



In This Issue

Liquor, Wine, and Heavy Beer Prices	Page 1
by DABC Staff	
Licensee Liquor Ordering Procedures	Page 2
A review by Stephne Pilling	
A 2007 Legislative Update	Page 2
Of alcohol related bills by Earl Dorius	
Club License Renewal Reminders	Page 4
New forms are on the way	
Avoiding Over-Service of Alcohol	Page 5
Some suggestions by Tom Zdunich	
We've been asked	Page 5
Keith Zuspan answers a restaurant question	
Samples and Promotional Tastings	Page 6
Information for Reps and Retailers by Earl Dorius	
Violations and Penalties	Page 7
Chris Johnson provides a summary	
Missing Persons	Page 9
Chris Johnson lists people we need to contact	
Penalties for Returned Checks	Page 9
by Stephne Pilling	
Outdoor Patios and Floor Plan Approval	Page 9
by Al Potvien	
Acceptable Forms of ID	Page 10
by Earl Dorius	
Sales Tax Exemption Certificate	Page 11
Bar Structures and Bar Service in Restaurants . .	Page 13
An update on the laws	

Liquor, Wine, & Heavy Beer Prices

New Information for Licensed Retailers

Starting July 1, 2007, the prices of liquor, wine, and heavy beer at the liquor stores and package agencies will **NO LONGER** include sales tax.

The sales tax will be added at the cash register when members of the general public shop in a liquor store or package agency and bring their purchases to the cash register.

Licensee sales are handled differently than sales to the general public. Licensed retailers (licensees) that buy liquor from the department for resale will now be able to purchase it without paying the sales tax.

However, the DABC Commission has established rules for liquor ordering procedures that must be followed. These rules establish licensee sales procedures. As of July 1, 2007, the liquor stores will no longer charge sales tax to licensees who order correctly by following the licensee sales procedures. These procedures are summarized in the article below.

Licensees that do not purchase through the licensee sales system and who make a purchase at the cash register would not only violate the commission rule, but would be charged sales tax just like the general public. The sales tax is automatically added at the cash register and can not be subtracted.

Purchasing liquor without the sales tax added will allow licensees to charge sales tax to the ultimate consumer on the total amount of the liquor, wine, and heavy beer purchase, just as they do for food and 3.2% beer.

New Information for Package Agencies

Package agencies (Types 1,2,3,4,and 5) that buy liquor from the department (liquor store or warehouse) for resale will now be able to purchase it without paying the sales tax. Each package agency will be responsible for collecting the sales tax at the register and remitting it directly to the State Tax Commission. *...Continued on the next page*

Liquor, Wine, & Heavy Beer Prices

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Exemption Certificate

Licenses and Package Agencies that buy liquor, wine, and heavy beer from the DABC must file tax commission form TC-721 with the DABC. This form is printed on pages 11 and 12 of this newsletter. It can also be accessed at the tax commission website:

www.tax.utah.gov/forms/index.html or specifically at:

<http://www.tax.utah.gov/forms/current/tc-721.pdf>. Once

filed, the licensee and package agency can buy liquor, wine, and heavy beer exempt from sales tax at any DABC owned and operated state liquor store.

If a licensee buys from a local package agency that is a "contracted store" (not owned or operated by the DABC such as Parowan, Beaver, or Spanish Fork), the licensee has to file form TC-721 with the package agency in order to be able to purchase "sales tax exempt".

All package agencies will be contacted by the Tax Commission and furnished with the appropriate forms to file. If package agencies have any questions about this procedure, they can contact the Stores and Agency Division of the DABC (801-977-6800, or 800-333-2921) or the Tax Commission directly: Amy Hill at 801-297-2200.♦

Licensee Liquor Order Procedures

by Stephne Pilling

(1) Commission rule requires that a licensee must place the order in advance to allow 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 to fill the licensee's order. 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.

(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, cashier's check, or debit card with a PIN.

(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.

The liquor store managers understand emergencies come up. The managers are willing to work with the licensees 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.

Remember, licensees that make purchases at the cash register will be charged sales tax just like the general public.

A licensee may receive one free copy a month of the price lists from the purchasing division. To be put on the mailing list, please contact Lorrie Hill at 977-6800. Or better yet, the price lists are available on our website: 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.

Another easy and convenient way to order is to use our on-line ordering program. 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.♦

2007 Legislative Update

By Earl Dorius

Alcohol-related bills that PASSED during the 2007 Legislative Session:

S.B. 205 - Alcoholic Beverage Control Amendments

(most amendments become effective April 30th) The text of the enrolled bill can be found here: <http://le.utah.gov/~2007/bills/sbillenr/sb0205.htm>

► CONTROLS TO PREVENT UNDERAGE DRINKING

- Unlawful for a minor to gain or attempt to gain admittance into a tavern or class D private club (except where expressly allowed by law)
- Allows for suspension of driving privileges of minors who commit alcohol-related crimes
- Sets a minimum age (16) to ring up alcoholic beverages at a cash register
- Prohibits a minor from working for a local industry liquor representative
- Makes technical amendments to the E.A.S.Y. (Eliminate Alcohol Sales to Youth) law by better defining "off-premise beer retailer", and clarifying the Highway Safety Office reimbursement provisions for compliance checks done by local law enforcement agencies on the premises of off-premise beer retailers)



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2007 Legislative Update

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S.B. 205 - ALCOHOLIC BEVERAGE CONTROL AMENDMENTS continued

- ▶ **ATTIRE, CONDUCT, AND SEXUALLY-ORIENTED ENTERTAINMENT RESTRICTIONS**
 - Defines “nudity,” “semi-nudity,” and “sexually-oriented entertainer”
 - Prohibits nudity, and sex acts on any licensed premise
 - Prohibits alcohol servers & those that mingle with patrons from being nude or semi-nude
 - Allows semi-nude entertainment only in class D private clubs and taverns (under guidelines that: (1) ensure separation of entertainers from patrons; (2) prohibit minors from being present; (3) restrict visibility into the premises; and (4) require outside entrance doors to remain unlocked)
 - Centralizes all sexually-oriented provisions in Chapter One of the ABC Act
- ▶ **ON-PREMISE BEER AMENDMENTS**
 - Prohibits an on-premise beer licensee or its employees or agents from buying a beer for a patron
 - Prohibits a tavern from closing or ceasing operations without notifying and receiving approval from the DABC
- ▶ **ADMINISTRATIVE CHANGES & TECHNICAL AMENDMENTS**
 - Changes the liquor pricing structure in a way that is (1) *revenue neutral*; (2) allows for the accurate collection of sales tax; (3) allows licensees to purchase liquor for resale tax exempt; and preserves full funding for the school lunch program (**this provision becomes effective on July 1st**)
 - Allows DABC state stores and package agencies to list their address and phone number in business, yellow page, and electronic directories
 - Modifies the disciplinary procedures for adjudicating violations (sets standard of proof, requires formal hearings in more serious cases, allows department to file objections, & clarifies extent of administrative costs)
 - Modifies the standard of judicial review of commission decisions
 - Terms of no more than two commissioners expire in a single fiscal year
 - Department director may be replaced by a vote of four commissioners
 - Adopts the Uniform Electronic Transactions Act for purchases by the DABC of spirits, wine, and heavy beer
 - Clarifies that the 200 milliliter limitation on container sizes purchased by the DABC for resale applies only to spirituous liquor (32A-1-116)
 - Corrects two drafting errors in the banquet catering license chapter (32A-4-401 and 32A-4-406)
 - Relocates provisions relating to the production of alcohol for non-beverage purposes from the manufacturing license chapter to the special use permit chapter (32A-6-302)

H.B. 273 - INDOOR SMOKING AMENDMENTS

- ▶ Permits smoking in class B private clubs (fraternals) until January 1, 2009 if:
 - the club was licensed prior to May 15, 2006; or
 - the club was licensed prior to May 15, 2006 and undergoes a change of ownership after that date; and
 - no minors are allowed in the club unless they are active military
- ▶ Amends provisions for class D social clubs and taverns that were licensed prior to May 15, 2006, to permit those that undergo a change in ownership after May 15, 2006 to retain their smoking status until January 1, 2009.

H.B. 104 - GAMBLING ACTIVITIES

- ▶ In addition to current law that prohibits DABC licensees and permittees from engaging in or permitting any form of gambling on the premises, or having any video gaming device on the premises, they also may not:

“engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.”

H.B. 150 & S.B. 3 - APPROPRIATIONS

- ▶ Continues the appropriation to fund the Eliminate Alcohol Sales to Youth (E.A.S.Y.) compliance check program and media & educational campaign.

S.B. 51 - ALCOHOLIC BEVERAGE ENFORCEMENT AND TREATMENT RESTRICTED ACCOUNT

- ▶ Expands the list of state agencies that may be awarded grants by the Utah Substance Abuse and Anti-Violence Coordinating Council to also include: the Department of Alcoholic Beverage Control, the Department of Human Services, and the Utah State Office of Education.♦

Private Club License Renewal Forms are Revised

by Neil Cohen

Club License renewal forms and fees are **due on Thursday, May 31, 2007**. 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 for some reason you do not receive this packet by the first week in May, please call us. The packets contain instructions as to what items must be completed and submitted in order to qualify for renewal of your license.

The renewal forms have been redesigned and should be easier to complete. **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 if the data has changed or is incomplete.**

In addition to the renewal application forms, you will also be asked to submit:

- A copy of your local (city, town, or county) business/alcohol license
- A certificate of general liability and liquor liability insurance
- A completed alcohol server training & ID badge form (provided in the packet as Form D). Now would be a good time to contact trainers if you need to schedule a class. A list of approved programs is on-line at: <http://www.dsamh.utah.gov/stateapprovedproviders.htm>
- The financial spreadsheet form provided in the packet as Form E.

The fees

Renewal fees are based on the annual cost of liquor purchased from the DABC. Clubs that have been in operation for a year or more have submitted this figure to the DABC on the "Form E - Financial Spreadsheet" under "cost of sales - liquor". The figure, cross checked with our department's records of purchases by the club, is the figure that the DABC uses 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 projections made from 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 or hand in your completed renewal application by **May 31**. 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 5:00pm on May 31**) the completed renewal or **we will accept a postmark** up to and including **May 31** as timely.

Tax delinquencies

Licensees must be in good standing with The Utah Tax Commission, 801-297-6229 (sales tax/payroll withholding), Labor Commission, Division of Industrial Accidents, 801-530-6831 (workers compensation coverage), and the Department of Workforce Services, 801-526-9561 (unemployment insurance tax requirements) in order to qualify for renewal. If you are not in good standing, you may want to contact them now to find out what you need to do to clear up the delinquency.♦

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. Telephone: 801-977-6800, Fax: 801-977-6888, e-mail: abcmain.hotline@utah.gov Website: www.abc.utah.gov
Download a copy of the newsletter at: http://www.abc.utah.gov/license_permit/newsletter_main.htm

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Violations for Over-serving of Alcohol Seem to Be on the Rise

by Tom Zdunich

In the last issue of this newsletter, nine of the 25 violations listed (36%) involved the sale of alcohol to intoxicated persons. These cases are often the result of the State Department of Public Safety conducting a SIP-Op (Serving Intoxicated Persons) operation. If a SIP-Op is performed on a licensee's premises, it is usually because of **a pattern of DUI arrests associated with a particular business, an automobile homicide, a referral from local law enforcement, or a verified citizen complaint.**

Aside from the impact that over-serving alcohol can have on public safety, there's the impact on the business due to lost sales brought about by a violation.

Here are some steps that can be taken to avoid such violations.

➤ **Schedule routine training.** Take advantage of the training that is offered by DABC staff and others that can give you and your associates additional knowledge about responsible service of alcohol. Routine training keeps your associates focused on their role in carrying out the required steps in prohibiting over-service of alcohol.

➤ **Listen to your associates.** Often we receive calls from employees of licensees pertaining to observed violations that are taking place on the licensed premises. Our response is generally one that asks the caller if they have brought the observed violation to the attention of management. In many cases, the caller will say that they did and that management acted "unconcerned". Any complaints you receive from associates pertaining to possible violations, should be taken seriously.

➤ **Be responsive to complaints from your neighbors.** Many of the businesses and residents in your immediate area need to know that you have concern for them and their businesses as well as your own business. They should feel that they can call you with their concerns about any patrons of your business that exhibit *abnormal behavior brought about by alcohol consumption* and that you will be responsive to them.

➤ **Do not distance yourself from local law enforcement.** Often times the local police department might be able to give you general feedback on what observations have been made on and around your premises.

➤ **Solicit comments.** Most progressive businesses are not afraid to ask their customer base for comment from time to time about such things as customer service, atmosphere, pricing etc. You might be surprised to find out that some customers will freely tell you about possible problems that might include over-service of alcohol.

If you have received a violation for selling alcohol to intoxicated persons, keep in mind that SBI performed the Sip Op on your premises for a reason. **Do not develop a "picked on" attitude.** If such a sentiment is passed on to the associates in your establishment, the resulting focus will be on the past violation and not the prevention of future violations.

Written responsible alcohol service plans are now required by the DABC when a licensee is found in violation for *service of alcohol to a minor* or for *selling alcohol to an intoxicated person*. In addition to the above mentioned steps, implementation of your own responsible alcohol service plan now could help you avoid these types of violations in the future.♦

We've Been Asked by Full Service Restaurants.... How Many is "Two" Many?

by Keith Zuspan

One question received from full service licensed restaurants is "How many drinks may a customer have in front of them?". A 2003 change in the law allows a restaurant patron to have no more than two alcoholic beverages of any kind at a time before them with the exception of *spirituous drinks*. A patron may have no more than one spirituous liquor drink at a time before the patron.

What does spirituous mean? Spirituous beverages are drinks made with distilled spirits, i.e. Bourbon, Scotch, Vodka, Gin, Rum, Tequila, Brandy, Grappa, or as some people would say "hard liquor".

So what combination of drinks can be served or be in front of a customer? A customer may have any combination of drinks (up to two) that do not include two distilled or "hard liquor" drinks. Some examples are:

2 beers	2 heavy beers (liquor store beer)
1 beer and a shot	1 heavy beer and a shot
1 beer and a mixed drink	1 heavy beer and mixed drink
1 beer and a glass of wine	1 heavy beer and a glass of wine
2 glasses of wine	1 glass of wine and a mixed drink

This may be a lot to swallow but if you have questions, don't hesitate to talk to your manager or give the compliance division a call.♦

Reminder to Local Industry Representatives & Retailers: Providing Samples & Conducting Promotional Tastings Are Illegal

by Earl Dorius

Over the last several years, the DABC has issued many new licenses to local industry representatives, and has seen an increase in the number of new employees that are working for brokers. Unfortunately, we are receiving numerous complaints from other industry representatives that some in the business are not fully complying with Utah's trade practice laws that prohibit providing samples and conducting promotional tastings with retailers.

Most of the complaints relate to others providing wine samples to restaurant and club licensees to promote their products. Some industry representatives and their employees mistakenly think that these practices are legal as long as they purchase the product from the state at full retail. Not so. Here's the law:

PROVIDING PRODUCT. Under Utah's trade practice laws, it is unlawful for any industry member [including their local representatives], directly or indirectly or through an affiliate, to induce a retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any competitor's products by furnishing, giving, or selling to the retailer any "thing of value." 32A-12-603(3). While there are exceptions to this general principle, none of them allow industry members to provide alcoholic beverage products to retailers. Indeed, 32A-12-603(4)(b)(ii) expressly states:

"The following exceptions provided in federal law are not adopted: (A) the exception for samples provided in 27 C.F.R. Sec. 6.91; (b) the exception for consumer tasting or sampling at retail establishments provided in 27 C.F.R. Sec. 6.95; and (c) the exception for participation in retailer association activities [e.g. industry member displaying its products at a retailer convention or trade show] provided in 27 C.F.R. Sec. 6.1000."

Section 32A-12-606 similarly provides that it is unlawful for any industry member to give away any of its alcoholic products to any person for promotional purposes. This does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served as part of a promotion of its products, or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

Thus, it is unlawful to promote products by providing retailers with alcoholic products regardless of

whether they are purchased from the state at full retail, or are provided directly from the manufacturer or supplier from outside the state. Indeed, the latter situation would also violate Utah's unlawful importation, possession and shipping laws.

PROMOTIONAL TASTINGS. Promotional tastings where industry members provide the product to retailers and their employees are not allowed. Commission Rule R81-12-2 allows industry members to participate in tastings only in the narrow context of educational seminars hosted by others. It precludes industry members from directly or indirectly hosting, organizing, or otherwise arranging for the seminar. Seminars may be hosted by retailers to educate themselves and their employees of the general qualities and characteristics of alcoholic beverages. However, the seminars may not be used by industry members to introduce retailers to new products which are not presently listed by the department for sale in this state. Products must be purchased at full retail by the host of the seminar (i.e. the retailer) and may not be directly or indirectly furnished or otherwise provided by the industry member.

PENALTIES. These laws apply to all industry members including local industry representatives and their employees and agents. The penalties for violating these laws include criminal sanctions, administrative fines, a suspension or revocation of the industry representative's license, the removal of the industry member's products from the department's sales list, and a suspension of the department's purchase of the products. If the violator is convicted of a trade practice offense, he or she may be disqualified from continuing to hold a license with the DABC. If the license is revoked, the licensee may not reapply for a license for at least three years.

RETAILERS ALSO MAY BE LIABLE. Retailers could be criminally liable for successfully urging industry representatives to violate these laws (i.e. by pressuring them to provide the retailer with free samples). Under Utah's criminal code, if a retailer agrees with the industry member to engage in or cause the performance of the conduct constituting a crime, and the retailer or industry member commits an overt act in pursuance of that crime, the retailer may be criminally culpable as a co-conspirator for the commission of that crime. Utah Code 76-4-201.

Also, 32A-12-208 makes it unlawful for any person (including a retailer or the retailer's officer, manager, employee, or agent) directly or indirectly to take, or accept any alcoholic beverage or product from any other person, except to the extent allowed by the Alcoholic Beverage Control Act or rules of the commission.♦

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 Permittees
 SE = Single Event Permittees BW = Beer Wholesaler AL= Airport Lounge

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
RE	Allie's American Grill, Salt Lake and Joel McClung (employee)	1. Sale to minors	1. 10 day license suspension plus costs
RE	Applebee's, Orem and Jared Leming and Susan Pontius (employees)	1. Allowing patrons to leave with open containers 2. Sale of A/B not in connection with an order of food	1. 6 day license suspension 2. Fine of \$250.00 plus costs
BE	Callie's Café, Orem	1. Sale to intoxicated persons	1. 18 day license suspension plus costs
RL	Cedars of Lebanon, Salt Lake and Justin Kramer (employee)	1. Sale to minors *	1. 12 day license suspension plus costs
RE	Eddie McStiff's, Moab and Jake Warren (employee)	1. Sale to minors *	1. 10 day license suspension plus costs
RE	Fiesta Guadalajara, Layton	1. Liquor bottles on the premises with no DABC labels	1. 90 day license suspension plus costs
RE	Krewson's Sunrise Café & Sunset Grille, Salt Lake and Jacob C Richens (employee)	1. Sale to minors 2. Allowing patrons to leave with open containers 3. Selling & allowing consumption at a bar 4. Sale of A/B not in connection with an order of food 5. No ID badge	1. 7 day license suspension 2. 7 day license suspension 3. Fine of \$250.00 4. Fine of \$250.00 plus costs 5. Written warning
RE	Palms @ Holiday Inn, St George and Alicia Bowman (employee)	1. Sale to minors	1. 5 day license suspension plus costs
RE	Red Lobster, Orem and Isaac Seborn (employee)	1. Allowing patrons to leave with open containers 2. Sale of A/B not in connection with an order of food	1. 6 day license suspension 2. Fine of \$250.00 plus costs
CL	Benjamin G Smith (former employee of Twilite Club, Salt Lake)	1. Sale to minors 2. Allowing minors on the premises of a class "D" club 3. Sold a visitor card to a minor	Merged counts 1 & 2. Fine of \$150.00 3. Fine of \$25.00
CL	Reggie Murdock (employee of Club Vortex, Salt Lake)	1. Sale to minors	1. 5 day suspension
BE	Barbacoa Mexican Grill, Draper and Devin Day (employee)	1. Sale to minors 2. No ID badge	1. 6 day license suspension plus costs 2. Written warning
CL	Big Dogs Club, Price	1. Minors on the premises of a class "D" club	1. Fine of \$500.00 plus costs
TV	Lazy Dog Saloon, Riverton and Jaycee Meyer (employee)	1. Sale to intoxicated persons	1. 25 day license suspension plus costs
TV	Varebena White (former employee of B & G Pool Hall, Salina)	1. Sale after hours 2. Allowing consumption after 2am 3. Allowing patrons to leave with open containers	1. Fine of \$25.00 2. Fine of \$25.00 3. Fine of \$100.00
TV	B & G Pool Hall, Salina and Varebena white (employee)	1. Sale after hours 2. Allowing consumption after 2am 3. Allowing patrons to leave with open containers	1. Fine of \$250.00 2. Fine of \$250.00 3. 7 day license suspension plus costs
CL	Celebrities Bar & Grill, Cedar City	1. Possession of illegal liquor 2. Purchased, acquired or possessed beer not purchased from a beer wholesaler	1. 10 day license suspension 2. 11 day license suspension plus costs
RE	Don Jose Mexican Restaurant, St George and Laurie A Johnson (employee)	1. Sale to minors	1. 5 day license suspension plus costs

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
TV	El Tenampa, Ogden	1. Allowing patron to dispense own A/B 2. Permitting intoxication 3. Service to a minor 4. Minors on the premises of a tavern	1. Dismissed 2. 5 day license suspension and a fine of \$1,000.00 3 & 4. 6 day license suspension plus costs
BE	Los Coyotes, Kearns	1. Permitting intoxication 2. Selling A/B after legal selling hours 3. Allowing consumption after 2am 4. Engaging in false statement calculated to induce A/B sales 5. No ID badge	1. 5 day license suspension plus costs 2-5. Dismissed
RE	Eric D Adams (former employee of McGrath's Fish House, Salt Lake)	1. Sale to minors	1. Fine of \$100.00
BE	Pizza Hut, Park City and Jose Duran (employee)	1. Sale to minors	1. 5 day license suspension plus costs
CL	Renegade Lounge, Beaver and Debbie Buckner (employee)	1. Sale to intoxicated persons 2. Allowing patrons to leave with open containers	1. 10 day license suspension 2. 6 day license suspension plus costs
RL	Siegfried's Delicatessen, Salt Lake and Tonya Rapp (employee)	1. Allowing patrons to leave with open containers 2. No ID badge 3. No warning sign displayed	1. Fine of \$600.00 2. Written warning 3. Dismissed
RE	Sullivan's Rococo Steakhouse & Motel, St George and Mindy Young (employee)	1. Sale to minors	1. 5 day license suspension plus costs
TV	Sunset West Bowling Center, St George and Jason M Green (employee)	1. Sale to intoxicated persons 2. Allowing patrons to leave with open containers	1. 32 day license suspension 2. 8 day license suspension plus costs
CL	Timbers @ Park City Marriott, Park City and Barry Strom (employee)	1. Sale to minors 2. Minors on the premises of a class "D" club 3. Non-member entry & sale	1. Merged counts 1 & 2. 7 day license suspension 3. Fine of \$250.00 plus costs
CL	Tracks Brewing, Tooele and Dayne Applegate (employee/owner)	1. Stage approval not received 2. Attire & conduct violation 3. Attire & conduct violation 4. Allowing lewd acts 5. Attire & conduct violation 6. Sale to intoxicated persons 7. Purchasing A/B for a patron 8. Failure to charge for memberships	1-5. 18 day license suspension 6. 20 day license suspension 7. Dismissed 8. Fine of \$250.00 plus costs
CL	Wee Blu Inn, Payson and Diane Johnson (employee/owner)	1. Gambling on the premises 2. Unlocked storage	1. 20 day license suspension plus costs 2. Dismissed
RL	Atlantic Pizza & Deli, Park City and Joe Walker (employee)	1. Sale to minors 2. No ID badge	1. 6 day license suspension plus costs 2. Written warning
TV	Cotton Bottom Inn, Holladay and Sharon Reidel (employee)	1. Sale to minors	1. Fine of \$3,000.00 plus costs
RE	Skybox Sports Grille, Salt Lake and Mike Zangrilli (employee)	1. Allowing patrons to leave with open containers	1. 5 day license suspension plus costs

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 S 900 W, Salt Lake City. Call 801-977-6800 for the current schedule.



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
 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
 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
 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
 Joel McClung - Allie's American Grill (Salt Lake)
 Jared Leming - Applebee's (Orem)
 Susan Pontius - Applebee's (Orem)
 Jake Warren - Eddie McStiff's
 Alicia Bowman - Palms @ Holiday Inn
 Isaac Seborn - Red Lobster (Orem)
 Laurie A Johnson - Don Jose Mexican Restaurant
 Jason M Green - Sunset West Bowling Center

Penalties for Returned Checks

By Stephne Pilling

The consequences of having a check returned can be as simple as a \$20 returned check charge and being placed on COD or as serious as a license **revocation** and **forfeiture** of a bond.

If a suspension is imposed and the face value of the check plus the \$20 returned check charge is not paid, it could result in a revocation. The rule states that "Failure to make good the returned check and pay the twenty dollars returned check charge 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 (6)]

Checks are returned for the following reasons: (1) insufficient funds, (2) refer to maker (3) account closed or (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 a person tendering the check..." [R81-1-3 (6)]

If a check is returned, accounting will notify the compliance officer the amount of the check plus the twenty dollars. It is imperative the check and returned check charge are paid with a cashiers check, cash or money order immediately.♦

Summer on the Patio / Dining Outdoors

by Al Potvien

At this time of year as the weather becomes more favorable, some licensees may want to offer outdoor / patio dining that includes the service of alcoholic beverages. If this has not been previously done, you will likely need the department to approve a revised floor plan.

During each license renewal period, one of the questions asked on the renewal forms is whether there have been any changes to the physical layout of the licensed premises, and if so, whether the department has been notified and a current floor plan filed. Additionally, when we conduct inspections floor plans are reviewed to ensure that they cover all areas relating to the sale, storage, service and consumption of alcohol beverages.

The law requires each licensee to file with the

department a current floor plan or drawing of their facilities highlighting areas where alcohol is sold, stored, served, and consumed. Alcoholic beverages may not be sold, stored, served, or consumed in any place other than as designated in the licensee's file, unless approval from the department has been obtained to modify the floor plan.

Remember when planning to add an outdoor patio area or expanding or altering your premises, contact the department in advance for review. Outdoor areas must be connected to the existing premises so that there is a clearly defined perimeter, and access in and out may be controlled and alcohol service monitored. Finally, be sure to check with your local authority or local business licensing offices to see if there are any local requirements that may apply.♦

What Forms of ID Are Acceptable?

By Earl Dorius

In our last newsletter, we ran an article listing the new security features the Utah Driver's License Division has added to driver licenses, driving privilege cards, and state ID cards in an effort to reduce the use of false IDs. The article also mentioned in passing that the driving privilege card issued to those who cannot provide a Social Security number is not an acceptable form of identification for proof of age to purchase liquor "*in state stores and agencies*" (referencing Section 53-3-207 of the Utah Driver Licensing Act).

Some of our clubs, taverns, and restaurants have construed this to mean that they too may not accept a driving privilege card as an acceptable form of proof of age. That is not what Section 53-3-207 says. It prohibits a "*governmental entity*" from accepting the card as proof of personal identification.

Governmental entities include the state and its offices, departments, agencies, boards, commissions, institutions, hospitals, colleges, universities. They also include political subdivisions of the state such as counties, cities, towns, and school districts. Because the DABC is a department of state government, it may not accept the driving privilege card as proof of ID in its stores and package agencies.

Similarly, if the actual holder of a DABC license is a governmental entity such as a city or county that owns and operates a concession that sells alcohol, the city or county cannot accept the card as proof of personal identification.

The Alcoholic Beverage Control Act does *not* require that licensees check identification before allowing persons to enter drinking establishments, or before selling or serving them alcohol. But it *does* require that licensees not sell or furnish alcohol to persons under 21.

Therefore, it makes sense that a licensee have its own policy requiring some form of ID, and that the ID is sufficiently reliable to avoid selling to a minor. In deciding whether to accept the driving privilege card as proof of age, here are some things to consider:

• The driving privilege card does contain a photograph and description of the person, name, birth date, Utah residence address, and a distinguishing number. It also has an under 21 age identifier. As stated earlier, the newer cards also will have the added security features to try to prevent

falsification of the cards. However, by law, 53-3-207 requires that the driving privilege card contain a cautionary phrase that substantially reads: "FOR DRIVING PRIVILEGES ONLY – NOT VALID FOR IDENTIFICATION". Note on the sample below, the Driver License Division has worded the phrase more narrowly to read: "NOT VALID IDENTIFICATION FOR UTAH GOVERNMENT ENTITY."

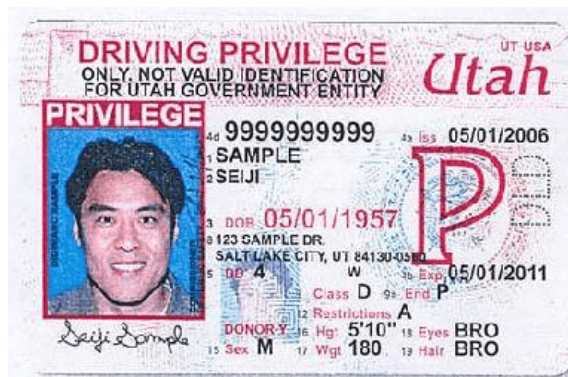
• The Alcoholic Beverage Control Act has provisions relating to "proof of age" that expressly allows a licensee to ask for and accept as evidence of legal age the following "proof of age" documents:

1. a **valid driver license certificate** that includes date of birth, has a picture affixed, and is issued under the Uniform Driver License Act or in accordance with the laws of the state in which it is issued;
2. an **identification card** that includes date of birth, has a picture affixed, and is issued under the Utah Identification Card Act (Title 53, Chapter 3, Part 8), or an identification card that is substantially similar issued in accordance with the laws of another state;
3. a **military identification card** that includes date of birth and has a picture affixed; or
4. a **valid passport**

If, after examining any of these "proof of age" documents, the licensee still questions the person's age, the licensee may require the person to sign a "**statement of age form**" provided by the Department of Public Safety. The form may be offered as a defense in any case where the legality of selling or furnishing alcohol to the person is at issue.

These laws were enacted to provide some protection to licensees who ask for these particular forms of ID. A person may not be subject to a penalty for a violation of these proof of age provisions if it is proved that the person charged with a violation acted in good faith.

Notably, the driving privilege card is not included among this list of documents to establish "proof of age". See 32A-1-301 to -305 and definition of "proof of age" in 32A.♦



Utah State Tax Commission Exemption Certificate (Sales, Use, Tourism and Motor Vehicle Rental Tax)		TC-721 Rev. 5/06	
Name of business or institution claiming exemption (purchaser)		Telephone Number	
Street Address	City	State	ZIP Code
Authorized Signature	Name (please print)	Title	
Name of Seller or Supplier:			Date

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed. Questions should be directed (preferably in writing) to Taxpayer Services, Utah State Tax Commission, 210 N 1950 W, Salt Lake City, UT 84134. Telephone (801) 297-2200, or toll free 1-800-662-4335.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION
Keep it with your records in case of an audit.

Sales tax account numbers with an "H" prefix are not to be used for tax-free purchases for resale or re-lease.

RESALE OR RE-LEASE

Sales Tax License No. _____

I certify I am a dealer in tangible personal property or services that is for resale or re-lease. If I use or consume any tangible personal property or services I purchase tax free for resale, or if my sales are of food, beverages, dairy products and similar confections dispensed from vending machines (see Rule R865-19S-74), I will report and pay sales tax on the proper cost thereof directly to the Tax Commission on my next regular sales and use tax return.

AGRICULTURAL PRODUCER

I certify the items purchased will be used primarily and directly in a commercial farming operation and qualify for the Utah sales and use tax exemption.

COMMERCIAL AIRLINES

I certify the food and beverages purchased are by a commercial airline for in-flight consumption; or, any parts or equipment purchased are for use in aircraft operated by common carriers in interstate or foreign commerce.

COMMERCIALS, FILMS, AUDIO AND VIDEO TAPES

Sales Tax License No. _____

I certify that purchases of commercials, films, prerecorded video tapes, prerecorded audio program tapes or records are for sale or distribution to motion picture exhibitors, or commercial television or radio broadcasters. If I subsequently resell items to any other customer, or use or consume any of these items, I will report any tax liability directly to the Tax Commission.

FILM, TELEVISION, VIDEO

I certify that purchases, leases or rentals of machinery or equipment will be used by a motion picture or video production company for the production of media for commercial distribution.

MEDICAL EQUIPMENT

I certify the equipment or device checked below is prescribed by a licensed physician for human use.

- Durable Medical Equipment primarily used to serve a medical purpose, is not worn in or on the body, and is for home use only. (Sales of spas and saunas are taxable.)
- Mobility Enhancing Equipment primarily used to increase the ability to move from one place to another, is for use in a home or motor vehicle and is not used by persons with normal mobility.
- Prosthetic Device used to replace a missing portion of the body, to prevent or correct a physical deformity/malfunction or support a weak or deformed portion of the body. (Sales of corrective eyeglasses, contact lenses and dental prostheses are taxable.)

CONSTRUCTION MATERIALS PURCHASED FOR SCHOOLS OR RELIGIOUS AND CHARITABLE ORGANIZATIONS

I certify the construction materials purchased are on behalf of a public elementary or secondary school or religious or charitable organization. I further certify the purchased construction materials will be installed or converted into real property owned by the school or religious or charitable organization.

Name of school or religious or charitable organization: _____

Name of project: _____

ENERGY-RELATED EQUIPMENT

Sales Tax License No. _____

I certify the machinery or equipment leased or purchased will be used to create or expand the operations of a renewable energy production facility, a waste energy production facility, or a facility that produces fuel from biomass energy.

FUELS, GAS, ELECTRICITY

Sales Tax License No. _____

I certify all natural gas, electricity, coal, coke, and other fuel purchased will be used for industrial use only and not for residential or commercial purposes.

MUNICIPAL ENERGY

Sales Tax License No. _____

I certify the natural gas or electricity purchased: is for resale; is prohibited from taxation by federal law, the U.S. Constitution, or the Utah Constitution; is for use in compounding or producing taxable energy; is subject to tax under the Motor and Special Fuel Tax Act; is used for a purpose other than as a fuel; is used by an entity exempted by municipal ordinance; or is for use outside a municipality imposing a municipal energy sales and use tax. The normal sales tax exemptions under Utah Code §59-12-104 do not apply to the Municipal Energy Sales and Use Tax.

POLLUTION CONTROL FACILITY

Sales Tax License No. _____

I certify our company has been granted a "Certification of Pollution Control Facilities" as provided for by Utah Code §§19-2-123 through 19-2-127 and as explained in Tax Commission Rule R865-19S-83 by either the Air Quality Board or the Water Quality Board. I further certify each item of tangible personal property purchased under this exemption is qualifying machinery or equipment for this purpose.

LEASEBACKS

I certify the tangible personal property leased satisfies the following conditions: (1) the property is part of a sale-leaseback transaction; (2) sales or use tax was paid on the initial purchase of the property; and, (3) the leased property will be capitalized and the lease payments will be accounted for as payments made under a financing arrangement.

STEEL MILL

Sales Tax License No. _____
I certify the rolls, rollers, refractory brick, electric motors or other replacement parts will be used in the furnaces, mills or ovens of a steel mill as described in Standard Industrial Code (SIC) 3312.

 MAILING LISTS

Sales Tax License No. _____
I certify the printed mailing lists or electronic databases are used to send printed material that is delivered by U.S. mail or other delivery service to a mass audience where the cost of the printed material is not billed directly to the recipients.

 MACHINERY AND EQUIPMENT AND NORMAL OPERATING REPAIR OR REPLACEMENT PARTS USED IN A MANUFACTURING FACILITY

Sales Tax License No. _____
I certify the machinery or equipment or normal operating repair or replacement parts purchased have an economic life of three years or more and are for use in a Utah manufacturing facility described within the SIC Codes of 2000-3999, in a qualifying scrap recycling operation, or in a cogeneration facility placed in service on or after May 1, 2006. **A separate exemption certificate must be presented for each subsequent purchase, at the time of purchase.** Failure to report these purchases on the information line of the manufacturer's sales and use tax return may subject the manufacturer to a penalty equal to the lesser of \$1,000 or 10 percent of the sales and use tax that would have been imposed if the exemption had not applied.

 SEMICONDUCTOR FABRICATING, PROCESSING, OR RESEARCH AND DEVELOPMENT MATERIAL

Sales Tax License No. _____
I certify the fabricating, processing, or research and development materials purchased are for use in research or development, manufacturing, or fabricating of semiconductors. Failure to report these purchases on the information line of the semiconductor manufacturer's sales and use tax return may subject the semiconductor manufacturer to a penalty equal to the lesser of \$1,000 or 10 percent of the sales and use tax that would have been imposed if the exemption had not applied.

 RELIGIOUS OR CHARITABLE INSTITUTION

Sales Tax Exemption No. **N** _____
I certify the tangible personal property or services purchased will be used or consumed for essential religious or charitable purposes. **This exemption can only be used on purchases totaling \$1,000 or more, unless the sale is pursuant to a contract between the seller and purchaser.**

 SKI RESORT

Sales Tax License No. _____
I certify the snowmaking equipment, ski slope grooming equipment or passenger ropeways purchased are to be paid directly with funds from the ski resort noted on the front of this form.

 TOURISM/MOTOR VEHICLE RENTAL

I certify the motor vehicle being leased or rented will be temporarily used to replace a motor vehicle that is being repaired pursuant to a repair or an insurance agreement; the lease will exceed 30 days; the motor vehicle being leased or rented is registered for a gross laden weight of 12,001 pounds or more; or, the motor vehicle is being rented or leased as a personal household goods moving van. This exemption applies only to the tourism tax (up to 7 percent) and the short-term motor vehicle rental tax (Transportation Corridor Funding – 2.5 percent) – not to the state, local, transit, zoo, hospital, highways, county option or resort sales tax.

 UNITED STATES GOVERNMENT OR NATIVE AMERICAN TRIBE

I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on the front page of this form and will be used in the exercise of essential governmental or tribal functions. **NOTE:** Includes sales of tangible personal property to federally chartered credit unions. "Directly" does not include per diem, entity advances, or similar indirect payments.

 UTAH STATE AND LOCAL GOVERNMENTS AND PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

Sales Tax License No. _____
I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on the front page of this form and will be used in the exercise of that entity's essential functions. For construction materials, if the purchaser noted on the front of this form is a Utah state or local government, these construction materials will be installed or converted into real property by employees of this government entity. If the purchaser noted on the front of this form is a public elementary or secondary school, these construction materials will be installed or converted into real property owned by this school. "Directly" does not include per diem, entity advances, or similar indirect payments. **CAUTION:** This exemption does not apply to government or educational entities of any other states.

 TELECOMMUNICATIONS EQUIPMENT, MACHINERY OR SOFTWARE

Sales Tax License No. _____
I certify these purchases or leases of equipment, machinery, or software, by or on behalf of a telephone service provider, have a useful economic life of one or more years and will be used to enable or facilitate telecommunications; to provide 911 service; to maintain or repair telecommunications equipment; to switch or route telecommunications service; or for sending, receiving, or transporting telecommunications service.

 RESEARCH AND DEVELOPMENT OF COAL-TO-LIQUID, OIL SHALE AND TAR SANDS TECHNOLOGY

Sales Tax License No. _____
I certify the tangible personal property purchased will be used in research and development of coal-to-liquids, oil shale, and tar sands technology.

To be valid this certificate must be filled in completely, including a check mark in the proper box.

A sales tax license number is required only where specifically indicated.

Please sign, date and, if applicable, include your license or exemption number.

NOTE TO SELLER: Keep this certificate on file since it must be available for audit review.

NOTE TO PURCHASER: Keep a copy of this certificate for your records. You are responsible to notify the seller of cancellation, modification, or limitation of the exemption you have claimed.

If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811 or TDD (801) 297-2020. Please allow three working days for a response.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION
Keep it with your records in case of an audit.

Restaurants – Bar Structures and Bar Service

by DABC Staff

Full service and limited service restaurants need to be aware of the restrictions regarding the service of alcoholic beverages at a “bar”. A “bar” was defined in the 2003 changes to the liquor laws.

There are four key issues governing how alcohol is served in restaurants:

1. Alcoholic beverages may *not* be served to a patron at a **bar** (no bartender service over the bar). And a patron may not consume alcoholic beverages at a **bar**. A **bar** is defined as a counter or similar structure at which alcoholic beverages are stored or dispensed, or from which alcoholic beverages are served. **Bar** is further defined as a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.
2. Alcoholic beverages shall be delivered by a server (i.e. waitperson) to the patron;
3. Any alcoholic beverage may only be consumed at the patron’s table; and
4. A **counter** means a level surface on which patrons consume food.

Two commission rules provide additional guidance for alcohol consumption.

1. A patron’s table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed or stored; and
2. Consumption of any alcoholic beverage must be within a reasonable proximity of a patron’s table.

The rationale behind these laws and rules is that restaurants are not bars, but public dining establishments where alcohol is served as a complement to the cuisine and the service of food is emphasized.

Applying these issues and rules to your operation

The traditional bar concept in restaurants has to be modified to comply with Utah law. This can be done by separating the storage and dispensing location from the consumption area, altering the appearance of the bar structure, and/or by changing the mechanics of service to the patron.

The following general plans or ideas will assist you in conforming to the statute and rules. In practice, all of these plans are in use.

Plan A

- All alcoholic beverages are stored and dispensed at a service bar that can be a room or counter where there are no seats. (Compliance: There is no service or consumption at the location where alcohol is dispensed and stored.)
- Drinks are made at the service bar and picked up by servers at a pick-up window or service station for delivery to the patron at a table or counter in another location. (Compliance: Alcoholic beverages are not dispensed directly to a patron, but delivered to the patron by a server.)
- The service bar can be located in the kitchen, dining area, or waiting/lounge area. (Compliance: There is no storage or dispensing in the area where the patron is seated. In other words, the counter is not a “bar”.)

Plan B:

- Alcoholic beverages are moved to a work area at the end of the counter where there are no seats. All storage and dispensing is done at that work area. (Compliance: There is no storage or dispensing in the area where the patron is seated.)
- Drinks are made and placed at a service pick-up area at that work station and delivered by a server to the patron who is seated at another area of the counter. (Compliance: There is no service or consumption at the exact location – i.e. the “bar” portion of the counter where alcohol is dispensed and stored.)
- The server delivers the drink to the patron from the patron’s side of the counter. (Compliance: There is no service at the counter *from* which alcoholic beverages are served or stored.)

Plan C:

- Alcoholic beverages (liquor, wine, and beer) are stored in an area behind the counter, and drinks are made at a work station in that area. A panel or barrier (typically 14 to 18 inches high) is constructed to separate the work station and storage area from the patron at the counter. The barrier is constructed so as to prevent the server from serving over the barrier. (Compliance: There is no service or consumption at the exact location where alcohol is dispensed and stored because it is being done behind a wall or barrier.)
- The barrier is of sufficient height so that there is no service to the patron from the work station over the barrier. (Compliance: There is no service over the bar.)
- The server delivers the drink to the patron from the patron’s side of the counter. (Compliance: There is no service to the patron over the bar.)♦



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

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