



In This Issue

Alcoholic Beverage Legislation

Bills that passed	Page 1
1.5 ounces and counting	Page 2
Election day sales	Page 3
The license quota	Page 4
Driving privilege cards	Page 4
Single event permits	Page 4
Proximity variances	Page 5
Private club price lists	Page 5
8 day violation notice	Page 6
Unlawful Drug Use	Page 6
Background checks	Page 7
Mark-up on alcoholic beverages	Page 7
Flavored Malt Beverages	Page 8
Beer displays in stores	Page 9
Club License Renewal Reminders	Page 9
Cops+Clubs+DABC	Page 9
Violations and Penalties	Page 10
Missing Persons	Page 12
Server Training - One's EASY, One's Not	Page 12
How to Clean Pourers	Page 13

Alcoholic Beverage Legislation

Bills that passed in the 2008 session

This edition of the newsletter contains articles on each of the following alcoholic beverage bills that passed in the 2008 session of the legislature:

- S.B. 95 - Markup on alcoholic beverages
- S.B. 165 - Single event permits
- S.B. 167 - Election day sales
- S.B. 211 - (Sub 03) Flavored Malt Beverages, 1.5 oz. drinks, etc.
- H.B. 157 - (Sub 01) 8-day notice to licensees
- H.B. 171 - Driving privilege cards not an acceptable form of ID to buy alcohol

A summary and text of the bills can be found on the DABC website at the following link:
http://www.abc.utah.gov/whats_new.html

The Alcoholic Beverage Control Commission will meet on April 23, 2008 at 9:00 a.m. to start the rule-making process for any rules required by or needed for the above bills.

This meeting is open to the public and will be held in the board room at the DABC office building: 1625 S 900 W, Salt Lake City.

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New Options for Drink Sizes

By Neil Cohen

The new law (SB211), effective May 5, 2008, increases the maximum amount of primary spirituous liquor in a drink from one ounce to *up to* 1.5 ounces. The maximum total amount of spirituous liquor in a mixed drink is reduced from 2.75 ounces to 2.5 ounces. Liquor licensees will have the option of offering a 1.5 ounce primary liquor drink to those patrons who want a stronger drink.

The 1.5 ounce portion size would be the maximum primary liquor allowed in a single drink, NOT the required amount. Where metered dispensing is required, (private clubs, full service restaurants, airport lounges, on-premise banquet licensees), licensees would be free to set their dispensing systems to pour any amount *up to* 1.5 ounces.

The total amount of spirituous liquor allowed in one drink will be 2.5 ounces under the new law, which is 1/4 of an ounce less than the current law. Recipes that call for secondary ("flavoring") liquors may need to be modified (such as the "Long Island Ice Tea") so that the total amount of liquor in one drink does not exceed 2.5 ounces.

In a private club and in an airport lounge, the new law allows two spirituous drinks in front of a patron, but *not* of the same liquor dispensed as a shot-on-the-side (commonly known as a "side car"). However, the two drinks can not contain a total of more than 2.5 ounces of liquor at a time before the patron.

This part of the law allows club or airport lounge patrons to order a second drink and have it served without them having to quickly finish the first drink, or patrons could order two mixed drinks (mixed with a non-alcoholic mixer such as ice, water, soda, tonic, juice), without having to

make a return trip to the bar for the second drink (as long as the two drinks don't contain a total of more than 2.5 ounces of spirituous liquor).

In either situation, the server has to make a determination as to whether the patron *should* be served a second (or subsequent) drink. This is a fundamental responsibility of a server/bartender in every transaction.

In full service restaurants and at licensed on-premise banquets, the law remains the same that a patron may have two drinks in front of him/her at a time, but only *one* can be a spirituous beverage. At events held under a single event permit, an attendee may only have *one* alcoholic beverage of any kind before the patron at a time.

For licensees using dispensing systems, some dispensing systems are capable of pouring and counting different portion sizes from the same bottle (such as a Berg, USC, or similar "ring" type system, and some gun systems). For those that need this capability, there may be an increased cost to "re-tool" or invest in dispensing equipment.

"Clickers" pour a fixed amount, but the portion size can be adjusted. "Clickers" that pour one ounce have four disks inside the chamber. Each disk displaces 1/8 of an ounce. Removing all four disks changes the pour size to 1.5 ounces. To offer different pour sizes to patrons with a "clicker", additional "clickers" would need to be purchased, set to the new size of the pour, and placed on another bottle of liquor to be poured at the new size.

For help with the calibration, and/or retro-fitting of your dispensing system, contact the company that sells or services your dispensing system. ♦

A list of dispensing systems with contact information can be found on the DABC website at this link: http://www.abc.utah.gov/license_permit/Dispensing%20systems.pdf

1.5 Ounce Drink Questions and Answers

By the Compliance Staff

The following is an excerpt of the language from the club section of Senate Bill 211. This language has prompted many questions.

"A private club licensee may sell or provide a primary spirituous liquor only in a quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title."

"A private club patron may have no more than 2.5 ounces of spirituous liquor at a time before the private club patron."

"A private club patron may have no more than two spirituous liquor drinks at a time before the private club patron, except that a private club patron may not have two spirituous liquor drinks before the private club patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink."

"A private club patron may have no more than two alcoholic beverages of any kind at a time before the private club patron" [subject to the spirituous drink limitation]

Here are the answers to some questions (exactly as they have been asked) that we have received about the 1.5 ounce drink option - so far...

1. Q. As a private club, we intend to stay with a 1 ounce pour. If a member wants 1.5 ounces, can I pour 1 ounce primary pour then ½ ounce of the same liquor from flavoring?

A. No

2. Q. My ring system can pour different sizes. Can I pour 1.5 ounces, 1 ounce and ½ ounce of flavoring from the same bottle?

A. Yes, if the dispensing system can account for each primary portion (regardless of the size) dispensed from the same bottle.

...Continued on the next page

1.5 Ounce Drink Questions and Answers

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3. Q. As a private club, we are discussing serving a 1.25 ounce primary pour. Can we then have 2 of the same drinks in front of a customers?

A. Yes, as long as one (or both) is not a shot of the same liquor.

4. Q. What date will the new laws go into effect?

A. May 5, 2008

5. Q. As a private club, can we make it our policy to have the first drink 1.5 ounces then the 2nd and 3rd only 1 ounce, and 3/4 ounce on each drink after that? Am I required to charge different prices?

A. Yes, as long as the customer is aware of the portion and each is priced accordingly.

6. Q. Our liquor system will pour different amounts at the push of a button. Do I have to indicate what quantity is being poured?

A. Yes

7. Q. Can I advertise on a sign within my club that I pour 1.5 ounce drinks?

A. Yes

8. Q. What pour amount will DABC check when they test my gun or ring system?

A. Whatever size the licensee says the system is set to pour.

9. Q. How will Liquor Law Enforcement know how much liquor I put in a drink or in front of a customer?

A. The same way they do now.

10. Q. UDABC used to provide an approved Daily Count Form for 1 ounce pours. Will they make something

available for multi pour sizes?

A. The current suggested form requires that licensees reconcile the number of drinks dispensed with the number of drinks sold (rung up). Regardless of the pour size, this will not change. If a drink is dispensed, it must be rung up. "Click it, ring it, count it".

11. Q. I am a private club and intend to serve 1.5 ounce primary alcohol. If a member orders a rum and coke, can I set down another rum & coke if he has consumed at least 1/4 of his initial drink?

A. Probably, as long as the drinks are not put down together. This is a judgment call. Besides, as a seller/server of alcohol, why would you want to do that? Wouldn't you rather wait until the patron has finished the drink before serving another?

12. Q. I am a private club. Can I serve 1.5 ounce drinks on Monday through Thursday from 3:00 pm to 6:00 pm if I do not advertise it as "happy hour" and charge more than my regular 1 ounce pour?

A. No. A drink may not be sold at a special price for a portion of the business day.

13. Q. UDABC requires a Price List available. Does this mean I have to make available what I charge for 1.5 ounce pours, 1.25 ounce pours, 1 ounce pours, etc.?

A. Yes

14. Q. As a bartender in a private club, can I legally serve a lesser amount of liquor to a group that looks like they may be approaching the legal limit, without telling them?

A. No. But in any event, all servers, managers, and supervisors should practice the techniques taught in the server training classes and keep customers from over-consuming alcohol.♦

Election Day – Changes in the law

By Al Potvien

During the legislative session this year, election laws were amended as to when alcoholic beverages may be sold, delivered, offered, served, or otherwise furnished by DABC licensees, permittees and certain package agencies (see S.B. 167).

The new law which takes effect on May 5, 2008, will allow alcoholic beverages to be sold, served and consumed on the premises of the following establishments and functions on election days:

- Private Clubs – liquor, wine and heavy beer
- Restaurants (full-service) - liquor, wine and heavy beer
- Restaurants (limited-service) - wine and heavy beer
- Banquet Licensees – liquor, wine and heavy beer
- Single Event Permit Holders - liquor, wine and heavy beer

State law still does not specifically prohibit the sale

of 3.2% beer on election days in any of the above licensed premises, or in on-premise beer retailer establishments, taverns and off-premise beer retailers such as grocery and convenience stores. Since local governments do have the authority to regulate the sale of beer, there still may be ordinances dealing with election days, so check with your local city, town or county attorney or licensing office.

State liquor stores will not be affected by the law change and must remain closed on election days. However, certain types of package agencies which are not operated "in a manner similar to a state store" may remain open. A proposed rule that will differentiate between those package agencies that may remain open and those that may not will be discussed at the April 23, 2008 commission meeting and then be scheduled for the rule-making process which takes 60-90 days.♦



License Quota Adjustments

by Neil Cohen

Senate Bill 211 changes the statewide quota formula for the number of licenses for limited restaurants, private clubs, and taverns. The quota is population based and under the new formulas the overall number of licenses stays about the same.

The limited restaurant license quota has been increased by about 45 licenses. Those have been very popular and the existing quota has almost been exhausted.

The quota on private club and tavern licenses, which have been at a surplus for several years, has been decreased by about 25 clubs and 20 taverns, leaving about 17 club and 25 tavern licenses still available to be issued.

The new quotas are:

limited licenses = state population divided by 9,300
private clubs = state population divided by 7,850
taverns = state population divided by 30,500
(The full service restaurant quota stays the same = state population divided by 5,200)♦

Driving Privilege Card.... not acceptable

By Stephne Pilling

A new law (HB 171) now states that the driving privilege card is not an acceptable form of ID to buy alcohol. This law prohibits a person authorized by law to sell or otherwise handle alcohol beverages or products from accepting a driving privilege card as evidence of the legal age of the person.

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, or allow a person under the age of 21 to be on the premises of a tavern or Class D private club. 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.

The Alcoholic Beverage Control Act has provisions



relating to proof of age that allows a licensee to ask for and accept as evidence of legal age the following documents:

- 1- a valid drivers license
- 2- an identification card that includes date of birth, has a picture affixed, and is issued under the Utah Identification Act (Title 53, Chapter 3, Part 8) or an identification card that is substantially similar issued 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 the licensee still questions the persons age, the licensee may require the person to sign a "Statement of Age Form" provided by the Department of Public Safety. That form may be offered as a defense in any case where the legality of selling or furnishing alcohol to the person is at issue.

However, the driving privilege card is not an acceptable form of ID to purchase alcohol or to be admitted into a tavern, class D private club, or the lounge or bar area of any private club. The above listed documents are an acceptable form of ID. If you have questions, contact the DABC compliance division.♦

The Allowable Number of Single Event Permits is Increased

By Neil Cohen

Senate Bill 165, effective May 5, 2008 allows for an increase in the number of Single Event Permits that can be granted in a calendar year to a qualified organization. Under the new law, a qualified organization can have up to 12 permits a year that are valid for no longer than 3 days (72 hours) **or** up to 4 permits that can last no longer than five days (120 hours).

There is no "mix and match" provision. Single event permit applicants must select, at the time of their first application of the year, which permit scheme they would like to follow for the rest of the calendar year.

A qualified organization is a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association or a recognized subordinate lodge, chapter or other local unit. The applicant must have been in existence as a bona fide organization for at least one year prior to the date of application.

Single event permits may be issued by the commission for the sale of all types of alcohol by the permit holder at conventions, civic or community enterprises, at locations and prices approved by the commission.

A single event permit is required if the applicant desires to benefit from the proceeds of the sale of alcohol by way of direct sales or indirect sales (or in combination) as follows:

- Direct sales of alcoholic beverages include cash bars where drinks are prepared, sold, and served to event participants who pay for alcoholic beverages as they are ordered and received.
- Indirect sales of alcoholic beverages include situations where the purchase of a ticket or payment of an entrance or registration fee entitles the participant to alcoholic beverages included with the event such as an open bar, or wine with dinner.♦

Changes in Proximity Variances

By Abe Kader

Senate Bill 211 has changed the law affecting applicants for alcoholic beverage licenses who request a variance to the 200/600 foot proximity restrictions with regards to locating within those distances to "community locations". A "community location" is a church, school, park, playground or library.

The commission is allowed to consider a request for a variance to any community location in any city, town, or county with respect to the 600 foot pedestrian travel measurement. But the new law will *not* allow the commission to grant a variance to the 200' straight line measurement restriction with respect to churches, schools, and playgrounds. It *does* allow variances to the 200' measurement *only* with respect to parks and libraries.

These new restrictions affect the location of state liquor stores, package agencies, full-service and limited restaurants, private clubs, taverns, on-premise beer and banquet catering licenses which are located within proximity to a community location.

There are four additional criteria (and one *wrinkle*) that the commission must consider when variances *are* allowed. The commission may grant a variance if: (1) written consent for the variance is obtained from the local governmental authority; (2) a public hearing has been held; (3) the commission determines that granting the variance will not be detrimental to the public health, peace, safety, and welfare of the community, and (4) the governing

The new law will not allow the commission to grant a variance to the 200' straight line measurement restriction with respect to churches, schools, and playgrounds.

authority of the community location gives its written consent to the variance.

The *wrinkle* is if the "community location" (i.e. church, school, etc.) does *not* give its written consent. If *that* is the case (...now take a deep breath): the commission must find that: (a) there is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local (governmental) authority in which the business seeking the alcohol license is to be located; (b) there is no reasonably viable alternative for satisfying the unmet public demand other than through the establishment of the license at the location; and (c) there is no reasonably viable alternative location within the geographic boundary of the local (governmental) authority in which the licensed business is to be located to satisfy the unmet demand. ...whew!

DABC licensing specialists will be available to assist applicants regarding this new proximity variance procedure.♦



For Private Clubs... The Price [List] is Right

By Keith Zuspan

Senate Bill 211 removes the requirements that a private club's alcoholic beverage price list be part of the club's house rules, and that changes to the price list constitute a change to the club's house rules that must be submitted to the DABC for review and approval before the price change can be effective.

The new law, which takes effect May 5, 2008, merely requires that a private club "shall have available on the premises for review at the time a customer requests it, a written alcoholic beverage price list or a menu containing the price of an alcoholic beverage sold or served by the private club licensee including: (a) a set-up charge; (b) a service charge; or (c) a chilling fee."

This change is consistent with Commission Rule R81-5-11 that requires that:

(1) clubs have readily available for their patrons a current price list of all mixed drinks, wine, beer and heavy beer;

Club price lists no longer have to be submitted to the DABC for approval before the changes can be effective.

(2) the list include any service charges for the supply of glasses, chilling, or wine service which may be on a printed menu, master beverage list, or other printed list; and

(3) clubs and restaurants and their employees may not misrepresent the price of any alcoholic beverage sold or offered for sale on the premises.

Based on this change in the law, a club will no longer have to forward copies of its price list to the DABC. However, the list must be made available on the premise for review by your compliance specialist.♦

Violations – New Eight Day Notice Requirements

By Earl Dorius

Our department receives “referrals” from law enforcement agencies on investigations conducted in our licensed establishments. These come in the form of “police reports” detailing alleged violations of the alcohol laws. We are asked by law enforcement agencies to take administrative (not criminal) action because we are the licensing bureau.

Unfortunately, we sometimes receive reports where there has been an extended delay from the date the violation allegedly occurred until the date the report was forwarded to us. These delays might be due to the reporting officer going off duty or on vacation before completing the report, or delays that occur during the screening process by the officer’s supervisors. In some instances, reports are delayed due to the possible need for followup investigations.

Whatever the reason, *inordinate* delays are not acceptable. Stale cases create problems for everyone. Witnesses memories fade over time. Some witnesses can no longer be located. Evidence might no longer be available. Licensees that use camera surveillance taping systems typically reuse the video tapes on a regular basis. Lengthy delays can result in evidence on these tapes being erased. Attorneys for licensees have complained that such delays make it difficult for them to prepare an adequate defense for their clients.

H.B. 157 was passed to help resolve these issues.

It requires a law enforcement agency to report a violation to the DABC no later than eight (8) business days after the officer or agency completes the investigation. (Law enforcement agencies should therefore include in their reports a reference to the day their investigation was completed.) The DABC is then required to verbally notify the licensee within eight (8)

The eight day notice will give licensees a better opportunity to start gathering evidence to prepare a defense to violation allegations.

business days of receipt of the report that it has been received and that the DABC might initiate or maintain a disciplinary action based on the report. This will give the licensee a better opportunity to start gathering evidence to prepare a defense to the allegations.

The new law does not require that the individual employee of the licensee that is alleged to have committed the violation be verbally notified. A verbal notification must be documented by the DABC and include the name of the person notified and the date of the notification. The DABC must later provide the licensee with written notification (which may be satisfied by the issuance of the administrative complaint which is called a “notice of agency action”).

The bill also covers those rare instances when the DABC initiates an administrative action based on its own investigation. This typically involves the occasional situation where a DABC compliance specialist has repeatedly warned a licensee to provide records or to correct some deficiency, and the warnings have been ignored. In these instances, the DABC must verbally notify the licensee within eight (8) business days from the date the DABC investigation is completed that an administrative action might be initiated.

Failure of a law enforcement agency or the DABC to meet the strict eight (8) business day referral and notice deadlines prohibits the DABC from taking any administrative action against the licensee or the licensee’s employee.♦

Unlawful Drug Use on Licensed Premises

By Robert Howe

Utah’s Controlled Substances Act has a provision that makes it a criminal offense for an owner, tenant, licensee, or person in control of any building, room, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations. See Utah Code Section 58-37-8. Therefore, it has always been illegal for a DABC licensee or employee of a licensee to knowingly or intentionally permit persons including owners, employees, or patrons of the business to possess, use, or distribute illicit drugs on the licensed premises.

Consistent with this law, S.B. 211 now makes it an *administrative* violation for a licensee or employee of a licensee to allow such conduct on the licensed premises. A DABC licensee or an employee of the licensee may not *knowingly* allow a person on the licensed premise to sell, distribute, possess or use a controlled substance or drug paraphernalia. A violation may result in the suspension or revocation of the license, and/or an administrative fine.

Controlled substances are defined in Section 58-37-2. Some examples are marijuana, cocaine, methamphetamine and heroine. Even medication that is not

The new law will allow the commission to suspend or revoke the license and/or impose an administrative fine for knowingly allowing illegal drug use on a licensed premises.

possessed under a valid prescription can be illegal. This should raise a red flag if someone is selling or distributing medications to others on the licensed premises.

Drug paraphernalia is defined in Section 58-37a-3. Some examples are syringes and pipes. Even cigarette rolling papers might be considered drug paraphernalia under certain circumstances. There may be valid and lawful reasons to possess some of these items. For example, a diabetic may have syringes, and someone may roll their own cigarettes. But when other factors are evident such as the presence of marijuana, the innocent rolling papers may be considered drug paraphernalia.

In summary, if a licensee or an employee of a licensee *knowingly* allows illegal drug related activity to occur on the licensed premises, they not only can be charged criminally, but can face severe administrative penalties assessed by the ABC commission.♦

Criminal Background Checks

By John Bryant

The Utah Alcoholic Beverage Control Act prohibits partners, managing agents, managers, officers, directors, corporate stockholders or LLC members owning at least 20% of the business, and supervisory or managerial employees of licensees or package agents who have been convicted of certain criminal offenses from being involved in the business.

Those offenses include any felony; any crime (felony or misdemeanor) concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; two DUI convictions within the last five years; or any crime (felony or misdemeanor) involving moral turpitude. A crime of moral turpitude is defined in Commission Rule R81-1-16(3)(c) as:

“A crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is “malum in se” as opposed to “malum prohibitum” – actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another’s property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.”

Because of these laws, new applicants for licenses or package agencies are required to provide criminal history background checks on these persons. Also, renewing licensees that have undergone changes involving these persons (i.e. new managers, new partners, new officers, etc.) must have those individuals provide criminal background information.

If the person has been a resident of Utah for the past two years, the criminal history may be obtained locally from the Utah Bureau of Criminal Identification (BCI). BCI’s offices are located at 3888 West 5400 South, Salt Lake City, UT 84118; phone: (801) 965-4445; Fax: (801) 965-4749. They may go directly to BCI to have their criminal history

checked or they may go to BCI’s web site: www.bci.ut.gov and get the information and forms needed for their criminal history report. They must make arrangements to have BCI forward their criminal history report directly to the DABC to ensure the accuracy of the report. This process typically takes less than a week.

If the person is not a resident of Utah, or has resided in the state less than two years, the criminal history report must be obtained from the Federal Bureau of Investigation (FBI). In the past, we have required the individual to personally apply for the report. Unfortunately, this has dramatically increased the processing time with the FBI. We have been experiencing delays of up to six (6) months before the FBI report is received. Because of this situation, our department sought legislation (S.B. 211) to allow the DABC to obtain the information from the FBI on behalf of the individual. This will significantly reduce the delays we have been experiencing, and we should be able to receive the information we need within approximately two (2) weeks. The bill passed and will become law on May 5, 2008.

Here’s how the new process will work. To acquire an FBI criminal history report, the individual must, at their own expense, submit to the DABC a fingerprint card, consent to a fingerprint criminal background check by the FBI, and pay a processing fee. The DABC will then forward the fingerprint card to BCI who will send it on to the FBI. When the criminal history check has been completed, the FBI will send its criminal history report to BCI who will forward it to the DABC. This will speed up the process and ensure the accuracy of the information.

Finally, the DABC must maintain the security of the information and limit its use only for purposes of enforcing the Alcoholic Beverage Control Act including determining whether: (1) the individual has been convicted of any of the disqualifying offenses, and accurately disclosed their criminal history; (2) to grant or deny an application for or renewal of a license; (3) to suspend or revoke a license; (4) to grant an application for a package agency; or (5) to suspend the operation of a package agency or terminate a package agency contract with the DABC. Except for these purposes, the information is not be disclosed to any person other than the individual who is the subject of the criminal history record. If the DABC determines that the individual is disqualified from being involved in the alcohol business, it will provide the person notice of the reason for the disqualification and an opportunity to respond.♦

Mark-up on Alcoholic Beverages

By Neil Cohen

Senate Bill 95 lowers the mark-up on spirituous liquor and heavy beer manufactured by a small distillery and small brewery, and continues the reduced mark-up on wine manufactured by small wineries.

The following qualify for a reduced mark-up:

A **distillery** producing less than 30,000 proof gallons in a calendar year qualifies for a 47% mark-up (instead of an 86% mark-up);

A **winery** producing less than 20,000 gallons in a calendar year qualifies for a mark-up of 47%; and

A **brewer** producing less than 40,000 barrels of beer and heavy beer qualifies for a 30% mark-up on heavy beer (instead of a 64.5% mark-up).

Manufacturers must apply to the DABC for the reduced mark-up. A product price calculator is available on the DABC website at this link:

www.abc.utah.gov/online_services/new_vend_calc.html

Any questions should be directed to the DABC Purchasing Department at 801-977-6800.♦

Utah's New Law on "Flavored Malt Beverages"

By Earl Dorius

What are Flavored Malt Beverages ("FMBs")? They are a relatively recent addition to the alcoholic beverage market sometimes referred to as "alcopops," "malternatives," and "premium malt beverages with natural flavors." They are sold under many proprietary names and include alcoholic fruit drinks, colas, lemonades, punches, energy drinks, cooler-type products, and other flavored alcoholic beverages. Some brewers have partnered with distilled spirits producers to label FMBs with prominent distilled spirits brand names.

Even though these producers assert that FMBs are not being marketed to youth, these sweet-tasting products have become popular among underage drinkers as "starter" drinks. They also have been marketed as "beer" products and sold by off-premise beer retailers such as grocery and convenience stores making them more accessible to potential underage buyers.

Because of the way FMBs are produced, several states are reassessing how they should be classified. They are beer products that are not traditionally produced. Instead, a fermented base of beer is brewed at the brewery. The malt beverage character such as color, bitterness, and taste, and some of the fermented alcohol is then removed from the base. Various flavors that typically contain distilled spirits are then added to achieve a desired taste profile and alcohol level.

While the overall alcohol content of the finished product is similar to that of traditional beer, as much as 49% of that alcohol is derived from the distilled spirit component of the added flavors, not from fermentation. These products exhibit little or no traditional beer character; their flavor is derived primarily from the added flavors rather than from malt and other materials used in fermentation. The federal government requires brewers of these products to file the formula of each FMB with the U.S. Alcohol Trade and Tax Bureau (27 C.F.R. §25.55).

Utah's New FMB Law. S.B. 211 regulates FMBs in two ways:

(1) Reclassification. The definition of "alcoholic beverages" will now include three categories: beer, liquor, and FMBs. FMBs will be classified as "liquor" and not "beer" products. The definition of FMBs is as defined in federal law (27 C.F.R. Sec. 25.55).(see footnote 1)

This means that these products may only be sold in Utah's state liquor stores and package agencies, and in on-premise retail establishments that have a full-service liquor license. They will no longer be sold in grocery and convenience stores, or in establishments that only hold beer, or beer/wine licenses.

Reclassification will take effect on October 1, 2008 (to allow current stock in off-premise beer retail stores and in on-premise beer and in limited restaurants to be depleted). Beginning August 1, 2008, a manufacturer of these products must file a report with the Utah DABC listing each product they seek to market in Utah.

Beginning October 1, 2008, the DABC will post on a quarterly basis, those FMB products that are classified as "liquor" products, and those few products that may be sold as "beer" products because they received a federal exemption from the FMB classification under 27 C.F.R. Sec. 25.55(f). (see footnote 2)

(2) Labeling. Beginning October 1, 2008, all beer products must receive *basic* label approval from the DABC. This will require that they comply with all federal label requirements; and clearly put the public on notice that the beverage is an alcoholic beverage (which can be satisfied by using terms such as beer, ale, porter, stout, lager, lager beer, or any other class or type designation commonly applied to malt beverages that conveys by a recognized term that the product contains alcohol)

However, *additional labeling will be required on FMBs* that are labeled and packaged in a manner similar to nonalcoholic beverages. The labels and outer packaging visible to a consumer (i.e. carton, case, or other wrapper of a container) must have prominently displayed either on the label or a firmly affixed sticker the words "alcoholic beverage" or "contains alcohol". The label and packaging must also include a statement of alcohol content by either weight or volume which may not be abbreviated. These terms must be in a format required by ABC commission rule. Labels and packaging may be rejected if it appears that they are designed to obscure the required information.

In deciding whether an FMB is labeled and packaged in a manner similar to nonalcoholic beverages, the DABC may consider in addition to other factors the following:

1. whether the coloring, carbonation, and packaging is similar to or can be confused with nonalcoholic beverages;
2. whether the FMB possesses a character and flavor distinctive from a traditional malted beverage;
3. whether the FMB is prepackaged, contains high levels of caffeine and other additives, and is marketed as an energy drink;
4. whether the FMB contains added sweetener or sugar substitutes; and
5. whether the FMB contains an added fruit flavor or other flavor that masks the taste of a traditional malt beverage.

Footnote 1

The Utah definition reads:

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

Footnote 2

Federal exemptions under 27 C.F.R. Sec. 25.55(f) are granted only if it can be shown that the coloring, flavoring, or food material that is added is generally recognized as a traditional ingredient in the production of beer, ale, porter, stout, lager, etc.♦

Beer Displays in Stores

By Earl Dorius

Senate Bill 211 that passed in the last legislative session has some provisions that will affect how beer products are displayed in stores. Effective May 5, 2008, stores such as grocery and convenience stores that sell beer for off-premise consumption must display all beer products in an "area that is visibly separate and distinct" from the area where nonalcoholic beverages are displayed. (Nonalcoholic beers may be displayed with the alcoholic beers.) The bill requires the Alcoholic Beverage Control Commission to define by rule what is meant by "area that is

visibly separate and distinct from the area where a nonalcoholic beverage is displayed." The commission will begin that rulemaking process at its meeting on April 23, 2008.

The bill also requires the stores to post a sign in the alcoholic beverage display area that reads: "These beverages contain alcohol. Please read the label carefully." The sign must be prominently posted in a manner that is easily readable by a consumer. It must be in print that is no smaller than .5 inches (½ inch) and in bold type. Any additional requirements for format will be established by commission rule.♦

Private Club License Renewals

by Neil Cohen

Club License renewal forms and fees are **due on Monday, June 2, 2008**. 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.

Forms A, B, and C will be preprinted 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). Please 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.

The renewal fees are based on the following schedule:

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

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 deadline

Please remember, you must send in or hand in your completed renewal application by **June 2**. 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. You may either hand deliver (**by 5:00 p.m. on June 2**) the completed renewal or **we will accept a postmark** up to and including **June 2** 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.♦

Cops + Clubs + DABC ...Free Training

By Robert Howe

The Utah Department of Public Safety (DPS) Alcohol Enforcement Team and the DABC have joined forces to resume a very popular, on-going training program. These two hour sessions will assist licensees in avoiding violations of the alcoholic beverage laws. Topics will include an explanation of the roles of the DPS and the DABC. We will also focus on some of the more serious violations, such as serving minors and intoxicated persons. The discussion will include what constitutes a violation and how to avoid them. There will be a question and answer period.

We welcome suggestions, complaints, and comments. We want this to be an open forum. Our goal is to provide licensees with the knowledge needed to run their businesses without violating the laws. We invite all interested parties to attend. Please RSVP as class size is limited. There is no charge to attend. The first two sessions have been scheduled as follows:

Location: DABC Administrative Office, 1625 S 900 West Salt Lake City, UT

Dates: Thursday, May 15, 2008 2:00 p.m. to 4:00 p.m.
Thursday, May 22, 2008 2:00 p.m. to 4:00 p.m.

RSVP to: Robert Howe, DABC, 801-977-6806

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
CL	Club Sound, Salt Lake	1. Minors on the premises of a class "D" club	1. Fine of \$1,600.00 plus costs
TV	Dead Dog Saloon, Grantsville and Kristy Warr (employee)	1. Sale to intoxicated persons	1. 10 day license suspension plus costs
TV	Dream On, Midvale	1. Allowing patrons to leave with open containers	1. 5 day license suspension plus costs
RE	Eddie McStiff's, Moab and Ashley Cloward (employee)	1. Allowing patrons to leave with open containers	1. 15 day license suspension plus costs
CL	Floyd's Place, Heber and Dean Adair (employee)	1. Allowing patrons to have more than 2 A/B at a time and more than 2.75 oz. of spirituous liquor at a time before them 2. Allowing patrons to leave with open containers 3. Failure to charge for a membership 4. No ID badge	1. Fine of \$600.00 2. 5 day license suspension 3. Fine of \$250.00 plus costs 4. Written warning
CL	Gateway Saloon & Café, Vernal	1. Minors on the premises of a class "D" club	1. Fine of \$750.00 plus costs
CL	Huka Bar & Grill, Murray and Ashlee Gould and Jeffery Green (employees)	1. Non-member entry & sale 2. No ID badge	1. Fine of \$250.00 plus costs 2. Written warning
CL	Liquid Joe's, Salt Lake and Ryan Peterson (employee)	1. Sale to intoxicated persons* 2. More than 2 A/B at a time before a patron	1. 24 day license suspension 2. Fine of \$1,000.00 plus costs
CL	Star Bar, Park City and Wallace J Belcher and Tyler Noquist (employees)	1. Allowing a patron to have more than 2 A/B at a time and more than 2.75 oz. of spirituous liquor at a time before them 2. Non-member entry & sale	1. Fine of \$600.00 2. Fine of \$250.00 plus costs
CL	Summit Lounge, Layton	1. Allowing a patron to have more than 2 A/B at a time and more than 2.75 oz. of spirituous liquor at a time before them 2. Non-member entry & sale	1. Fine of \$600.00 2. Fine of \$250.00 plus costs
CL	Vicky Marcus (former employee of Summit Lounge, Layton)	1. Allowing a patron to have more than 2 A/B at a time and more than 2.75 oz. of spirituous liquor at a time before them	1. Fine of \$60.00
RE	Vikki D Houghton (former employee of Claim Jumper, St George)	1. Sale to minors	1. Fine of \$100.00
RE	Sara J Darling (former employee of Iggy's Sports Grill, Salt Lake)	1. Sale to minors	1. Fine of \$100.00
RE	Rebecca Mosquera (former employee of Little America Restaurant, Coffee Shop/Petit Café, Salt Lake)	1. Sale to minors	1. Fine of \$100.00
TV	Deana Bundy (former employee of One & Only, St George)	1. Sale to minors	1. 5 day suspension
BE	Daniel B Gonzalez (employee of Winger's Brigham City)	1. Sale to minors	1. 5 day suspension
RE	Chili's, Midvale and Troy Taylor and Kathy Walton (employees)	1. Allowing patrons to leave with open containers 2. No ID badge	1. 4 day license suspension and a fine of \$500.00 plus costs 2. Written warning
RL	Italian Village and Lindsey R Ralphs (employee)	1. Sale to minors 2. No ID badge	1. 6 day license suspension plus costs 2. Written warning
TV	Old Towne Tavern, Midvale and Adrienne Michelson (employee)	1. Employee consuming on duty	1. 5 day license suspension plus costs

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
RE	Thaifoon, Salt Lake and Rebecca Bilsky (employee)	1. Sale to minors	1. Fine of \$3,000.00 plus costs
TV	White Owl, Logan and James Zahmel (employee)	1. Sale to minors 2. Minors on the premises of a tavern	1& 2. 5 day license suspension and a fine of \$1,000.00 plus costs
BE	Nathan Richmond (former employee of Copper Creek Pub & Grub, West Valley)	1. Sale to minors	1. Fine of \$100.00
RE	Jake Warren (former employee of Eddie McStiff's, Moab)	1. Sale to minors	1. Fine of \$100.00
CL	Mia Crawford (former employee of Play Pen, Ogden)	1. Sale to intoxicated persons	1. 13 day suspension
CL	Tina Overgaard (former employee of Green Street Social Club, Salt Lake)	1. Sale to intoxicated persons	1. Fine of \$100.00
CL	Detour, Richfield and Bryce Boyter and Laurie Layton (employees)	1. Sale to intoxicated persons 2. Allowing patrons to have more than 2 A/B at a time and more than 2.75 oz. of spirituous liquor at a time before them 3. Allowing patrons to leave with open containers 4. Minors on the premises of a class "D" club 5. Non-member entry & sale	1. 25 day license suspension 2. Fine of \$650.00 3. 5 day license suspension 4. 5 day license suspension 5. Fine of \$250.00 plus costs
CL	Hog Wallow Pub, Salt Lake and Jessica Harnois and Natalie Oswald (employees)	1. Sale to intoxicated persons	1. 15 day license suspension plus costs
CL	Maggie McGee's, Salt Lake and Tania Elder (employee)	1. Sale to intoxicated persons	1. 15 day license suspension plus costs
CL	Flirts, Lehi and Christa Carlson (employee)	1. Sale to intoxicated persons*	1. 25 day license suspension plus costs
TV	Cotton Bottom Inn, Salt Lake and Ryan Thomas (employee)	1. Sale to minors 2. Minors on the premises of a tavern	1. 11 day license suspension 2. Fine of \$1,000.00 plus costs
RE	Ernesto's, St George	1. Opened bottled not affixed to metering device 2. Unlocked storage	1. 5 day license suspension 2. Fine of \$150.00 plus costs
RL	Gateway Grille, Kamas and Emily K Anderson (employee)	1. Sale to minors	1. 5 day license suspension plus costs
CL	Hotel, Salt Lake and Michael Devoe (employee)	1. Minors on the premises of a class "D" club* 2. Non-member entry & sale	1. Fine of \$1,600.00 2. Fine of \$250.00 plus costs
RL	Las Palmeras, St George and Daniel Alas (employee)	1. Sale of A/B before legal selling hours 2. No ID badge	1. Fine of \$250.00 plus costs 2. Written warning
CL	Sandy's Station, Sandy	1. Allowing lewd acts 2. Attire and conduct violation 3. Non-member entry & sale	1. 11 day license suspension 2. 11 day license suspension 3. Fine of \$250.00 plus costs
BE	Kaylee Jellum (former employee of Gladstan Golf Course, Payson)	1. Minor employed selling A/B 2. Untrained server 3. No ID badge	1. Fine of \$75.00 2. Fine of \$25.00 3. Written warning
CL	Duvan's Karamba, Salt Lake and John L Bankhead (employee)	1. Minors on the premises of a class "D" club * 2. Non-member entry & sale	1. Fine of \$3,000.00 2. Fine of \$250.00 plus costs

Missing Employees

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

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

Jared B Hileman - Shaggy's Livin Room
 Danielle Sims - Sportsman's Lounge
 "Bubba" - Sportsman's Lounge
 Sarah E. Ellis - Alpine Internet Café
 Vincent Laguardia - Alpine Internet Café
 Troy Mattinson - Applebee's (St George)
 Monica M. Salazar - Cheater's Lounge
 Susan Pontius - Applebee's (Orem)
 Alicia Bowman - Palms @ Holiday Inn
 Laurie A. Johnson - Don Jose Mexican Restaurant
 Jason M. Green - Sunset West Bowling Center
 Jeffery S. Anderson - La Frontera (Bountiful)
 Clay Petty - World Famous Woody's Tavern
 "Julie" - Jessie's Bar & Grill
 Billie Jo Lange - Outback Steakhouse (St George)
 Brenda Conners - Papa Joe's
 Kathy Walton - Chili's, Midvale
 Natalie Oswald - Hog Wallow Pub



It's not E.A.S.Y

The Alcoholic Server Training Seminar Requirement

By Keith Zuzpan

Every individual who is employed by an on-premise licensed establishment to sell or furnish alcoholic beverages to consumers for consumption on the premises, or to manage or supervise the service of alcoholic beverages must complete an approved on-premise Alcohol Server Training and Education Seminar. Alcohol servers, managers, and supervisors must take and pass this seminar every 3 years.

2006 legislation creating the EASY (Eliminate Alcohol Sales to Youth) program required those who sell or directly supervise the sale of beer in grocery or convenience stores to take a state approved off-premise 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. The training received under the EASY program is valid for 5 years.

The off-premise EASY training program, which is available through local instructors as well as the internet, **does not meet** the requirements for the on-premise

training set forth in 32A-1-401 and 62A-15-401.

The on-premise Alcohol Server Training and Education Seminar subjects taught in the seminar are more expansive and tailored for on-premise service and include:

- Alcohol as a drug and its effects on the body and behavior.
- Recognition of the problem drinker.
- An overview of state alcohol laws.
- Dealing with problem customers.
- Discussing alternative means of transportation for customers who need help safely arriving at home.

Review the Alcohol Server Training and Education Seminar certificates of your servers. Certificates which reflect EASY, off-premise, or have an expiration date of 5 years do not qualify and the server, supervisors or manager must take the correct course.

For more information and a current list of approved providers, call the Department of Substance and Mental Health at (801) 538-3939 or visit their website at www.dsamh.utah.gov ♦

EASY training certificates that have a 5 year expiration date DO NOT qualify for the on-premise training requirement.

Likewise, on-premise certificates do not qualify for the EASY training requirement.

How to Clean Pourers...on Ring Liquor Systems

by Dale Kennett & Jason Ross

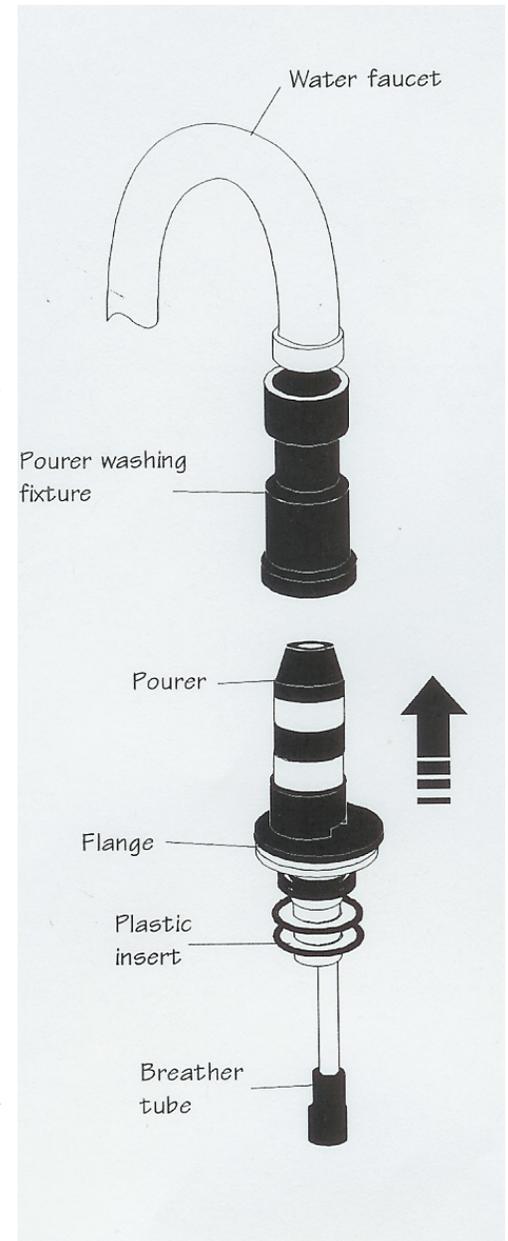
Whether you call them toppers, spouts or nozzles, the pourers you use with your ring style liquor system need to be cleaned internally. You may have had erratic or short pours because the inside valve was partially plugged. Here are 4 easy ideas to keep your pourers working smoothly:

- 1 Attach the pour washing fixture / back flush adapter (available from your liquor system provider for about \$15.00) to a faucet. Insert the pourer and turn on warm water **slowly**. Hold for about 5 seconds or until the water runs freely and clear. The water is forced through the pourer, cleaning out any undissolved sugar. Shake out excess water and insert into a new bottle, using an air release tool or straw.
- 2 Pourers that have been used on liquors with a high sugar content, like Bailey's or Jaegermeister, must be cleaned daily. Pourers used on "unsugary" liquors can be cleaned by back-flushing bi-weekly, or when you change the bottle.
- 3 Never use soap or chemicals to clean a pourer, because there is the possibility of contaminating the liquor. Do NOT clean in a glass washer or dishwasher because the heat can deform the internal parts of the pourer. Soaking pour spouts in a sink or bucket causes cross contamination that makes the Health Department unhappy, and will not open the internal valve like back flushing does.
- 4 After cleaning, and whenever you change bottles, check three things:
 - 1) the breather tube and end are inserted tightly;
 - 2) the breather hole at the base of the spout is not sealed by security tape; and
 - 3) the plastic insert (cork) is the right size for the bottle (4 sizes are available from your liquor system provider).

If the cork becomes stiff after cleaning, you may wish to replace it so you do not leak liquor. You may also try to reshape the corks, particularly for Patron bottles, by running hot water over the cork, reshaping the fins, then submerging the cork in cold water.

By keeping your pourers clean and complete, you can stay consistent, accurate, compliant and more profitable.

Picture courtesy of Berg™ Company. Dale Kennett and Jason Ross have a combined 19 years experience with all types of liquor dispensing systems. We welcome your comments at liquorleasing@gmail.com or (801) 561-1996.





THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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