

RULES – IMPLEMENTATION

MAY 3, 2023

BUSINESSOWNERS
GENERAL LIABILITY

LI-BP-2023-042
LI-GL-2023-105

UTAH LIQUOR LIABILITY RULES REVISION FILED AND TO BE IMPLEMENTED

KEY MESSAGE

Commercial Lines filing [CL-2023-OLIQ1](#) filed and to be implemented in response to 2023 Utah Laws ___ (former H.B. 247) concerning liquor liability.

Applicable Lines: BP, GL

BACKGROUND

In circular [LI-BP-2023-037/LI-GL-2023-091](#), we announced our initial review of 2023 Utah Laws ___ (former H.B. 247) effective May 3, 2023, which, in part, amends UTAH CODE ANN. §32B-15-201 in connection with liquor liability.

ISO ACTION

We submitted filing CL-2023-OLIQ1, which revised the Utah General Liability exception to Rule **45**. Liquor Liability Coverage and the Businessowners exception to Rule **29**. Endorsements to reflect the revisions made by 2023 Utah Laws ___ (former H.B. 247).

Refer to the attached explanatory material for complete details about the filing.

For more information on the status of filings in a particular state, including filed and approved documents, associated circulars and links to Print Ready Manuals and Commercial Lines Manual, please feel free to access our [Filings](#) feature within the ISOnet Circulars product.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies **written** on or after December 1, 2023.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Number CL-2023-OLIQ1 and SERFF Tracking Number ISOF-133654641, NOT this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

No new attributes are being introduced with this revision.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2023-005](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Manualholders with an edition date of 12-23 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

REFERENCE(S)

- [LI-BP-2023-037/LI-GL-2023-091](#) (03/31/2023) Utah Former H.B. 247 Concerning Liquor Liability Under Review
 - [LI-CL-2023-005](#) (02/21/2023) Commercial Lines Revised Lead Time Requirements Listing
-

ATTACHMENT(S)

Filing CL-2023-OLIQ1

COPYRIGHT EXPLANATION

The material distributed by Insurance Services Office, Inc. is copyrighted. All rights reserved. Possession of these pages does not confer the right to print, reprint, publish, copy, sell, file or use same in any manner without the written permission of the copyright owner. Permission is hereby granted to members, subscribers and service purchasers to reprint, copy or otherwise use the enclosed material for purposes of their own business use relating to that territory or line or kind of insurance, or subdivision thereof, for which they participate, provided that:

- (A) Where ISO copyrighted material is reprinted, copied, or otherwise used **as a whole**, it must reflect the copyright notice actually shown on such material.
- (B) Where ISO copyrighted material is reprinted, copied, or otherwise used **in part**, the following credit legend must appear at the bottom of each page so used:
Includes copyrighted material of Insurance Services Office, Inc., with its permission.

IMPORTANT NOTICE FOR USERS OF ISO PRODUCTS AND SERVICES

Please make sure that your company has authorized your use of this product and has complied with the requirements applicable in the jurisdiction where you plan to use it.

We distribute both state-specific and multistate products and services. We do not distribute all the multistate products and services for use in every jurisdiction due to corporate policy, regulatory preference, or variations or lack of clarity in state laws.

We provide participating insurers with information concerning the jurisdictions for which our products and services are distributed. Even in those jurisdictions, each insurer must determine what filing requirements, if any, apply and whether those requirements have been satisfied.

Now, as in the past, all of our products and services are advisory, and are made available for optional use by participating insurers as a matter of individual choice. Your company must decide for itself which, if any, ISO products or services are needed or useful to its operation and how those selected for use should be applied. We urge that you be guided by the advice of your attorneys on the legal requirements.

CONTACT INFORMATION

If you have any questions concerning:

- The content of this circular, please contact:
Carissa Serrano
Compliance & Product Services – Specialty
201-469-2585
specialty@verisk.com
Carissa.Serrano@verisk.com
- Other issues for this circular, please contact Customer Support:
E-mail: info@verisk.com
Phone: 800-888-4476

Callers outside the United States, Canada, and the Caribbean may contact us using our global toll-free number (International Access Code + 800 48977489). For information on all ISO products, visit us at www.verisk.com/iso. To keep abreast of the latest Insurance Lines Services updates, view www.verisk.com/ils.

Utah Liquor Liability Rules Revision

Applicable Lines of Business

This filing applies to the following lines of business:

- ◆ Businessowners
- ◆ Commercial General Liability

About This Filing

This filing revises Utah state exceptions pertaining to liquor liability in response to 2023 Utah Laws __ (former H.B. 247).

Revised Rules

We are revising the following rules:

- ◆ Division Six – General Liability
 - Rule **45**. Liquor Liability Coverage
- ◆ Division Ten – Businessowners
 - Rule **29**. Endorsements

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes. For the purposes of this filing, asterisks (* * *) indicate undisplayed text that remains unchanged with this filing.

Background

2023 Utah Laws __ (former H.B. 247), which becomes effective May 3, 2023, in part, amends UTAH CODE ANN. §32B-15-201 in connection with liquor liability. In part, the revisions are as follows:

- ◆ Paragraphs (1)(a) and (1)(b) are revised in the following excerpts, as illustrated with deleted text struck through and new text underlined:

“(1) (a) Except as provided in Subsections 32B-15-202(2) and (3), a person described in Subsection (1)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) a third person; or

(B) the heir, as defined in Section 78B-3-105, of ~~that~~the third person; or

- (ii) the death of a third person.
- (b) A person is liable under Subsection (1)(a) if:
 - (i) the person directly gives, sells, or otherwise provides an alcoholic product:
 - (A) to a person described in Subsection (1)(b)(ii); and
 - (B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product;
 - (ii) those actions cause the intoxication of:
 - (A) an individual under ~~the age of 21 years old~~;
 - (B) an individual who is apparently under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug;
 - (C) an individual whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug; or
 - (D) an individual who is a known interdicted person; and
 - (iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic product.”
- ◆ Newly added paragraph (1)(c) states:
 - “(c) It is prima facie evidence that a person is liable under Subsection (1)(a) for an injury or death that results from the intoxication of an individual described in Subsection (1)(b)(ii)(B) or (C) if:
 - (i) the person directly gives, sells, or otherwise provides the individual the last alcoholic product the individual consumes before the injury or death described in Subsection (1)(b)(iii);
 - (ii) the individual consumes the alcoholic product at the location where the person directly gives, sells, or otherwise provides the individual the alcoholic product;
 - (iii) the injury or death occurs within 30 minutes after the time at which the individual leaves, and within a 10 mile radius of, the location where the person gives, sells, or otherwise provides the individual the alcoholic product; and
 - (iv) the individual is charged with a criminal violation of Section 41-6a-502 for driving under the influence of an alcoholic product in relation to the injury or death.”

Explanation of Changes

We are revising the Utah General Liability exception to Rule **45**. Liquor Liability Coverage and the Businessowners exception to Rule **29**. Endorsements to reflect the revisions made by 2023 Utah Laws __ (former H.B. 247). We are also making minor editorial revisions to both exceptions.

Copyright Explanation

The material distributed by Insurance Services Office, Inc. is copyrighted. All rights reserved. Possession of these pages does not confer the right to print, reprint, publish, copy, sell, file or use same in any manner without the written permission of the copyright owner.

Important Note

Insurance Services Office, Inc. (ISO) makes available advisory services to property/casualty insurers. ISO has no adherence requirements. ISO rules and explanatory materials are intended solely for the information and use of ISO's participating insurers and their representatives, and insurance regulators. Neither ISO's general explanations of rules intent nor opinions expressed by members of ISO's staff necessarily reflect every insurer's view or control any insurer's application of manual rules.

DIVISION SIX – GENERAL LIABILITY

45. LIQUOR LIABILITY COVERAGE (Subline Code 332)

Paragraph **G.5.** is replaced by the following:

G. Liquor Liability Grades

5. The Liquor Liability Numerical Grade is 0 for businesses licensed to sell beer at retail only for off-premise consumption. A Liquor Liability Numerical Grade of 6 applies for all other establishments.

Citation of Law: UTAH CODE ANN. Section 32B-15-201 *et seq.*

Comments:

The statute provides, in part, that any person who directly gives, sells or otherwise provides an alcoholic product to one of the following persons, as part of the commercial sale, storage, service, manufacture, distribution, or the consumption of an alcoholic product, and by those actions causes the intoxication of ~~that the~~ person, is liable for injuries in person, property, or means of support to any third person, or the heir of ~~that the~~ third person (generally a spouse, child, or parent of ~~that the~~ third person), if the injury (or death) results from the intoxication of the individual who is provided the alcoholic product:

- Any person under ~~the age of 21 years old;~~ or
- Any person apparently under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug; or
- Any person whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug; or
- Who is a known interdicted person.

The statute further provides, in part, it is prima facie evidence that a person is liable under the above referenced provisions for such injury or death that results from the intoxication of an individual if:

- The person directly gives, sells or otherwise provides the individual the last alcoholic product the individual consumes before the injury or death;
- The individual consumes the alcoholic product at the location where the person directly gives, sells or otherwise provides the individual the alcoholic product;
- The injury or death occurs within 30 minutes after the time at which the individual leaves, and within a 10-mile radius of, the location where the person gives, sells or otherwise provides the individual the alcoholic product; and
- The individual is charged with a criminal violation of UTAH CODE ANN. Section 41-6a-502 for driving under the influence of an alcoholic product in relation to the injury or death.

The "6" designation reflects the fact that the total amount of damages that may be awarded to any person pursuant to a cause of action arising under the statute is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of any one occurrence is limited to \$2,000,000. It should also be noted that the Supreme Court of Utah ruled in *Reeves v. Gentile*, 813 P.2d 111 (Utah, 1991) that the Dram Shop Act allowed a cause of action against each establishment that served patrons in their intoxicated condition and, thus, the jury could award up to \$100,000* against each tavern owner.

In addition, the Supreme Court in *Red Flame v. Martinez*, 996 P.2d 540 (Utah, 2000) ruled that the comparative fault statute (UTAH CODE ANN. Sects. 78-27-37 and 78-27-38) permits recovery by the at-fault vendor against the intoxicated person who directly caused the injury.

*_Case was decided when limitation was \$100,000.

DIVISION TEN – BUSINESSOWNERS

29. ENDORSEMENTS

Paragraph **B.13.b.(4)** is replaced by the following:

b. Liquor Liability Grades

- (4) The Liquor Liability Numerical Grade is 0 for businesses licensed to sell beer at retail only for off-premise consumption. A Liquor Liability Numerical Grade of 6 applies for all other establishments.

Citation of Law: UTAH CODE ANN. Section 32B-15-201 *et seq.*

Comments:

The statute provides, in part, that any person who directly gives, sells or otherwise provides an alcoholic product to one of the following persons as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product, and by those actions causes the intoxication of ~~that the~~ person, is liable for injuries in person, property, or means of support to any third person, or the heir of ~~that~~ the third person (generally a spouse, child, or parent of ~~that the~~ third person), if the injury (or death) results from the intoxication of the individual who is provided the alcoholic product:

- Any person under ~~the age of 21 years old;~~ or
- Any person apparently under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug; ~~or~~
- Any person whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of ~~intoxicating alcoholic products or drugs~~ an alcoholic product or drug;
- Who is a known interdicted person.

The statute further provides, in part, it is prima facie evidence that a person is liable under the above referenced provisions for such injury or death that results from the intoxication of an individual if:

- The person directly gives, sells or otherwise provides the individual the last alcoholic product the individual consumes before the injury or death;
- The individual consumes the alcoholic product at the location where the person directly gives, sells or otherwise provides the individual the alcoholic product;
- The injury or death occurs within 30 minutes after the time at which the individual leaves, and within a 10-mile radius of, the location where the person gives, sells or otherwise provides the individual the alcoholic product; and
- The individual is charged with a criminal violation of UTAH CODE ANN. Section 41-6a-502 for driving under the influence of an alcoholic product in relation to the injury or death.

The "6" designation reflects the fact that the total amount of damages that may be awarded to any person pursuant to a cause of action arising under the statute is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of any one occurrence is limited to \$2,000,000. It should also be noted that the Supreme Court of Utah ruled in *Reeves v. Gentile*, 813 P.2d 111 (Utah, 1991) that the Dram Shop Act allowed a cause of action against each establishment that served patrons in their intoxicated condition and, thus, the jury could award up to \$100,000* against each tavern owner.

In addition, the Supreme Court in *Red Flame v. Martinez*, 996 P.2d 540 (Utah 2000) ruled that the comparative fault statute (UTAH CODE ANN. Sects. 78-27-37 and 78-27-38) permits recovery by the at-fault vendor against the intoxicated person who directly caused the injury.

* Case was decided when limitation was \$100,000.
