversion of shipment.**

- (1) It is unlawful for a person transporting an alcoholic product, including a motor carrier, in interstate or other commerce intended for, or consigned to, or claimed to be intended for or consigned to a person outside of this state, to remove or to permit a person to remove the alcoholic product or any part of the alcoholic product from the conveyance in which it is carried while within this state.

- (2) Notwithstanding Subsection (1), removal of an alcoholic product from a conveyance may be allowed if the person described in Subsection (1) notifies the department in writing at least 24 hours before the intended removal and complies with the instructions given by the department.
- (3) It is unlawful for a person to receive for storage or another purpose, or to possess an alcoholic product, that is removed from a vehicle or other conveyance in violation of this section.
- (4) It is unlawful for a person, including a motor vehicle, to divert to any place within this state, or to deliver to any person in this state, an alcoholic product that is consigned for shipment to any place without this state, unless the person:
  - (a) first notifies the department in writing at least 24 hours before the intended diversion or delivery; and
  - (b) complies with the instructions given by the department.
- (5) Upon receiving a notice under Subsection (2) or (4), the department shall take precautions as necessary to ensure compliance with the laws of this state relating to an alcoholic product.

Enacted by Chapter 276, 2010 General Session

**32B-4-602 Unlawful transportation.**

- (1) It is unlawful for a person, including a motor carrier, or staff of the person to order or purchase an alcoholic product or to cause an alcoholic product to be shipped, carried, or transported into this state, or from one place to another within this state except as otherwise authorized by this title.
- (2) This section does not prohibit a person, including a motor carrier, from:
  - (a) transporting an alcoholic product in the course of export from the state; or
  - (b) transporting an alcoholic product across any part of this state while in transit pursuant to a bona fide consignment of the alcoholic product to a person outside of this state.

Enacted by Chapter 276, 2010 General Session

**32B-4-603 Carriers' records.**

- (1)
  - (a) A person, including a motor carrier, transporting an alcoholic product into or within this state shall make and maintain a record in which is entered, immediately on the receipt of an alcoholic product:
    - (i) the name of every person to whom the alcoholic product is consigned;
    - (ii) the amount and kind of alcoholic product received; and
    - (iii) the date when the alcoholic product is delivered.
  - (b)
    - (i) Except as provided in Subsection (1)(b)(ii), a consignee shall sign the consignee's name.
    - (ii) If the consignee is a corporation, partnership, or limited liability company, an agent authorized in writing shall sign the record described in Subsection (1)(a).
- (2) A person described in Subsection (1) shall make the record open to inspection by an authorized official of the state or local authority at any time during the person's business hours.
- (3) A record under this section constitutes prima facie evidence of the facts stated in the record and is admissible as evidence in a court proceeding to enforce this title.

Enacted by Chapter 276, 2010 General Session

## Part 7 Trade Practices Act

### **32B-4-701 Title.**

This part is known as the "Trade Practices Act."

Enacted by Chapter 276, 2010 General Session

### **32B-4-702 Definitions.**

As used in this part:

- (1)
  - (a) For purposes of Section 32B-4-703, "exclusion" is as defined in 27 C.F.R. Sec. 8.51 through 8.54.
  - (b) For purposes of Section 32B-4-704, "exclusion" is as defined in 27 C.F.R. Sec. 6.151 through 6.153.
- (2)
  - (a) "Industry member" means:
    - (i) an alcoholic product manufacturer;
    - (ii) a producer;
    - (iii) a supplier;
    - (iv) an importer;
    - (v) a wholesaler;
    - (vi) a bottler;
    - (vii) a warehouser and bottler; or
    - (viii) for a person described in Subsections (2)(a)(i) through (vii), any of its:
      - (A) affiliates;
      - (B) subsidiaries;
      - (C) officers;
      - (D) directors;
      - (E) partners;
      - (F) agents;
      - (G) employees; or
      - (H) representatives.
  - (b) "Industry member" does not include:
    - (i) the commission;
    - (ii) a commissioner;
    - (iii) the director;
    - (iv) the department; or
    - (v) a department employee.
- (3) "Product" means an alcoholic product or item associated with an alcoholic product.
- (4) "Retailer" means:
  - (a) the holder of a license or permit issued by the commission or by a local authority to allow the holder to engage in the sale of an alcoholic product to a patron whether for consumption on or off the premises; or
  - (b) an agent, officer, director, shareholder, partner, or employee of a holder described in Subsection (4)(a).

Enacted by Chapter 276, 2010 General Session

**32B-4-703 Exclusive outlets.**

- (1) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase a product from the industry member or the department to the exclusion in whole or in part of a product that is sold or offered for sale by another person.
- (2)
  - (a) Subsection (1) applies only to a transaction between:
    - (i) one or more industry members; and
    - (ii)
      - (A) the department; or
      - (B) one or more retailers.
  - (b) Subsection (1) does not apply to a transaction between two or more industry members, including between a manufacturer and a wholesaler.
- (3) Subsection (1) includes purchases coerced by an industry member through an act or threat of physical or economic harm, as well as through a voluntary industry member-retailer purchase agreement.
- (4)
  - (a) Subsection (1) includes a contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase an alcoholic product from the industry member beyond a single sales transaction.
  - (b) Examples of a contract or agreement described in Subsection (4)(a) include:
    - (i) an advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's product; or
    - (ii) a sales contract awarded on a competitive bid basis that has the effect of prohibiting the department or retailer from purchasing from another industry member by:
      - (A) requiring that the retailer purchase a product or line of products exclusively from the industry member for the period of the agreement; or
      - (B) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.
- (5)
  - (a) Subsection (1) includes a contract, agreement, or other arrangement between an industry member and a third party nonretailer that requires the department or a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person.
  - (b) This Subsection (5) applies whether a contract, agreement, or other arrangement originates with the industry member or the third party.
  - (c) Examples of a contract, agreement, or other arrangement described in this Subsection (5) include:
    - (i) a contract, agreement, or arrangement:
      - (A) with a third party, such as a ball club or municipal or private corporation, that is not a retailer;
      - (B) under which the third party leases the concession rights and is able to control the purchasing decisions of a retailer; and
      - (C) that requires the retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person; or

- (ii) a contract, agreement, or arrangement with a third party nonretailer that requires a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person in return for which the third party provides a service or other thing of value such as:
  - (A) sponsoring radio or television broadcasting;
  - (B) paying for advertising; or
  - (C) providing other services or things of value.

Enacted by Chapter 276, 2010 General Session

**32B-4-704 Tied house -- Prohibitions.**

- (1)
  - (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring or holding an interest in a license with respect to the premises of a retailer, except when the license is held by a retailer that is completely owned by the industry member.
  - (b) Interest in a retail license includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member.
  - (c) An interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.
  - (d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).
- (2)
  - (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.
  - (b) For purposes of Subsection (2)(a):
    - (i) "interest" does not include complete ownership of a retail business by an industry member;
    - (ii) interest in retail property includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member;
    - (iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;
    - (iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;
    - (v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and
    - (vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.
- (3)
  - (a) Subject to Section 32B-4-705, it is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or

offered for sale by another person by furnishing, giving, renting, lending, or selling to the retailer equipment, a fixture, a sign, supplies, money, a service, or other thing of value.

(b)

(i) For purposes of this Subsection (3), indirect inducement includes:

- (A) furnishing a thing of value to a third party when the benefit resulting from the thing of value flows to an individual retailer; and
- (B) making a payment for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

- (A) the thing of value is furnished to a retailer by the third party without the knowledge or intent of the industry member; or
- (B) the industry member does not reasonably foresee that the thing of value would be furnished to a retailer.

(c) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Section 32B-4-705 may be furnished directly by a third party to a retailer.

(d)

(i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in Section 32B-4-705, is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(e) The furnishing of free warehousing by delaying delivery of an alcoholic product beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(f) A financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by paying or crediting the retailer for an advertising, display, or distribution service:

(a) as defined in and to the extent restricted by 27 C.F.R. Sec. 6.51 through 6.56; and

(b) subject to the exceptions:

- (i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and
- (ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(5) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by guaranteeing a loan or the repayment of a financial obligation of the retailer.

(6)

(a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase beer from the industry member to the exclusion in whole or in part of a beer product sold or offered for sale by another person by extending to a retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge from all indebtedness arising from the transaction by the retailer paying cash or its equivalent, unless:

- (i) beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month; and
  - (ii) beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.
  - (b) A first party in-state check is considered cash payment if the check is:
    - (i) honored on presentment; and
    - (ii) received under the terms prescribed in Subsection (6)(a).
  - (c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (6)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.
- (7)
- (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by requiring:
    - (i) the department to take and dispose of a certain quota of a product; or
    - (ii) a beer retailer to take and dispose of a certain quota of a beer product.
  - (b)
    - (i) It is an unlawful means to induce to require:
      - (A) the department to purchase one product in order to purchase another product; or
      - (B) a beer retailer to purchase one beer product in order to purchase another beer product.
    - (ii) This Subsection (7)(b) includes:
      - (A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium container such as:
        - (I) a distinctive decanter; or
        - (II) a wooden or tin box; or
      - (B) combination sales if one or more products may be purchased only in combination with another product and not individually.
  - (c) This Subsection (7) does not preclude the selling, at a special combination price, of two or more kinds or brands of products so long as the department or beer retailer:
    - (i) has the option of purchasing either product at the usual price; and
    - (ii) is not required to purchase a product the department or beer retailer does not want.
  - (d) An industry member may package and distribute an alcoholic product in combination with other nonalcoholic items.
  - (e) A combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

Amended by Chapter 307, 2011 General Session

**32B-4-705 Exclusions from tied house prohibitions.**

- (1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an industry member to a retailer under the conditions and within the limitations prescribed in:
  - (a) this section; and
  - (b) the applicable federal laws cited in this section.
- (2) The following may be furnished by an industry member:
  - (a) a product display as provided in 27 C.F.R. Sec. 6.83;



- (b) point of sale advertising material or a consumer advertising specialty as provided in 27 C.F.R. Sec. 6.84;
  - (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;
  - (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;
  - (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;
  - (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;
  - (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;
  - (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;
  - (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
  - (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and
  - (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.
- (3) The following exceptions provided in federal law are not applicable:
- (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
  - (b) the exception for a consumer tasting or sampling at a retail establishment as provided in 27 C.F.R. Sec. 6.95; and
  - (c) the exception for participation in a retailer association activity provided in 27 C.F.R. Sec. 6.100.
- (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain a record:
- (a) of an item furnished to a retailer;
  - (b) on the premises of the industry member; and
  - (c) for a three-year period.
- (5) A sample of liquor may be provided to the department under the following conditions:
- (a) With the department's permission, an industry member may submit a department sample to the department for product testing, analysis, and sampling.
  - (b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.
  - (c)
    - (i) A department sample may not exceed 1 liter.
    - (ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a larger size, not to exceed 5 liters:
      - (A) wine;
      - (B) heavy beer; or
      - (C) a flavored malt beverage.
  - (d) A department sample submitted to the department:
    - (i) shall be shipped prepaid by the industry member by common carrier; and
    - (ii) may not be shipped by United States mail directly to the department's central administrative warehouse office.
  - (e) A department sample may not be shipped to any other location within the state.
  - (f) The industry member shall submit with a department sample submitted to the department a letter from the industry member that clearly:
    - (i) identifies the product as a "department sample"; and
    - (ii) states the FOB case price of the product.
  - (g)
    - (i) The department may transfer a listed item from current stock:
      - (A) for use as a comparison control sample; or
      - (B) to verify product spoilage as considered appropriate.

- (ii) The department shall charge back a sample transferred under this Subsection (5)(g) to the respective industry member.
- (h) The department shall:
  - (i) account for, label, and record a department sample received or transferred;
  - (ii) account for the department sample's disposition; and
  - (iii) maintain a record of the sample and its disposition for a two-year period.
- (i) The department shall affix to each container of a department sample a label clearly identifying the product as a "department sample."
- (j) The department shall dispose of a department sample delivered to the department or transferred from the department's current stock in one of the following ways as chosen by the department:
  - (i) test and analyze the department sample, with the remaining contents destroyed under controlled and audited conditions established by the department;
  - (ii) destroy the entire contents of the department sample under controlled and audited conditions established by the department; or
  - (iii) add the department sample to the inventory of the department for sale to the public.
- (k) A person other than an authorized department official may not be in possession of a department sample except as otherwise provided.
- (l) The department shall handle a liquor item received by the department from a supplier that is not designated as a sample by the supplier, but that is an item not specifically listed on a department purchase order, in accordance with this Subsection (5).
- (m) The department may not use its money to pay freight or charges on a sample or a liquor item:
  - (i) shipped to the department by a supplier; and
  - (ii) not listed on a department purchase order.
- (6) A sample of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (6).
  - (a) A sample of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.
  - (b) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation, an industry member may furnish the next largest size.
- (7) An educational seminar may involve an industry member under the conditions listed in this Subsection (7).
  - (a) An industry member may provide or participate in an educational seminar:
    - (i) involving:
      - (A) the department;
      - (B) a retailer;
      - (C) a holder of a scientific or educational special use permit;
      - (D) another industry member; or
      - (E) an employee of a person listed in Subsections (7)(a)(i)(A) through (D); and
    - (ii) regarding a topic such as:
      - (A) merchandising and product knowledge;
      - (B) use of equipment; and
      - (C) a tour of an alcoholic product manufacturing facility.
  - (b) An industry member may not pay the expenses of or compensate a person who is a department employee, a retailer, or a permittee for attending a seminar or tour described in Subsection (7)(a).

- (8)
- (a) A liquor industry member may conduct a tasting of a liquor product of the industry member:
    - (i) for the department, at the department's request; and
    - (ii) for a licensed industry representative, but only at the department's central administrative warehouse office.
  - (b) A liquor industry member may only use a department sample or industry representative sample when conducting a tasting of the industry member's liquor product.
  - (c) A beer industry member may conduct a tasting of a beer product for a beer retailer either at:
    - (i) the industry member's premises; or
    - (ii) a retail establishment.
  - (d) Except to the extent authorized by commission rule, an alcoholic product industry member may not conduct tasting or sampling activities with:
    - (i) a retailer; or
    - (ii) a member of the general public.
- (9) A beer industry member may participate in a beer retailer association activity to the extent authorized by 27 C.F.R. Sec. 6.100.
- (10)
- (a) An industry member may contribute to a charitable, civic, religious, fraternal, educational, or community activity, except the contribution may not be given to influence a retailer in the selection of a product that may be sold at the activity.
  - (b) An industry member or retailer violates this Subsection (10) if:
    - (i) the industry member's contribution influences, directly or indirectly, the retailer in the selection of a product; and
    - (ii) a competitor's product is excluded in whole or in part from sale at the activity.
- (11)
- (a) An industry member may lease or furnish equipment listed in Subsection (11)(b) to a retailer if:
    - (i) the equipment is leased or furnished for a special event;
    - (ii) a reasonable rental or service fee is charged for the equipment; and
    - (iii) the period for which the equipment is leased or furnished does not exceed 30 days.
  - (b) This Subsection (11) applies to the following equipment:
    - (i) a picnic pump;
    - (ii) a cold plate;
    - (iii) a tub;
    - (iv) a keg box;
    - (v) a refrigerated trailer;
    - (vi) a refrigerated van; or
    - (vii) a refrigerated draft system.
- (12)
- (a) A liquor industry member may assist the department in:
    - (i) ordering, shipping, and delivering merchandise;
    - (ii) new product notification;
    - (iii) listing and delisting information;
    - (iv) price quotations;
    - (v) product sales analysis;
    - (vi) shelf management; and
    - (vii) an educational seminar.
  - (b)

- (i) A liquor industry member may, to acquire a new listing:
  - (A) solicit an order from the department; and
  - (B) submit to the department a sample of the liquor industry member's products under Subsection (5) and price lists.
- (ii)
  - (A) An industry member is confined to the customer areas when the industry member visits a state store or package agency unless otherwise approved.
  - (B) An industry member is confined to the office area of a state warehouse when the industry member visits a state warehouse unless otherwise approved.
- (13) A beer industry member may assist a beer retailer in:
  - (a) ordering, shipping, and delivering beer merchandise;
  - (b) new product notification;
  - (c) listing and delisting information;
  - (d) price quotations;
  - (e) product sales analysis;
  - (f) shelf management; and
  - (g) an educational seminar.
- (14) A beer industry member may, to acquire a new listing:
  - (a) solicit an order from a beer retailer; and
  - (b) submit to a beer retailer a sample of the beer industry member's beer products under Subsection (5) and price lists.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

#### **32B-4-706 Commercial bribery.**

This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(c) and 27 C.F.R. Sec. 10.1 through 10.54, which make it unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a wholesaler or retailer engaged in the sale of an alcoholic product to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer.

Enacted by Chapter 276, 2010 General Session

#### **32B-4-707 Consignment sale.**

- (1) This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(d) and 27 C.F.R. Sec. 11.1 through 11.46, which make it unlawful for an industry member, directly or indirectly, or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of an alcoholic product, or for any wholesaler or retailer to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or that person's agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or foreign

commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce.

- (2) This section does not apply to a transaction involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

Enacted by Chapter 276, 2010 General Session

**32B-4-708 Unlawful act involving consumers.**

- (1)
- (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to give away any of its product to a person except for testing, analysis, and sampling purposes by the department or local industry representative licensee to the extent authorized by this title.
  - (b) This Subsection (1) does not preclude an industry member from serving its product to others at a private event hosted by the industry member in the industry member's home or elsewhere so long as the product is not served:
    - (i) as part of a promotion of the industry member's product; or
    - (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or sampling purposes.
- (2) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a promotion, program, or other activity.
- (3) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an alcoholic product.
- (4) It is unlawful for an industry member or retailer to sponsor or underwrite an athletic, theatrical, scholastic, artistic, or scientific event that:
- (a) overtly promotes the consumption of a product;
  - (b) offers a product to the general public without charge; or
  - (c) takes place on the premises of a school, college, university, or other educational institution.

Enacted by Chapter 276, 2010 General Session