**State of Utah**

**Administrative Rule Analysis**

Revised May 2020

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| **Notice of Proposed Rule** | | |
| **TYPE OF RULE:**  New \_\_\_; Amendment \_X\_; Repeal \_\_\_; Repeal and Reenact \_\_\_ | | |
|  | **Title No. - Rule No. - Section No.** | |
| **Utah Admin. Code Ref (R no.):** | **R82-1** | **Filing No. 53013** |

**Agency Information**

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| **1. Department:** | Alcoholic Beverage Control | |
| **Agency:** | Administration | |
| **Street address:** | 1625 South 900 West | |
| **City, state:** | SLC, Utah 84104-1630 | |
| **Mailing address:** | PO Box 30408 | |
| **City, state, zip:** | SLC, Utah 84130-0408 | |
| **Contact person(s):** | | |
| **Name:** | **Phone:** | **Email:** |
| Vickie Ashby | 801-977-6801 | vickieashby@utah.gov |
| Angela Micklos | 801-977-6800 | afmicklos@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

**General Information**

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| **2. Rule or section catchline:** |
| R82-1-101. General |
| **3. Purpose of the new rule or reason for the change** (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:** |
| This rule is necessary to implement provisions of House Bill (H.B.) 157 passed in the 2020 General Session. The proposed rule removes the administrative fee and the requirement for the Department of Alcoholic Beverage Control (DABC) permission for someone bringing alcohol when moving to Utah. It also removed the requirement for someone inheriting alcohol to pay a fee to DABC, although they must still provide proof of inheritance. |
| **4. Summary of the new rule or change:** |
| This rule is necessary to implement provisions of H.B. 157 passed in the 2020 General Session. H.B.157 modified Section 32B-4-414 by removing the administrative fee and the requirement for DABC permission for someone bringing alcohol when moving to Utah. It also removed the requirement for someone inheriting alcohol to pay a fee to DABC, although they must still provide proof of inheritance. |

**Fiscal Information**

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| **5. Aggregate anticipated cost or savings to:** | | | |
| **A) State budget:** | | | |
| None – any anticipated cost or savings to the state budget are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **B) Local governments:** | | | |
| None – any anticipated cost or savings to local government are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **C) Small businesses** ("small business" means a business employing 1-49 persons)**:** | | | |
| None – any anticipated cost or savings to small businesses are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons)**:** | | | |
| None – any anticipated cost or savings are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:** | | | |
| Any anticipated cost or savings are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **F) Compliance costs for affected persons:** | | | |
| There are no fees associated with this process. Any anticipated cost or savings are a result of statutory requirements of H.B. 157. Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process. | | | |
| **G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| **Regulatory Impact Table** | | | |
| **Fiscal Cost** | **FY2021** | **FY2022** | **FY2023** |
| State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| **Total Fiscal Cost** | **$0** | **$0** | **$0** |
| **Fiscal Benefits** |  |  |  |
| State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| **Total Fiscal Benefits** | **$0** | **$0** | **$0** |
| **Net Fiscal Benefits** | **$0** | **$0** | **$0** |
| **H) Department head approval of regulatory impact analysis:** | | | |
| The head of department of the Department of Alcoholic Beverage Control, Salvador Petilos, has reviewed and approved this fiscal analysis. | | | |
| **6. A) Comments by the department head on the fiscal impact this rule may have on businesses:** | | | |
| The fiscal impact for this rule was accounted for in H.B. 157 passed in the 2020 General Session, so there will be no anticipated cost or savings to businesses because of this rule. | | | |
| **B) Name and title of department head commenting on the fiscal impacts:** | | | |
| Salvador Petilos, Executive Director. | | | |

**Citation Information**

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| **7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required**)**:** | | |
| Section 32B-2-202 | Section 32B-4-414 |  |

**Public Notice Information**

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| **9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.) | |
| **A) Comments will be accepted until** (mm/dd/yyyy)**:** | 10/01/2020 |

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| **10. This rule change MAY become effective on** (mm/dd/yyyy)**:** | 10/08/2020 |
| NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over. | |

**Agency Authorization Information**

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| **To the agency**: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date. | | | |
| **Agency head or designee, and title:** | Salvador Petilos, Executive Director | **Date** (mm/dd/yyyy)**:** | 08/14/2020 |

**R82. Alcoholic Beverage Control, Administration.**

**R82-1. General.**

**R82-1-101. Scope and Effective Date.**

These rules are adopted pursuant to section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the Department and all licensees and permittees of the Commission.

**R82-1-103. General Provisions.**

(1) [~~Authority.~~ ]This rule is [~~made~~] adopted pursuant to [~~s~~]Section 32B-2-202, which authorizes the Commission to act as the general policymaking body regarding alcoholic product in the state and to adopt rules accordingly.

(2) [~~Purpose.~~ ]The purpose of this rule is to provide administrative guidance to the Department and members of the public.

(3) For purposes of this rule, “cash only” means:

(a) cash;

(b) certified check;

(c) bank draft;

(d) cashier’s check; or

(e) United States Post Office money order.

[~~(3) Interest Assessment on Delinquent Accounts.~~]

(4) The Department may assess the legal rate of interest provided in [~~s~~]Sections 15-1-1 through 15-1-3[~~-4~~] for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.

[~~(4) Dishonored Checks.~~]

[~~(a)~~](5) The Department will assess a $20 charge for any dishonored check payable to the Department if returned for the following reasons:

[~~(i)~~](a) insufficient funds;

[~~(ii~~)](b) refer to maker; or

[~~(iii)~~](c) account closed.

[~~(b)~~](6) Receipt of a check payable to the Department which is returned by the bank for any of the reasons listed in [~~subpart~~]Subsection (4)(a) [~~of this rule~~] may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within 30 days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

[~~(c)~~](7) In addition to the remedies listed in [~~subpart~~]Subsection (4)(b) [~~of this rule~~], the Department may require that the licensee, permittee, or package agent transact business with the Department on a [~~"cash only"~~]cash-only basis. The determination of when to put a licensee, permittee, or package agency operator on [~~"cash only"~~]cash-only basis and [~~how long the licensee, permittee, or package agency operator remains on "cash only" basis~~] the length of the cash-only restriction shall be at the discretion of the Department and shall be based on the following factors:

[~~(i)~~](a) the dollar amount of the returned check[~~(s)~~];

[~~(ii)~~](b) the number of returned checks;

[~~(iii)~~](c) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;

[~~(iv)~~](d) the time necessary to collect the returned check[~~(s)~~]; and

[~~(v)~~](e) any other circumstances.

[~~(d)~~](8) A returned check received by the Department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the Department, require that the person or entity that applied for or held the permit be on ~~["cash only" status~~]cash-only basis for any future events requiring permits from the Commission.

[~~(e)~~](9) In addition to the remedies established in this rule, the Department may pursue any legal remedies to effect collection of any returned check

[ ~~(5) Administrative Handling Fees.~~

~~(a) Pursuant to subsection 32B-4-414(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or 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 obtains Department approval before moving the liquor into the state, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.~~

~~(b) Pursuant to subsection 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains Department approval before moving the liquor into the state, the person provides sufficient documentation to the Department to establish the person's legal right to the liquor as a beneficiary, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.~~

~~(c) The administrative handling fee to process any request for Department approval referenced in subparts (3)(a) and (3)(b) of this rule is $20~~].

[~~(6) Case Handling Markup~~]

[~~(a)~~](10) For purposes of the [~~l~~]”Landed case cost” defined in [~~s~~]Section 32B-2-304, [~~"~~]the cost of the product[~~"~~] includes a case handling markup determined by the Department.

[~~(b)~~](11) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

[~~(c)~~](12) The Department shall collect and remit the case handling markup as outlined in [~~s~~]Section 32B-2-304.

[~~(7)~~](13) [~~Listing and Delisting Product:~~] Pursuant to [~~s~~]Section 32B-2-202, this rule authorizes the director to make internal Department policies in accordance with [~~s~~]Section 32B-2-206 for Department duties as defined by [~~s~~]Section 32B- 2-204 for listing and de[~~-~~]listing products to include a program to place orders for products not kept for sale by the Department.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [~~February 25,~~] 2020**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

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