

UT Const. Art. 6, s 27  
U.C.A. 1953, Const. Art. 6, s 27

TEXT

UTAH CODE, 1953  
CONSTITUTION OF UTAH  
PREAMBLE  
ARTICLE VI. LEGISLATIVE DEPARTMENT

s 27 [**Games of chance** not authorized.]

The Legislature shall not authorize any **game of chance, lottery** or gift enterprise under any pretense or for any purpose.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

History: Const. 1896; L. 1972, S.J.R. 1.

Compiler's Notes. -- The 1972 amendment deleted former Section 27 of this article which read: "The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the **State**, or to any municipal corporation therein." The amendment transferred to this section the matter formerly comprising Section 28 of this article.

NOTES TO DECISIONS

ANALYSIS

**Bingo.**

Effect of section.

**Games of chance.**

Insurance policy.

**Lottery.**

**Pari-mutuel betting** system.

**Bingo.**

Retail grocer's "double cash **bingo**" did not constitute an illegal **lottery**, since the **chance** to win -- i.e., the **bingo** card -- was acquired by mere request of participant, so that there was no valuable consideration for the **chance** of obtaining property. Albertson's, Inc. v. Hansen, 600 P.2d 982 (Utah 1979).

Effect of section.

Under this section the legislature cannot, under any circumstances, legalize any form of **gambling**. Salt Lake City v. Doran, 42 Utah 401, 131 P. 636 (1913).

**Games of chance.**

In **game of chance**, the predominating element is **chance**. D'Orio v. Startup Candy Co., 71 Utah 410, 266 P. 1037, 60 A.L.R. 338 (1928).

Under this section, punch board, providing checker problem, is a **game** of skill and not a **game** of **chance**, since checker playing is **game** of skill, not of **chance**, and fact that one of players is more skillful than another does not alter nature of **game**. D'Orio v. Startup Candy Co., 71 Utah 410, 266 P. 1037, 60 A.L.R. 338 (1928).

Insurance policy.

An insurance policy in which person insuring life of another for his own benefit has no insurable interest in life of the insured is a **wagering** contract, and offends against this provision. Commercial Travelers Ins. Co. v. Carlson, 104 Utah 41, 137 P.2d 656 (1943).

#### **Lottery.**

Contests by oil companies wherein all licensed drivers received **game** cards which, when rubbed with the side of a coin, revealed whether the holder of the card was entitled to a prize, constituted a **lottery** under this section; the players' time, attention, thought, energy and money spent in transportation to the store for a **chance** to win a prize supplied the element of consideration necessary to constitute a **lottery**. Geis v. Continental Oil Co., 29 Utah 2d 452, 511 P.2d 725 (1973).

#### **Pari-mutuel betting system.**

Proceedings of constitutional convention tend to indicate that this section was not intended to prohibit horse racing; **betting** being a necessary concomitant thereof, legislature may **regulate** mischief relating to **betting** by authorizing **pari-mutuel** system. Utah State Fair Ass'n v. Green, 68 Utah 251, 249 P. 1016 (1926).

Horse Racing Act (**Laws** 1925, ch. 77), permitting **pari-mutuel betting** at track, did not violate this section. Utah State Fair Ass'n v. Green, 68 Utah 251, 249 P. 1016 (1926).

#### COLLATERAL REFERENCES

Utah **Law** Review. -- Recent Developments in Utah **Law**, 1980 Utah L. Rev. 649.

Am. Jur. 2d. -- **Gambling** generally, 38 Am. Jur. 2d **Gambling** s 1 et seq.

C.J.S. -- 54 C.J.S. **Lotteries** s 8.

U.C.A. 1953, Const. Art. 6, s 27

UT Const. Art. 6, s 27

END OF DOCUMENT

UT ST s 76-10-1101

U.C.A. 1953 s 76-10-1101

TEXT

UTAH CODE, 1953

TITLE 76. CRIMINAL CODE

CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

PART 11. **GAMBLING**

76-10-1101 Definitions.

For the purpose of this part:

(1) "**Gambling**" means risking anything of value for a return or risking anything of value upon the outcome of a contest, **game**, **gaming** scheme, or **gaming** device when the return or outcome is based upon an element of **chance** and is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome, and **gambling** includes a **lottery**; **gambling** does not include:

(a) a **lawful** business transaction, or

(b) playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(2) "**Gambling bet**" means money, checks, credit, or any other representation of value.

(3) "**Gambling** device or record" means anything specifically designed for use in **gambling** or used primarily for **gambling**.

(4) "**Gambling** proceeds" means anything of value used in **gambling**.

(5) "**Lottery**" means any scheme for the disposal or distribution of property by **chance** among persons who have paid or promised to pay any valuable consideration for the **chance** of obtaining property, or portion of it, or for any share or any interest in property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or **chance**, whether called a **lottery**, **raffle**, or gift enterprise, or by whatever name it may be known.

(6) "Video **gaming** device" means any device that possesses all of the following characteristics:

(a) a video display and computer mechanism for playing a **game**;

(b) the length of play of any single **game** is not substantially affected by the skill, knowledge, or dexterity of the player;

(c) a meter, tracking, or recording mechanism that records or tracks any money, tokens, **games**, or credits accumulated or remaining;

(d) a play option that permits a player to spend or risk varying amounts of money, tokens, or credits during a single **game**, in which the spending or risking of a greater amount of money, tokens, or credits:

(i) does not significantly extend the length of play time of any single **game**; and

(ii) provides for a **chance** of greater return of credits, **games**, or money; and

(e) an operating mechanism that requires inserting money, tokens, or other valuable consideration in order to function.

CREDIT

History: C. 1953, 76-10-1101, enacted by L. 1973, ch. 196, s 76-10-1101; 1998, ch. 127, s 6.

<General Materials (GM) - References, Annotations, or Tables>

#### NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1998 amendment, effective May 4, 1998, redesignated Subsection (2) as (5) and Subsections (3) to (5) as (2) to (4) and added Subsection (6).

Cross-References. --Legislature not to authorize **lottery**, Utah Const., Art.

VI, s 27.

NOTES TO DECISIONS

ANALYSIS

**Lottery.**

Valuable consideration.

**Lottery.**

Giving of automobile to one holding winning ticket of admission to celebration or fair, winning ticket to be determined by lot or **chance**, was "**lottery**"; court would leave parties where it found them and would aid neither. Blair v. Lowham, 73 Utah 599, 276 P. 292 (1929).

Valuable consideration.

Since Subsection (2) of this section specifically and directly requires payment or promise of "any valuable consideration for the **chance** of obtaining property," a "**lottery**" does not exist merely by virtue of presence of valuable consideration flowing to or from any element in the transaction; thus, grocery store's **bingo game** did not constitute an illegal **lottery** where participants acquired **chance** to win by giving no more than mere request for a card. Albertson's, Inc. v. Hansen, 600 P.2d 982 (Utah 1979).

COLLATERAL REFERENCES

Utah **Law** Review. --Recent Developments in Utah **Law**, 1980 Utah L. Rev. 649.

Am.Jur.2d. --38 Am. Jur. 2d **Gambling** s 5.

C.J.S. --54 C.J.S. **Lotteries** s 2.

A.L.R. --Constitutionality of statutes providing for destruction of **gambling** devices, 14 A.L.R.3d 366.

Validity and construction of statute exempting **gambling** operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against **gambling**, 42 A.L.R.3d 663.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of **wagers** or **wagering** information related to bookmaking, 53 A.L.R.4th 801.

Private contests and **lotteries**: entrants' rights and remedies, 64 A.L.R.4th 1021.

Validity, construction, and application of statute or ordinance prohibiting or **regulating** use of messenger services to place **wagers** in **pari-mutuel** pool, 78 A.L.R.4th 483.

Validity, construction, and application of statute or ordinance prohibiting or **regulating** use or occupancy of premises for bookmaking or pool selling, 82 A.L.R.4th 356.

U.C.A. 1953 s 76-10-1101

UT ST s 76-10-1101

END OF DOCUMENT

UT ST s 10-8-41  
U.C.A. 1953 s 10-8-41

TEXT

UTAH CODE, 1953  
TITLE 10. CITIES AND TOWNS  
CHAPTER 8. POWERS AND DUTIES OF ALL CITIES  
ARTICLE 1. GENERAL POWERS

10-8-41 Prostitution, lewd or perverted acts, gambling, and obscene or lewd publications.

(1) Boards of commissioners and city councils of cities may suppress and prohibit the keeping of disorderly houses, houses of ill fame or assignation, or houses kept by, maintained for, or resorted to or used by, one or more persons for acts of perversion, lewdness, or prostitution within the limits of the city and within three miles of the outer boundaries thereof, and may prohibit resorting thereto for any of the purposes aforesaid; they may also make it unlawful for any person to commit or offer or agree to commit an act of sexual intercourse for hire, lewdness, or moral perversion within the city, or for any person to secure, induce, procure, offer, or transport to any place within the city any person for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to receive or direct or offer or agree to receive or direct any person into any place or building within the city for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to aid, abet, or participate in the commission of any of the foregoing; and they may also suppress and prohibit **gambling** houses and **gambling, lotteries** and all fraudulent devices and practices, and all kinds of **gaming**, playing at dice or cards, and other **games of chance**, and the sale, distribution, or exhibition of obscene or lewd publications, prints, pictures, or illustrations.

(2) (a) A woman's breast feeding, including breast feeding in any place where the woman otherwise may rightfully be, does not under any circumstance constitute an obscene or lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

(b) Boards of commissioners and city councils of cities may not prohibit a woman's breast feeding in any location where she otherwise may rightfully be, irrespective of whether the breast is uncovered during or incidental to the breast feeding.

CREDIT

History: R.S. 1898 & C.L. 1907, s 206, subd. 40; L. 1911, ch. 120, s 1; 1915, ch. 100, s 1; C.L. 1917, s 570x40; R.S. 1933 & C. 1943, 15-8-41; L. 1969, ch. 30, s 1; 1995, ch. 131, s 1.

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1995 amendment, effective May 1, 1995, added Subsection (2) and the Subsection (1) designation, substituted "Boards of commissioners and city councils of cities" for "They" at the beginning of Subsection (1), and made several punctuation changes.

Cross-References. --Punishment of prostitutes, s 10-8-51.

NOTES TO DECISIONS

Slot machines.

Slot machines fall within the forms of **gambling** which a city may suppress under this section. Salt Lake City v. Doran, 42 Utah 401, 131 P. 636 (1913).

COLLATERAL REFERENCES

Utah **Law** Review. --**State** Preemption and the Exercise of Municipal General Welfare Powers: A City's Anti-Prostitution Ordinance, 1968 Utah L. Rev. 419.

Am.Jur.2d. --56 Am. Jur. 2d Municipal Corporations, Etc. s 441.

C.J.S. --62 C.J.S. Municipal Corporations ss 247, 263.

A.L.R. --Paraphernalia or appliances used for recording **gambling** transactions or receiving or furnishing **gambling** information as **gaming** "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Constitutionality, construction, and application of statutes exempting schemes for benefit of public, religious, or charitable purposes from statutes or constitutional provisions against **lotteries** or **gambling**, 42 A.L.R.3d 663.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation --modern cases, 77 A.L.R.3d 519.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia, 51 A.L.R.4th 796.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of **wagers** or **wagering** information related to bookmaking, 53 A.L.R.4th 801.

U.C.A. 1953 s 10-8-41

UT ST s 10-8-41

END OF DOCUMENT

UT ST s 76-10-1102

U.C.A. 1953 s 76-10-1102

TEXT

UTAH CODE, 1953

TITLE 76. CRIMINAL CODE

CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

PART 11. **GAMBLING**

76-10-1102 **Gambling.**

(1) A person is guilty of **gambling** if he:

(a) participates in **gambling**;

(b) knowingly permits any **gambling** to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; or

(c) knowingly allows the use of any video **gaming** device that is:

(i) in any business establishment or public place; and

(ii) accessible for use by any person within the establishment or public place.

(2) **Gambling** is a class B misdemeanor, provided, however, that any person who is twice convicted under this section shall be guilty of a class A misdemeanor.  
CREDIT

History: C. 1953, 76-10-1102, enacted by L. 1973, ch. 196, s 76-10-1102; 1998, ch. 127, s 7.

<General Materials (GM) - References, Annotations, or Tables>

#### NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1998 amendment, effective May 4, 1998, added Subsection (1)(c), making stylistic changes.

#### NOTES TO DECISIONS

#### ANALYSIS

Elements.

Ticket pool.

Validity of agreements.

Elements.

Under former s 76-27-1, offense was complete if **game** was played, carried on, or conducted in any house, street, or alley, or other place, public or private; it was sufficient that it was played only once or for any indefinite length of time, if played for money, credit or other representative or thing of value. **State v. Poulis**, 45 Utah 340, 145 P. 1044 (1915).

It was **games of chance** that Legislature intended to prohibit and not chess, checkers, billiards, bowling and other **games** in which skill is predominating element. **D'Orio v. Startup Candy Co.**, 71 Utah 410, 266 P. 1037, 60 A.L.R. 338 (1928).

Ticket pool.

Agreement to pool **lottery** tickets to enable participants to share equally, in event that any of them held winning ticket, violated former s 76-27-11. **Blair v. Lowham**, 73 Utah 599, 276 P. 292 (1929).

Validity of agreements.

Agreements in violation of former **lottery law** were unenforceable. **Blair v. Lowham**, 73 Utah 599, 276 P. 292 (1929).

#### COLLATERAL REFERENCES

Am.Jur.2d. --38 Am. Jur. 2d **Gambling** s 119.

C.J.S. --38 C.J.S. **Gaming** s 96.

A.L.R. --**Gambling** in private residence as prohibited or permitted by anti-**gambling laws**, 27 A.L.R.3d 1074.

Promotion schemes of retail stores as criminal offense under **anti-gambling**

laws, 29 A.L.R.3d 888.

Validity of statute or ordinance prohibiting or **regulating** bookmaking or pool selling, 80 A.L.R.4th 1079.

U.C.A. 1953 s 76-10-1102

UT ST s 76-10-1102

END OF DOCUMENT

UT ST s 76-10-1104

U.C.A. 1953 s 76-10-1104

TEXT

UTAH CODE, 1953

TITLE 76. CRIMINAL CODE

CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

PART 11. **GAMBLING**

76-10-1104 **Gambling** promotion.

(1) A person is guilty of **gambling** promotion if he derives or intends to derive an economic benefit other than personal winnings from **gambling** and:

(a) he induces or aids another to engage in **gambling**; or

(b) he knowingly invests in, finances, owns, controls, supervises, manages, or participates in any **gambling**.

(2) **Gambling** promotion is a class B misdemeanor, provided, however that any person who is twice convicted under this section shall be guilty of a felony of the third degree.

CREDIT

History: C. 1953, 76-10-1104, enacted by L. 1973, ch. 196, s 76-10-1104; 1991, ch. 241, s 104.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

COLLATERAL REFERENCES

Am.Jur.2d. --38 Am. Jur. 2d **Gambling** s 119.

C.J.S. --54 C.J.S. **Lotteries** s 22.

A.L.R. --Validity, construction, and application of statute or ordinance prohibiting or **regulating** use of messenger services to place **wagers** in **pari-mutuel** pool, 78 A.L.R.4th 483.

Construction and application of statute or ordinance prohibiting or **regulating** bookmaking or pool selling, 84 A.L.R.4th 740.

U.C.A. 1953 s 76-10-1104

UT ST s 76-10-1104

END OF DOCUMENT

UT ST REV Rule 201

Utah Rules of Evidence, Rule 201

UTAH CODE, 1953  
TITLE 31A. INSURANCE CODE  
CHAPTER 20. UNDERWRITING RESTRICTIONS

31A-20-101 Underwriting limitations.

No insurer may insure or attempt to insure against:

- (1) a **wager** or **gaming** risk;
- (2) loss of an election;
- (3) the penal consequences of a crime; or
- (4) punitive damages.

CREDIT

History: C. 1953, 31A-20-101, enacted by L. 1985, ch. 242, s 25; 1986, ch. 204, s 134.

U.C.A. 1953 s 31A-20-101

UT ST s 31A-20-101

END OF DOCUMENT

UT ST s 76-10-1108

U.C.A. 1953 s 76-10-1108

TEXT

UTAH CODE, 1953  
TITLE 76. CRIMINAL CODE  
CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS  
PART 11. **GAMBLING**

76-10-1108 Seizure and disposition of **gambling** debts or proceeds.

(1) At the commencement of any prosecution for a violation of this part, any **gambling bets** or **gambling** proceeds which are reasonably identifiable as having been used or obtained in violation of this part may be seized and they shall be held pending the disposition of the proceedings. At the conclusion of the proceedings, any person who is found guilty of a violation of this part shall forfeit any sums held by the court which were acquired or being used in violation of this part. Any sums not identifiable, or in the event the individual is found not guilty, the sums shall be returned to him.

(2) A commencement of prosecution shall occur upon arrest, issuance of a complaint, or indictment, which ever occurs first.

(3) All sums forfeited under this section shall be paid into the treasury of the county or political unit conducting the prosecution.

CREDIT

History: C. 1953, 76-10-1108, enacted by L. 1973, ch. 196, s 76-10-1108.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Cross-References. --Attachment, Rules of Civil Procedure, Rule 64C.

COLLATERAL REFERENCES

Am.Jur.2d. --38 Am. Jur. 2d **Gambling** s 179.

C.J.S. --54 C.J.S. **Lotteries** ss 20, 21.

UTAH CODE, 1953

TITLE 76. CRIMINAL CODE

CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

PART 11. **GAMBLING**

76-10-1109 Confidence **game** --Punishment as for theft --Description in charge.

(1) Any person who obtains or attempts to obtain from any other person any money or property by any means, instrument or device commonly called a confidence **game** shall be punished as in the case of theft of property of like value.

(2) In every indictment, information, or complaint under this section, it shall be deemed and held a sufficient description of the offense to charge that the accused did, on, \_\_\_\_\_ (insert the date) unlawfully and knowingly obtain or attempt to obtain (as the case may be) from \_\_\_\_\_, (insert the name of the person or persons defrauded or attempted to be defrauded) his money or property (as the case may be) by means and by use of a confidence **game**.

CREDIT

History: C. 1953, 76-10-1109, enacted by L. 1973, ch. 196, s 76-10-1109.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Cross-References. --Theft, classification of offenses, s 76-6-412.

COLLATERAL REFERENCES

Am.Jur.2d. --32 Am. Jur. 2d False Pretenses s 88.

C.J.S. --35 C.J.S. False Pretenses s 39.

U.C.A. 1953 s 76-10-1109

UT ST s 76-10-1109

END OF DOCUMENT

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

UT ST s 76-10-1107

U.C.A. 1953 s 76-10-1107

TEXT

UTAH CODE, 1953

TITLE 76. CRIMINAL CODE

CHAPTER 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

PART 11. **GAMBLING**

76-10-1107 Seizure and sale of devices or equipment used for **gambling**.

(1) Whenever any magistrate shall determine that any devices or equipment is used or kept for the purpose of being used for **gambling**, the magistrate may authorize the county commissioner [commission] of the county wherein the seizure occurred, in conjunction with the sheriff, or if the seizure occurred within the limits of an incorporated city or town, may authorize its governing body, in conjunction with its chief **law** enforcement officer, to seize the devices and sell them for the best price obtainable. The sale must be made to a person of good character and repute who is a bona fide resident of a **state** where it is **lawful** to use the equipment. The officials conducting the sale shall place the equipment on a public carrier, properly consigned to the purchaser at the place of his residence.

(2) The proceeds of any sale shall be paid into the treasury, for welfare purposes only, of the county or political unit conducting the sale.

(3) If no sale is consummated within ninety days of the authorization therefor, the devices or equipment shall be destroyed under the direction of the magistrate.

CREDIT

History: C. 1953, 76-10-1107, enacted by L. 1973, ch. 196, s 76-10-1107.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

COLLATERAL REFERENCES

Am.Jur.2d. --38 Am. Jur. 2d **Gambling** s 174.

C.J.S. --38 C.J.S. **Gaming** s 79.

A.L.R. --Constitutionality of statutes providing for destruction of **gambling** devices, 14 A.L.R.3d 366.

UT ST s 32A-4-106

U.C.A. 1953 s 32A-4-106

TEXT

UTAH CODE, 1953

TITLE 32A. ALCOHOLIC BEVERAGES

CHAPTER 4. PUBLIC LIQUOR LICENSES

PART 1. RESTAURANT LIQUOR LICENSES

32A-4-106 Operational restrictions.

Each person granted a restaurant liquor license and the employees and management personnel of the restaurant shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) (a) Liquor may not be purchased by a restaurant liquor licensee except from state stores or package agencies.

(b) Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises.

(c) Payment for liquor shall be made in accordance with rules established by the commission.

(2) A restaurant liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(d) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the commission.

(b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (3)(a) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, required by Subsection (3)(b) may result in a suspension or revocation of the restaurant's:

(i) state liquor license; and

(ii) alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the restaurant.

(b) A patron may only make alcoholic beverage purchases in the restaurant from a server designated and trained by the licensee.

(c) Any alcoholic beverage may only be consumed at the patron's table.

(d) Liquor may not be stored where it is visible to patrons of the restaurant.

(6) (a) Alcoholic beverages may not be dispensed directly to a patron from the storage area.

(b) Alcoholic beverages shall be delivered by a server to the patron.

(7) The liquor storage area shall remain locked at all times other than

those hours and days when liquor sales are authorized by **law**.

(8) (a) Liquor may not be sold or offered for sale at a restaurant during the following days or hours:

(i) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(ii) on the day of any municipal, special district, or school election, but only:

(A) within the boundaries of the municipality, special district, or school district; and

(B) if closure is required by local ordinance; and

(iii) on any other day after 12 midnight and before 12 noon.

(b) The hours of beer sales are those specified in Chapter 10, Beer Retailer Licenses, for on-premise beer licensees.

(9) Alcoholic beverages may not be sold except in connection with an order for food prepared, sold, and served at the restaurant.

(10) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(11) (a) Liquor may not be sold except at prices fixed by the commission.

(b) Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(12) Each restaurant patron may have only one alcoholic beverage at a time before the patron on the patron's table.

(13) No more than one ounce of primary liquor may be served to a patron at a time, except:

(a) wine as provided in Subsection (2)(c); and

(b) heavy beer as provided in Subsection (2)(d).

(14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons of the restaurant.

(15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any location where they are stored or dispensed.

(16) (a) A wine service may be performed and a service charge assessed by the restaurant as authorized by commission rule for wine purchased at the restaurant or carried in by a patron.

(b) If wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(17) (a) A person may not bring onto the premises of a restaurant liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee and consume wine pursuant to Subsection (16).

(b) A restaurant, whether licensed under this title or unlicensed, or its officers, managers, employees, or agents may not allow:

(i) a person to bring onto the restaurant premises any alcoholic beverage for on-premise consumption; or

(ii) consumption of any such alcoholic beverage on its premises, except cork-finished wine under Subsection (17)(a).

(c) If a restaurant licensee, or any of its officers, managers, employees, or agents violates this Subsection (17):

(i) the commission may immediately suspend or revoke the restaurant's

liquor license and the restaurant licensee is subject to possible criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the restaurant's:

(A) local liquor license;

(B) local consent under Subsection 32A-4-102(1); or

(C) local business license.

(18) Alcoholic beverages purchased from the restaurant may not be removed from the restaurant premises.

(19) (a) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic beverages.

(b) Notwithstanding Subsection (19)(a), a minor may be employed to enter the sale at a cash register or other sales recording device.

(20) An employee of a restaurant liquor licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be under the influence of alcoholic beverages.

(21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a food menu except that a statement of availability of a liquor and wine menu on request, the content and form of which is approved by the department, may be attached to or carried on a food menu. The context of both food and liquor and wine menus may not in any manner attempt to promote or increase the sale of alcoholic beverages.

(b) A server, employee, or agent of a licensee may not draw attention to the availability of alcoholic beverages for sale, unless a patron or guest first inquires about it.

(c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic beverage menus.

(22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(23) The following acts or conduct in a restaurant licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (23)(a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of that person's genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(24) Nothing in Subsection (23) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (23).

(25) (a) Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (25)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (25)(a).

(26) A restaurant liquor licensee may not engage in or permit any form of **gambling**, or have any video **gaming** device, as defined and proscribed by Title 76, Chapter 10, Part 11, **Gambling**, on the premises of the restaurant liquor licensee.

(27) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) liquor;

(D) food; and

(E) all other items required by the department; and

(ii) sales made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) food; and

(D) all other items required by the department.

(b) The record required by Subsection (27)(a) shall be kept:

(i) in a form approved by the department; and

(ii) current for each three-month period.

(c) Each expenditure shall be supported by:

(i) delivery tickets;

(ii) invoices;

(iii) receipted bills;

(iv) canceled checks;

(v) petty cash vouchers; or

(vi) other sustaining data or memoranda.

(28) (a) Each restaurant liquor licensee shall maintain accounting and other records and documents as the department may require.

(b) Any restaurant or person acting for the restaurant, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the restaurant required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the restaurant's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(29) (a) A restaurant liquor licensee may not close or cease operation for a period longer than 240 hours, unless:

(i) the restaurant liquor license notifies the department in writing at least seven days before the closing; and

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

(b) Notwithstanding Subsection (29)(a), in the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the restaurant licensee and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year.

(30) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges.

(31) A person may not transfer a restaurant liquor license from one location to another, without prior written approval of the commission.

(32) (a) A person, having been granted a restaurant liquor license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) A restaurant liquor license has no monetary value for the purpose of any type of disposition.

(33) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(34) A person's willingness to serve alcoholic beverages may not be made a

condition of employment as a server with a restaurant that has a restaurant liquor license.  
CREDIT

History: C. 1953, 32A-4-6, enacted by L. 1985, ch. 175, s 1; 1987, ch. 92, s 38; 1988, ch. 7, s 1; 1988, ch. 77, s 4; 1989, ch. 256, s 2; renumbered by L. 1990, ch. 23, s 60; 1991, ch. 132, s 13; 1993, ch. 7, s 3; 1993, ch. 23, s 1; 1994, ch. 95, s 1; 1997, ch. 40, s 1; 1998, ch. 127, s 1.

<General Materials (GM) - References, Annotations, or Tables>

#### NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1994 amendment, effective May 2, 1994, substituted "comply with" for "abide by" in the first sentence; made internal reference changes in Subsections (3)(b), (3)(c), (17)(c), (23)(b), and (25)(b); and added Subsection (26), renumbering the subsequent subsections accordingly.

The 1997 amendment, effective May 5, 1997, deleted "Beginning July 1, 1991" from the beginning of Subsections (2), (13), and (17)(a) through (c); deleted references to "guest" following "patron" in Subsections (5), (6), (12), and (13); added Subsection (19)(b); added "Notwithstanding Subsection (29)(a)" to the beginning of Subection (29)(b); and made stylistic changes throughout the section.

The 1998 amendment, effective May 4, 1998, updated the section reference in Subsection (17)(c)(ii)(B), and inserted "or have any video **gaming** device" in Subsection (26).

#### COLLATERAL REFERENCES

Am.Jur.2d. --45 Am. Jur. 2d Intoxicating Liquors s 281.

A.L.R. --Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors, 7 A.L.R.3d 809.

Validity of municipal **regulation** more restrictive than **state regulation** as to time for selling or serving intoxicating liquor, 57 A.L.R.3d 1061.

Validity of **state** statute or **regulation** fixing minimum prices at which alcoholic beverages may be sold at retail, 96 A.L.R.3d 639.

Validity, under federal and **state** establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

U.C.A. 1953 s 32A-4-106

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TITLE 32A. ALCOHOLIC BEVERAGES

CHAPTER 5. PRIVATE CLUB LIQUOR LICENSES

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Current through End of 1998 General Session

32A-5-107 Operational restrictions.

Each corporation or association granted a private club liquor license and its employees, officers, managing agent, and members shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Each private club shall hold regular meetings as required by its articles or bylaws and conduct its business through regularly elected officers. Within ten days following the election of any officer, the department shall be notified in writing of the officer's name, address, and office to which the officer has been elected, and the term of that office.

(2) Each private club may admit members only on written application signed by the applicant, following investigation and approval of the governing body. Admissions shall be recorded in the official minutes of a regular meeting of the governing body and the application, whether approved or disapproved, shall be filed as a part of the official records of the licensee. An applicant may not be accorded the privileges of a member until a quorum of the governing body has formally voted upon and approved the applicant as a member. An applicant may not be admitted to membership until seven days after the application is submitted.

(3) Each private club shall maintain a current and complete membership record showing the date of application of each proposed member, the member's address, the date of admission following application, and the date initiation fees and dues were assessed and paid. The record shall also show the serial number of the membership card issued to each member. A current record shall also be kept indicating when members were dropped or resigned.

(4) Each private club shall establish in the club bylaws initial fees and monthly dues, as established by commission rules, which are collected from all members.

(5) Each private club may allow guests or visitors to use the premises only when previously authorized by a member. A member is responsible for all services extended to guests and visitors. If the guest or visitor is a member of the same fraternal organization as the private club liquor licensee, no previous authorization is required.

(6) Each private club shall limit the issuance of visitor cards for a period not to exceed two weeks and assess and collect a fee from each visitor of not less than \$5 for each two-week period the visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to the department for the administration of this title. A current record of the issuance of each card shall be maintained and shall contain the name of the member sponsoring the visitor.

(7) A private club may not sell alcoholic beverages to any person other than a member, guest, or visitor who holds a valid visitor card issued under Subsection (6).

(8) A person who is under 21 years of age may not be a member, officer, director, or trustee of a private club.

(9) An employee of a club, while on duty, may not consume an alcoholic beverage, be under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host for a guest.

(10) A visitor to a club may not host more than five guests at one time.

(11) Each private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, utilities, supplies, and

all other expenditures. This record shall be kept in a form approved by the department and balanced each month. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal year documenting purchases made by officers of the club for the benefit of the club shall also be maintained.

(12) Each private club shall maintain a bank account that shows all income and expenditures as a control on the income and disbursements records. This account shall be balanced each month under the direction of the treasurer or other officer of the licensee.

(13) Each private club shall maintain a minute book that is posted currently by the secretary. This record shall contain the minutes of all regular and special meetings of the governing body and all committee meetings held to conduct club business. Membership lists shall also be maintained.

(14) Each private club shall maintain current copies of the club's articles of incorporation, current bylaws, and current house rules. Changes in the bylaws are not effective unless submitted to the department within ten days after adoption, and become effective 15 days after received by the department unless rejected by the department before the expiration of the 15-day period.

(15) Each private club shall maintain accounting and other records and documents as the department may require.

(16) Any club or person acting for the club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the club required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the club's license and possible criminal prosecution under Chapter 12.

(17) Each private club shall maintain and keep all the records required by this section and all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the department requires, for a minimum period of three years. All records, books, receipts, and disbursements are subject to inspection by authorized representatives of the commission, department, and council. The club shall allow the department, through its auditors or examiners, to audit all records of the club at times the department considers advisable. The department shall audit the records of the licensee at least once annually.

(18) Each private club shall make available to the department, upon request, verified copies of any returns filed with the United States Treasury Department, Internal Revenue Service, under the federal Internal Revenue Code. Failure to provide any returns and supporting documents upon reasonable request by the department or, alternatively, to provide evidence of an extension granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to suspend or revoke a license. Any return or copy of a return so filed with the department is confidential and may not be used in any manner not directly connected with the enforcement of this title, nor may it be disclosed to any person or any department or agency of government, whether federal, state, or local.

(19) Each private club shall own or lease premises suitable for its activities in its own name. A copy of the lease shall be filed with the department.

(20) Each private club shall operate the club under the supervision of a manager or house committee, appointed by the governing body of the club.

(21) A private club may not maintain facilities in any manner that barricades or conceals the club operation. Any member of the commission, authorized department personnel, member of the council, or any peace officer shall, upon presentation of credentials, be admitted immediately to the club and permitted without hindrance or delay to inspect completely the entire club premises and all books and records of the licensee, at any time during which the same are open for the transaction of business to its members.

(22) A private club may not pay any person or entity any fee, salary, rent, or other payment of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities or equipment rented. It is the intention of this subsection to insure that no officer, managing agent, employee, or other person derives a principal economic benefit from the operation of a club.

(23) A private club may not engage in any public solicitation or public advertising calculated to increase its membership.

(24) Each private club shall comply with the following operational restrictions:

(a) The liquor storage and sales area shall remain locked at all times when it is not open for business.

(b) Liquor may not be purchased by a private club liquor licensee except from state stores or package agencies. Liquor so purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(i) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(A) the beverage shall contain liquor from a lawfully purchased container;

(B) the secondary ingredient is not the only liquor in the beverage;

(C) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(ii) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(iv) heavy beer may be served in standard containers not exceeding one liter.

(d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (24)(d)(i) shall comply with all appropriate operational restrictions under Title 32A, Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(iii) Failure to comply with the operational restrictions under Title 32A,

Chapter 10, as set forth in Subsection (24)(d)(ii) may result in a suspension or revocation of the private club's state liquor license and its alcoholic beverage license issued by the local authority.

(e) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(f) A private club may not charge for the service or supply of glasses, ice, or mixers unless the charges are fixed in the house rules of the club and a copy of the rules is kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic beverage.

(h) An officer, director, managing agent, employee, and any other person employed by or acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be sold, delivered, or furnished any liquor to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(i) (i) Liquor may not be sold or offered for sale at any private club during the following days or hours:

(A) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(B) on the day of any municipal, special district, or school election, but only within the boundaries of the municipality, special district, or school district, and only if closure is required by local ordinance; and

(C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

(ii) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

(j) On all other days the liquor storage and sales area in the club shall be closed from 1 a.m. until 10 a.m.

(k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a member, guest, or visitor at a time, except wine as provided in Subsection (24)(c)(iii) and heavy beer as provided in Subsection (24)(c)(iv).

(m) (i) Beginning January 1, 1991, a person may not bring onto the premises of a private club liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private club liquor licensee and consume wine pursuant to Subsection (24)(n).

(ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or agents may not allow a person to bring onto the private club premises any alcoholic beverage for on-premise consumption, except cork-finished wine under Subsection (24)(m)(i).

(iii) Beginning January 1, 1991, if any private club licensee or any of its officers, managers, employees, or agents violates this subsection:

(A) the commission may immediately suspend or revoke the private club's liquor license and the private club licensee is subject to criminal prosecution under Chapter 12; and

(B) the local authority may immediately suspend or revoke the private club's local liquor license, local consent under Subsection 32A-5-102(1), or

local business license.

(n) A wine service may be performed and a service charge assessed by the private club as authorized by commission rule for wine purchased at the private club or carried in by a member, guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(o) A member, guest, or visitor to a club may not carry from a club premises an open container used primarily for drinking purposes containing any alcoholic beverage.

(p) Each private club liquor licensee shall display in a prominent place in the private club:

(i) the private club liquor license that is issued by the department;

(ii) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(iii) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(q) The following acts or conduct in a private club licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(i) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(ii) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (24)(q)(i);

(iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(iv) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(v) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(vi) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(vii) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah **law**;

(B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(D) scenes wherein a person displays the vulva or the anus or the genitals.

(r) Nothing in Subsection (24)(q) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(q).

(s) (i) Although live entertainment is permitted on the premises of a club

liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(ii) Nothing in Subsection (24)(s)(i) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(s)(i).

(25) A private club may not engage in or permit any form of **gambling**, or have any video **gaming** device, as defined and proscribed in Title 76, Chapter 10, Part 11, **Gambling**, on the premises of the private club.

(26) (a) A private club may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the private club and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's license fee for the remainder of the license year.

(27) Each private club shall conduct its affairs so that it is not operated for a pecuniary profit.

(28) A private club may not transfer a private club liquor license from one location to another, without prior written approval of the commission.

(29) A person, having been granted a private club liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A private club liquor license has no monetary value for the purpose of any type of disposition.

CREDIT

History: C. 1953, 32A-5-7, enacted by L. 1985, ch. 175, s 1; 1987, ch. 92, s 41; 1989, ch. 256, s 3; renumbered by L. 1990, ch. 23, s 75; 1991, ch. 132, s 20; 1992, ch. 60, s 1; 1993, ch. 7, s 5; 1994, ch. 95, s 3; 1998, ch. 127, s 3.

<General Materials (GM) - References, Annotations, or Tables>

#### NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1994 amendment, effective May 2, 1994, substituted "comply with" for "abide by" in the first sentence and near the beginning of

Subsection (24); made internal reference changes throughout Subsection (24); and added Subsection (25), renumbering the subsequent subsections accordingly.

The 1998 amendment, effective May 4, 1998, updated the section reference in Subsection (24)(m)(iii)(B), and inserted "or have any video **gaming** device" in Subsection (25).

## NOTES TO DECISIONS

### ANALYSIS

Interdicted person.  
Suspension of club license.

Interdicted person.

A person who is not a member or who does not hold a valid guest card is an "interdicted person" with respect to alcoholic drinks in a club; thus sale of liquor to such a person, as well as purchase from liquor store by that person, is proscribed by the statutes. *DeFusion Co. v. Utah Liquor Control Comm.*, 613 P.2d 1120 (Utah 1980) (decided under former law).

Suspension of club license.

Suspension is not premised on repeated violations, and one violation is sufficient basis for action by commission; contention by licensee that club had been checked by liquor control agents on at least 12 occasions during year with only two violations of serving nonmembers being noted was no defense to imposition of two-week suspension. *DeFusion Co. v. Utah Liquor Control Comm.*, 613 P.2d 1120 (Utah 1980) (decided under former law).

Testimony of two liquor control agents that they were unlawfully served two "screwdrivers" at a club to which they did not belong and at which they were not guests was not sufficient to support license suspension in absence of evidence of alcoholic content of "screwdrivers"; alcoholic content of a "screwdriver" drink served at that particular club was a fact about which neither commission nor reviewing court could take judicial notice. *DeFusion Co. v. Utah Liquor Control Comm.*, 613 P.2d 1120 (Utah 1980) (decided under former law).

### COLLATERAL REFERENCES

Am.Jur.2d. --45 Am. Jur. 2d Intoxicating Liquors ss 140, 279.

C.J.S. --48 C.J.S. Intoxicating Liquors ss 41, 96, 97.

A.L.R. --Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors, 7 A.L.R.3d 809.

Validity of municipal **regulation** more restrictive than **state regulation** as to time for selling or serving intoxicating liquor, 57 A.L.R.3d 1061.

Validity of **state** statute or **regulation** fixing minimum prices at which alcoholic beverages may be sold at retail, 96 A.L.R.3d 639.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of **state** or local liquor or

**gambling laws** thereon, 98 A.L.R.3d 694.

Validity, under federal and **state** establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

U.C.A. 1953 s 32A-5-107

UT ST s 32A-5-107

-7, enacted by L. 1971, ch. 46, s 39.

No private or special law shall be enacted where a general law can be applicable.

<General Materials (GM) - References, Annotations, or Tables>

Attorney's fees.

Statute limiting award of attorney's fees, in mechanic's lien proceeding, to successful "lien holder" held special law and invalid under this provision. Brubaker v. Bennett, 19 Utah 401, 57 P. 170 (1899).

Former statute allowing attorney's fee to mortgagor in action to compel discharge or release by mortgagee of mortgage which had been fully satisfied held invalid as special legislation. Openshaw v. Halfin, 24 Utah 426, 68 P. 138, 91 Am. St. R. 796 (1902).