**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.):** | **R82-5-104** | **Filing No. 53019** |

**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:** |
| R82-5-104. Liquor Dispensing Systems. |
| **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 amendment is necessary to implement provisions of House Bill (H.B.) 399 passed in the 2020 General Session. The amendment establishes rules for dispensing areas of restaurants, bars, and taverns in accordance with the provisions of 32B; and prohibits a dispensing system to remain at a patron's table. |
| **4. Summary of the new rule or change:** |
| This rule amendment is necessary to implement provisions of H.B. 399 passed in the 2020 General Session. The amendment establishes rules for dispensing areas of restaurants, bars, and taverns in accordance with the provisions of 32B; and prohibits a dispensing system to remain at a patron's table. |

**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**)**:** |
| Subsection 32B-5-301(9) | Section 32B-2-202 | Section 32B-5-304 |

**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.**

**R82-5. General Retail License Provisions.**

**R82-5-104. Liquor Dispensing Systems.**

 (1) This rule is [~~made~~]adopted pursuant to [~~s~~]Sections 32B-5-301[~~, which requires retail licensees and retail licensee staff to comply with rules made by the Commission regarding general operational requirements of a retail licensed establishment,~~] and 32B-5-304[~~, which requires the Department to approve a liquor dispensing system~~].

 (2) [~~Purpose.~~ ]This rule describes:

 (a) the minimum requirements for a liquor dispensing system[~~, which is~~] required by [~~s~~]Section 32B-5-304[~~,~~];

 (b) [~~and~~ ]how the Department approves a liquor dispensing system[~~.~~]; and

 (c) where a liquor dispensing system may be used and stored.

 (3) As used in this section:

 (a) “Dispensing area” means a fixed structure, area, counter, or surface where an alcoholic beverage is stored, prepared, and dispensed.

 (b) “Dispensing System” means a device that measures alcohol and dispenses alcohol in the selected measured amount.

 ([~~3~~]4)(a) A licensee may not install or use any liquor dispensing system for the automated mixing or dispensing of spirituous liquor unless the liquor dispensing system has been approved by the Department.

 (b) After the Department's approval, a licensee may only change its liquor dispensing system with prior approval by the Department.

 ([~~4~~]5) A liquor dispensing system may be approved by the Department if it meets the following minimum requirements:

 (a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

 (b) has a meter which counts the number of pours dispensed; and

 (c) the margin of error of the liquor dispensing system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

 ([~~5~~]6) [~~Types of systems.~~ ]Dispensing systems may be of various types, including:

(a) gun[~~,~~];

(b) a stationary head[~~,~~];

(c) a tower[~~,~~];

(d) an insertable spout[~~,~~];

(e) a ring activator; or

(f) a similar method.

 ([~~6~~]7) [~~Licensee Responsibility.~~]

 ~~[(a)~~ ]The licensee is responsible for verifying that the system, when initially installed, meets the specifications in Subsection (1)[~~which listed in subpart (1) of this rule~~]. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the liquor dispensing system may be grounds for suspension or revocation of the licensee's liquor license.

 ([~~7~~]8) [~~Operational restrictions.~~]

 (a) [~~The~~]A liquor dispensing system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

 (b)(i) Voluntary consent is given that representatives of the Department, State Bureau of Investigation, or any law enforcement officer shall have access to any liquor dispensing system for inspection or testing purposes.

 (ii) A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any liquor dispensing system for verification and analysis.

 (c) Spirituous liquor bottles in use with a liquor dispensing system at the dispensing location must be affixed to the liquor dispensing system by the licensee.

 (d) Spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system[~~, defined in R82-5-105~~] [~~which has been~~] approved by the Department must be in a locked storage area identified on the licensee's floor plan.

 (e) Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

 (f) Liquor dispensing systems shall not be utilized at patron's table. Liquor dispensing systems may only be used at approved dispensing structures.

 (g) Spirituous liquor bottles shall not be dispensed or stored at a patron's table.

 ([~~d~~]h) The liquor dispensing system and spirituous liquor bottles attached to the liquor dispensing system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

 ([~~e~~]i) [~~All d~~]Dispensing systems and devices must:

 (i) avoid an in-series hookup [~~which~~] that would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

 (ii) not dispense from or utilize containers other than original liquor bottles; and

 (iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

 ([~~f~~]j) Pursuant to federal law, [~~all~~] liquor dispensed through a liquor dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance[ ~~whatsoever~~]. The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.

 ([~~g~~]k) Each licensee shall keep daily records for each dispensing outlet as follows:

 (i) a list of brands of liquor dispensed through the liquor dispensing system;

 (ii) the number of portions of liquor dispensed through the liquor dispensing system determined by the calculated difference between the beginning and ending meter readings [~~and/~~]or as electronically generated by the recording software of the dispensing system;

 (iii) number of portions of liquor sold; and

 (iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

 ([~~v~~]l) The records described in [~~subpart (4)(g)~~] Subsection (8)(k) [~~of this rule~~] must be made available for inspection and audit by the Department or law enforcement.

 ([~~h~~]m) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

 ([~~i~~]n) [~~All~~] Liquor dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the Department may:

 (i) require the alteration or removal of any liquor dispensing system; and

 (ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any liquor dispensing system.

**KEY: alcoholic beverage**

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202, 32B-5-301**

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