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| **Notice of Proposed Rule** |
| **TYPE OF RULE:** Amendment |
| **Rule or Section Number:** | **R82-1-208** | **Filing ID: 54842** |

**Agency Information**

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| **1. Department:** | Alcoholic Beverage Services |
| **Agency:** | Administration |
| **Street address:** | 1625 S 900 W |
| **City, state and zip:** | Salt Lake City, UT 84104 |
| **Mailing address:** | PO Box 30408 |
| **City, state and zip:** | Salt Lake City, UT 84130-0408 |
| **Contact persons:** |
| **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** (Why is the agency submitting this filing?)**:** |
| Section 32B-1-208 provides that the commission shall make rules establishing the maximum percentage of revenue from alcohol sales a percentage lease agreement may require. The current version of this rule provides that the maximum percentage of revenue from alcohol sales allowable in a percentage lease agreement is 20%. The proposed modification in Subsections R82-1-208(4)(a) and (d) lowers the amount to 19%, as at the 20% level, the landlord would be considered to hold an ownership interest that would require them to undergo a background check. |
| **4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:** |
| This amendment will modify the rule to reduce the maximum percentage of revenue from alcohol sales allowable in a percentage lease agreement from 20% to 19%. |

**Fiscal Information**

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| **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:** |
| **A) State budget:** |
| The fiscal impact of this amendment on the state budget is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **B) Local governments:** |
| The fiscal impact of this amendment for local governments is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **C) Small businesses** ("small business" means a business employing 1-49 persons)**:** |
| The fiscal impact of this amendment for small businesses is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons)**:** |
| The fiscal impact of this amendment for non-small businesses is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **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***)**:** |
| The fiscal impact of this amendment is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?)**:** |
| The fiscal impact of this amendment is inestimable as it is unknown how many applicants will submit a percentage lease agreement where the landlord holds an ownership interest. Additionally, the proposed change from a cap of 20% to 19% is minute, and any fiscal impact would be miniscule. |
| **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** | **FY2023** | **FY2024** | **FY2025** |
| 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** | **FY2023** | **FY2024** | **FY2025** |
| 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 comments on fiscal impact and approval of regulatory impact analysis:** |
| The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this fiscal analysis. |

**Citation Information**

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| **6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:** |
| Section 32B-1-208 | Section 32B-2-202 |  |

**Public Notice Information**

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| **8. 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. See Section 63G-3-302 and Rule R15-1 for more information.) |
| **A) Comments will be accepted until:** | 10/17/2022 |

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| **9. This rule change MAY become effective on:** | 10/24/2022 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.  |

**Agency Authorization Information**

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| **Agency head or designee and title:** | Tiffany Clason, Executive Director | **Date:** | 08/24/2022 |

**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~~ ]19%[~~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~~]cannot 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~~]19% 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 Last Change: [~~June 1,~~] 2022**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-208; 32B-1-304(7)(a); 32B-1-304(7)(b)**

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