

101 *Be it enacted by the Legislature of the state of Utah:*
102 Section 1. Section **32A-1-105** is amended to read:
103 **32A-1-105. Definitions.**
104 As used in this title:

221 (19) "Flavored malt beverage" means a beverage:
222 (a) that contains at least .5% alcohol by volume;
223 (b) that is treated by processing, filtration, or another method of manufacture that is not
224 generally recognized as a traditional process in the production of a beer as described in 27
225 C.F.R. Sec. 25.55;
226 (c) to which is added a flavor or other ingredient containing alcohol, except for a hop
227 extract; and
228 (d) (i) for which the producer is required to file a formula for approval with the United
229 States Alcohol and Tobacco Trade and Tax Bureau pursuant to 27 C.F.R. Sec. 25.55; or
230 (ii) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

266 [~~24~~] (28) (a) (i) "Liquor" means alcohol, or ~~any~~ an alcoholic, spirituous, vinous,
267 fermented, malt, or other liquid, or combination of liquids, a part of which is spirituous, vinous,
268 or fermented, ~~and all other drinks~~ or other drink, or drinkable ~~liquids~~ liquid that ~~contain~~
269 more than 1/2 of 1% of]:
270 (A) contains at least .5% alcohol by volume; and
271 (B) is suitable to use for beverage purposes.
272 (ii) On or after October 1, 2008, "liquor" includes a flavored malt beverage.
273 (b) "Liquor" does not include ~~any~~ a beverage defined as a beer~~, malt liquor, or malted~~
274 ~~beverage that has an alcohol content of less than 4% alcohol by volume].~~

Part 8. Malted Beverages Act

926 **32A-1-801. Title.**
927 *This part is known as the "Malted Beverages Act."*
928 Section 12. Section **32A-1-802** is enacted to read:
929 **32A-1-802. Definitions.**
930 *As used in this part:*
931 (1) "Malted beverages" means:
932 (a) beer;
933 (b) a flavored malt beverage; and
934 (c) heavy beer.
935 (2) "Packaging" means the outer packaging that is visible to a consumer such as a
936 carton, case, or other wrapper of a container.
937 Section 13. Section **32A-1-803** is enacted to read:
938 **32A-1-803. Power of the commission and department to classify flavored malt**
939 **beverages.**
940 (1) *The commission and department shall beginning on October 1, 2008, regulate a*
941 *flavored malt beverage as liquor.*
942 (2) (a) *By no later than October 1, 2008, the department shall make available to the*
943 *public on the Internet a list of all flavored malt beverages authorized to be sold in this state as*

944 liquor.
945 (b) The list described in Subsection (2)(a) shall be updated at least quarterly.
946 (3) (a) Beginning on August 1, 2008, a manufacturer shall file, under penalty of perjury,
947 a report with the department listing each flavored malt beverage manufactured by the
948 manufacturer that the manufacturer wants to distribute in this state on or after October 1, 2008,
949 subject to the manufacturer holding:
950 (i) a brewery license under Chapter 8, Part 4, Brewery Licenses; or
951 (ii) a certificate of approval issued by the department under Subsection 32A-8-101 (4).
952 (b) On or after October 1, 2008, a manufacturer may not distribute or sell in this state a
953 flavored malt beverage if the manufacturer does not list the flavored malt beverage in a filing
954 with the department in accordance with this Subsection (3) before distributing or selling the
955 flavored malt beverage.
956 (4) The department may require a manufacturer of a flavored malt beverage to provide
957 the department with a copy of the following filed with the United States Alcohol and Tobacco
958 Trade and Tax Bureau, pursuant to 27 C.F.R. Sec. 25.55:
959 (a) a statement of process; or
960 (b) a formula.
961 (5) (a) A manufacturer of an alcoholic product that the department is classifying or
962 proposes to classify as a flavored malt beverage may submit evidence to the department that its
963 alcoholic product should not be treated as liquor under this section because the alcoholic
964 product:
965 (i) is obtained by fermentation, infusion, or decoction of a malted grain;
966 (ii) is produced by processing, filtration, or another method of manufacture that is
967 generally recognized as a traditional process in the production of beer as described in 27 C.F.R.
968 Sec. 25.55;
969 (iii) does not have added to it a flavor or other ingredient containing alcohol, except for
970 a hop extract; and
971 (iv) (A) is not one for which the producer is required to file a formula for approval with
972 the United States Alcohol and Tobacco Trade and Tax Bureau pursuant to 27 C.F.R. Sec.
973 25.55; or
974 (B) is exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
975 (b) The department shall review the evidence submitted by the manufacturer under this
976 Subsection (5).
977 (c) The department shall make available to the public on the Internet a list of all
978 alcoholic beverages authorized under this Subsection (5) to be sold as beer in this state.
979 (d) A decision of the department under this Subsection (5) may be appealed to the
980 commission.
981 Section 14. Section **32A-1-804** is enacted to read:
982 **32A-1-804. Requirements for labeling and packaging -- Authority of the**
983 **commission and department.**
984 (1) On or after October 1, 2008, a manufacturer may not distribute or sell a malted
985 beverage:
986 (a) unless the label and packaging of the malted beverage:
987 (i) complies with the federal label requirements of 27 C.F.R. Parts 7, 13, and 16; and
988 (ii) clearly gives notice to the public that the malted beverage is an alcoholic beverage;
989 and
990 (b) until the day on which the department in accordance with this title and rules of the
991 commission approves the label and packaging of the malted beverage.
992 (2) The department shall review the label and packaging of a malted beverage to ensure
993 that the label and packaging meet the requirements of Subsection (1)(a).
994 (3) A manufacturer may comply with the requirement of Subsection (1)(a)(ii) by

995 including on a label and packaging for a malted beverage any of the following terms:

996 (a) beer;

997 (b) ale;

998 (c) porter;

999 (d) stout;

1000 (e) lager;

1001 (f) lager beer; or

1002 (g) another class or type designation commonly applied to a malted beverage that
1003 conveys by a recognized term that the product contains alcohol.

1004 Section 15. Section **32A-1-805** is enacted to read:

1005 **32A-1-805. General procedure for approval.**

1006 (1) To obtain approval of the label and packaging of a malted beverage, the
1007 manufacturer of the malted beverage shall submit an application to the department for approval.

1008 (2) The application described in Subsection (1) shall be on a form approved by the
1009 department and include the following:

1010 (a) a copy of a federal certificate of label approval from the Department of Treasury,

1011 Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking approval;

1012 (b) a complete set of original labels for each size of container of the malted beverage;

1013 (c) a description of the size of the container on which a label will be placed;

1014 (d) a description of each type of container of the malted beverage; and

1015 (e) a description of any packaging for the malted beverage.

1016 (3) The department may assess a reasonable fee for reviewing a label and packaging for
1017 approval.

1018 (4) (a) The department shall notify a manufacturer within 30 days after the day on
1019 which the manufacturer submits an application whether the label and packaging is approved or
1020 denied.

1021 (b) If the department determines that an unusual circumstance requires additional time,
1022 the department may extend the time period described in Subsection (4)(a).

1023 (5) A manufacturer shall obtain the approval of the department of a revision of a
1024 previously approved label and packaging before a malted beverage using the revised label and
1025 packaging may be distributed or sold in this state.

1026 (6) (a) The department may revoke a label and packaging previously approved upon a
1027 finding that the label and packaging is not in compliance with this title or rules of the
1028 commission.

1029 (b) The department shall notify the person that applies for the approval of a label and
1030 packaging at least five business days before the day on which a label and packaging approval is
1031 considered revoked.

1032 (c) After receiving notice under Subsection (6)(b), a manufacturer may present written
1033 argument or evidence to the department on why the revocation should not occur.

1034 (7) A manufacturer that applies for approval of a label and packaging may appeal a
1035 denial or revocation of a label and packaging approval to the commission.

1036 Section 16. Section **32A-1-806** is enacted to read:

1037 **32A-1-806. Special procedure for flavored malt beverages.**

1038 (1) If a flavored malt beverage is labeled or packaged in a manner that is similar to a
1039 label or package used for a nonalcoholic beverage, beginning October 1, 2008, a manufacturer
1040 of the flavored malt beverage may not distribute or sell the flavored malt beverage in this state
1041 until the day on which the manufacturer receives approval of the labeling and packaging from
1042 the department in accordance with:

1043 (a) Sections 32A-1-804 and 32A-1-805 ; and

1044 (b) this section.

1045 (2) The department may not approve the labeling and packaging of a flavored malt

1046 beverage described in Subsection (1) unless in addition to the requirements of Section
1047 32A-1-804 the labeling and packaging complies with the following:
1048 (a) The label on the flavored malt beverage shall bear a prominently displayed label or a
1049 firmly affixed sticker that provides the following information:
1050 (i) the statement:
1051 (A) "alcoholic beverage"; or
1052 (B) "contains alcohol"; and
1053 (ii) the alcohol content of the flavored malt beverage.
1054 (b) Any packaging of the flavored malt beverage shall prominently include, either
1055 imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging, the
1056 statement:
1057 (i) "alcoholic beverage"; or
1058 (ii) "contains alcohol".
1059 (c) A statement required by Subsection (2)(a) or (b) shall appear in a format required by
1060 rule made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
1061 Rulemaking Act.
1062 (d) A statement of alcohol content required by Subsection (2)(a)(ii):
1063 (i) shall state the alcohol content as a percentage of alcohol by volume or by weight;
1064 (ii) may not use an abbreviation, but shall use the complete words "alcohol," "volume,"
1065 or "weight"; and
1066 (iii) shall be in a format required by rule made by the commission.
1067 (3) The department may reject a label or packaging that appears designed to obscure
1068 the information required by Subsection (2).
1069 (4) To determine whether or not a flavored malt beverage is described in Subsection (1)
1070 and subject to this section, the department may consider in addition to other factors one or more
1071 of the following factors:
1072 (a) whether the coloring, carbonation, and packaging of the flavored malt beverage:
1073 (i) is similar to those of a nonalcoholic beverage or product; or
1074 (ii) can be confused with a nonalcoholic beverage;
1075 (b) whether the flavored malt beverage possesses a character and flavor distinctive from
1076 a traditional malted beverage;
1077 (c) whether the flavored malt beverage is:
1078 (i) prepackaged;
1079 (ii) contains high levels of caffeine and other additives; and
1080 (iii) marketed as a beverage that is specifically designed to provide energy;
1081 (d) whether the flavored malt beverage contains added sweetener or sugar substitutes;
1082 or
1083 (e) whether the flavored malt beverage contains an added fruit flavor or other flavor
1084 that masks the taste of a traditional malted beverage.
1085 Section 17. Section **32A-1-807** is enacted to read:
1086 **32A-1-807. Rulemaking authority.**
1087 The commission may adopt rules necessary to implement this part.
1088 Section 18. Section **32A-1-808** is enacted to read:
1089 **32A-1-808. Disciplinary proceeding for violation.**
1090 A person who violates this part is subject to a disciplinary proceeding under Section
1091 32A-1-119. 1092 Section 19. Section **32A-1-809** is enacted to read:
1093 **32A-1-809. Transition protections.**
1094 (1) Except as provided in Subsection (3), a manufacturer of a flavored malt beverage
1095 may not be held liable under this title for distributing or selling a flavored malt beverage as a
1096 beer if:
1097 (a) the flavored malt beverage is distributed or sold on or before September 30, 2008;

1098 and
1099 (b) the manufacturer when distributing or selling the flavored malt beverage complies
1100 with the requirements of this title for distributing or selling a beer including holding:
1101 (i) a brewery license under Chapter 8, Part 4, Brewery Licenses; or
1102 (ii) a certificate of approval issued by the department under Subsection 32A-8-101 (4).
1103 (2) Except as provided in Subsection (3), a licensee or permittee may not be held liable
1104 for the sale, offering, or furnishing of a flavored malt beverage as a beer if:
1105 (a) the flavored malt beverage is sold, offered, or furnished on or before September 30,
1106 2008; and
1107 (b) the licensee or permittee when selling, offering, or furnishing the flavored malt
1108 beverage complies with the requirements of this title for selling, offering, or furnishing a beer
1109 under the license or permit held by the licensee or permittee.
1110 (3) This section does not apply to liability under Chapter 14a, Alcoholic Beverage
1111 Liability.