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## UTAH ADMINISTRATIVE CODE

The Utah Administrative Code is the body of all effective administrative rules as compiled and organized by the Division of Administrative Rules (see Subsection 63G-3-102(5); see also Sections 63G-3-701 and 702).

NOTE: For a list of rules that have been made effective since October 1, 2015, please see the [codification segue](#) page.

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### R81. Alcoholic Beverage Control, Administration.

#### Rule R81-5. Club Licenses.

As in effect on October 1, 2015

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#### **R81-5-1. Licensing.**

(1) Club liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) (a) At the time the commission grants a club license the commission must designate whether the club qualifies to operate as an equity, fraternal, dining, or social club based on criteria in 32B-6-404.

(b) After any club license is granted, a club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(e)(i) Pursuant to 32B-6-409, a dining club licensee may convert its dining club license to a different type of retail license for which the dining club licensee qualifies. However, the conversion must occur between July 1, 2011 and June 30, 2013.

(ii) The dining club licensee shall request the conversion in writing supported by evidence to establish that the club qualifies to operate under the new retail license based on the statutory criteria for that type of license.

(iii) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(iv) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new retail license, the commission shall approve the request.

(v) After the conversion, the licensee must then operate under the provisions relevant to the type of retail license to which the club converted. If the dining club is converted to a full-service restaurant, limited-service restaurant, or beer-only restaurant, the bar structure of the dining club is considered a seating grandfathered bar structure for purposes of a full-service restaurant or limited-service restaurant license, or a grandfathered bar structure for purposes of a beer-only restaurant license.

(vi) Such conversions will not be counted against any quota for the type of retail licensee to which the club converted.

(3)(a) A dining club must operate as described in 32B-6-404(3), and must maintain at least 60% of its total club business from the sale of food, not including mix for alcoholic beverages, and service charges.

(b) A dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than the required percentage for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission, or alternatively, to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants a reclassification to a social club, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be reclassified a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed the required percentage.

(1) Club licensees with a Fraternal Club classification as of July 1, 2013 may allow guests that are over 21 without a host as long as the practice is allowed in the bylaws of the Fraternal Club and the Fraternal Club maintains at least 60% of its total business from the sale of food pursuant to Section 32B-6-407(10)(c) (i-iii).

(a) The Fraternal Club shall notify the department of the intent to allow guests without a host by providing a copy of the bylaws.

(b) The Fraternal Club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 60% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 60%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine if the Fraternal Club may continue to allow guests without a host.

#### **R81-5-2. Application.**

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

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-405 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as the type of club license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of club license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal club a copy of the club's bylaws or house rules and any amendment to those records); and

(b) the department has inspected the club premise.

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

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

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

#### **R81-5-3. Bonds.**

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

#### **R81-5-4. Insurance.**

Public liability and dram shop insurance coverage required in Subsections 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

#### **R81-5-6. Club Licensee Liquor Order and Return Procedures.**

The following procedures shall be followed when a club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

#### **R81-5-7. Club Licensee Operating Hours.**

Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

#### **R81-5-8. Sale and Purchase of Alcoholic Beverages.**

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304; and Sections R81-1-9 (Liquor Dispensing Systems) and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

#### **R81-5-9. Liquor Storage.**

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the club as approved by the department.

**R81-5-10. Alcoholic Product Flavoring.**

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

**R81-5-11. Price Lists.**

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the club premises and available at all times for examination by patrons of the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

**R81-5-12. Identification Badge.**

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

**R81-5-13. Brownbagging.**

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private event, and members of the private group are restricted to that area, and are not allowed to mingle with regular patrons of the club.

**R81-5-14. Membership Fees and Monthly Dues.**

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

**R81-5-15. Minors in Lounge or Bar Areas.**

(1) Pursuant to 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, fraternal, or dining club. A minor may not be on the premises of a social club except to the extent allowed under 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

#### **R81-5-18. Age Verification - Dining and Social Clubs.**

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

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

(D) the individual's the birth date;

(E) the individual's gender; and

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

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

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

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Sections 32B-6-406 - 407;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

**KEY**

alcoholic beverages

**Date of Enactment or Last Substantive Amendment**

September 24, 2013

**Notice of Continuation**

May 10, 2011

**Authorizing, Implemented, or Interpreted Law**

32B-1-607; 32B-2-202; 32B-5; 32B-6-401 through 409

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ADDITIONAL INFORMATION

CONTACT

For questions regarding the *content* or *application* of rules under Title R81, please contact the promulgating agency (Alcoholic Beverage Control, Administration). A list of agencies with links to their homepages is available at <http://www.utah.gov/government/agencylist.html> or from <http://www.rules.utah.gov/contact/agencycontacts.htm>.