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2011 Legislative Session Special Edition Newsletter

Welcome to this special edition of the "Licensing Newsletter". It is devoted exclusively to recent changes in Utah's Alcoholic Beverage Control laws during the last three legislative sessions.

The articles on the following pages of this Newsletter will primarily focus and provide more detail on the most recent 2011 changes in the laws (Senate Bill 314). However, we will also provide a "refresher course" on some of the laws passed in 2009.

There have been so many changes, but here are some highlights:

2011: Major changes to the alcoholic beverage laws were enacted in Senate Bill 314, sponsored by Senator John Valentine. The enrolled text of the bill can be viewed here:
<http://le.utah.gov/~2011/bills/sbillenr/sb0314.pdf>

Licensing and renewal fees were increased. License quotas for restaurants, taverns, and airport lounges were adjusted, and beginning on July 1, 2012, all licenses that are under a quota will be tied to the number of law enforcement officers that the Department of Public Safety allocates to alcohol enforcement. Also, effective July 1, 2012, alcohol licenses may be bought and sold on the open market.

Several new license types were created including reception center, beer-only restaurant, and recreational amenity on-premise beer licenses. Sales hours in all restaurants including the new "beer-only restaurants" start at 11:30 a.m. Consumption of alcohol on any licensed premises must cease one hour after the licensee's closing sales hour.

2011 summary ...continued on the next page

The new laws take effect on July 1, 2011 unless otherwise noted as follows:

- **October 1, 2011** - Heavy Beer may not be sold or possessed in containers larger than two liters
- **November 1, 2011** - Reception Center License
- **March 1, 2012** - Beer-only Restaurant License
- **July 1, 2012** - Transfer and Sale of Licenses
- **July 1, 2012** - License quota tied to the number of law enforcement officers
- **July 1, 2012** - Special funding to increase law enforcement positions

2011 Summary

...continued from the previous page

Dining clubs must maintain 60% in food sales. Expensive wines in excess of \$250 per bottle are not included in any required food to alcohol ratios. Temporary event permit holders may not include an unlimited number of alcoholic drinks for a fixed price unless the drinks are served to a patron at a seated event.

Taverns, like social and dining clubs, must use electronic age verification scanning devices. Room service "by the drink" is allowed in hotels and resorts. A package agency located on a manufacturer's premises (winery, brewery, distillery) may be open on Sundays and state and federal holidays if the manufacturer holds a full-service,

limited-service, or "beer only" restaurant license located at the manufacturing facility, and only sells product produced at the manufacturing facility from the package agency. Discounting of any alcoholic beverage products is not allowed. The DABC may no longer carry heavy beer in containers that exceed two liters.

On-line alcohol server training guidelines were enacted. Finally, changes were made with respect to how the commission chairman and department director are selected, and a new conflicts of interest law was enacted that effects the commissioners, the director, certain ABC employees, and even their spouses and children.♦

Changes in the previous two legislative sessions:

A "cross-reference" guide comparing the former Title 32A with the new 32B (as enacted in 2010) is available on-line at: <http://le.utah.gov/session/2010/pdfdoc/Recod.Title32A%20TABLE.pdf>

2010: The Alcoholic Beverage Control Act was completely renumbered and reorganized, but the substance of the laws was not changed. Old Title 32A was scrapped in favor of a new and hopefully improved Title 32B which officially becomes effective on July 1, 2011. As a result, all Utah Code statutory references relating to alcohol control will change. This will require the DABC to completely revise our licensing handbooks, summaries, application forms, website, etc. etc. etc.

2009: Club memberships were eliminated in social and dining clubs, but these clubs are now required to use electronic age verification scanning devices.

Restaurant bar areas where alcoholic beverages are stored or dispensed fell under closer scrutiny. Laws

were passed in an effort to reduce the prevalence and visibility of bar structures and bar service in restaurants. Minors may no longer be seated at bar structures.

A new resort license was created. The sale of alcohol on election days became legal. A new definition of "intoxication" was enacted to deal with situations involving sales of alcohol to intoxicated patrons. The mandatory dram shop insurance coverage required to be carried by licensees doubled.

DABC labels on liquor bottles became things of the past. Home production of beer, heavy beer, and wine became legal. And penalties increased for social hosts who allow minors to engage in underage drinking parties.♦

D**A****B****C's** goal as a licensing agency is to keep you in business and in compliance with alcoholic beverage laws. Hopefully, this Newsletter will accomplish this goal. We urge you to read and then share this Newsletter with all of your employees involved in the sale and service of alcohol. We also encourage you to contact our Licensing and Compliance Division at (801) 977-6800 or e-mail us at hotline@utah.gov if you have any questions about any of these laws.♦

New Quota Law

Most licenses that allow the sale of alcoholic beverages for on-premise consumption are tied to a statutory quota based on the state's overall population. For example, the total number of club licenses may not exceed more than one for every 7850 persons. **Starting July 1, 2012**, the number of quota licenses will also be directly tied to the number of designated alcohol law enforcement officer positions in the Department of Public Safety (DPS).

Enforcement Ratio. The new law creates an "enforcement ratio" which is based on the total number of "quota retail licenses" available divided by the total number of designated law enforcement officers rounded to the

nearest whole number. "Quota retail licenses" include full-service restaurants, limited service restaurants, clubs, on-premise banquet retailers, taverns, and reception centers.

If the enforcement ratio is greater than 52, the commission may not issue a "quota retail license" for the 12-month period beginning July 1 for which the enforcement ratio is greater than 52. The commission may issue a "quota retail license" during the 12 month period if a sufficient number of law enforcement officers are employed so that the ratio is less than 52. The ratio does not include dining clubs in existence as of July 1, 2011, that convert to another type of retail license.

New Quota Law ... continued on the next page

New Quota Law ... continued from the previous page

The governor must include a recommendation in his budget for maintaining a sufficient number of alcohol enforcement officers to maintain the enforcement ratio or explain why not. Once the Department of Public Safety certifies the total number of positions designated as alcohol-related law enforcement officers, that department may not use the funding for any purpose other than funding those positions.

Restaurants**New Laws in 2011 (S.B. 314)**

Quotas Adjusted. Restaurant quotas were adjusted resulting in 25 more limited service restaurants and 15 more full-service restaurants. The limited-service restaurant quota went from 1 license per 9300 population to 1 license per 8373 population. The full-service restaurant quota went from 1 license per 5200 population to 1 license per 4925 population. Utah's projected population when the new law takes effect in July, 2011 will be 2,815,668.

New "Beer-Only" Restaurant License. See summary under Beer Licenses.

Sales Hours. Alcohol sales may commence at 11:30 a.m. in full-service, limited-service, and the new "beer-only" restaurants. Liquor sales in full-service and limited-service restaurants must cease at midnight. However, 3.2% beer sales in full-service, limited-service and "beer-only" restaurants end at 1 a.m.

Hours of Consumption. Patrons of a full-service or limited-service restaurant may not consume liquor on the restaurant premises after 1 a.m. and before 11:30 a.m. However, they and patrons of a "beer-only" restaurant may consume beer until 2 a.m. and no consumption of beer is allowed on the premises after 2 a.m. and before 11:30 a.m.

Refresher Course on Restaurant Laws Passed in 2009 (S.B. 187)

Bars in Restaurants. Restaurant bar areas where alcoholic beverages are stored or dispensed came under close scrutiny in 2009. Laws were passed to reduce the prevalence and visibility of bar structures and bar service in restaurants, and minors were prohibited from being seated at bar structures. These laws initially applied only to full-service and limited-service restaurants. But now they also apply to the new "beer-only" restaurants. Here are some of the details of these rather complex laws:

"Bar" or "bar structure" means a surface or structure at which an alcoholic product is stored or dispensed. "Counter" means a surface or structure in a dining area where seating is provided to a patron for service of food, but not where alcohol is stored or dispensed.

"Grandfathering" of bar structures". Any full-service or limited service restaurant that, as of May 11, 2009, had patron seating at a bar structure that was divided by a partition along the width or length of the structure, or a restaurant that was under construction as of May 12, 2009, and was granted a license by the commission by December 31, 2009, may allow adults to be seated at the bar and

Alcoholic Beverage Control Act Enforcement Fund. **Starting July 1, 2012**, a restricted special revenue fund which equals 1% of the total gross revenue from the Department of Alcoholic Beverage Control's sale of liquor will be credited to the Department of Public Safety for designated alcohol law enforcement positions. This is intended to ensure that the enforcement ratio as of July 1 of each year is equal to or less than 52.♦

This change in the hours of consumption will prohibit restaurants from booking private parties for "after hours" consumption of alcohol.

Translucent Barriers. Full-service, limited-service and "beer-only" restaurants that do not have "grandfathered" bar structures, must separate the alcohol storage and dispensing area from the view of dining patrons by a solid barrier. The barrier may be either "opaque" (impenetrable to sight) or "translucent" (allows light to pass through, but does not allow an object or person to be seen).

Food to Alcohol Ratio. 70% of a restaurant's total sales must be in food sales. This applies to all restaurants including the new "beer only" restaurant. Expensive wines in excess of \$250 per bottle may be excluded when calculating the food to alcohol ratio for full-service and limited-service restaurants.

No Discounting of Beer. The law that previously prohibited discounting "liquor" on any day or at any time was amended to prohibit discounting of any "alcoholic product". Thus, under the new law, there can be no discounting of 3.2% beer products.

served alcohol without the partition.

This "grandfathering" continues if the restaurant changes ownership. For purposes of "beer-only" restaurants, a "grandfathered" bar structure is one that was (1) in a restaurant that was operational as of January 1, 2011, and had facilities for dispensing or storing beer; or (2) will be in a restaurant that was not operational as of January 1, 2011, but the license applicant had a building permit to construct the restaurant and was actively engaged in the construction of the restaurant, and is issued a beer-only restaurant license by no later than December 31, 2011.

Alcoholic beverages may be dispensed only from: (1) a "grandfathered" bar structure; (2) an area in a full-service or limited-service restaurant adjacent to a "grandfathered" bar structure that is visible to a patron sitting at the "grandfathered" bar structure if that area was used to dispense an alcoholic beverage as of May 12, 2009 (i.e. a service bar near the bar structure); or

2009 Restaurant Law Recap ...continued on the next page

2009 Restaurant Law Recap ...continued from the previous page

(3) an area that is separated from the dining, staging, lobby, or waiting areas by a solid, opaque or translucent permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons

If a restaurant remodels, it loses the above "grandfathering" benefit. However, as an incentive, if a full-service or limited-service restaurant wants to eliminate a "grandfathered" bar structure and remodel the restaurant to dispense and store liquor in an area described in (3) above, the restaurant will receive a credit for liquor purchases from a state store or package agency for the actual costs of the remodel or \$30,000 whichever is less. The total amount appropriated for these credits is \$1,000,000 awarded on a first come, first served basis. To receive the credit, the licensee must complete the reconstruction by December 31, 2011, and apply for the credit no later than April 1, 2012.

A "grandfathered" bar structure remains so notwithstanding whether a restaurant undergoes a change of ownership.

Patrons may consume alcohol at their table, a counter, or a "grandfathered" bar structure where food is served.

Minors may not sit or be served food or beverages at a "grandfathered" bar structure. Minors may perform maintenance and cleaning services at bar structures when the restaurant is not open for business. Minors may momentarily pass by a "grandfathered" bar structure en route to an area where a minor is permitted to be, but may

not remain or sit at a bar structure.

Minors may be seated at a "counter". Thus, a minor may be seated next to an adult patron that is consuming an alcoholic beverage if that beverage was dispensed from a remote location separate and not visible to restaurant patrons.

Alcoholic beverage bottles may be displayed in areas visible to restaurant patrons. Such bottles may be used for dispensing, but once opened, must be stored in the separate storage/dispensing area not visible to restaurant patrons.

Mandatory dram shop insurance coverage. Must have a minimum of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

Definition of intoxicated person. "Intoxicated" means that a person (a) is significantly impaired as to the person's mental or physical functions as a result of the use of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of these, and (b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic beverage. Administrative disciplinary actions involving alleged serving of intoxicated patrons may not be brought unless the investigating officer has received training regarding the requirements of the Alcoholic Beverage Control Act related to responsible alcoholic beverage sale or service.♦

Clubs***New Laws in 2011 (S.B. 314)***

"The Quota Crises". We have been in short supply of club licenses for quite some time. In recent months, there have been five applicants for every available license. Sadly the situation is getting worse. The quota is based on statewide population estimates which were recently adjusted downward following receipt of the latest census population report.

Utah's population growth was slower than estimated. As a result, we have issued ten licenses over the quota. The Legislature did not adjust the club quota this year. Accordingly, the DABC will have to wait until population growth catches up before we can issue any more club licenses. This includes situations where a current licensee sells a club to a new buyer.

When a sale occurs, the license must be surrendered to the DABC. In normal times, we would typically and promptly reallocate the license to the new owner. Unfortunately, we will have to hold the license until population growth allows us to reissue it, or until a new law that allows for the sale and transfer of licenses takes effect on July 1, 2012. See separate article on "The Sale/Transfer of Licenses. Finally, the club quota could further be impacted by a new law that takes effect on July 1, 2012 that ties the number of licenses available to the number of designated alcohol law enforcement positions in the

Department of Public Safety. See separate article entitled "New Quota Law".

Food Sales in Dining Clubs. Effective July 1, 2011, dining clubs must maintain at least 60% of their overall sales in food sales except that any dining club that was licensed on or before June 30, 2011 may maintain 50% food sales until July 1, 2012, but must then maintain 60%. Expensive wines in excess of \$250 per bottle are not included in calculating the food to alcohol ratio.

Dining Club Conversion. The new law allows dining clubs to convert to a different type of retail license such as a social club, any type of restaurant, or a tavern. But they must do so between July 1, 2011 and June 30, 2013. The retail license they convert to will not be considered in determining the quota for that type of license. Those that convert to a full-service restaurant, limited service restaurant, or beer-only restaurant will have their bar structures "grandfathered". See "Bars in Restaurants" in the "Restaurant" article.

No Discounting of Beer. The law that previously prohibited discounting of "liquor" on any day or at any time was amended to prohibit discounting of any "alcoholic product". Thus, under the new law, there can be no discounting of 3.2% beer products.

2009 Club Law Recap ...continued on the next page

2009 Club Law Recap ...continued from the previous page

Refresher Course on Club Laws Passed in 2009 (S.B. 187 & H.B. 352).

Public Clubs. Dining and social clubs are open to the public, but must comply with the electronic scanner proof of age verification laws. They must verify age before anyone who appears to be 35 years of age or younger may gain admittance to a social club, or obtain an alcoholic beverage in a dining club. Clubs are required to provide the information from the scanner to law enforcement agencies or the department and must know how to download the data from the scanner.

Minors. Minors are allowed in equity, fraternal, and dining clubs, but not in bar areas. Minors must be accompanied by an adult in a dining club. Minors are not allowed in social clubs (except those few clubs that had a minor dance hall/concert hall permit on or before May 11, 2009). Minors may not be employed on the premises of a social club.

Temporary Rentals. A club licensee may not temporarily rent or lease its premises to another person unless that person agrees in writing to comply with the operational restrictions for clubs and the licensee takes reasonable steps to ensure that the person complies.

Mandatory dram shop insurance coverage. Must have a minimum of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

Definition of intoxicated person. "Intoxicated" means that a person (a) is significantly impaired as to the person's mental or physical functions as a result of the use of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of these, and (b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic beverage.

Definition of intoxicated person (continued). Administrative disciplinary actions involving alleged serving of intoxicated patrons may not be brought unless the investigating officer has received training regarding the requirements of the Alcoholic Beverage Control Act related to responsible alcoholic beverage sale or service.

Access to records. An auditor or inspector employed by the DABC, or a peace officer, examiner, or investigator employed by another state, county, city or town agency may have access to records, including electronic records such as video surveillance tapes kept by clubs (and taverns). The investigator, with probable cause that a violation may have occurred, may "inspect, have a copy of, or otherwise review" any record that is a visual recording of the operation of the business.♦

Beer Licenses

New Laws in 2011 (S.B. 314)

Two New Beer Licenses are created effective March 1, 2012. Currently, all beer licenses that are not taverns are called "on-premise beer retailer" licenses. The new law divides these into two types: (1) "beer-only" restaurant, and (2) on-premise beer retailer - "recreational amenity".

Any current non-tavern on-premise beer licensee that is licensed as of July 1, 2011, must convert to one of these two new license types, or convert to a tavern. They must make this decision and

notify the DABC by August 1, 2011. Failure to timely notify the department will result in the expiration of the current license on February 29, 2012, and the licensee will have to apply for a new license.

Those who timely notify the DABC by August 1, 2011, will have their licenses automatically converted to the new license type on March 1, 2012. Any license converted will not be required to meet the proximity restrictions – the license will be "grandfathered." And those who convert to a "beer-only" restaurant will have any bar structures "grandfathered."

Here are the differences between the two new beer license types:

"Beer-Only" Restaurant Licenses - Effective March 1, 2012

- Sales hours: 11:30 a.m. to 1 a.m.
- No consumption of beer between 2 a.m. and 11:30 a.m.
 - 70% of the business must be from the sale of food, and beer may only be sold in connection with an order for food.
- There must be adequate culinary facilities for food preparation and dining accommodations.
 - Cannot sell beer at a discount price on any date or at any time.
 - Beer must be consumed at the patron's table, "grandfathered" bar structure, or counter and where food is served. Otherwise, beer may not be sold or furnished to a patron and a patron may not consume beer at a bar structure. See "Bars in Restaurants" in the "Restaurant" article.
 - Minors may not remain or be seated at a bar structure.
 - Dispensing and storage of beer may only be from an area not visible to a patron and separated by a solid,

- translucent or opaque barrier, or from a grandfathered bar.
 - Cash or surety bond in the amount of \$5,000.
 - A patron may have no more than two beers before them at a time.
 - No liquor is allowed on the premises except for dessert flavorings and food preparation.
 - Servers must keep a written beverage tab for each table or group that orders or consumes beer.
 - A person's willingness to serve beer may not be a condition of employment as a server.
 - Only one license is required for each building or resort facility owned or leased by the same person. A separate license is not required for each dispensing location in the same building or resort premises owned or operated by the same person.
 - No quota on these licenses.

Beer Licenses...continued on the next page

Beer Licenses...continued from the previous page

On-Premise Beer Retailer - "Recreational Amenity" Licenses

- Must be tied to a "recreational amenity" as defined by commission rule which must include: a billiard parlor; pool parlor; bowling facility; golf course; miniature golf; golf driving range; tennis club; sports facility that hosts professional sporting events and has a seating capacity of 6500 or greater; concert venue with a seating capacity of 6500 or greater; certain government-owned facilities (convention center, fair facility, equestrian park, theater, or concert venue); amusement park (with one or more permanent amusement rides and located on at least 50 acres); ski resort; or venue for live entertainment (if the

venue is not regularly open for more than five hours on any day, food is available whenever beer is sold or furnished, and no more than 15% of its total annual receipts are from the sale of beer).

- Cash or surety bond in the amount of \$2,000.
- Sales hours: 10 a.m. to 1 a.m.
- No consumption of beer between 2 a.m. and 10:00 a.m.
- Must maintain 70% of its total gross revenues from a recreational amenity that is on or directly adjoins the licensed premises of the beer retailer.
- No quota on these licenses.

Taverns (Beer Bars)

- The quota for taverns was adjusted downward from one license per 30,500 statewide population to one license per 54,147. This is a reduction of 43 tavern licenses based on population estimates for July, 2011.
- Sales hours: 10 a.m. to 1 a.m.
- No consumption of beer between 2 a.m. and 10 a.m.
- Cash or surety bond in the amount of \$2,000.

Effective July 1, 2011, Taverns must electronically verify the identification of anyone who appears 35 years of age or younger to enter the premises. Identification which cannot be scanned must be manually reviewed and a daily log maintained with name, date of birth, type of identification, expiration date and identification issuing authority number.

For more information see the article on scanners on page 11 of this newsletter.♦

New Reception Center License

The on-premise banquet license was created years ago for hotels, resorts, sports venues, and convention centers to allow them to sell and serve alcohol to groups that book their facilities for private banquet functions. The ABC commission was approached by several smaller banquet venues wanting to do the same. The commission responded by including them under the "convention center" category, and issued them on-premise banquet licenses.

The Legislature disagreed with this approach, and passed a law in 2009 that required convention centers to be at least 30,000 square feet. The few smaller banquet venues that had been licensed as "convention centers" were

"grandfathered" in to allow them to continue to sell alcoholic beverages, but only until November 1, 2011. This "grandfathering" provision allowed time for the Legislature to further study the issue.

The 2011 Legislature responded by enacting a new "reception center" license for those small banquet venues that want to sell, offer for sale, or furnish alcohol on their premises. The license is not required for those venues that do not want to sell or furnish alcohol, but merely rent their facilities to private groups for private social functions where the group provides their own alcoholic beverages.

Here are the details of the new reception center license:

- The reception center must be at least 5000 sq. ft. and have culinary facilities on the premises or under the control of the center that are adequate to prepare full meals.
- Its primary purpose must be leasing its facility to a third party for the third party's event.
- Events must be under a contract between the center and a third party host of the event.
- The center may not maintain in excess of 30% of its total annual receipts from the sale of alcohol which includes mix and any service charge.
- These licenses are under a quota (1/56,313 statewide population) which is approximately 50 licenses.
- Proximity restrictions with respect locating near churches, schools, libraries, parks and playgrounds apply.
- Alcohol sales and service hours are 10 a.m. to 1 a.m.
- Hours of Consumption.: Patrons may not consume alcoholic beverages on the premises after 2 a.m. and before 10 a.m.
- The center must provide local law enforcement and the DABC with advance notice of any scheduled event involving the sale and service of alcohol to allow for random inspections.

Reception Center License ...continued on the next page

Reception Center License ...continued from the previous page

- Alcohol furnished by the center is only for consumption at the center. The host, patrons, or persons other than the center licensee may not remove alcohol from the premises. A patron at an event may not bring alcohol into or onto or remove alcohol from the center. Left over alcohol must be destroyed or, if saleable, returned to storage and retained by the center for later use.
- Minors may not be employed at an event if no food is available.
- A person's willingness to serve alcohol may not be made a condition of employment as a server.
- The center may not sell or furnish alcohol at an event at which a minor is present unless food is available at all times when alcohol is sold, furnished or consumed at the event.
- Only two drinks before a patron at a time.
- The licensee shall supervise and direct any person involved in selling or furnishing alcohol.
- Servers must have alcohol server training.
- Staff must be present at all times when alcohol is consumed.
- Patrons may not consume at a bar structure, and dispensing may only be from an area not visible to a patron separated by a solid, opaque or translucent barrier. However, the center may dispense from a mobile serving area that is moved only by staff of the center, can be moved by one person, and is no larger than 6' long and 30" wide. The method of dispensing can be by way of a hosted bar or a cash bar.♦

AIRPORT LOUNGES

The Salt Lake International Airport is undergoing significant renovation. The Legislature has created a new method for determining the number of allowable airport lounges at the airport. Effective July 1, 2011, the number is no longer tied to the number of concourses or terminals. Instead, it is based on the total number of passengers in a calendar year. One airport lounge is allowed for each 2,500,000 passengers. The airport lounges must be located beyond the airport's security points.

ON-PREMISE BANQUET LICENSES

A hotel or resort that holds an on-premise banquet license could previously provide room service only by the bottle ("sealed" container), and not by the drink. This restriction has been lifted. Adult room guests may now order an alcoholic beverage by the drink. The law continues to require that room service be provided in person by staff of the on-premise banquet licensee only to an adult guest in the guest room. The alcoholic beverage may not be left outside the guest room for retrieval by the guest.

PACKAGE AGENCIES

A package agency located on a manufacturer's premises (winery, brewery, distillery) may be open on Sundays and state and federal holidays if the manufacturer holds a full-service, limited-service, or "beer only" restaurant license located at the manufacturing facility, and only sells product produced at the manufacturing facility from the package agency. Days and hours of sale at the package agency shall be the same as for the restaurant. Note that this new law does **not** apply to a manufacturer that holds a dining or social club license on the premises.

Like on-premise banquet licenses, a package agency on the premises of a hotel or resort that is authorized to provide room service may do so by the drink.

TEMPORARY EVENT PERMITS

Single Event and Temporary Beer Event permittees may not discount the price of alcohol on any date or at any time. *They also may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price unless served to a person at a seated event, food is available when the alcohol is furnished, and this exception is not advertised.*

RESORT LICENSES

The period for "grandfathering" bar structures for full-service and limited-service restaurant resort sublicenses is extended to those issued up to December 31, 2010.

MISCELLANEOUS

Certificates of Approval Currently, an out-of-state brewer must obtain a certificate of approval to distribute its beers in Utah. The new law requires out-of-state importers and suppliers of beer to obtain a certificate of approval.

Heavy Beer Effective October 1, 2011, state stores and package agencies may not sell heavy beer in containers that exceed two liters, and no person may sell, purchase, or possess heavy beer in containers that exceed two liters.

Beer Territories A brewery may not enter into an agreement with more than one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or any portion of the sales territory.

Server Training An individual who is required to take the alcohol server training seminar must complete any test required to demonstrate completion of the training either (1) in the physical presence of an instructor, or (2) through an on-line course that has certain protections against fraud.♦

TRANSFER (SALE) OF ABC LICENSES

Utah ABC laws have prohibited holders of licenses issued by the ABC commission from selling the licenses to other persons. By law, the licenses have had no monetary value, and had to be surrendered back to the commission for reallocation. **Effective July 1, 2012**, this will all change. License holders will be permitted to sell their licenses and those licenses may even be moved to a different location within the same county. See Utah Code Sections 32B-8a-101 to -502. These new laws also govern situations where a current license holder wants to move their license to another location.

Here is a summary of the new law:

- If approved by the ABC commission, a retail license may transfer their license from one location to another, or sell the license to another person regardless of whether it is for the same premises, or is moved from one premises to another. However, any transfer of location may not be to a different county. A transferee must begin operations of the license at the location to which the transfer applies before the transferee may seek a transfer of the license to a different location. Transfers must be for the same type of license.
- The transferee must qualify to hold the license, and may not be delinquent in payment of taxes arising out of the operation of a retail license.
- The transfer process is required when ownership of 51% of the corporation, partnership, or limited liability company changes and notice of the intended transfer must be given to the DABC within 30 days of the ownership change. Otherwise, the license is forfeited.
- The transferee must begin operations within 30 days from the day the transfer is approved by the commission or the license is forfeited. This is to prevent persons from buying licenses and holding them to drive up the value. The commission may grant an extension.
- Procedure:
 - Notice. The transferee must file notice of the intended transfer with the department 10 days before filing the transfer application. This must include the name and address of the transferor and transferee, the type of license, the address of the premises, the address to which it will be transferred, an agreement that consideration will be paid only after the transfer is approved by the commission. Where applicable, the notice must include the name of the business entity, and the name and address of persons acquiring ownership of 51% or more of the business.
 - Transfer Application. Must specify whether the consideration includes payment for inventory, fixtures, and transfer of the license. The transfer *application* fee is \$300 and an additional *transfer fee* will vary depending on the circumstances. Current license holders must also pay the application and transfer fees to move their license from one location to another. There is a statutory list of factors the ABC commission must weigh in deciding whether to grant any transfer.
 - Protection of creditors. The transferor must provide the transferee a list of creditors who have a claim against the transferor. The transferee must provide notice of the intended transfer to the creditors. The transferor and transferee must establish an escrow account with an independent escrow holder for the full amount of the consideration. Creditors are given the opportunity to file a claim. The transferee must notify the DABC within 30 days of the filing of the transfer application, that the consideration has been deposited with the escrow holder. Duties of the escrow holder are enumerated. Creditors must be paid in a statutory order of preference within a reasonable time after completion of the transfer.
Escrow is not required if a business entity files with the DABC a guaranty of payment of all claims of creditors – which is accepted by the creditors. The transfer is not complete until all creditors' claims are paid in full.♦

ABC ADMINISTRATION

Effective July 1, 2011:

1. The ABC commissioners will no longer be able to select their own chairman. The chairman must be appointed annually by the governor and serve at the pleasure of the governor.

2. The department director will continue to be appointed by the commission by a vote of four of the five commissioners, with the approval of the governor. However, the appointment will also require the consent of the Senate.

3. The commissioners, the director, and certain "applicable" department employees" including deputy or assistant

directors, chief administrative division officers, compliance officers, and employees that directly perform licensing or compliance functions will be governed by a new conflicts of interest law. See Utah Code Section 32B-2-209.

It prohibits them and their spouses and children under 18 years of age from the following involvement with an applicant for or holder of a license, permit, package agency, or certificate of approval:

- having a pecuniary interest whether as holder of stock or other securities other than a mutual fund;
- having a conflict of interest;

ABC Administration ...continued on the next page

ABC Administration ...continued from the previous page

- having an office, position, or relationship, or being engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of the office or employment;
- having a direct business relationship with a person subject to administrative action under the ABC Act;
- accepting a gift (in value of \$50 or more), gratuity, emolument, or employment from any of the above or their officers, agents, or employees;
- soliciting, requesting, or recommending, directly or indirectly, the appointment of any person to any officer or employment with any of the above.

This law also prohibits an officer, agent, attorney, or employee of an applicant or holder of a license, permit, package agency, or certificate of approval from, directly or indirectly, soliciting, requesting, or recommending to the

governor, any state senator, the commission, or the department the appointment of any person as a commissioner, director, or department staff position.

Finally, the law provides a procedure for a commissioner to disclose during a meeting of the commission a potential violation of this law including the existence and nature of a professional, financial, business, or personal interest with a licensee, permittee, package agent, or holder of a certificate of approval.

4. With respect to the issuing of retail alcoholic beverage licenses, after receiving public input in a public meeting in support or opposition to the issuance of a license, the commission may discuss in a closed meeting the various statutory factors the commission is required to weigh before issuing a license.♦

The Licensing Newsletter is published 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: hotline@utah.gov
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DABC administrative office hours:
 Monday – Thursday, 7:00 am to 6:00 pm. Closed Fridays

DABC warehouse hours: Monday – Friday, 5:00 am to 2:30 pm

Liquor stores will be open regular hours Monday - Saturday.
 Closed Sundays and holidays

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

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

Call 801-977-6800 for the current schedule.

NEW LICENSING FEES - EFFECTIVE JULY 1, 2011

<u>LICENSE/PERMIT TYPE</u>	<u>APPLICATION FEE</u>	<u>INITIAL LICENSE FEE</u>	<u>RENEWAL FEE</u>
Full-Service Restaurant	\$300	\$2000	cost of liquor under \$5,000 = \$ 850 \$5,000 but less than \$10,000 = \$1050 \$10,000 but less than \$25,000 = \$1500 \$25,000 or more = \$1750
Limited-Service Restaurant Club	\$300	\$ 750	\$ 550
Airport Lounge	\$300	\$ 2750	\$2000
Banquet Catering	\$300	\$ 8000	\$6000
Tavern	\$300	\$ 750	\$ 750
On-Premise Beer Recreational Amenity	\$300	\$ 1500	\$1250
Beer-Only Restaurant	\$300	\$ 300	\$ 350
Reception Center	\$300	\$ 750	\$ 550
Resort	\$300	\$ 750	\$ 750
Manufacturer	\$300	\$10,000 then \$2000 for each additional sublicense; later addition of sublicense: \$2250	\$1000 per sublicense
Liquor Warehouse	\$300	\$ 850	\$2900
Beer Wholesaler	\$300	\$2300	(\$1400 if winery production less than 20,000 gals.) \$1200
Local Industry Representative	\$ 75	\$ 125	under 500,000 case sales = \$1200 5000 but less than 1,000,000 = \$2350 1,000,000 or more = \$3500
Package Agency	\$125	N/A	\$ 125
Single Event Permit		\$ 125	N/A
Temporary Beer Event Permit		\$ 100	N/A
Public Service Special Use	\$ 75	\$ 250	\$30/flight, etc.
Industrial/Manuf. Special Use	\$ 75	\$ 250	N/A
Scientific/Educational Special Use		\$ 125	N/A
Religious Special Use		\$ 125	N/A
Certificate of Approval	\$75	\$ 300	\$ 250

New Warning Signs Must be Posted on July 1, 2011

Legislation passed in 2009, but which becomes effective on July 1, 2011, modifies the language of the "Warning Signs" that must be posted in state stores, package agencies, and all alcohol retail establishments licensed by the DABC.

The new warning sign must include two separate warnings. The first must be in large letters and read: "*WARNING - Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.*" This warning must be followed by: "*Call the Utah Department of Health at 1-800-822-2229 with questions or for more information.*" The second portion of the warning sign is the DUI warning which is currently in use.

These new warning signs are required to be posted in licensed establishments effective July 1, 2011. The

DABC has already mailed the new signs to all licensees. Licensees may voluntarily begin posting these new warning signs prior to July 1, 2011.

If you have any questions concerning the warning signs, please feel free to contact the Compliance division at 801-977-6800.

A template of the warning sign will be made available on the DABC website. You may print it and frame it as is, or create your own signs that are the same dimensions and font sizes as the template. The sign consists of two messages, each of which must be in a different font. The color of the print does not have to be red, and the sign does not have to be white, but it has to be easily readable and posted in a prominent place in the licensed premises. ♦

Taverns Must Use Electronic Scanners as of July 1, 2011

Information For Taverns on the "Scanner" Requirement

Effective July 1, 2011, Taverns are required to electronically verify the identification of anyone who appears 35 years of age or younger *to enter the premises.*

As a tavern licensee, you must purchase or lease an electronic age verification device (commonly referred to as a "scanner") for use by July 1, 2011. These devices are sold by local providers or on-line. The DABC does not provide a list of approved devices, but does specify the minimum technology specifications of electronic age verification devices and the procedures for recording identification that cannot be electronically verified.

An electronic age verification device must be able to read a "barcode" (two dimensional "2d" stack symbology) or a magnetic stripe. It must be capable of reading a valid state issued driver's license, a valid state issued identification card, a valid military identification card, or a valid passport.

The device must also have a screen that displays no more than the individual's name, age, ID number, date of birth, gender, and the ID expiration date.

The device must have the capability of electronically storing the following information for seven days (168 hours) after which it must be deleted: the individual's name, date of birth, age, gender, expiration date of the ID, the time and date the ID was scanned.

Identification which cannot be scanned i.e

passports or military identification cards must be manually reviewed and a daily log maintained with the date the identification is presented, individual's name, date of birth, type of identification (such as driver license, passport, state ID card), ID's expiration date and ID number issued by the issuing authority.

A state driver license or identification card which cannot be scanned due to bar code damage must follow the same process as passports. These logs are considered records and must be maintained for 7 days and then must be destroyed. In addition to the logs, the scanner contains data which is considered a "record". You may be required to provide the information from your scanner to the department as part of a normal compliance review or by law enforcement agencies in conducting an investigation.

When you buy or lease a scanner, you must ask the provider to train you on its use including instructions so that you have the knowledge, capability and equipment (i.e. computer, cables, printers) to be able to read and produce the data in the scanner upon request by an authorized DABC employee, law enforcement officer, or other investigative agency personnel.

Any data collected either electronically or otherwise may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age. You may not keep the data in a data base for mailing, advertising, or promotional activity and you may not acquire personal information to make inappropriate personal contact with the individual. ♦



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