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## 2006 Legislative Update

By Earl Dorius

**A**lcohol-related bills that PASSED during the 2006 Legislative Session:

### **S.B. 58 - Eliminate Alcohol Sales to Youth (E.A.S.Y.) - (effective July 1<sup>st</sup>)**

#### Grocery & Convenience Stores.

► Requires those who sell or directly supervise the sale of beer in grocery or convenience stores to take a state approved alcohol server training seminar that covers such topics as underage drinking laws (zero tolerance), the importance of compliance, the consequences of violations, new research on alcohol and the developing teen brain, and checking for I.D.

► Requires that each store issue a unique identification badge to any employee who sells or directly supervises the sale of beer.

► Provides funding to local law enforcement agencies to conduct random compliance checks using underage youth to attempt to purchase alcohol.

► Provides statewide uniform administrative penalties for selling beer to minors. Penalties may be assessed against both the employee and the store. These are in addition to any criminal penalties that may be assessed.

► Provides a state system administered by the Highway Safety Office of the Department of Public Safety for tracking compliance checks, and those found in violation of selling to minors.

#### Education & Media Campaigns.

► Provides funding for statewide education & media campaigns administered by the Department of Alcoholic Beverage Control in coordination with the Utah Substance Abuse and Anti-Violence Council (USAAV). The campaigns will target the sources of alcohol to minors and focus on underage drinking from the perspective of impairment to the teenage developing brain and resultant increased addiction from early use. (For more detail, see article entitled "Sales to Minors – an Issue of Brain Damage in the Winter 2005-2006 UDABC Licensing Newsletter).

*Continued on the next page...*

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**2006 Legislative Update***Continued from the previous page...***S.B. 124 - Alcohol Beverage Control Amendments (effective May 1<sup>st</sup>)****Quotas.**

► **Limited Restaurants** - Increases the quota from 1/13,000 (statewide population) to 1/11,000 resulting in 45 available licenses.

► **Full-service Restaurants** - Decreases the quota from 1/5000 to 1/5200 resulting in 34 available to issue.

► **Private Clubs** - Decreases the quota from 1/7000 to 1/7300 resulting in 17 available to issue.

► **Taverns** - Decreases the quota from 1/22,500 to 1/25,000 resulting in 12 available to issue.

► **Selling Without a Permit.** Makes it a criminal offense (class B misdemeanor) to sell or furnish alcoholic beverages at a public event without a permit, or to sell or offer to sell alcoholic beverages to persons attending a privately hosted event or social function without a permit.

**Housekeeping Amendments.****► Clarifies the Authority and Duties of****Commission with Respect to:**

► issuing and regulating "certificates of approval" that authorize out-of-state brewers to sell 3.2% beer in Utah;

► imposing fines against package agencies and holders of certificates of approval who violate the ABC laws;

► requiring the Commission to consider the estimated attendance and nature of an event in deciding whether to issue a single event permit;

**► Disciplinary Proceedings.**

● defines "disciplinary proceeding"

● requires such proceedings to be video or audio recorded; and

● authorizes the director of the department at the direction of the Commission to prepare, issue, and cause to be served the final order of the Commission.

**S.B. 19 - Amendments to Indoor Clean Air Act**

► The Utah Indoor Clean Air Act (UICAA) extends the smoking ban to taverns, private clubs, "any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families" and "any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor."

**► Effective dates:**

● January 1, 2009 - Taverns and class D private clubs that are licensed on or before May 15, 2006.

● May 16, 2006 - New taverns and class D private clubs licensed after May 15, 2006

● January 1, 2007 - class A, B, and C private clubs.

From the Utah Department of Health...

A business or organization may go smoke-free sooner than required by the UICAA.

"No smoking" signs are available free of charge and can be ordered by calling 1-877-220-3466. Your state and local health departments are available to field questions or concerns you may have. Contact information can be found at:

[http://www.tobaccofreeutah.org/uicaa-busguide-county\\_resources.htm](http://www.tobaccofreeutah.org/uicaa-busguide-county_resources.htm).

Several businesses have inquired about assistance for employees who want to quit smoking. The Utah Tobacco Prevention and Control Program offers a number of free resources, most notably the Utah Tobacco Quit Line and Utah QuitNet. For help in quitting, call: 1-888-567-TRUTH or visit: <http://www.UtahQuitNet.com/>.

For more information go to:

<http://www.tobaccofreeutah.org/2006uicaa.html> or call 1-877-220-3466.

**Driving Under the Influence Amendments**

► **S.B. 51** - Makes it a 3<sup>rd</sup> degree felony to cause serious injury while operating a vehicle while having marijuana or a derivative equivalent in the body (effective May 1<sup>st</sup>).

► **S.B. 18** - Prohibits an interlock restricted driver from operating or being in actual physical control of a vehicle without an ignition interlock system and allows for impounding the vehicle, and allows imposing a three-year prohibition on driving except with an ignition interlock device for refusing to submit to a chemical test for alcohol or drugs (effective May 1<sup>st</sup>). Prohibits pleas in abeyance in DUI cases (effective July 1, 2008).♦

**Free training....**

*Free liquor law training is available to all licensees and their employees. This training helps licensees to understand the alcoholic beverage laws, prevent violations, and to provide better and consistent service to patrons. It gives licensees and employees the opportunity for a one-on-one session with the DABC to deal with specific questions and concerns. We will tailor our training to fit your needs and schedule. If you are interested in having one of our Compliance Specialists present a training session to your staff, please call at (801) 977-6800.*

## Bond and Insurance Requirements

by Al Potvien

In order to apply for a state alcoholic beverage license, among the requirements are 1) proof of insurance for both general public liability and liquor liability (dram shop) coverage for your business; and 2) a surety bond.

The liability insurance must meet certain minimum amounts of coverage and the bond amount varies depending on what type of license you hold. These are separate requirements but both may be acquired by contacting an insurance agency.

As long as you are a license holder, these requirements must continue to be met in order to maintain your qualifications. As you are aware, a current certificate of insurance is requested during each license renewal period, however many policies either lapse or a change in coverage or carriers takes

place at other times during the year, without the updated certificate being forwarded to the department.

It is very important not only to keep your coverage in place, but also to keep the department notified as to your current insurance policies and effective dates.

When the department receives a notice of cancellation from an insurance agency of an insurance policy or compliance bond, the licensee is promptly notified to provide either reinstatement of the existing policy or bond or new coverage prior to the cancellation date.

Failure to do so may result in an immediate suspension of a license, reinstatement fee of \$300 and/or an order being issued to appear at the monthly commission meeting for possible revocation of the license.

The purpose of the surety bond is to insure that a licensee will faithfully comply with the state alcoholic beverage laws or risk losing the amount of the bond if the license is ever revoked because of serious law violations. In order to collect on a bond, the DABC notifies the surety company issuing the bond.

Once payment is made, the surety company then attempts to collect the same amount from the licensee in whose name the bond is issued. A claim against a bond may also be filed so that the department can collect payment for a returned check from a licensee when all other attempts at collection have failed.

Remember, it is the licensee's obligation to maintain all qualifications while a license is in effect, including the required insurance and bond information to be current and the department notified. ♦

## When in Doubt, give us a Shout....

By Keith Zuspan

Did you know, if you are....remodeling...taking a vacation...relocating...thinking about selling...we can help.

All restaurant and club licenses are based upon a population quota and are in limited quantities. As such, operational restrictions for these license types include a provision for temporary closure (clubs 32A-5-107 § 42, full-service restaurants 32A-4-106 § 25 and limited service restaurants 32A-4-306 § 25).

In a nut-shell, if you are planning to close for a period greater than 240 hours (10 days), you must provide the DABC written notice of your intended closure. The written notice should arrive at least seven days prior to the closure. Your compliance officer, after reviewing your request, may authorize a closure for a period not to exceed 60 days. This closure may be extended an additional 30 days for a maximum of 90 days. Closures of greater than 90 days must be formally approved by the ABC Commission. Once a closure had been approved, you must resume operations at the end of the closure period. If you do not resume operations, your license may be automatically forfeited.

### Location, Location, Location

Are you thinking about moving your business? All requests for relocation must be approved by the ABC Commission.

*If you are planning to close for a period greater than 10 days, you must provide the DABC written notice of your intended closure.*

The requirements for moving your license are similar to the basic application process. A new business and alcohol license for the new location from the local business licensing office is required. We also need local consent from the local authority. Proximity restrictions to churches, schools, libraries, parks and playgrounds apply. Your compliance officer will come out to complete a premise check. Additional documentation such as updated insurance certificates, floor plans and menus may be required as well. When your request is complete, it will be added to the monthly commission meeting agenda.

### Selling the farm...

If you are thinking of selling your business, just remember, licenses may not be sold, bartered, exchanged, or given away or disposed of whether there is a financial gain or not. The new owner or operator must apply for their own DABC license and complete an application. After review of their qualifications, the ABC Commission may issue a new license for the establishment. As part of the process, you will be asked to surrender or relinquish your license upon sale of the business. ♦

## Private Club License Renewals

by Neil Cohen

Club License renewal forms and fees are due on Wednesday, May 31, 2006. This is a month before the actual expiration date printed on your current license. We will mail the renewal packet to you by the end of April. If you do not receive this packet by the first week in May, please call us. The packets contain instructions to qualify for renewal of your license.

### The fees

Renewal fees are based on the annual cost of liquor purchased from the DABC. The 2006 renewal fee will be based on the "cost of liquor" for the FY 2004 or 12 month fiscal year submitted on "Form E - Financial spread sheet" for clubs that renewed for the 2005/2006 period. This figure is cross checked with our department's records of purchases by the club. Once reconciled, this is the figure that the DABC will use to determine renewal fees for this year.

For clubs renewing for the first time or for clubs that do not have a year's worth of cost data, the DABC will calculate the renewal fee based on the projected cost of liquor provided on the pro forma operating statement (sales and cost projections) turned in with the club's original application or on extrapolated partial year data .

**The renewal fees are based on the following schedule:**

<u>Your Gross Cost of Liquor</u>	<u>Your Renewal Fee</u>
under \$10,000	\$1000
\$10,000 to \$24,999	\$1250
\$25,000 to \$74,999	\$1750
\$75,000 or over	\$2250

### The deadline

Please remember, you must send in your completed renewal application by Wednesday, May 31<sup>st</sup>. This deadline is set by the legislature and we can not extend it. If you miss this deadline, you can not renew. You will have to re-apply for your club license. This means you will have to pay an additional application fee (\$250) and initial license fee (\$2500). Please do not wait until the last minute.

*We will accept a postmark up to and including May 31<sup>st</sup> as timely.*

*If you hand deliver the renewal, it must be in to our office by 5 p.m. on May 31.*

You may either hand deliver (by 5:00 pm on May 31<sup>st</sup>) the completed renewal or **we will accept a postmark up to and including May 31<sup>st</sup> as timely.** You do *not* have to pay extra for overnight mail to get it here by May 31<sup>st</sup>. If for some reason you bring your renewal to the post office on May 31<sup>st</sup>, make sure the post office puts that day's postmark on your envelope right there, in front of you, at the window, while you watch. If your local post office is closed, the Salt Lake airport post office is open 24 hours. As long as you get there before midnight on May 31<sup>st</sup>, you can get that date's postmark.

### The "Notice of Delinquency"

Finally, you will be notified *if* you are not in good standing with the Utah Tax Commission (sales tax/payroll withholding), Labor Commission, Division of Industrial Accidents (workers compensation coverage), or Department of Workforce Services (unemployment insurance tax requirements).

You are responsible for calling the agency directly to find out what they want you to do to clear up the delinquency. (See the *Headache Remedy?* article below.) When you satisfy their requirements, they will send us a letter of good standing that will clear your account. Your license can not be renewed if the delinquency is not cleared.♦

*If you receive a notice, please contact the agency at the telephone number listed on the notice to clear the delinquency.*

### Headache Remedy?

by Abe Kader

**D**o you get a headache at license renewal time because you received a "NOTICE OF DELINQUENCY" from a state agency. An effective remedy for this headache is to contact the agency ahead of time so you can resolve your delinquency before the deadline for renewal.

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)

Private club renewals are coming up and all tax delinquencies must be resolved in order to get your license renewed. To prevent a headache, call the agencies listed below to clear up any delinquencies you may have before they are reported to us.♦

Tax Commission - Karen Russell - (801) 297-6318;

Labor Commission - Marilyn Elliot - (801) 530-6831

Department of Workforce Services - Kevin Shingleton - (801) 526-9561



## Banquet Licenses - a Review Course

By Abe Kader

The banquet license is relatively new and available to hotels, resort facilities, and convention and sports centers to provide alcoholic beverages for private banquet functions. It allows the facility to furnish alcohol in any format that best meets the needs of the event organizers such as a cash or hosted bar, or a sit-down dinner function. It also allows hotels and resorts to provide alcoholic beverage room service to their guests. Here's a quick overview:

**1. The Banquet Contract.** Alcoholic beverages are provided under a contract between the banquet licensee and the person organizing the event (banquet host). The contract is for a private banquet function to be held on a specific date and time, and for a pre-arranged, guaranteed number of attendees at a negotiated price. The contract must:

- include the specific location of the event on the premises of the facility;
- specify that the event must be separate from other areas of the facility that are open to the general public;
- require signage at or near the entrance of the banquet function to indicate that the location has been reserved for a specific group.

**2. Reporting Requirement.** Banquet licensees must report known scheduled banquet events and their location to the department at the beginning of each quarter (January 1, April 1, July 1, and October 1) of each year.

**3. Food Ratio.** At least 50% of a banquet licensee's total annual banquet gross receipts must be from the sale of food, not including mix for alcoholic beverages, and alcohol service charges.

### 4. Alcohol Banquet Service.

- The method of dispensing is generally the same as for restaurants with full-service liquor licenses:
  - Primary spirituous liquor in a drink may not exceed one ounce and must be dispensed through a calibrated, metered dispensing system.
  - Secondary liquors used as flavorings may be free-poured, but the overall amount of spirituous liquor in a drink (including flavorings) may not exceed 2.75 ounces.
  - Each person may only have one spirituous drink at a time, and may not have more than two alcoholic beverages of any kind at a time.
  - Wine may be served by the glass not exceeding five ounces. Wine flights are allowed as long as the flight does not exceed five ounces. Wine may also be served by the bottle in containers up to 1.5 liters. (This differs from restaurants which may only serve up to 750 ml bottles to tables of less than four persons.)
  - Heavy beer may be served in original containers not exceeding one liter.
  - 3.2% beer may be served in original

containers or on draft in containers not exceeding two liters to two or more persons. An individual may only be served in up to a one liter portion.

- Alcohol sales and service hours are 10 a.m. to 1 a.m. seven days a week except on election days (sale/service allowed after the polls close). (This differs from restaurants which may serve beer commencing at 10 a.m., but must wait until noon to serve liquor, wine and heavy beer). Alcohol must be locked in storage when sales are not permitted.
- Employees must be at least 21 years of age to sell, serve, dispense, or furnish alcohol. Those serving or supervising the sale of alcohol must complete the alcohol server training seminar, and wear an identification badge.
- An employee of the banquet licensee must be present at all times when alcohol is being sold, served, and consumed.
- Those attending the banquet and the banquet host may not bring alcohol in or remove alcohol from the banquet.
- At the conclusion of the banquet, all unused or unsold alcohol must be removed by the banquet licensee or its employees and either be returned to locked storage for sale at a future banquet event, or destroyed if unsaleable. This inventory may not be used for other purposes (i.e. by a restaurant, club, or beer outlet located at the same hotel, resort, conference center, or sports facility).
- A copy of the banquet license and warning sign must be prominently displayed at each banquet.

### 5. Other Options.

- **Single Event Permits.** Some groups may have obtained a single event permit from the DABC to sell alcohol at a public or private event (i.e. a charitable fundraiser) held on the premises of a hotel, resort, conference center, or sports center that holds a banquet license. In this situation, the group must provide its own alcohol, and the facility's banquet license and license inventory may not be used. However, if the facility has a Type 4 package agency, the group could purchase the alcohol from the agency and have it delivered to the function room by the package agent's staff.
- **Privately Hosted Events or Social Functions.** A banquet license should accommodate the needs of most groups that are conducting private functions. Occasionally, a group may have already purchased alcohol for their private function. If the hotel, resort, conference center, or sports center wants to accommodate this situation, it may do so. However, the facility's banquet license and license inventory may not be used. For a definition of "privately hosted event or social function" see Utah Code Section 32A-1-105(39) which may be viewed on-line at: <http://www.le.state.ut.us/~code/TITLE32A/htm/32A01006.htm>

*Continued on the next page...*

## Banquet Licenses - A Review Course

...Continued from the previous page

### 6. Room Service.

- Alcohol may only be delivered under the banquet license to guest rooms in hotels and resorts in sealed containers. The commission allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service. See Commission Rule R81-4D-13 which may be viewed on-line at: <http://www.rules.utah.gov/publicat/code/r081/r081-04d.htm#T13>
- Alcohol must be personally delivered by an adult banquet license employee to an adult staying in the guest room.
- Alcohol may not be left outside a guest room for retrieval by a guest.
- Alcohol sales hours are 10 a.m. to 1 a.m. seven

days a week, except on election days (sale/service allowed after the polls close). Note that prior to the creation of the banquet license, room service was provided in hotels and resorts under the Type 4 package agency. See Commission Rule R81-3-1. Those hotels and resorts that have retained their Type 4 package agencies will find it preferable to provide room service under their banquet license because the sales hours are more favorable. Type 4 package agency hours are 10 a.m. to 1 a.m., Monday through Friday; 10:00 a.m. until 12:00 midnight on Saturday; and no sales on Sundays or legal holidays. If a holiday falls on a Sunday, the following Monday will be observed as the holiday.♦

## UDABC Licensing Compliance Notice

by Tom Zdunich

UDABC Compliance staff is committed to visiting each of our licensees at least once a year. During that visit we typically check to see that required paperwork is being kept and operational guidelines are being followed. Additionally, we try to answer questions that our licensees might have and provide information that could be of help to our licensees (this includes offering liquor law training for staff if needed). During this scheduled visit, compliance officers will point out any changes that are needed in the alcohol portion of the business to be in compliance.

If it appears that there is a lack of concern on a licensee's part to follow the requirements necessary to maintain the respective license type, or if some of the deficiencies have been previously discussed with the licensee, the UDABC compliance officer may issue a notice of deficiency called a UDABC Licensing Compliance Notice.

The notice will detail the requirements needed to come into compliance and set a date for a follow up visit by the Compliance Officer.

If you receive a Compliance Notice this should indicate to you that there is a serious need for immediate attention to be paid to the items listed on that notice. Additionally, the notice will be part of the documentation needed for additional steps to be taken by the UDABC to bring about compliance.

Fortunately, most of our licensees are very good at making the required adjustments to their operation upon the first request from their respective compliance officer, eliminating the need for issuance of a compliance notice.♦

*The notice indicates that there is a need for immediate attention to correct the compliance deficiencies by a certain date.*

## 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 Chris Johnson in the Licensing & Compliance Division at 801 977-6800.



Stan G. Allen - The Standard  
Anita Anderson - Tony Romas (Sandy)  
Cynthia M Anderton - Applebee's (West Valley)  
Michael R Arcaris - Squatter's Pub  
Braeden M. Brinton - The Standard  
Sara Bryson - Mimi's Café (Orem)  
Deana Bundy - One & Only  
Tonya Capson - Whiskey  
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  
Derek Johnson - Andy's Place  
Charles Lamb - Jeremy Golf & Country Club  
George H Lasater - Eddie McStiff's  
Lacey B. Miller - World Famous Woody's Tavern  
Reggie Murdock - Club Vortex  
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)

Seth Hill - Chili's (St. George)  
Jared B Hileman - Shaggy's Livin Room  
Danielle Sims - Sportsman's Lounge  
"Bubba" - Sportsman's Lounge  
Sarah E Ellis - Alpine Internet Café  
Vincent Laguardia - Alpine Internet Café  
Garret Stein - Applebee's (Cedar City)  
Troy Mattinson - Applebee's (St George)  
Monica M Salazar - Cheater's Lounge  
Eric D Adams - McGrath's Fish house (Salt Lake)

## 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 alcohol violations listed, law enforcement agencies have been very active. PLEASE BE CAREFUL!!

CL = Private Club Liquor  
RE = Full Service Restaurant  
SE = Single Event Permittees

OPB = On-Premise Beer  
RL = Limited Service Restaurant  
BW = Beer Wholesaler

TV = Taverns  
TB = Temporary Beer permittees  
\* = Prior Violation History

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
CL	Cyndi Lammert (employee of Club Rio, Moab)	1. Employee consuming on duty 2. No ID badge	1. Fine of \$100.00 2. Written warning
CL	Room 32, Salt Lake and Crystal Smedley (employee/owner)	2 cases Case #1 1. Sale to minors 2. Non-member entry & sale Case #2 1. Permitting intoxication 2. Selling A/B after hours	Both cases Surrender of the private club license plus costs
BE	Taqueria La Guadalupana, Salt Lake and Socorro M Alvarado (employee)	1. Sale to minors 2. No ID badge	1. 7 day license suspension plus costs 2. Written warning Employee 1. Fine of \$100.00 2. Written warning
CL	A Beuford Gifford's Libation Emporium, Provo and Kevan S Francis (employee)	1. Sale to intoxicated persons 2. Non-member entry & sale	1. 15 day license suspension plus costs 2. Dismissed Employee 1. 15 day suspension and a fine of \$300.00
CL	Atchafalaya, Provo and Betsy J DuBois (employee)	1. Sale to intoxicated persons 2. Non-member entry & sale	1. 15 day license suspension plus costs 2. Dismissed Employee 1. 15 day suspension
TV	Celebrities Bar & Grill, Cedar City	1. Sale after hours	1. Written warning
RE	Chili's St. George and Kate Christianson, Seth Hill and Joanna MacLennan (employees)	1. Allowing a patron to have more than 1 spirituous drink at a time 2. Sale of A/B without an order of food	1. Fine of \$200.00 2. Fine of \$250.00 plus costs Employee Joanna MacLennan 1. Fine of \$25.00 Kate Christianson and Seth Hill will be handled separately.
CL	El Mirador, Ogden and Luis D Hernandez (employee)	1. Sale to minors 2. Minors on the premises of a class "D" club 3. Non-member entry & sale	Merged Counts 1 & 2. 7 day license suspension 3. Fine of \$250.00 plus costs Employee 1. 5 day suspension
RE	Lone Star Steakhouse, Centerville and Heather L Hyatt (employee)	1. Sale to minors 2. Sale of A/B without an order of food	1. 10 day license suspension and a fine of \$2,500.00 2. Fine of \$250.00 plus costs Employee 1. Fine of \$100.00 2. Fine of \$25.00
CL	Rumba Club, Kearns and Faustino Porcayo (employee)	1. Allowing consumption after hours	1. Fine of \$250.00 plus costs Employee 1. Fine of \$25.00
CL	Shaggy's Livin Room, Salt Lake and Jared B Hileman (employee)	1. Giving away free drinks 2. Non-member entry & sale	1. Fine of \$500.00 2. Fine of \$1,500.00 plus costs Employee Handled separately
TV	Sportsman's Lounge, Cedar City and "Bubba", Danielle Sims and Dawn Wright (employees)	1. Sale to intoxicated persons 2. Allowing patrons to leave with open containers	Merged count 1 14 day license suspension plus costs and will not renew the Tavern license Employee Dawn Wright Fine of \$200.00 "Bubba" and Danielle Sims will be handled separately
RE	Toro Moro, St George and Susan Murphy (employee)	1. Open bottles not affixed to a metered dispensing system 2. Unlocked storage 3. Untrained server 4. No ID badge	1. 6 day license suspension 2. Fine of \$150.00 3. Fine of \$250.00 plus costs 4. Written warning Employee 1. Fine of \$25.00 2. Written warning

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
BE	Alpine Internet Café, Park City and Sarah E Ellis and Vincent Laguardia (employees)	1. Sale to minors	1. 5 day license suspension plus costs Employees Handled separately
RE	Applebee's, Cedar City and Garret Stein (employee)	1. Sale to minors	1. Fine of \$3,000.00 plus costs Employee Handled separately
RE	Applebee's, St George and Troy Mattinson (employee)	1. Sale to minors	1. Fine of \$3,000.00 plus costs Employee Handled separately
BE	Big Ed's, Salt Lake and Mary White (employee)	1. Sale to minors	1. 15 day license suspension plus costs Employee 1. 15 day suspension
RL	Cedars of Lebanon and Ashley Klungervik (employee)	1. Sale to minors 2. Wrong ID badge	1. 6 day license suspension plus costs 2. Written warning Employee 1. 6 day suspension 2. Written warning
CL	Cheater's Lounge, Ogden and Monica M Salazar (employee)	1. Sale to minors 2. Minors on the premises of a class "D" club 3. Employee consuming on duty 4. Non-member entry & sale	All counts Surrendered the private club license plus costs Employee Handled separately
RE	La Casa Don Miguel, Cedar City and Rosa L Leon (employee)	1. Sale to minors	1. 5 day license suspension plus costs Employee 1. 5 day suspension
RE	La Casita Mexican Restaurant, Park City and Claudia A Ormazabal-Ponce (employee)	1. Sale to minors	1. 5 day license suspension plus costs Employee 1. 5 day suspension
RE	Lefty's Hideout, Cedar City and Ashley Cooper (employee)	1. Sale to minors 2. Wrong ID badge	1. 6 day license suspension plus costs 2. Written warning Employee 1. 6 day suspension 2. Written warning
RE	McGrath's Fish House, Salt Lake and Eric D Adams (employee)	1. Sale to minors	1. Fine of \$3,000.00 plus costs Employee Handled separately
RE	Mo's, Salt Lake and Shana E Miller (employee)	1. Sale to minors	1. 5 day license suspension plus costs Employee 1. 5 day suspension
CL	Suede, Park City and Dave Roberts, Chuck Sanich, Tony Sapa and Samuel Smith (employees)	1. Sale to minors 2. Minors on the premises of a class "D" club 3. Non-member entry & sale	Merged count 1 & 2. 15 day license suspension 3. Fine of \$500.00 plus costs Employees Dave Roberts: 1. 5 day suspension Chuck Sanich: 2. 5 day suspension 3. Fine of \$35.00 Tony Sapa: 2. 5 day suspension 3. Fine of \$35.00 Samuel Smith: 1. 5 day suspension
BE	Wing Wah Restaurant, Ogden and Shanna D Hughes (employee)	1. Sale to minors 2. No ID badge	1. 6 day license suspension plus costs 2. Written warning Employee 1. 6 day suspension 2. Written warning
BE	Winger's, Brigham City and Daniel B Gonzalez (employee)	1. Sale to minors	1. 5 day license suspension plus costs Employee 1. 5 day suspension

**The Alcoholic Beverage Control Commission meets once a month on the third Thursday of each month. Meeting dates and times are subject to change. Call 801-977-6800 for the current schedule.**

**The meetings are open to the public and are held in the board room at the DABC office building: 1625 S 900 W Salt Lake City.**

## A friendly reminder regarding the procedures for liquor orders

Let's review.....

by **Stephne Pilling**

(1) The licensee must place the order in advance. This allows the department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency. *The store managers understand emergencies come up. The managers are*

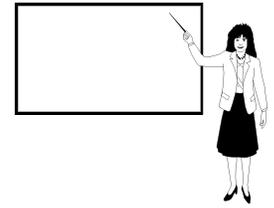
*When merchandise is picked off the shelves by a licensee or employee of a licensee it is against commission rule and could result in a violation.*

*willing to work with the licensee's in certain situations. The store managers ask that you contact them **by phone** regarding your situation and or emergency. Whatever the managers decide, please abide by their decision. Not only is it an inconvenience to the stores when merchandise is picked off the shelves by a licensee or employee of a licensee it is against commission rule and it could result in a violation for the licensee.*

The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity. *A licensee may receive one free copy a month of the price lists from the purchasing division. To be*

*Order the easy and convenient way...order on-line. Contact Tammy Bolte at 977-6800 for more information regarding on-line ordering or if you would like, open an account. Tammy will set you up with a login and password.*

*put on the mailing list, please contact Lorrie Hill at 977-6800. Or better yet, the price lists are available on our website at [www.abc.utah.gov](http://www.abc.utah.gov). Click on Product, click on products and prices, then you may either click on Product Price Book or Product Price List...very easy and convenient.*



(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check, and cashier's check. In the near future, licensees will be able to use a debit card. However, no credit cards are accepted for licensee orders.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items, may, at the discretion of the department, be provided to a licensee on an allocated basis.♦

## Drinking in Space?

Compiled by John Bryant from  
MosNews.com

Russia's Interfax news agency has reported that a ban on alcohol aboard the International Space Station could be lifted in 2006 to allow crews nips of liquor after grueling work assignments.

A Russian official stated: "They fly in orbit for half a year and perform a heavy workload, especially during exhausting space walks when they shed several pounds in weight over a few hours. Many people think a small ration of alcohol would help restore their strength."

Moderate alcohol consumption was tolerated on Russia's Mir space station until it was decommissioned in 2001. But a strict ban has been in place on the International Space Station since Russia and the United States sent the



first joint crew five years ago.

A tentative step to loosen the ban was taken before the New Year when gifts sent on a cargo ship to cosmonaut Valery Tokarev and astronaut William MacArthur were thought to include chocolate liqueurs.

While Russian space controllers may favor allowing modest rations of alcohol, the US space agency, NASA, has insisted that missions must be alcohol free.♦

## A Caution about Gambling

By Earl Dorius

**G**ambling. The Alcoholic Beverage Control Act clearly prohibits gambling and use of gambling devices on any licensed premises. Last year, at the height of the popularity of poker tournaments throughout the country, local prosecutors warned of possible prosecution and a potential suspension or revocation of local licenses. Our department also sent notice to all of our licensees cautioning them about the consequences of allowing gambling on their premises.

B	I	N	G	O
9	27	41	59	68
14	26	43	57	70
5	23	—	55	66
7	30	36	56	67
6	29	42	58	64

Unfortunately, we continue to receive complaints of gambling in various forms on licensed premises (poker tournaments, bingo, pull-tab games, gaming machines, etc.). The complaints are immediately referred to the alcohol enforcement unit of the Department of Public Safety for investigation. If we receive an investigation report of illegal gambling we will take administrative action on the license.

The Utah Attorney General's Office addressed these issues in a letter we mailed to all licensees last year. The following is taken from that letter:



*"Gambling is of concern to the Department [DABC] because the liquor laws make it a violation for any licensee to engage in or permit any form of gambling or have any video gaming device on the premises .... Further, the Utah Alcoholic Beverage Control Commission (Commission) has classified the violation as a "grave" violation, resulting in a penalty range of a suspension of the [alcohol] license from ten days to revocation and/or a fine from \$1,000 to \$25,000 .... [T]he Commission has taken action against licensees in the past for gambling on the premises.*

*The Utah Constitution prohibits the Legislature from authorizing any gambling for any purpose. See Article 6, Section 27, Utah Constitution. Gambling is made a crime and the elements for gambling are defined in Utah Code Ann. §76-10-1101.... In essence, there are three elements to illegal gambling – to the extent that you have all three elements, there is probably illegal gambling; to the extent that one of the elements is missing, you probably do not. Those three elements are that:*

1. *It is among people who have given or agreed to give something of value in order to participate or who are risking anything of value for a return or upon the outcome of a contest, game or scheme;*
2. *There is 'an element' of luck in the game, scheme, or distribution, and*
3. *Something of value may be received.*

*The statute speaks of 'anything of value' and is not limited to cash or money. Rather, anything of value or a promise sufficient to support a contract is sufficient.*

*Poker and card games are generally held to be games of chance and, if the other elements are present, illegal gambling. This is true even though skill at the game may increase the chances of winning. Nonetheless, victory or defeat can turn on the random draw of a card. See D'orio v. Startup Candy Company, 266 P. 1037 (Utah 1920). Thus, if one is playing in a poker or card game, and pays money or risks something of value in order to play and may receive something of value based upon the scheme, that would probably constitute illegal gambling.*

*However, if those other elements were not present, it would probably not constitute illegal gambling. Thus, the Commission has approved 'casino nights' at fund raisers where, while there was the playing of the card games, dice games, or roulette, and the use of chips, no use could be made of the chips and no prizes or money were awarded to winners of the game. Thus, the third element of gambling was not present. Further, if nothing of value is given in order to participate, nothing is risked by the individual, and where it is totally free and no purchase or fee of any kind is required (such as a purchase of a meal or an entry fee or cover charge, see Blair v. Lowham, 276 P. 292 (Utah 1929)), the first element of gambling is not present and illegal gambling is probably not occurring.*

*If the Department receives a report of illegal gambling on the premises of a licensee or permittee, and the Department brings an administrative proceeding against the licensee or permittee, this Office will provide legal advice and assistance to the Department and the Commission in that proceeding."*

**V**ideo Gaming Devices. The Attorney General's Office has also noted that unlike the Utah Criminal Code that makes it a criminal offense to knowingly allow a person to use a "video gaming device" in a business establishment or public place (§76-10-1102(1)(c)), the Alcoholic Beverage Control Act is stricter. It prohibits having any "video gaming device" on the premises of any DABC licensee (see e.g. §32A-5-107(41) (private clubs); 32A-10-206(15) (on-premise beer and taverns); 32A-4-106(23) and -307(23)(restaurants).

*Continued on the next page...*

## A Caution about Gambling

...Continued from the previous page.

A "video gaming device" is defined in §76-10-1101(6) as any device that possesses all of the following characteristics:

1. a video display and computer mechanism for playing a game;
2. the length of play of any single game is not substantially affected by the skill, knowledge, or dexterity of the player;
3. a meter, tracking, or recording mechanism that records or tracks any money, tokens, games, or credits accumulated or remaining;
4. a play option that permits a player to spend or risk varying amounts of money, tokens, or credits during a single game, in which the spending or risking of a greater amount of money, tokens, or credits:
  - (a) does not significantly extend the length of play time of any single game; and
  - (b) provides for a chance of greater return of credits, games, or money; and
5. an operating mechanism that requires inserting money, tokens, or other valuable consideration in order to function.

Therefore, if you have any video machine that has all of these characteristics, it is considered a "video gaming device" and may not be on your premises whether used for gambling or not.



## News from Other States (or Countries)

by John Bryant

On August 9, 2001, the Utah Alcoholic Beverage Control Commission announced new guidelines for the advertising of alcoholic beverages in Utah. One of those guidelines was that alcoholic beverage advertising may not advertise any promotional scheme such as "Happy Hour". It has been shown that consumption is reduced when "Happy Hours" are eliminated.

The BBC News is reporting that as part of a campaign to curb binge drinking, thousands of pubs across the UK are to end "Happy Hour". The ban is being introduced by all 32,000 members of the British Beer and Pub Association.

A spokesman for the Association stated: "Happy

Hours had no place in the industry and pub companies wanted to encourage people to enjoy themselves responsibly. Our members have committed themselves to stop running promotions which can fuel excessive drinking and we're looking for support from the government and the police. Clearly there's been a lot of debate around binge drinking and anti-social behavior and happy hours have been highlighted as one of the reasons for this. That's why we decided to take this step."♦



The DABC website is [www.abc.utah.gov](http://www.abc.utah.gov).

Other links:

• Current and past issues of this newsletter:

[www.alcbev.state.ut.us/license\\_permit/newsletter\\_main.htm](http://www.alcbev.state.ut.us/license_permit/newsletter_main.htm)

• server training information: [www.alcbev.state.ut.us/license\\_compliance/serv\\_train.html](http://www.alcbev.state.ut.us/license_compliance/serv_train.html)

• how to look up a server's training record: [www.dsamh.utah.gov/webapps\\_alcoholserver.htm](http://www.dsamh.utah.gov/webapps_alcoholserver.htm)

• complete price list: [www.alcbev.state.ut.us/Products/products\\_main.html](http://www.alcbev.state.ut.us/Products/products_main.html)



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