

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 South 900 West • PO Box 30408 • Salt Lake City, Utah • 84130-0408 (801) 977-6800 • Fax 977-6888

www.abc.utah.gov

“LOCAL INDUSTRY REPRESENTATIVE LICENSE”
APPLICATION CHECKLIST

The items below must be completed and submitted by the **10th of the month** before any action can be taken by the Alcoholic Beverage Control Commission. You will be notified of the next monthly commission meeting when your application will be considered for issuance of a license. We request that a representative attend the meeting to make a brief presentation.

1. ____ Completed application form (enclosed).
2. ____ Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of the articles of incorporation;
 - b) if a partnership, submit a copy of the written agreement;
 - c) if a limited liability company, submit a copy of the articles of organization
3. ____ Criminal history background check information (see application form).
4. ____ Copy of current local business license.
5. ____ If applicant holds a federal importer's permit from the Alcoholic and Tobacco Tax and Trade Bureau, submit a copy.
6. ____ **\$75** application fee (non-refundable).
7. ____ **\$125** initial license fee (make checks payable to UDABC).

Enclosed for your information are summaries of the laws pertaining to local industry representatives in Title 32B of the Utah Code and the rules of the Commission.

If you have any questions, please contact our Licensing and Compliance Department at (801)-977-6800.

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
APPLICATION FOR LOCAL INDUSTRY REPRESENTATIVE LICENSE

1. Business Name: _____
2. Applicant/Owner of business: _____
3. Location: _____
Street City State Zip
4. Mailing Address: _____
Street or PO Box City State Zip
5. Business Phone: _____ Other Phone: _____ Fax: _____
6. Contact Person: _____ E-mail: _____
7. **Ownership:** Check appropriate box and provide the requested information in the space below (add additional sheets if necessary).

- ☐ Applicant is an **individual:** List below information for: (a) Individual
(b) Managers
- ☐ Applicant is a **partnership:** List below information for: (a) All Partners
(b) Managers
- ☐ Applicant is a **corporation:** List below information for: (a) Any Stockholder
owning at least
20% of the corporation
(b) All Corporate officers
(c) Managers
- ☐ Applicant is a **limited liability company (LLC):**
List below information for: (a) Any members owning
at least 20% of the
company
(b) Managers

TITLE _____ NAME _____ HOME ADDRESS _____
HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ %OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____
HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ %OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

8. **Criminal History.** The law prohibits any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverage from being in the alcoholic beverage business. The law also prohibits any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been

convicted of driving under the influence of alcohol, or any drug, or the combination of alcohol and any drug from being in the alcohol business. This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to any person employed to act in a supervisory or managerial capacity.

Please list *all* criminal offenses *other than minor traffic offenses* of which you or any of the above persons have ever been convicted:

<u>NAME</u>	<u>CRIMINAL OFFENSE</u>	<u>DATE OF CONVICTION</u>
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In addition, a criminal history **background check** must be furnished on each person listed above and in subparagraph 7. This may be done as follows:

a. Utah residents: If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.

b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

An informed consent and release of liability form is included with this application.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$20.00 per card for BCI background checks, or
- \$39.25 per card for FBI background checks.

In the case of an undue delay in the processing of a B.C.I or F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires a B.C.I or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the B.C.I or F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if a B.C.I. or F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
 - searching the internet under Background Screening or Background Checks
- Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

9. Applicant agrees to immediately notify the department of any change in ownership, management, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of license.
10. Have you as an applicant, or any proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years? _____ If so, please explain.

11. The undersigned verifies that proprietor/applicant is at least 21 years of age.
12. List the names, addresses and dates of birth of all employees of the business. Attach extra sheets if necessary.

<u>NAME</u>	<u>ADDRESS</u>	<u>BIRTH DATE</u>

13. List any other alcoholic beverage licenses held by applicant:

14. Current Accounts Lists: List names, addresses, and products of all manufacturers, suppliers, and importers the applicant is authorized to represent. Attach extra sheets if necessary.

(The applicant agrees to maintain on file with the department a current accounts list, and agrees to notify the department in writing of any changes to the accounts listed within 14 days from the date the applicant either acquired or lost the account of a particular manufacturer, supplier, or importer.)

15. List locations where these products are stored in Utah other than the Department of Alcoholic Beverage Control:

16. Does applicant hold a federal importer's permit from the Alcohol and Tobacco Tax and Trade Bureau? _____ If yes, submit a copy.
17. By signing below, the applicant attests that:
- a) neither he, nor any partner, managing agent, director, officer, shareholder owning at least 20% of corporation stock, or if a limited liability company, any member owning at least 20% of the company, has acquired or holds any interest in any retailer's license issued under the Alcoholic Beverage Control Act (this does not apply if the license is held by a retailer that is completely owned by the applicant), or has acquired any interest in real or personal property owned, occupied, or used by any retailer licensed under the Act in the conduct of the retailer's business (this does not apply if the retailer is completely owned by the applicant).
 - b) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the licensee.
 - c) he/she has read and will abide by the provisions of Title 32B, Utah Code, and all rules of the commission and directives of the Department of Alcoholic Beverage Control; and understands that failure to adhere thereto or to no longer possess the qualifications of a licensee may result in suspension or revocation of the liquor license and forfeiture of compliance bond.
 - d) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.
 - f) as a condition of licensing employees or agents of the local industry representative licensee may not be the holder of any retail license issued under this title; or be employees or agents of any retail licensee issued under this title.
 - g) he/she has read and understands the statements made herein, and that execution hereof is done voluntarily and by authorization of the applicant/organization, and that any false statement made on this application or any related document is a second degree felony.
18. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a local industry representative license and certifies that the information contained herein and attached hereto is true and correct.

Dated this _____ day of _____, 20____

Applicant's Signature

Print Name / Title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me

this _____ day of _____, _____.

Notary Public

SEAL:

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32B-1-305, 306, and 307, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

_____/_____
Driver License # /State

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC for a third-party national criminal background check)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s).**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if a criminal history report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

P.O. Box 30408 • Salt Lake City, UT 84130-0408 • Ph: 801-977-6800 • Fax: 801-977-6889
website: www.abc.utah.gov

LOCAL INDUSTRY REPRESENTATIVES 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 (<http://le.utah.gov/UtahCode/chapter.jsp?code=32B>) or the Rules of the Commission (<http://www.rules.utah.gov/publicat/code/r081/r081.htm>)

A local industry representative means an individual resident of Utah, Utah partnership, Utah corporation, and a Utah limited liability company compensated by any means for representing the distilled spirits, wine, heavy beer, and flavored malt beverages of a manufacturer, supplier, or importer. Local industry representatives must be licensed by the state. They may represent more than one manufacturer, supplier, or importer at a time. Licenses run from January 1 to December 31. Individual employees of a local industry representative are not required to be separately licensed.

Representatives may assist the department in ordering, shipping, and delivering merchandise. They may provide new product notification, listing and de-listing information, price quotations, product sales analysis, shelf management, and educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit price lists and samples of their products to the department. Representatives may not sell or ship liquor, wine, or heavy beer to anyone within the state other than the department and military installations. Representatives may call on licensed retailers, permittees, and package agents, and provide them with informational material concerning the products they carry. Representatives must maintain on file with the department, a list of all manufacturers, suppliers, and importers they represent, and notify the department of any changes within 14 days of acquiring or losing an account.

A local industry representative license may *not* be granted to:

- a holder of any retail license issued by the Alcoholic Beverage Control Commission or any employee or agent of a retail licensee; or
- any individual, partnership, corporation, or limited liability company who holds any interest in any retail license issued by the Alcoholic Beverage Control Commission; or
- a minor.

An employee of a local industry representative may *not* be:

- the holder of any retail license issued by the Alcoholic Beverage Control Commission; or
- an employee of any retail licensee.

Liquor, wine, heavy beer, and flavored malt beverage product samples are restricted:

- Samples may only be shipped to the department for
 - tasting and analysis by the department under certain conditions; or
 - tasting and analysis by local industry representatives at the department only under certain conditions.

Trade Practices:

- *Because the interplay between state and federal law is so technical and detailed, we are providing very general information below.*

In the Alcoholic Beverage Control Act, Section 32B-4 Part 7, U.C.A., Utah's trade practice and tied house laws are made consistent with federal laws (27 U.S.C. 201 to 219A; 27 C.F.R. Subchapter A, Parts 6, 8, 10 & 11) except with respect to furnishing samples of liquor products which are regulated by Utah law. Liquor samples may only be shipped to the department for tasting and analysis by the department or for tasting and analysis by local industry representatives at the department under certain conditions. Beer samples may be given to a retailer, however not more than three gallons of any brand may be given and only if the retailer has not purchased the brand within the last 12 months.

Generally, alcoholic beverage industry members (such as manufacturers, manufacturer representatives, wholesalers, or importers), are prohibited from engaging in certain practices with retailers that unlawfully induce the retailer to purchase their products to the exclusion in whole or in part of other competitor's products. For example, manufacturers may not have either a direct or indirect ownership in any retail license (unless it is complete ownership); acquire any interest in the real or personal property of a retailer (unless it is complete ownership); furnish a retailer with equipment, fixtures, signs, supplies, money, services, or other "things of value" unless specifically authorized by the federal or state "tied house" laws; extend credit beyond a specified period (usually 30 days), act as guarantor of a retailer's debt; lend money; or require any quota or condition the sale of one product upon the purchase of another.

Industry members *may*:

- contribute to charitable, civic, religious, fraternal, educational, or community activities. These contributions may not be given to influence a retailer in the selection of alcoholic beverage products which might be sold at these activities and events.
- lease or furnish certain equipment for a reasonable rental or service fee for a period not to exceed 30 days to a retailer for a special event. Equipment includes a picnic pump, cold plate, tub, keg box, refrigerated trailer or van, or refrigerated draft system.

Industry members *may not*:

- give away any of their alcoholic products. This does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served as part of a promotion of its products, or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes;
- engage in any advertisement or promotional scheme that requires the purchase or sale of an alcoholic beverage, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; or
- sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that overtly promotes consumption, offers alcoholic products to the general public without charge, or takes place on the premises of a school, college, university, or other educational institution.

TITLE 32B - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through July 2011)

Chapter 11 - Manufacturing Licenses

Part 6

Local Industry Representative License Act

32B-11-601. Title.

This part is known as the "Local Industry Representative License Act."

32B-11-602. Definitions.

Reserved

32B-11-603. Commission's power to issue local industry representative license.

(1) (a) Before a person described in Subsection (2) may represent an alcoholic product of a manufacturer, supplier, or importer, the person shall obtain a local industry representative license from the commission in accordance with this part.

(b) A violation of this Subsection (1) is a class B misdemeanor.

(2) The commission may issue a local industry representative license to a person who is:

- (a) (i) an individual resident of Utah;
- (ii) a Utah partnership;
- (iii) a Utah corporation; or
- (iv) a Utah limited liability company; and

(b) employed by a manufacturer, supplier, or importer, to represent a liquor product with the department, a package agency, licensee, or permittee under this title, whether compensated by salary, commission, or another means.

(3) An individual staff member of a local industry representative licensee is not required to be separately licensed.

(4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.

(5) (a) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, a package agency, licensee, or permittee, except that staff of a manufacturer, supplier, or importer who is not a local industry representative shall register with the department, on a form provided by the department, before the staff represents an alcoholic product while in the state with the department, a package agency, licensee, or permittee.

(b) A manufacturer, supplier, or importer described in Subsection (5)(a) and its staff are subject to the same operational requirements of this part and Chapter 4, Criminal Offenses and Procedure Act.

32B-11-604. Application for local industry representative license.

(1) To obtain a local industry representative license, a person shall submit to the department:

- (a) a written application in a form prescribed by the department;
- (b) a nonrefundable \$75 application fee;
- (c) an initial license fee of \$125, which is refundable if a local industry representative license is not issued;
- (d) verification that the person is:
 - (i) a resident of Utah;

- (ii) a Utah partnership;
 - (iii) a Utah corporation; or
 - (iv) a Utah limited liability company;
- (e) an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent;
- (f) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, or any law enforcement officer to have an unrestricted right to enter, during normal business hours, the specific premises where the local industry representative conducts business;
- (g) 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
- (h) any other information the commission or department may require.

(2) A local industry representative licensee is not required to pay an additional license fee to represent more than one manufacturer, supplier, or importer.

32B-11-605. Renewal requirements for local industry representative license.

(1) A local industry representative license expires on December 31 of each year.

(2) To renew a local industry representative 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;
- (b) a renewal fee of \$125; and
- (c) an affidavit stating the name and address of any manufacturer, supplier, or importer the local industry representative licensee represents at the time of submitting the renewal application.

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

32B-11-606. Specific qualifications for local industry representative.

(1) The commission may not issue a local industry representative license to:

- (a) a person who is disqualified under Section 32B-1-304; or
- (b) unless otherwise provided:
 - (i) a retail licensee that sells, offers for sale, or furnishes liquor;
 - (ii) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
 - (iii) an individual, partnership, corporation, or limited liability company who holds an interest in a retail licensee that sells, offers for sale, or furnishes liquor.

(2) If a person to whom a local industry representative license is issued under this part no longer possesses the qualifications required by this title for obtaining that local industry representative license, the commission may suspend or revoke that local industry representative license.

32B-11-607. Commission and department duties before issuing local representative license.

(1) (a) Before the commission may issue a local industry representative 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 local industry representative 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 local industry representative license, the commission shall:
- (a) determine that the person filed a complete application and is in compliance with Sections 32B-11-604 and 32B-11-606;
 - (b) determine that the person is not disqualified under Section 32B-1-304; and
 - (c) consider any other factor the commission considers necessary.

32B-11-608. Operational requirements for local industry representative license.

(1) (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state, shall comply with this title and rules of the commission.

(b) If a person knowingly violates Subsection (1)(a):

(i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(A) a local industry representative licensee;

(B) individual staff of a local industry representative licensee; or

(C) both a local industry representative licensee and staff of the local industry representative licensee; and

(ii) if the conditions of Subsection (1)(c) are met, the commission may order:

(A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and

(B) a suspension of the department's purchase of those products for a period determined by the commission.

(c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

(i) directly commits the violation; or

(ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.

(2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.

(b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

(i) acquires the account of a manufacturer, supplier, or importer; or

(ii) loses the account of a manufacturer, supplier, or importer.

(4) (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) Staff of a local industry representative licensee may not be:

(a) a retail licensee that sells, offers for sale, or furnishes liquor;

(b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or

(c) a minor.

(6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for any type of disposition.

(7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:

(a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:

(i) assist the department in:

(A) ordering, shipping, and delivering merchandise;

(B) providing new product notification;

(C) obtaining listing and delisting information;

(D) receiving price quotations;

(E) providing product sales analysis;

(F) conducting shelf management; and

(G) conducting educational seminars; and

(ii) to acquire new listings:

(A) solicit orders from the department; and

(B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;

(b) may not sell liquor within the state except to:

(i) the department; and

(ii) a military installation;

(c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;

(d) may not sell or furnish any liquor to any person within this state other than to:

(i) the department; or

(ii) a military installation;

(e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;

(f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and

(g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.

(8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).

(a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) An industry representative sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact 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.

- (c) An industry representative sample may only be of a product not presently listed on the department's sales list.
- (d) (i) An industry representative sample shall be shipped:
 - (A) prepaid by the manufacturer, supplier, or importer;
 - (B) by common carrier and not via United States mail; and
 - (C) directly to the department's central administrative warehouse office.
- (ii) An industry representative sample may not be shipped to any other location within the state.
- (e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:
 - (i) clearly identifying the product as an "industry representative sample"; and
 - (ii) clearly stating:
 - (A) the FOB case price of the product; and
 - (B) the name of the local industry representative for whom it is intended.
- (f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.
- (g) The department shall affix to a container a label clearly identifying the product as an "industry representative sample."
- (h) The department shall:
 - (i) account for and record each industry representative sample received;
 - (ii) account for the industry representative sample's disposition; and
 - (iii) maintain a record of the industry representative sample and its disposition for a two-year period.
- (i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.
- (j) A local industry representative licensee's and a local industry representative licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.
- (k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.
- (l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:
 - (i) the contents destroyed under controlled and audited conditions established by the department; or
 - (ii) added to the inventory of the department for sale to the public.

32B-11-609. Notifying department of change in ownership.

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

- (1) ownership of the business;
- (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.

TITLE 32B - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through July 2011)

CHAPTER 4

CRIMINAL OFFENSES AND PROCEDURE ACT

Effective July 1, 2011

Part 1 General Provisions

Section

32B-4-101 Title

32B-4-102 Definitions

Part 2 Criminal Procedures

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

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

32B-4-203 Authority to inspect.

32B-4-204 Arrests

32B-4-205 Prosecutions.

32B-4-206 Searches, seizures, forfeitures, and fines

32B-4-207 Right of appeal

32B-4-208 Nuisances

32B-4-209 Lawful detention

32B-4-210 Sentencing considerations

Part 3 Criminal Offenses in General

32B-4-301 Applicability of Utah Criminal Code

32B-4-302 Criminal responsibility for conduct of another

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

32B-4-304 Violation of title a misdemeanor

32B-4-305 Additional criminal penalties

Part 4 Sale, purchase, possession or consumption

32B-4-401 Unlawful sale or furnishing

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

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

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

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

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

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

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

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

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32B-4-412 Unlawful purchase by intoxicated person
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Part 5 Operations

32B-4-501 Operating without a license or permit.
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32B-4-601 Unlawful removal from conveyance or diversion of shipment
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Part 1 General Provisions

32B-4-101. Title.

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

32B-4-102. Definitions.

Reserved

Part 2 Criminal Procedures

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.

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, or town;
- (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.

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).

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.

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.

32B-4-206. Searches, seizures, forfeitures, and fines.

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

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

(b) a container or property used or intended for use as a container for an alcoholic product in violation of this title or commission rules;

(c) raw materials, products, and equipment used, or intended for use, in manufacturing, processing, delivering, importing, exporting, or adulterating an alcoholic product in violation of this title or commission rules;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the district court shall have jurisdiction of the case.

(b) A return shall describe:

(i) the property seized;

(ii) the place where the property is seized; and

(iii) any person in apparent possession of the property.

(c) A peace officer or other person described in Subsection (4)(a) shall promptly:

(i) deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure is made; or

(ii) post a written inventory of anything seized in a conspicuous place at the premises.

(d) A written inventory under this Subsection (4) shall state the place where the property is being held.

(5) Property taken or detained under this section is not repleviable but is considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction. When property is seized under this title, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by:

(i) the person or agency; or

(ii) the warrant under which the property is seized; or

(c) take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

(6) When property is subject to forfeiture under this section, a proceeding shall be instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(7) When property is ordered forfeited under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, by a finding of a court that no person is entitled to recover the property, the property, if an alcohol container or product used as a container for an alcoholic product, shall be disposed of as follows:

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

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

(ii) otherwise in saleable condition.

(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the department shall destroy the alcoholic product and its container under competent supervision.

(8) 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.

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.

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.

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.

32B-4-210. Sentencing considerations.

(1) In sentencing an actor for a misdemeanor violation of Section 32B-4-403 or Subsection 32B-4-409(1), the court shall consider the elements under Subsection (2) as a mitigating factor.

(2) The mitigating factor referred to in Subsection (1) is:

(a) the actor committed an offense under Subsection (1) in the course of the same event regarding which the actor contacted a law enforcement agency for emergency assistance for a person whom the actor reasonably believed was, at the time the call was made, in need of medical care due to having apparently consumed an excessive amount of alcohol;

(b) the actor was younger than 21 years of age at the time of the offense;

(c) the actor was present during the incident of alcohol consumption that resulted in the actor's call to law enforcement under this section, but the actor was not involved in coercing or encouraging the endangered person to consume alcohol; and

(d) the actor was not charged with any other criminal conduct during the incident when the actor committed the offense listed under Subsection (1).

Part 3 Criminal Offenses in General

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

Except as otherwise provided, Title 76, Chapters 1, 2, 3, and 4, apply to the prosecution of a criminal offense defined in this chapter or expressly identified as a criminal offense in this title.

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.

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 a person operating under a sublicense of the resort 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.

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.

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 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 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 for at least two years from the date of revocation.

Part 4 Sale, purchase, possession or 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 warehouse 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)(c); or
- (ii) under a package agency issued by the commission on the winery 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.

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.

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.

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.

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.

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.

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.

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.

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) 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:
 - (a) shall order the minor to participate in an educational series as defined in Section 41-6a-501; and
 - (b) may order the minor to participate in a screening as defined in Section 41-6a-501.
- (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) the minor completes an educational series as defined in Section 41-6a-501.
- (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.

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) 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:
 - (a) shall order the minor to participate in an educational series as defined in Section 41-6a-501; and
 - (b) may order the minor to participate in a screening as defined in Section 41-6a-501.
- (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) the minor completes an educational series as defined in Section 41-6a-501.
- (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.

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) 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.

(4) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

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

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

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.

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.

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; or

(d) an establishment open to the general public.

(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; or
- (e) staff of a person listed in Subsections (2)(a) through (d).

(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 location from which the passenger departs in a private vehicle.

(4) (a) A person may bring bottled wine onto the premises of the following and consume the wine pursuant to Subsection 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 on 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; and

(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department.

(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; and

(ii) if the chartered bus has a nondrinking designee other than the driver traveling on the chartered bus to monitor consumption.

(5) A person may bring onto any premises, possess, and consume an alcoholic product at a private event.

(6) The restrictions of Subsections (2) and (3) apply to a resort licensee or person operating under a sublicense in relationship to:

- (a) the boundary of a resort building; or
- (b) a sublicense premises.

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.

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.

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.

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.

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.

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.

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.

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; or
- (g) a business similar to one listed in Subsections (1)(a) through (f).

(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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Part 7 - Trade Practices Act

32B-4-701. Title.

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

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).

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.

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.

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.

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.

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.

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.