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License Availability – Quota

By Al Potvien

The ABC Commission meets monthly to consider licensing applications. In order to be issued an alcoholic beverage license, an application needs to be submitted by the tenth of the month and the process completed prior to the meeting which takes place later in the month. Licenses are granted by the commission based on evaluation factors which include but are not limited to such things as location and physical characteristics of the premises, management experience and nature or type of operation, as well as public input.

Availability can also be a factor for some license types which are based on a quota system, meaning that there can only be a certain number issued throughout the state at any time. Basically, the estimated statewide population figures are divided by numbers determined by the legislature, which vary per license type. The numbers of licenses available are adjusted monthly prior to the commission meeting to determine how many will be available for those applicants being considered. An increase in the availability of licenses comes with estimated growth in population and when a license is relinquished due to a business closing or changing ownership. Availability is then decreased by the number of applicants who receive their licenses, and the cycle continues.

Those types of licenses which are affected by the quota system and the actual number available following the August commission meeting are: clubs (12), full-service restaurants (1), limited restaurants (11), on premise banquet (20), taverns (34). State liquor stores and package agencies also have limits on how many there can be, however they are not actually considered licenses, but are available.

On premise beer retailer licenses other than taverns are not under a quota system and may be applied for and issued without availability being a factor. Whenever availability of another license type becomes very limited, an applicant may wish to apply also for an on premise beer license. This is an option which would allow for beer to be sold at the establishment, in case the other license is not issued. The preferred license application is then held over to be considered again at the commission meeting the following month.♦

The Licensing Newsletter is published every four months by the State of Utah, Department of Alcoholic Beverage Control, P.O. Box 30408, Salt Lake City Ut, 84130-0408.

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Download a copy of the newsletter at:

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License Renewals

by Keith Zuspan, Neil Cohen, and Abe Kader

All full service restaurants, limited service restaurants, airport lounges, and on-premise catering licensees will receive a renewal application packet in early September.

Online Renewal

The on-line renewal system allows you to submit your renewal application electronically beginning September 1, 2009 through September 30, 2009. Remember the deadline to complete your renewal is Wednesday, September 30.

Renewing your license online is simple and efficient. The process requires you to enter online information from the renewal materials mailed to you by DABC, verify and update your unique license information, answer a few questions, pay your renewal fees and print a copy of your submission and payment. The payment feature for your convenience accepts debit/credit card (Visa, Mastercard, American Express, Discover) or an electronic check.

You may *not* be able to renew your license online due to changes in operating entity, changes of corporate officers/directors, or relocation of your business. If that is the case, please complete the paper renewal form (see below).

Paper Renewal

All licensees will receive a paper renewal packet with forms A, B, and, C (with preprinted license data), D (alcohol server training information), E (financial spreadsheet), and F (the online instructions). If you are completing a paper renewal, please note that you only need to submit the renewal fee, Forms A, B, C, and E, and any background check documents and fees that are required. Background check information and instructions are in the packet.

Forms A, B, and C will be pre-printed with data that you submitted for last year's renewal or in your initial application. You will only need to make changes to those forms if the data has changed or is incomplete.

Please remember, you must mail or hand in your completed renewal application by Wednesday, September 30. This deadline is set by the legislature and we can not extend it. If you miss this deadline, you may not *renew*. You will have to *re-apply* for your license. This means you will have to pay for an additional application fee and initial license fee. Please do not wait until the last minute.

You may either hand deliver (**by 6:00 pm on September 30**) the completed renewal or **we will accept a postmark** up to and including **September 30** as timely.

Renewal Fees

Full service restaurant renewal fees are based on the annual cost of liquor, wine, and heavy beer purchased from the DABC state store system (gross cost of liquor). Renewing licensees in previous years have submitted this figure to the DABC on the "Form E -

Financial Spreadsheet" under "cost of sales - liquor". This is the figure the DABC will use to determine renewal fees for this year.

For a restaurant that is renewing for the first time, the DABC will calculate the renewal fee based on the projected cost of liquor from any financial statements that have been provided to the DABC or from data in the state store system.

Limited Service Restaurants

The renewal fee for a limited restaurant license is \$300.

Airport Lounges

The renewal fee for an airport lounge is \$5000.

On-Premise Banquet Licensees

The renewal fee for an on-premise banquet license is \$500.

Follow-up

Either way you choose to file your renewal and after the renewal process, you may be asked by your compliance specialist to submit additional information such as local business/alcohol license(s), an ACORD type Certificate of Insurance (for general and liquor liability coverage), or alcohol server training records (form D).

If you do not receive renewal materials in the mail by the *second* week of September, please call (801) 977-6800 to obtain a copy of your license renewal packet and your online renewal ID number.

As a reminder, information you provide is for the sole use of the DABC. Personal information submitted online is protected. The State of Utah and Utah.gov take your internet security very seriously. Our technology and policies are designed to make your online transactions safe, private, and secure. Rigorous policies and procedures are utilized to safeguard your personal information, such as social security numbers, banking information, and personal data.

Tax Delinquencies

Licenses can not be renewed unless tax delinquencies are cleared. The law specifies that, "Each applicant for a license and each licensee shall comply with all applicable federal and state laws pertaining to payment of taxes and contributions to unemployment and insurance funds to which it may be subject." (32A-1-123 Utah Code)

If you have a delinquency, you will receive a notice directly from the Tax Commission regarding sales tax or payroll withholding tax, the Labor Commission, Division of Industrial Accidents regarding workers compensation coverage, or the Department of Workforce Services regarding unemployment insurance tax.

If you have any deficiencies with these departments, they will let you know who to call and what you need to do to bring your account back into good standing. ♦

Club Bonds

by Neil Cohen

A “Club License” is the official name of the license held by equity, fraternal, dining, and social clubs. The word “private” is now gone from the name of the license. The bond form has been changed accordingly and now reads “Club Bond”. All **new** clubs are required to have their bonds on the new form. Any existing club that is renewing a bond that is on the old form, should ask their surety company to replace the bond with the new form. The correct form is on our website at http://www.abc.utah.gov/Forms/Club_Bond.pdf. ♦

Dram Shop Insurance Coverage Limits Are Increasing

by Keith Zuspan

S B187 [2009] - “Alcohol Amendments” changed the current dram shop “liquor liability” insurance requirements to a minimum of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate from their current levels of \$500,000 per occurrence; and \$1,000,000 in the aggregate.

These new minimums become effective January 1, 2010 for:

- Restaurants
- Limited Restaurants
- On-Premise Beer (non-tavern)
- On-Premise Beer (tavern)
- On-Premise Banquet

Clubs (equity, fraternal, dining and social) must acquire these minimum dram shop insurance coverages by July 1, 2010.

Please contact your insurance agent on these new limits. ♦

Metered Dispensing ...No Matter What Shape You're Bottle's in

by Keith Zuspan

Some distilleries place pre-metered or flow controls on liquor bottles when manufacturing and shipping liquor product. Some examples of these liquors are Don Julio and Presidente Brandy which are manufactured with a pre-inserted pour spout. The tops are an integral part of the band affixed to the neck of the bottle.

Utah law requires that all distilled spirits including these liquors [and liquor types] are required to be dispensed through a calibrated metered dispensing system. In order to place the Berg top, “Berg like system” top, or “clicker” on the bottle, the band (which is either plastic or metal) must be cut off. Once the band is removed, the pre-inserted pour spout can be removed and the proper dispensing system can be put on the bottle.

If you have any questions or concerns, please contact the compliance division. ♦



Myths and Facts about Changes to the Liquor Laws

by Neil Cohen

HOURS OF SALES

MYTH: There was rumor that the sales hours have changed and that restaurants could sell liquor and wine before noon.

FACT: The hours of sale for all licenses were not changed. What did change is that there are no more restrictions on the sale of alcohol on the days of a regular, primary, or special election.

OUT-OF-STATE BOTTLES

MYTH: Another rumor was that a person can bring in out of state alcohol or have it shipped in to Utah. This rumor came about because the legislature eliminated the requirement that the DABC place official stickers on the bottles.

FACT: The laws in this regard have not changed. It is true that there are no more stickers on the bottles, but it does not mean a person is allowed to bring in or ship in an "un-stickered" bottle. Also, the product codes on the bottles allow the DABC to trace the origins of each bottle.

ID SCANNERS

MYTH: All clubs need to scan the IDs of anyone who wants to come in.

FACT: ID Scanners are required for dining and social clubs only. Dining clubs have to scan the ID cards of patrons that wish to order an alcoholic beverage who appear to be 35 years old or under. Social clubs have to scan the ID cards of any patron that wants to enter the club who appears to be 35 years old or younger.

MYTH: Club ownership/management are not allowed to read the data in the scanners.

FACT: The data contained in the scanner is considered a "record" and is subject to inspection by a peace officer, or by an authorized representative of the

commission and the department. Club owners/managers should be able to produce the data upon the request of a peace officer or DABC authorized representative. Scanner suppliers/vendors should provide instructions and training to licensees on how to read out the data.

CONVENTION CENTERS

MYTH: Convention centers with an on-premise banquet license that are smaller than 30,000 square feet are "grandfathered".

FACT: The "grandfathered" status expires on October 31, 2011. After that date, an on-premise banquet licensed convention center that is smaller than 30,000 square feet is not allowed to renew the license because it does not qualify as a convention center anymore. See U.C.A. 32A-4-401-(8).

CONDITIONAL LICENSES

MYTH: Applicants for any liquor license that have not completed construction can be granted a conditional license without a business license.

FACT: Only full service restaurants and limited service restaurants may be granted a conditional license if the application is complete except for the issuance of a local business license.

FREE-POURING

MYTH: Since clickers or "berg" tops don't fit on bottles with wide or skinny necks, or on bottles with pre-inserted pour spouts, it is OK to "free-pour" the liquor into a shot glass.

FACT: All distilled spirits, regardless of the shape of the bottle or the bottle neck (i.e. like some bottles of Grappa, Brandy, and Tequila), must be dispensed through a metered dispensing system that measures and counts the pours and that is affixed to the bottle.♦

Rob Hansen Joins the DABC Compliance Staff

Rob Hansen is our newest License and Compliance Specialist with DABC. Rob has been a State Employee for over two years. He started with Workforce Services as a Field Investigator and then as an Adjudicator. Previously Rob has worked for a national bank as their Legal Department Manager, at a law firm as the Bankruptcy Manager, and at a car dealership as the Finance Manager.

Rob was born and raised here in the Salt Lake Valley. He graduated from the University of Utah with a business degree and also obtained a paralegal certificate from Weber State. He and his wife have one big rambunctious puppy and are avid concert goers. Rob loves to play volleyball and enjoys watching mixed martial art fighting. Rob is excited to be working at DABC and is eager to meet all the businesses that have been assigned to him.♦

The Alcoholic Beverage Control Commission meets once a month toward the end of each month. Meeting dates and times are subject to change.

The meetings are open to the public and are held in the board room at the DABC office building: 1625 South 900 West, Salt Lake City.

Call 801-977-6800 for the current schedule.

Local Licensing Article for Cities, Towns, and Counties

Conditional licensing for full-service and limited-service restaurants

by Neil Cohen

The commission is authorized to issue a conditional license to a person who is building a restaurant that is not yet open for business. The application for the liquor license can be considered by the commission if the application is complete in all respects except for the issuance of a business license from a local authority.

This allows the commission and department to conduct preliminary investigations and inspections to ensure that the person qualifies for a license and that the business is not precluded from selling alcohol because of possible proximity issues to schools, churches, parks, playgrounds, and libraries.

After the conditional license is issued, the person will be issued a valid license to sell alcoholic beverages once the person has obtained a current business license and provides evidence that there has been no change in the information provided to the commission when the conditional license was issued. A conditional license expires after six months unless it becomes a valid license before then.

An applicant for a conditional license is required by statute to obtain the "written consent of the local authority". This written consent is commonly referred to as "local consent". A city, town, or county's procedure for granting local consent may vary. Nevertheless a local authority's granting of local consent and the granting of a business license can be two different actions that can be independent

of each other.

The local consent is a locality's official statement that it is OK for the DABC Commission to put a liquor license in a particular location (determined by zoning, land use, etc.). If proximity to a "community location" is an issue (such as a church, school, park, playground, or library), a city, town or county can include its consent to a variance on the local consent form. A conditional license applicant is therefore asking the local authority to grant local consent prior to the local authority granting the local business license.

Conditional licenses can only be granted to applicants for full service restaurants and limited service restaurants. Applicants for other types of licenses such as a club, beer, on-premise banquet license must have all application items completed including both local consent and a business license before the applicant can be considered for a license by the commission.

The DABC provides a suggested "Local Consent" form in each of the license application packets that an authorized local official can sign and return to the DABC. However, a city, town, or county may use its own form to grant written consent to the DABC for the issuance of a state liquor license. Any license application packet can be downloaded from the DABC website at: www.abc.utah.gov/license_permit/license_app_main.html ♦

News from Other States

Only in Utah??

...not really

An article by Jack Sullivan in the August 8, 2009 issue of The Boston Globe caught our eye. The headline read, **City says Red Sox must end open bar**. The article states that the team was unaware of a 25 year old Massachusetts law that bans happy hours and open bars.

The reporter explained that "[I]n 1984, [Massachusetts] banned free drinks, reduced price drinks, and open bars at all public drinking establishments. Exemptions ... were granted for private functions and parties "by invitation only", but the state alcohol commission ruled that the exemption does not include parties that are advertised, open to the public, or if tickets are sold.

...
The all-you-can-drink Sox packages were available in the popular Green Monster sections above the left field wall as well as the right field pavilion and several premium seat sections. Prices ranged from \$1,000 to as much as \$32,000 for a package that included as many as 27 seats in the Green Monster's section 10."

You can read the article at www.boston.com at the following link:

http://www.boston.com/business/articles/2009/08/08/city_regulators_say_red_sox_must_end_open_bar/

In other stadium news, many football teams have implemented a text messaging program for contacting security to report an unruly fan. An article in The St. Petersburg Times by Justin George, described one such program instituted last year by the Tampa Bay Buccaneers. George reported "For fans spending hundreds of dollars to attend Tampa Bay Buccaneers games, the beer-soaked, foul-mouthed nuisance in the next seat can ruin the game-day experience. [T]he Bucs have a solution for those who don't want to confront unruly fans or miss any action: Text message for help. On Sundays, fans dealing with abusive spectators can text (813) 277-6501 with their problem and location, and a security or law enforcement officer will arrive."

The article can be viewed at: <http://www.tampabay.com/news/business/bucs-fans-can-tattle-via-text/807109> ♦

Violations and Penalties

by Chris Johnson

Below is a list of the most recent violations and penalties assessed for all licensees. Please review the violations listed below with your staff to prevent similar violations from occurring in your own establishment. As you can see by the number of alcoholic violations listed, law enforcement agencies have been very active. **PLEASE BE CAREFUL!!**

CL = Private Club Liquor BE = On-Premise Beer TV = Taverns * = Prior Violation History
 RE = Full Service Restaurant RL = Limited Service Restaurant TB = Temporary Beer Permitees
 SE = Single Event Permitees BW = Beer Wholesaler AL= Airport Lounge

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
RE	Chili's, Orem and Christina Hille (employee)	1. Sale to minors (S)	1. Fine of \$1,000.00 plus costs
RE	Fiesta Mexicana, Kanab and Leonel G Franco (employee)	1. Sale to minors (S)	1. Fine of \$1,000.00 plus costs
RE	Iggy's Sports Grill, St George	1. Sale of A/B not in connection with an order of food (S)	1. Fine of \$500.00 plus costs
RE	Ruby Tuesday, St George and Sherry Gerry (employee)	1. Sale to minors (S)	1. Fine of \$1,000.00 plus costs
RE	Karen Buschmann (former employee of Players Sports Grill, St George)	1. Sale to minors (S)	1. Fine of \$100.00
BE	El Mexicano #2, Salina and Aresalia Silva (employee)	1. Sale to minors (S)	1. Fine of \$1,000.00 plus costs
RL	South China Café, Richfield and Nahum Miramontes and Jaxon Peterson (employees)	1. Sale to minors (S) 2. Minor selling A/B (S)	1. 5 day license suspension 2. 5 day license suspension plus costs
CL	Hotel, Salt Lake	3 cases: Case #1: 1. Attire & conduct violation (G) 2. No stage approval (S) 3. Non-member entry & sale (MD) Case #2: 1. Sale of spirituous liquor without metering device (S) 2. Exceeding 1.5 oz. of primary liquor & 2.75 oz. Total alcohol (S) 3. Non-member entry & sale (MD) 4. No ID badge (MI) Case #3: 1. Minors on the premises of a class "D" club (S) 2. Served a minor (S)	All cases: 1. 10 day license suspension 2. Surrender of the license on or before 8/26/09 3. Fine of \$1,000.00 plus costs

Missing Employees

The DABC is attempting to locate the following individuals that either currently or previously worked for the licensees listed below. We have adjudicated violations with the licensees, but the employees either could not be located or did not attend the proceedings when the violations were adjudicated. If any of these employees are currently working for your business, please have them immediately contact Ed Lombard at the Utah Attorney General's Office at 801 366-0157.

Stan G. Allen - The Standard
 Cynthia M Anderton - Applebee's (West Valley)
 Michael R. Arcaris - Squatter's Pub
 Braeden M. Brinton - The Standard
 Sara Bryson - Mimi's Café (Orem)
 Catherine Clark - Goldbar Saloon
 David Durrant - Tucci's (Salt Lake)
 Kristina M. Erskine - Asuka Japanese Sushi
 Robert J. Gardner - Juhl Haus Deli & Market
 David Homer - One & Only
 Charles Lamb - Jeremy Golf & Country Club
 George H. Lasater - Eddie McStiff's
 Lacey B. Miller - World Famous Woody's Tavern
 Bryce Pearson - Old Spaghetti Factory (Salt Lake)

Courtney J Rios - Art's Place
 James D. Santini - P.F. Chang's (Orem)
 Kate Christianson - Chili's (St. George)
 Sean Hill - Chili's (St. George)
 Jared B Hileman - Shaggy's Livin Room
 Karen Buschman - Players Sports Grill
 Whitney Hathaway - Gladstan Golf Course
 "Sherry" - Lumpy's Downtown
 Danielle Sims - Sportsman's Lounge
 "Bubba" - Sportsman's Lounge
 Vincent Laguardia - Alpine Internet Café
 Troy Mattinson - Applebee's (St George)
 Monica M. Salazar - Cheater's Lounge
 Susan Pontius - Applebee's (Orem)
 Alicia Bowman - Palms @ Holiday Inn
 Laurie A. Johnson - Don Jose Mexican Restaurant

Jason M. Green - Sunset West Bowling Center
 Jeffery S. Anderson - La Frontera (Bountiful)
 Clay Petty - World Famous Woody's Tavern
 "Julie" - Jessie's Bar & Grill
 Billie Jo Lange - Outback Steakhouse (St George)
 Brenda Conners - Papa Joe's
 Kathy Walton - Chili's, Midvale
 Natalie Oswald - Hog Wallow Pub
 Kristan Holeman - Jersey's Sports Grill
 "Mark" - Davis County Conference Center
 Bradley M Wood - Circle Inn
 Chase W Watson - Winger's (Draper)
 Hank McHenry - Mynt Martini Lounge
 Richard McHenry - Mynt Martini Lounge
 Langford O Meeks - Mynt Martini Lounge

Soju – Distilled Spirit

by Stephne Pilling

Soju is a distilled beverage native to Korea. Most brands of modern Soju are made in South Korea. Soju is traditionally made from rice, though some brands replace the rice with other starches such as potato, wheat barley, sweet potato and tapioca. Its taste is comparable to vodka, but often sweeter because of the sugars added in the manufacturing process.

The liquor licensing laws in the states of California and New York classify Soju in the same category as beer and wine, allowing businesses with a beer and wine license to sell it without requiring the more expensive license required for other distilled spirits. The only stipulation is that the Soju must be clearly labeled as such and contain less than 25% alcohol. But that's California and New York, not Utah.

Under Utah law, Soju is a distilled spirit ("spirituous liquor"). Because of that, limited restaurant licensees **may not sell Soju**. In order to be able to sell Soju, you must have a full service restaurant license, a club license, or an on-premise banquet license.

The specific code sections are:
U.C.A. 32A-4-307(2)(a) A limited restaurant licensee may not

sell, serve, or allow consumption of the products listed in Subsection (2)(c) on the premises of the limited restaurant.

(b) A product listed in Subsection (2)(c) may not be on the premises of the limited restaurant except for use:

(i) as a flavoring on a dessert; and
(ii) in the preparation of a flaming food dish, drink, or dessert.

(c) This Subsection (2) applies to:

(i) spirituous liquor; and
(ii) a flavored malt beverage.

U.C.A. 32A-1-105(62)

(62) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcohol product defined as a "distilled spirit" by 27 U.S.C. 211 and 27 C.F.R. Sections 5.11 through 5.23.



Full service restaurants, clubs, and on-premise banquet licensees that do sell Soju need to dispense it through a metered dispensing system in quantities not exceeding 1.5 ounces.♦

Returned Checks and Ability to Manage

By Abe Kader

One of the evaluation factors the commission considers before issuing or renewing a license is the ability of the applicant to manage a business. Record keeping is a vital part of managing a business and maintaining generally accepted accounting practices.

The number and amount of returned checks from DABC licensees has increased recently, according to Rae Jordison, the DABC Accounting Manager. Ms. Jordison said that "the increase includes licensees who have had returned checks in the past." The penalty for a returned check is a \$20 returned check fee and being placed on "cash only" at the liquor store.

The length of time a licensee is on "cash only" is at the discretion of the department. The rule allows the department to consider: (1) the dollar amount of the returned check(s); (2) the length of time required to collect the amount owed the department; (3) the number of returned checks received by the department during the period in question; and (4) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

The department receives returned checks for the following reasons: (1) insufficient funds, (2) refer to maker (3) account closed, (4) stop payment. The Commission Rule states that "receipt of a check payable to the department which is returned by the bank for any of these

reasons may result in the immediate suspension of the license, permit or operation of the package agency of the person tendering the check..." [R81-1-3(5)]

A license could be revoked if a suspension is imposed and the face value of the returned check plus the \$20 returned check fee is not paid. The Commission Rule

Receipt of a check payable to the department that is returned may result in the immediate suspension of the license.

states that "Failure to make good the returned check and pay the \$20 returned check fee within thirty days after the license, permit or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, or package agent's bond." [R81-1-3(5)]

If your check is returned, please pay it as soon as possible. Your contact at the DABC to clear returned checks is Rae Jordison at 801-977-6800.♦



THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
PO BOX 30408
SALT LAKE CITY UT 84130-0408

Return Service Requested

PRSR STD
U.S. POSTAGE
PAID
Salt Lake City, UT
Permit No. 4621