

INTOXICATING LIQUORS

CHAPTER 49

S. B. No. 71.
(Passed March 10, 1937. In effect May 11, 1937.)

ADMINISTRATION AND ENFORCEMENT OF LIQUOR CONTROL ACT

An Act Amending Sections 5, 6, 10, 11, 12, 26, 73, 126, 152, 165, 168, 172, 181, 189, 195, 196 and 199, Chapter 43, Laws of Utah, 1935, Relating to Appointment and Salaries and Prescribing Duties of Liquor Control Commissioners; Division of Work and Selection of Employees of Commission; Ownership of Property and Assets; Payment of Expenses and Remitting Net Profits to State Treasurer Quarterly; Payment for Services of State Chemist, Licensing Distillers of Alcohol and Liquor and Manufacturers of Wine; Drinking and Drunkenness in Public Places; Search Without Warrant; Procedure After Seizures; Destruction of Confiscated Alcoholic Beverages; Proof of Sale; Procedure Where Persistent Violation is Charged; and Right of Appeal in Commission; and Providing Penalties for Issuing or Furnishing Liquor on False Permits; and Declaring Property Used in Connection With Violations a Nuisance and Providing for Abatement Thereof; and Creating a Fund for Educational Purposes and Repealing Sections 15, 16, 17, 117, and 171, Chapter 43, Laws of Utah, 1935.

Be it enacted by the Legislature of the State of Utah:

Section 1. Sections Amended.

Sections 5, 6, 10, 11, 12, 26, 73, 126, 152, 165, 168, 172, 181, 189, 195, 196 and 199, Chapter 43, Laws of Utah, 1935, are amended to read as follows:

5. Liquor Control Commission.

A liquor control commission is hereby created consisting of three commissioners to be appointed by the governor by and with the consent of the senate. Immediately after the effective date of this act the governor shall appoint one commissioner to hold office for a period of two years, one to hold office for a period of four years, and one to hold office for a period of six years. The governor shall designate one of the members as chairman and administrator, who shall devote all of his time to the duties of his office and shall be the manager and administrator of the business of the commission, said manager shall be well qualified in managerial and business affairs, and shall be directly responsible for the administration of the act. The other two commissioners shall meet with

the administrator as a board of commissioners as often as is necessary or at least once each week to shape the policies of the commission and transact other business submitted to them by the administrator or by the governor. The salary of each commissioner shall be \$4,500 per annum. At the expiration of the term of any commissioner the governor shall appoint his successor for a period of six years by and with the consent of the senate if it then be in session. The governor shall have power to fill vacancies in the office of any commissioner for the balance of an unexpired term and each commissioner shall be subject to removal at any time at the pleasure of the governor. Within ten days after notice of his appointment and before entering upon the discharge of the duties of his office each commissioner shall take the oath prescribed for elective state officers and shall give a bond to the state of Utah in the sum of \$10,000 for the faithful performance of the duties of his office, the premium on such bond to be paid out of the funds of the commission.

The commission is the governing body of its affairs, and the several commissioners shall discharge their official duties and perform their official acts under its direction and control. The commission shall make a division of the work and define the duties of each commissioner and designate by a majority vote the commissioner to superintend each of the several work divisions; *provided*, that all acts, proceedings and appointments of each commissioner shall be reported to and be subject to confirmation by the commission.

Two members of the commission shall constitute a quorum for the transaction of business. Each commissioner shall be allowed his actual and necessary traveling expenses while engaged in the performance of his official duties to be paid out of the funds of the commission. No more than two of such commissioners shall be of the same political party.

6. Powers and Duties.

Subject to the provisions of this act, the commission shall:

(a) Have the general control, management and supervision of all liquor stores and package agencies.

(b) Decide, within the limits and under the conditions imposed by this act, the number and location of the stores and package agencies to be established in the state.

(c) Regulate the equipment and management of stores and warehouses in which liquor is kept or sold.

(d) Buy, import and keep for sale, and sell, liquors, in the manner set forth in this act and

void, a court by whom such second or subsequent conviction was made shall summon the person convicted to appear at a time and place to be named and shall thereupon, upon proof of the due service of such summons, if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed, and such amended conviction shall thereupon be held valid to all intents and purposes as if it had been made in the first instance.

195. Property Used in Connection With Violation Declared Nuisance.

Any room, house, building, boat, vehicle, structure or place where alcoholic beverages are manufactured, sold, kept, bartered, stored or given away, or used in violation of this act, or where persons resort for the drinking of alcoholic beverages, and all alcoholic beverages, packages, equipment or other property kept or used in maintaining the same, are hereby declared to be common nuisances, and any person who maintains or assists in maintaining any such common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure or place is occupied or used for the manufacture or sale or use of alcoholic beverages in violation of the provisions of this act and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation and any such lien may be enforced by action in any court having jurisdiction.

196. Id. Abatement.

An action to enjoin any nuisance defined in this act may be brought in the name of liquor control commission of Utah. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, that such nuisance exists a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the alcoholic beverages, packages, fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as

aforesaid at the time of the hearing, but on finding that the material allegations of the petition or complaint are true the court shall order that no alcoholic beverages shall be manufactured, sold, kept, bartered, stored or given away in such room, house, building, boat, vehicle, structure or place, or any part thereof; and upon judgment of the court ordering such nuisance to be abated the court may order that the room, house, building, structure, boat, vehicle or place shall not be occupied or used for any purpose for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court, making the order, in the penal and liquidated sum of not less than \$500, or more than \$1,000, payable to the state of Utah, and conditioned that alcoholic beverages will not thereafter be manufactured, sold, bartered, kept or otherwise disposed of therein or thereon and that he will pay all fines, costs, and damages that may be assessed for any violation of this act upon said property.

199. Right of Appeal in State.

In all cases arising under this act the commission shall have the right of appeal as to questions of law.

Section 2. Sections Repealed.

Sections 15, 16, 17, 117 and 171, chapter 43, Laws of Utah, 1935, are repealed.

Section 3. Partial Invalidity—Saving Clause.

If any word, clause, sentence, paragraph or section of this act shall be declared invalid by any court of competent jurisdiction, the remainder of the act shall not be affected.

Approved March 23, 1937.

CHAPTER 50

S. B. No. 72:

(Passed March 11, 1937. In effect May 11, 1937.)

BEER—BONDS OF LICENSEES

An Act Amending Sections 76, 77, 84, 86, 89, 90, 92, 103, and 104, Chapter 43, Laws of Utah, 1935, Relating to Bonds of Persons Licensed Under the Liquor Control Act, Term of Licenses and Amount of License Fee; Qualifications and Certification of Persons Licensed to Sell Light Beer, Authority to Grant and Kind of Such License, Contents of Labels, Manner of Affixing Stamps to Containers of Beer, and Consumption of Beer on Licensed Premises; and Repealing Section 91, Chapter 43, Laws of Utah, 1935.

Be it enacted by the Legislature of the State of Utah:

Section 1. Sections Amended.

Sections 76, 77, 84, 86, 89, 90, 92, 103, and 104, chapter 43, Laws of Utah, 1935, are amended to read as follows:

76. Bonds of Licensees.

No license shall be granted until the applicant shall give a bond to the commission in such sum as the commission shall determine within the limits hereinafter stated, with two good and sufficient sureties or a corporate surety to be approved by the liquor control administrator, conditioned as in the following form, to wit:

KNOW ALL MEN BY THESE PRESENTS,
That we, A. B. of.....
as principal, and C. D. and E. F. of.....
as sureties, are held and firmly bound unto
the liquor control commission of the state of
Utah in the sum of \$..... for which pay-
ment well and truly to be made we hereby
jointly and severally bind ourselves and our
respective heirs and legal representatives,
firmly by these presents.

Dated this.....day of.....,
19.....

The condition of this obligation is such that
whereas the above bounden A. B. has this
day been licensed by license No.
issued by the liquor control commission of the
state of Utah.

Now, if the said A. B. shall faithfully comply
with the laws of the state of Utah and with
the regulations of the said commission and
with the ordinances of the city, town or county
in which the license shall be effective and in
particular with all laws, ordinances and regula-
tions relating to the possession, use, sale and
dispensing of alcoholic beverages and shall
pay all excise taxes that may be imposed
upon him and all damages, fines, penalties and
forfeitures that may be adjudged against him
under the provisions of the liquor control act,
or of said regulations or ordinances, and all
other damages recoverable under the provi-
sions of law relating to the possession, sale and
dispensing of alcoholic beverages, then this
bond shall be void, but otherwise in force.
The commission of the local government must
accept such bond with personal sureties in all
cases wherein such personal sureties can
qualify as hereinafter provided.

Principal.

Sureties.

The commission may prescribe additional
conditions.

The bond of a brewer, a distiller and of a
producer of wine shall be in the penal sum
of not less than \$10,000, that of a wholesaler
in a penal sum of not less than \$5,000, that
of a retailer selling beer for on-premise con-
sumption in a penal sum of not less than \$1,000,
and that of a retailer selling beer for off-

premise consumption in the penal sum of
\$1,000.

No person who is a principal or surety upon
any bond given under this act, except a surety
company, shall be permitted to become a surety
upon any other bond of a like character.
Every surety, except as aforesaid, shall make
a written statement under oath that he is not
a surety upon any other bond given under the
provisions of this section, and that he is the
owner of real property in his own right and
standing in his name and situated within the
state of Utah free from incumbrance and not
exempt from execution having a fair market
value of not less than twice the penalty named
in the bond, and that he is worth not less than
twice the penalty named in the bond over and
above all liabilities and indebtedness and all
property exempt from execution, and the state-
ment so made shall describe such real property,
and sufficient other property, real or personal,
to cover the requirements of the bond. The
commission shall cause a copy of such verified
statement of such surety, together with a copy
of such bond, certified by a notary public,
to be filed for record in the office of the re-
corder in the county in which such real prop-
erty is situated, and when so filed such bond
shall be a lien on such real property. Such
bond and affidavit shall be recorded in the book
kept for the recordation of mortgages, and
the recorder shall make no charge for record-
ing the same. Upon the filing of a certificate
by the administrator that said bond has been
cancelled, the lien shall be discharged.

No bond shall be required from a public
service licensee.

77. License Fees for Part Term.

All licenses shall expire on the thirtieth day
of June of each year, unless sooner cancelled,
and the fees for such licenses, when applied
for and issued on or after October first, but
prior to January first, shall be three-fourths
of the annual fee; on or after January first,
but prior to April first, shall be one-half of
the annual fee; on or after April first, but prior
to July first, shall be one-fourth of the annual
fee. The commission may also issue seasonal
licenses for less than one year and the fee for
such license shall be one-eighth of the annual
license fee for each calendar month the
license is granted.

84. Labels—Contents.

Every person manufacturing or importing
beer for sale within this state shall put or
cause to be put upon all containers of beer,
including bottles, jugs, kegs, cans and other
receptacles, a label showing the nature of the
contents, the kind of beer as "beer," "ale,"
"stout" or "porter," whether the percentage of

(see next pg for change)

alcohol contained therein is not over 3.2 per cent by weight or is over 3.2 per cent by weight, the name of the person by whom the beer was manufactured and the place where it was brewed.

86. Qualifications of Licensees.

No license shall be granted to any retailer to sell light beer or to any brewer or wholesaler, unless he shall be of good moral character, over the age of twenty-one years, and a citizen of the United States, or to anyone who has been convicted of a felony or of any violation of any law or ordinance relating to intoxicating liquors, or of drunken driving, or of keeping a gambling or disorderly house, or who has pleaded guilty to or has forfeited his bail on a charge of having committed a felony or of having violated any such law or ordinance, or to any partnership, any member of which lacks any of the qualifications hereinbefore in this paragraph set out, or to any corporation, director or officer of which lacks any of such qualifications.

89. Retail Licenses.

Cities and towns within their corporate limits, and counties outside of incorporated cities and towns shall have power to license, tax, regulate or prohibit the sale of light beer, at retail, in bottles or draft; provided, that no such licenses shall be granted to sell beer in any dance hall, theater or in the proximity of any church or school. The commission granting the license shall have authority to determine in each case what shall constitute proximity.

90. Amount of License Fees.

Annual license fees shall be as follows:

Brewers operating a brewery with an annual capacity not exceeding 5,000 barrels, \$250; with an annual capacity over 5,000 barrels and not exceeding 25,000 barrels, \$500; with an annual capacity over 25,000 barrels and not exceeding 50,000 barrels, \$750; with an annual capacity over 50,000 barrels and not exceeding 75,000 barrels, \$1,000; with an annual capacity over 75,000 barrels, \$1,250.

In all other cases, each city council or commission, town board, or board of county commissioners, if the business licensed shall be within its jurisdiction, shall fix the amount to be paid for the license, but no board of county commissioners shall have authority to fix or charge a license fee of any business situated within a city or town. Each license fee collected by the commission shall be paid by it, within ten days after the close of the

quarter year during which it is collected, to the county, city or town in which shall be situated the licensed business with respect to which the fee shall be paid, except that brewers' license fees shall be retained by the commission.

92. Consumption on Premises.

No licensee unless he shall be so licensed shall permit any beer to be consumed on his premises, except that brewers, if it shall be in accordance with established custom, may allow their employees to consume in the brewery such beer as may be furnished to them without charge by the brewer and except that licensees who may lawfully buy from brewers or wholesalers may consume bona fide samples furnished them by such brewers or wholesalers.

103. Stamps.

The state tax commission shall at all times obtain and keep on hand or available stamps of denominations suitable for paying the tax on containers of beer ordinarily in use at the time, including bottles, jugs and cans, of a maximum capacity of 16 ounces; bottles of a maximum capacity of 32 ounces; bottles of a maximum capacity of 64 ounces; kegs of a maximum capacity of one-eighth barrel; kegs of a maximum capacity of one-quarter barrel; kegs of a maximum capacity of one-half barrel; and barrels of maximum capacity of 31 wine gallons. The state tax commission may, in its discretion, cause to be prepared and kept on hand stamps of other denominations. The stamp affixed to any immediate container under the provisions of the act must be sufficient to pay the tax upon the maximum capacity of such container, and if stamps are not provided by law or in the discretion of the state tax commission of denominations accurately adapted for the payment of the tax on the maximum capacity of the container, then the stamp adapted for the payment of the tax on the container of the next higher capacity. Such stamps shall only be sold by the state tax commission to those who have satisfied said commission under such regulations as it may prescribe that they are authorized to use the stamp. The state tax commission may, in its discretion, establish reasonable tolerance with relation to the maximum capacity of containers and the tax to be paid with respect thereto.

104. Stamps Imprinted on Labels and Caps, Etc.

Any person required by this act to affix stamps to containers of beer, including bottles, jugs and cans, may furnish to the state tax commission a design for the label which he

This passage "added" to 1935 act - otherwise all the same phrases

1937 LAWS

NOVEL!
over 3.2
(air. HEAVY
beer) included
the bottle
not only by
the cases
so included
be applied
to similar
stamps??

see "add" 1935 law
said bottles...

see 1935 law

proposes to affix to such containers, which design shall leave near the middle thereof a suitable blank space sufficient to have such stamps imprinted therein. Such person may thereupon deposit with the state auditor a sufficient sum to cover the cost of the manufacture and printing such labels, whereupon the state auditor shall procure the quantity of such labels ordered and so paid for, and shall cause the appropriate stamp to be printed in the blank spaces. Such labels shall thereafter be sold to the persons entitled to purchase them for the price of the stamps imprinted thereon, and may be used as and for the stamps required by this act.

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The state tax commission shall also, upon request, under such regulations as it may make, publish and file as hereinafter provided, license any manufacturer of beer containers, within or without the state, to print, lithograph, emboss or imprint upon the crowns, caps, covers, lids, can ends or other means of covering, closing or sealing such containers, such words, symbol or devices as such regulations may authorize, in lieu of the stamp or label herein prescribed, and to keep on hand and to sell such crowns, caps, covers, lids, can ends or other means of covering, closing or sealing such containers, either separately or as a part of such containers, only to qualified users thereof, as herein prescribed, when the same amounts are paid by such users thereof to the state therefor as are required herein to be paid for stamps, such payment to be made as prescribed by such regulations; provided, however, only if such manufacturers shall have filed with the state tax commission a bond running to the state of Utah, in such form and amount as said commission may prescribe, with such surety or sureties satisfactory to the commission. Containers of beer with such crowns, caps, covers, lids, can ends or other means of covering, closing or sealing the same, so authorized, may be used and distributed to the same extent as if stamps or labels as herein specified were used thereon.

Section 2. Section Repealed.

Section 91, chapter 43, Laws of Utah, 1935, is repealed.

Section 3. Partial Invalidity—Saving Clause.

If any word, clause, sentence, paragraph or section of this act shall be declared invalid by any court of competent jurisdiction, the remainder of the act shall not be affected.

Approved March 23, 1937.

CHAPTER 51

H. B. No. 66.

(Passed February 19, 1937. In effect March 6, 1937.)

LICENSING WINERIES AND DISTILLERIES

An Act to Provide for the Licensing of Wineries and Distilleries in the State of Utah; and Providing for an Inspection Fee, License Fee, and Bond; Providing That Utah Grown Products Shall Be Used in the Manufacture of Distilled and Fermented Products in Said Distilleries or Wineries Wherever Practicable; Relating to the Sale of Utah Made, Distilled and Fermented Products; Providing for the Forfeiture of Permits and Bonds, Empowering the Liquor Control Commission to Fix Rules and Regulations, and Repealing All Acts in Conflict Herewith.

Be it enacted by the Legislature of the State of Utah:

Section 1. Permits—Utah Grown Products.

That upon application in writing made to the Utah liquor control commission, accompanied by a bond in an amount fixed by said commission, a permit to operate a winery or distillery and to manufacture, sell and distribute distilled and fermented products within the state of Utah, shall be granted by the Utah liquor control commission; *provided*, that the products used in the manufacture of said distilled and fermented products shall be manufactured or grown within the state of Utah wherever practicable.

Section 2. Fee.

Upon the granting of said permit, the Utah liquor control commission shall charge a fee, to be paid by the applicant, in the sum of \$1,000, which said fee shall be used in part as an inspection fee, and thereafter said Utah liquor control commission shall charge an annual fee for said inspection of not to exceed \$250.

Section 3. Products Preferred.

That said Utah liquor control commission shall purchase, and display in preference to other products, the products of said Utah wineries or distilleries, provided the quality and price of such products are comparable with competing products.

Section 4. Rules and Regulations Governing.

All such wineries and distilleries shall operate under rules and regulations fixed and prescribed by the Utah liquor control commission and the federal government, and all liquor produced by such wineries and distilleries sold for consumption within the state of Utah shall be sold to and purchased by said commission; *provided*, that such products may be sold for consumption without the state only