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2017 Utah Legislative Session - Week 2

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A Utah State University college student is shadowing me during this legislative session. Ellie is a political science student who is interested in attending law school. As a political professional, it can be easy to become absorbed by only the issues that require my attention. Ellie's questions about the political process, her commentary on the body language, the political theater she observes in hearings, and her interest in the groups expressing their views is a refreshing reminder of what originally drew me to politics.

Without Ellie's questions and interest, I might have otherwise skipped a hearing on HB99 Bigamy Offense Amendments. This bill seeks to make bigamy a third degree felony crime. The hearing lasted several hours and involved a passionate discussion about the societal impacts of polygamist practices, the bill's potential for attack by court challenges, and feedback from fundamentalist groups in Utah that practice polygamy. Since Ellie is from a city named Hurricane, which neighbors polygamist communities in southern Utah, the discussion had interesting and relevant implications to her community. The Committee ultimately held the bill for further work, but it proved to be educational for both of us!

HB115 Solid Waste Revisions, Rep. Mike McKell.

Many clients that operate in the waste or industrial manufacturing areas will want to include this bill on their tracking list. This bill expands the definition of solid waste to include "transferring, treating and storing" to the current regulatory framework and would require an approved operation plan and fees for those expanded activities. The bill also directs the Utah Department of Environmental Quality (UDEQ) to propose and finalize a fee schedule consistent with the statute by July 1, 2017. The fee is supposed to be "equitable" and no greater than \$0.33 per ton. Some concerns have been expressed that UDEQ might not be able to meet the timeline for the fee schedule outlined in the bill and with true equity. Clients that believe they may be impacted by this bill should reach out to myself or to Amanda Smith for additional analysis and review.

HB81 Post-employment Restrictive Covenant Amendments, Rep. Brian Greene.

During the 2016 Legislative session, there was significant debate over HB251 Post- Employment Restrictions Amendments. Last year's bill began with much broader proposals, but was ultimately scaled back to restrict non-compete agreements (NCA) to one year in length and the requirement that agreements must be reasonable with regard to geographic or market scope. Employers that use or enforce unenforceable NCAs would be liable for employee attorneys' fees, court costs, and actual damages. NCAs

related to the sale of a business were exempted from the bill. Though many proponents wanted to push the bill further, it was agreed that a study would be conducted to review the impacts of this bill on Utah employers and employees following the mid-2016 implementation. The Legislature contributed \$50,000 to the study and the business community matched the Legislature's funds. The results of this study are to be released on February 24, 2017.

The prior year's history and the soon-to-be released study results make HB81's introduction and advancement to a committee hearing all the more interesting. This year's proposed bill would expand on last year's reforms by requiring "new consideration" (i.e. a large increase or a provision) when an employer seeks to require an employee to sign an NCA. It would also make the NCA unenforceable if an employee is terminated without cause within a year of signing the agreement. It further limits court action to enforcement only during the time (1 year) the NCA is effective and specifies treble damages against an employer that tries to bring an unenforceable action. Clients who are concerned about this bill or have questions about the use of NCAs should reach out to myself or Bryan Benard.

Changes to Alcohol Policy Coming: This year the Legislature is embarking on some major reforms to Utah's alcohol policy and regulation. It has been nearly a decade since the last significant changes in the state's alcohol policies took place, which resulted in the dismantling of the private club system. This is always a tricky area of policy that has overtones and undertones related to religious and cultural sensitivities, tourism perceptions and impacts, costs to businesses, and to the consuming and non-consuming public. Arriving at a level of regulation that provides for public safety and is deemed "fair" is a tall order. Rep. Brad Wilson (R-Kaysville) and Sen. Jerry Stevenson (R-Layton) are the legislators who have taken on this difficult issue.

No public draft of the alcohol proposal is available, but it is said to focus on lowering the rate of drunk driving, continue focus on alcohol abuse, reduce consumption by minors, and modernize parts of the code that haven't been updated in a decade or more. It is rumored to contain restrictions on establishment names and license types to ensure there is a distinction between different types of facilities, the type of alcohol license they hold, and what that should mean to facility patrons about the level, visibility, and type of alcohol served. Consumers may also want to stock up on some products as a 2% increase to the mark-up on heavy beer and distilled spirits has been proposed as a means to fund a new alcohol abuse and underage drinking education initiative.

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