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# Utah Legislative Update: August 2017

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## **Utah & the Current State of Alcohol Policy**

### **The 3.2 Beer Conundrum**

This is an issue I'm asked about frequently both in and out of State. Like it or not, Utah is known for its sometime quirky alcohol laws. Utah and alcohol have a unique relationship shaped by the dominate religious culture in our State. After the end of Prohibition, Utah became one of 17 "control states" for alcohol distribution where the sale of distilled spirits and wine is handled through government agencies at the wholesale level and retail level sales are handled in state-operated retail outlets. In Utah, we take it a step further for beer restricting retail sales by grocery and convenience stores to 3.2% alcohol by weight (ABW). Several of our neighboring states — Idaho, Montana, Wyoming, and Oregon — have similar control models, although their wholesale and retail restrictions apply only to distilled spirits. Utah was one of five states with a 3.2% ABW requirement for beer sales in grocery and convenience store, but recently three states made changes to their liquor laws; leaving just Utah and Minnesota with this unique requirement. In terms of market percentage, when all five states had the requirement in place, the market percentage of 3.2% beer compared to all beer was 1.8 %. After the full phase out in Colorado, Kansas, and Oklahoma, the market percentage is expected to be 0.6 percent.

What does this mean for Utah's 3.2% ABW beer requirement? Well, many beer producers are warning it won't be economically viable to produce 3.2% ABW beer for such a small share of the market. Without delving too deep into the science, making 3.2% ABW beer requires running a special batch to manipulate the chemical reactions to obtain the lower level. In the regular brewing process the chemical reactions run their natural course that determines the ABW percentage. When the process is artificially stopped or modified to obtain a pre-determined, lower ABW level, the producer also has to modify other ingredients to get the right "taste" that the beer is known for. This means the availability of 3.2 % ABW beer in Utah grocery and convenience stores might become extremely limited as producers decide the production costs are not justified by the small market, particularly for national brands. This wouldn't just impact grocery and convenience stores, but also restaurants with beer on-tap, golf courses, and other venues with a beer-only license.

Currently 94% of all beer sales in Utah are of 3.2% ABW beer, which equates to about 32.4 million gallons. When asked by the Business and Labor Interim Committee to speak on this issue of limited availability,

Executive Director Sal Petilos of the Utah Department of Alcohol Beverage Control (DABC), expressed concern to the legislators about the Department's ability to absorb the 3.2% ABW beer sales that would normally take place in non-State controlled venues, primarily grocery and convenience stores. Director Petilos was very direct with legislators that his department, with its current staff, warehouse, and retail footprint, would have no way of absorbing that volume of product and purchases required if the supply of 3.2% ABW dries up. This leaves the Utah Legislature in an interesting pickle. Do legislators consider raising the ABW level of beer allowed to be sold in non-State controlled venues? Do they provide for a massive investment in DABC facilities and staff to keep the State control structure in place? Some legislators suggest taking a wait-and-see approach since the full effect of the three states leaving the 3.2% ABW market won't be known or realized until sometime in 2019. Retailers, restaurants, and the tourism community are greatly concerned about this issue and have suggested raising the ABW allowed in non-state outlets to 4.8% ABW which would capture the lion's share of production-line beer. How this issue will play out in the Legislature during the 2018 session is tied to another interesting alcohol issue...

#### **Utah's 0.05 DUI Law**

During the 2017 Annual Session, the Utah Legislature passed a bill that would lower the threshold for a Driving Under the Influence (DUI) violation from 0.08% blood alcohol content (BAC) to 0.05%. Nationally, all states have been at the 0.08% BAC level and Utah's new bill would make it an outlier. The bill has a delayed effective date of Dec. 31, 2018, but restaurants, bars, and tourism officials are seeking to modify or repeal the requirement. This is a particularly sensitive issue because it can be difficult to avoid being cast as "pro-drunk driving" if you oppose the 0.05% BAC level. The change means that a 150-pound man would be over the new, lower limit after two beers; and a 120-pound woman would be over the limit after a single drink. Tourism officials in particular are worried that this enhances the perception that visitors to Utah will find it difficult to get a drink while visiting and run the risk of picking up a DUI violation for what is considered "normal" consumption in their home state.

As a rule, the Utah Legislature avoids alcohol policy discussions. In fact, many legislative sessions often pass with no significant alcohol bills proposed. The majority of Utah legislators are members of the Church of Jesus Christ of Latter Day Saints (Mormons) and do not consume alcohol at all. Some resist changing policy for a product they don't use and find morally reprehensible. Others lack a frame of reference for alcohol and prefer the status quo. Alcohol policy trends is an area where Utah typically follows other states slowly and cautiously rather than leads out, which makes Utah's lonely stance on 0.05% BAC for DUIs an interesting position. The debate on this issue is not complete because the delayed effective date means the law can be modified in the 2018 Annual Session before it would ever go into effect. Perhaps the most likely modification would be to allow someone driving with a BAC between 0.05% and 0.07% to be charged with some type of enhanced violation short of a traditional DUI, similar to the approach in Colorado.

### Putting the Numbers Together...

If you combine the complexities of the 3.2% ABW beer policy discussion and the continued handwringing over the 0.05% BAC DUI law, it adds up to a very uncomfortable place for the Utah Legislature. Raising the ABW level for beer sold to 94% of Utah's beer drinking public, while simultaneously lowering the DUI standard, has some wondering if DUI's will skyrocket. Some are already pointing to tourism ads run by other states suggesting that you can have all the outdoor fun you want without risking a DUI by visiting Colorado or Wyoming. One issue is a problem of Utah's own making; and on the other issue Utah is a casualty of the change in policy by other states. For those who love political theater or have a vested interest in the outcome, the 2018 Legislative Session will be one to watch on alcohol policy. I suggest popcorn and a beverage of your choosing.

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