**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.):** | **R82-1-208** | **Filing No. 53014** |

**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:** |
| R82-1-208. Percentage lease agreements |
| **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 section is necessary to implement provisions of House Bill (H.B.) 399 passed in the 2020 General Session. The new section establishes the maximum percentage of revenue from alcohol sales a percentage lease may require; and the procedure for submitting a percentage lease agreement. At the 20% level it seems appropriate for the landlord to fulfill the obligations of ownership including a background check. |
| **4. Summary of the new rule or change:** |
| This section is necessary to implement provisions of H.B. 399 passed in the 2020 General Session. The new section establishes the maximum percentage of revenue from alcohol sales a percentage lease may require; and the procedure for submitting a percentage lease agreement. At the 20% level it seems appropriate for the landlord to fulfill the obligations of ownership including a background check. |

**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. 399. 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. 399. 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. 399. 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. 399. 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. 399. 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. 399. 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. 399 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-1-208 | Section 32B-2-202 |  |

**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.**

**R82-1-208. Percentage lease agreements.**

 (1) The authority for this rule is Section 32B-1-208

 (2) This rule establishes the following:

 (a) the maximum percentage of revenue from alcohol sales a percentage lease agreement may require; and

 (b) the procedure for submitting a percentage lease to the department.

 (3) As used in this section, “Percentage lease” means the same as in Section 32B-1-208.

 (4) (a) The maximum percentage of revenue from alcohol sales allowed in a percentage lease is 20 percent, whether that percentage is:

 (i) described through a rent-sharing or profit-sharing agreement;

 (ii) calculated in part on the gross sales or profits of the licensee, including profits from the sale of alcoholic beverages; or

 (iii) described in the percentage lease in some other manner.

 (b) Parties to a percentage lease must submit a copy to the department for review as part of the application for licensing.

 (c) If during the review process the Department is unable to determine how alcohol sales in a percentage lease agreement are being shared, based on the language in the percentage lease agreement, the department staff shall return the lease agreement and license application, and the Commission may decline to act on the application.

 (d) An applicant may resubmit a lease once the language in the lease is sufficiently clear for the Department to determine that no more than 20% of profits from the sale of alcoholic beverages will be distributed to a lessor.

 (e) The lessor cannot control or acquire an ownership interest in the business of the lessee.

 (f) An industry representative is prohibited from profit sharing and ownership of retail license operations.

**KEY: alcoholic beverages**

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202 32B-1-208**

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