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STATUTORY AMENDMENTS AFFECTING LOCAL AUTHORITY TO REGULATE ALCOHOLIC BEVERAGE RETAIL OUTLETS

I. [§ 1] UTAH'S ALCOHOLIC BEVERAGE CONTROL ACT

A. [§ 1.1] LEGISLATIVE ACTIONS

Utah's intoxicating liquor statutes, Utah Code Annotated Title 32, were repealed by the legislature in 1985.¹ The corresponding liquor statutes for non-profit clubs, were also repealed.² The new comprehensive Alcoholic Beverages Control Act [hereinafter cited as ABCA] was enacted and codified under Utah Code Annotated Title 32A.³

B. [§ 1.2] GOALS OF THE CURRENT STATUTE

The legislature had two specific goals in revising the state liquor laws. According to a conversation with the bill's sponsor, State Senator Warren E. Pugh, the most important goal was the introduction of the single event permit, designed to help attract conventions. This portion of the code was enacted in an effort to put Utah on a more equal footing with other states when competing for the convention trade, by allowing alcoholic beverages to be served at a convention site. A second goal was to update the law by deleting archaic language and modernizing sections that were originally written in the first part of this century. As part of the changes, the necessity for written consent of local authorities, the governing bodies of counties, cities and towns, has been included in many instances. This necessity for local consent is included in many sections as a prerequisite for applying for a liquor license.

C. [§ 1.3] SCOPE OF REVIEW

The terms used in this article correspond to the definitions found in the current ABCA.⁴ This article reviews the scope of local authority in regulating retail outlets. Changes in the ABCA that impact on local ordinances are also reviewed to make local authorities aware of such changes.

¹The repealing act is found in 1985 Utah Laws 175(2).

²Previously non-profit clubs liquor statutes were found under UTAH CODE § 16-6-12.1-4, 13.1-.3, 13.5-.12, 14, and 15 (Code. Co 1984-85) (repealed 1985).

³The ABCA was enacted by 1985 Utah Laws 175(1).

⁴UTAH CODE ANN. § 32A-1-5 (Supp. 1985). Definitions. As used in this title:

(1) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

II. [§ 2] AUTHORITY TO REGULATE

A. [§ 2.1] SOURCES OF LOCAL AUTHORITY

Local authority to regulate intoxicating liquor has two sources. First, the State legislature specifically grants local authorities certain powers in Utah Code Annotated Title 32A. A secondary source of power is the general welfare power as granted under other sections of the Utah Code. Cities may pass ordinances that are necessary and proper to “provide for the safety and preserve the health, and promote the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the city. . . .”⁵ In *Salt Lake City v. Allred*,⁶ the Utah Supreme Court held that through a local government’s police power,⁷ the local government has independent authority, in addition to specific grants, to pass ordinances which are reasonably and appropriately related to the objectives of public safety, health, morals and welfare.

B. [§ 2.2] GENERAL WELFARE

1. [§ 2.2.1] *State v. Hutchinson*

In using the general welfare power, local authority must comply with

(4) “Beer”, “light beer”, “malt liquor”, or “malted beverages” means all products which contain 63/100 of 1% of alcohol by volume or ½ of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

(18) “Local authority” means the board of county commissioners of the county if the premises are located in an unincorporated area of a county, or the governing body of the city or town if the premises are located in an incorporated city or town.

(22) “Outlet” means a location other than a state store or package agency where liquor is sold pursuant to a license issued at the discretion of the commission.

(24) “Package agency” means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

(35) “Retailer” means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

(41) “State Store” means a facility for the sale of package liquor located on premises owned or leased by the state of Utah and operated by state employees. This term shall not apply to restaurants, private clubs or package agencies.

⁵UTAH CODE ANN. § 10-8-84 (Supp. 1985). County general welfare power is granted in UTAH CODE ANN. § 17-5-77 (Supp. 1985).

⁶20 Utah 2d 298, 437 P.2d 434 (1968).

⁷Police power is the power used to promote the general welfare grant. 16A C.J.S. Constitutional law § 432 (1984).

the standards set in *State v. Hutchinson*.⁸ In *Hutchinson*, the Utah Supreme Court, reviewed a Salt Lake County ordinance that required the filing of a campaign statement and disclosure of campaign contributions. The court held the “Dillon” view of municipal authority, where municipal authority is strictly construed to be limited to specific grants from the state, is not to be used.⁹ The justices found it inappropriate for the state supreme court “to enfeeble local governments on the unjustified assumption that strict construction of delegated powers is necessary to prevent abuses.”¹⁰ The court stated “[t]he enactment of a broad general welfare clause conferring police powers directly on local governments allows local government to act in every reasonable, necessary and appropriate way to further the public welfare of their citizens.”¹¹ The justices declared such a philosophy is consistent with the McQuillin treatise,¹² *The Law of Municipal Corporations*, where it asserts the general welfare clause should be liberally construed to give a municipality wide discretion in the exercise of the police power.¹³ *Hutchinson* sets out three restraints on local authority to regulate under the general welfare clause: the regulations 1) must rationally promote the public health, safety, morals and welfare; 2) must not conflict with superior law; and 3) must not be preempted or attempt to regulate an area which by the nature of the subject requires uniform state regulation.¹⁴ The justices also directed the legislature to limit specific grants of power by directing the use of power in a particular manner, if the legislature so desires.¹⁵

The *Hutchinson* court held that financial disclosure by candidates is a legitimate purpose within the state general welfare clause.¹⁶ The bench found no direct conflict with the state statute, and in finding so, the bench looked at an attempt to preempt such local ordinances.¹⁷ Preemption occurs when the state occupies a particular field or “blankets” the field

⁸624 P.2d 1116 (Utah 1980).

⁹624 P.2d at 1127. Counties are included in this broad definition of municipalities since they are characterized as quasi-municipal corporations. *Shaw v. Salt Lake County*, 119 Utah 50, 224 P.2d 1037 (1950).

¹⁰624 P.2d at 1121.

¹¹*Id.*

¹²*Id.* at 1124

¹³8 McQUILLAN MUNICIPAL CORPORATIONS (1980 Rev. Vol.) Section 24.44, at 511.

¹⁴624 P.2d at 1127.

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.* at 1126-27.

completely, not allowing room for local regulation.¹⁸ In *Hutchinson*, there was no preemption since the state law dealt only with state offices.¹⁹ Since there was no direct preemption the court looked for the necessity for uniform state regulation.²⁰ The justices focused on the difference in the various counties with respect to population, wealth and other factors in finding that in such diverse situations uniformity was not needed.²¹ The county ordinance met all the requirements and was valid. The bench stated restrictions on local authorities powers should permit reasonable latitude when they exercise their express and implied powers.²²

2. [§ 2.2.2] *Hutchinson* Standards as Applied to Alcoholic Beverage Control

The standards set forth in *Hutchinson*, may be applied to alcoholic beverage control. Local liquor control regulations are founded on the general welfare power and rationally promote public health, safety, morals and welfare; the first *Hutchinson* standard. The second *Hutchinson* standard can be met by drafting local ordinances that do not directly conflict with state law. The ABCA does not preempt local regulation of alcohol. The ABCA does not attempt to “blanket” the entire field of alcoholic beverage regulation, preempting all local regulation. Local authorities are granted specific power which can be used as a reasonable means to implement regulations. Since the ABCA specifically allows local control to some extent statutorily, preemption does not exist. These instances of granting local authorities power will be addressed in length later in this article. Finally, the necessity of uniform regulation can be questioned on the same grounds as in *Hutchinson*. The problems of liquor sales or consumption may be more acute in certain localities, necessitating local control over a unique local problem. It is not suggested that local authority has a broad power to regulate as long as there is no direct conflict, but there are a few areas that the legislature has allowed local authorities to regulate expressly and, within reasonable latitude, impliedly.

C. [§ 2.3] ATTORNEY GENERAL’S INFORMAL OPINION (85-89) REVIEWED

The Attorney General’s office released an informal opinion (85-89) on local ordinances and the 1985 ABCA’s affect on local ordinances on

¹⁸*Id.* at 1121.

¹⁹*Id.* at 1127.

²⁰*Id.*

²¹*Id.*

²²*Id.* at 1124. The court stated that the limitation on local governments is the grant of power by the state and by the people themselves. *Id.* at 1121.

December 16, 1985. The opinion used *Hutchinson* as the basis for its argument. The primary issue addressed in the Attorney General's opinion was whether local authorities have the power to control the hours of operation of liquor outlets. According to the Attorney General's reading of Utah Code Annotated Title 32A, the legislature intended to "blanket the entire field" of alcoholic beverage control as demonstrated by the establishment of the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Commission [hereinafter cited as Commission]. The Attorney General's opinion concluded that local authorities may only regulate alcoholic beverage control where authority is explicitly granted.

The opinion contradicts the broad latitude granted local authorities in *Hutchinson*. The establishment of administrative agencies does not necessarily cause preemption or indicate a need for uniform state regulation in all aspects of liquor law. Indeed, the specific grants to local authorities show a legislative intent to allow the use of the local authorities general welfare powers.

III. [§ 3] ORDINANCES

A. [§ 3.1] CONSUMPTION PERMITS

Most local regulations controlling retail liquor at the local level are found in ordinances governing business licenses. Many of these ordinances focus on the regulation of different types of retail beer sales licenses, conditions for their issuance and local control of hours of such sales. In many instances, the power to regulate alcoholic beverage consumption is overlooked by local authorities. As discussed below, the revisions in the ABCA specifically emphasize the local control of consumption for certain types of liquor licenses, while the act is silent concerning other types of liquor licenses. This general power is described in Utah Code Annotated § 32A-12-16 (Supp. 1985).²³ This statute specifically refers to restaurants, clubs or similar organizations. Local authorities are expressly allowed to regulate consumption, and therefore issue or deny consumption permits. The legislature has explicitly allowed the use of local authority to regulate consumption, therefore the ABCA cannot preempt all local authorities regulation of liquor activities.

B. [§ 3.2] LOCAL CONSENT

Local authorities are given additional unspecified powers due to the necessity of written local consent prior to the application for a state liquor

²³UTAH CODE ANN. § 32A-12-16 (Supp. 1985). "Operation without a license or permit. (1) No person shall operate a restaurant, club, or similar organization which allows patrons, customers, members, guests, visitors, or other persons to purchase or consume liquor on the premises, except as provided by this title or the rules of the commission. Nothing in this section prevents the operator of a

permit. There are no standards specified for the issuance of local consent and according to State Senator Warren E. Pugh, the bills sponsor, there was no discussion of a standard during any proceedings. In *Salt Lake City v. Ronnenburg*,²⁴ the court upheld a city ordinance prohibiting persons under age twenty one from being in a liquor establishment. The court stated that local government can impose a condition on the revocable privilege of alcohol sales.²⁵ As long as the local authority acts within its power, is not arbitrary or capricious, and does not deny due process, such action will be found constitutional.²⁶ *Ronnenburg* shows that local authorities can impose additional restraints on outlets in some circumstances even after local consent has been granted. The Attorney General's informal opinion (85-89), on the other hand, contends that once local consent for an outlet is obtained, regulation is exclusively a state matter.

C. [§ 3.3] ZONING RESTRICTIONS

Zoning restrictions are one example of the use of local ordinances or administrative procedures that affect liquor control prior to the issuance of local consent. Zoning restrictions have been used to limit access and location of other businesses. In *Young v. American Mini Theatres, Inc.*²⁷ the Supreme Court found a zoning ordinance, that prohibited an adult motion picture theater from being within 1000 feet of other uses, valid.²⁸ The Supreme Court of Virginia ruled in *City of Norfolk v. Tiny House, Inc.*,²⁹ that a zoning restriction regulating the proximity of liquor sales establishments was valid even though the Alcoholic Beverage Control Commission had the exclusive authority to control the sale and purchase of alcoholic beverages.³⁰ The Utah Commission is similarly charged with authority to control the sale of alcoholic beverages. Local authorities should use zoning regulations in an effort to maintain the desired present and future character of their cities or counties.

restaurant, club or similar organization from allowing consumption of liquor on the premises if the local authority has authorized consumption.”

²⁴674 P.2d 128 (Utah 1983).

²⁵*Id.* at 129.

²⁶*Whiting v. Clayton*, 617 P.2d 362, 364 (Utah 1980), *Anderson v. Utah County Board of County Commissioners*, 589 P.2d 1214, 1216 (Utah 1979).

²⁷*Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976).

²⁸*Id.* at 62.

²⁹222 Va. 414, 281 S.E. 2d 836 (1981).

³⁰*Id.* at 421, 281 S.E.2d at 841. *Accord, Skaggs-Albertson v. ABC Liquors, Inc.*, 363 So.2d 1082 (Fla. 1978), *MacKenzie v. Town Planning and Zoning Commission of the town of Trumbull*, 149 Conn. 678, 183 A.2d 619 (1962); *see Ullis v. Inhabitants of the town of Boothbay Harbor*, 459 A.2d 153 (Me. 1983) (concur-

IV. [§ 4] AMENDMENTS AFFECTING SPECIFIC TYPES OF BUSINESSES

The Commission has the statutory power, under the new ABCA, to grant liquor licenses on the state level. The majority of the ABCA applies only to the Commission and Department of Alcoholic Beverage Control. Several changes instituted by the ABCA affect local regulations and several changes reemphasize local control.

Each chapter of the ABCA has slightly different wording that may allow local regulation of different aspects of liquor sales and consumption. Each chapter of the ABCA will be discussed separately.

A. [§ 4.1] STATE STORES

Statutes concerning state stores are found in Utah Code Annotated § 32A-2-1 to 4 (Supp. 1985). It is important to note there is no local authorities power to grant or deny local consent. The only input local authorities have is when the Commission "consults" local governing authority. Other than the requirement of consultation, the only influence local authorities can exert is through local zoning ordinances, which must be met.³¹ Local authorities have no other control over state stores. The Commission and state law control the store exclusively. There is no grant of local control or such implied authority; this is an area where state law blankets the field.

B. [§ 4.2] RESTAURANTS

1. [§ 4.2.1] Definitional Changes and State Quotas

To qualify as a restaurant, the primary purpose of the establishment must be the service of meals to the public. Additionally, the definition of a restaurant has been modified by deleting reference to indoor dining accommodations.³² A maximum quota of one restaurant liquor license per 9,000 population is established, but that quota can be misleading because of a special seasonal license. Seasonal licenses allow periodic licenses of a nine month duration to be counted as half of one restaurant liquor license. These licenses must be paired with another seasonal restaurant liquor license. The paired restaurants duration of operation shall not exceed one 12 month period per calendar year.³³

2. [§ 4.2.2] Proximity to Schools, Churches, Libraries, Playgrounds and Parks

The relationship of restaurants serving liquor and specific types of

ring with the decision in *Norfolk* but finding total preemption of alcoholic beverage control).

³¹UTAH CODE ANN. § 32A-2-2(2) (Supp. 1985).

³²UTAH CODE ANN. § 32A-1-5 (Supp. 1985).

³³UTAH CODE ANN. § 32A-4-1(3) (Supp. 1985).

institutions should be considered when first granting a restaurant business license. The liquor license restrictions prohibit establishment of a restaurant within 600 feet of a public or private school, church, public library, public playground, or park starting at nearest entrance of the restaurant and ending at the closest property line if a travel route is used or within 200 feet if a direct line is used.³⁴ There is an exception for third-class cities and towns.³⁵ If, in a third class city or town, a church is the sole reason the restaurant is within a restricted area, the restaurant may receive a liquor license if: 1) the church gives written approval; and 2) the commission approves such variance after holding hearings and considering all the circumstances.³⁶

3. [§ 4.2.3] Applicant and Employee Qualifications

The statutory language concerning the qualifications of applicants for liquor licenses and their employees has changed. The qualifications for applicants has become more strict. Prior language permitted a felony criminal history, an alcoholic beverage violation, or a conviction for a crime involving moral turpitude of the proprietor, officer, director, or managing agent to be a considering factor in granting a license, but these factors alone would not disqualify the individual.³⁷ Under Utah Code Annotated § 32A-4-2(1)(Supp. 1985), a license cannot be issued to such persons. Employees' criminal history provisions have been relaxed.³⁸ Reference to an employee's criminal history is not considered, however a conviction for a crime committed during the time of employment may result in license revocation for the employer.

³⁴UTAH CODE ANN. § 32A-4-1(4) (Supp. 1985). To determine the 600 foot restriction, one would measure from the nearest entrance of the restaurant and follow the shortest "ordinary" pedestrian route to the nearest property boundary of the school, church public library playground or park. An alternate measurement method would be to measure from the nearest entrance of the restaurant and follow the vehicular traffic route along "public thoroughfares" to the nearest boundary of the school, church, public library, playground or park.

"Ordinary" is not defined in Title 32A, but may include footpaths.

"Public thoroughfares" are not defined in the title but pathways would be excluded since they are not generally "public."

³⁵A third class city is defined as municipality having 800 or more inhabitants but less than 60,000. A town is a municipality having less than 800 inhabitants. UTAH CODE ANN. § 10-2-301. (Supp. 1985).

³⁶UTAH CODE ANN. § 32A-4-1(4) (b) (Supp. 1985).

³⁷UTAH CODE § 32-1-36.10 (Code. Co 1984-85) (repealed 1985).

³⁸UTAH CODE ANN. § 32A-4-2(2)(Supp. 1985). "If an employee . . . is convicted of any offense [specified] the commission may immediately revoke the license." There are no references to the criminal history of the employee.

4. [§ 4.2.4] Local Consent and Regulations

The application for a state restaurant liquor license must contain a copy of the applicant's current local business license and written local consent.³⁹ There is no standard set for such consent nor is there any specification on who can grant such consent. The application of local business regulations have considerable impact on the ability of a restaurant to obtain a liquor license. One example would be where local ordinance allows one restaurant per 12,000 population to serve alcoholic beverages. Even though a restaurant qualifies under state law for such a license, it may be precluded by ordinance from obtaining such license and therefore local consent may be validly denied.⁴⁰ There may be a question of implied blanketing of the field since state law allows one restaurant per 9,000 population. This can be addressed by the language of the statute. The governing statute states simply that "the total number of restaurant liquor licenses shall not at any time aggregate more than that number determined by dividing the population of the state by 9,000."⁴¹ The distribution among a local area is not addressed. This is an area for local control.⁴²

5. [§ 4.2.5] State Restrictions on Restaurants and Local Authority

Compared to the prior Liquor Control Act, the state had imposed more specific operational restrictions on restaurants that have obtained a liquor license. Under one such restriction, restaurants may only sell light beer in open containers, of any size and on draft, but not sell heavy beer⁴³ or liquor from opened containers.⁴⁴ The State statute also requires that no minor⁴⁵ shall be employed by a restaurant licensee to sell or dispense

³⁹UTAH CODE ANN. § 32A-4-4 (Supp. 1985).

⁴⁰See § 3.3

⁴¹UTAH CODE ANN. § 32A-4-1(3) (Supp. 1985).

⁴²This premise is also adopted in *Norfolk*, 222 Va. at 423, 281 S.E. 2d at 841.

⁴³Light beer is synonymous with beer. Heavy beer is beer with more than 4% alcohol by volume and is considered liquor. UTAH CODE ANN. § 32A-1-5 (14) (Supp. 1985).

⁴⁴UTAH CODE ANN. § 32A-4-6(3) (Supp. 1985). This restriction should have been included in UTAH CODE ANN. § 32A-4-6(2) (Supp. 1985), which concerns other open containers that can legally be in restaurants. The way in which the statute is presently worded could be read to usurp the local right to "license, tax, regulate, or prohibit the sale of light beer, at retail, in bottles or draft" within their boundaries. UTAH CODE ANN. § 32A-10-7 (Supp. 1985).

⁴⁵"Minor" means any person under the age of 21 years. UTAH CODE ANN. § 32A-1-5(21) (Supp. 1985).

alcoholic beverages.⁴⁶ There is reference in the statutes to certain times when sales cannot be made,⁴⁷ however, local regulation of other times when sales can or cannot be made at a restaurant is not addressed. Being unclear, local regulation of such a matter may conflict with an intent by the legislature to not allow such regulation. However, there may be an implied grant to allow a reduction, at least, of such hours. Using *Hutchinson*, as a basis for allowing local authorities broad discretion in their exercise of the general welfare grant, it is arguable that since the legislature expressly empowered local authorities to regulate the times of operation of clubs and special events and did not specify what was necessary to obtain local consent, there is an implied grant to reduce days and hours of restaurant liquor sales, since such action is not specifically precluded. The need for a uniform regulation is not persuasive since other forms of liquor sales are regulated by local authorities.

C. [§ 4.3] CLUBS

1. [§ 4.3.1] Expansion of Local Authority

The regulation of private club liquor licenses is no longer governed by Title 16 of the Utah Code Annotated. Private club liquor licensing has been incorporated into Utah Code Annotated § 32A-5-1 to 8 (Supp. 1985).

The commission is given plenary power to grant or deny private club liquor licenses, however such power is modified by other provisions within the Title.⁴⁸ The private club chapter allows the commission to issue private club liquor licenses at places and in numbers it considers necessary, subject to a quota limit.⁴⁹ These subsections alone would indicate there is no local authority to regulate clubs. However, local authority is actually expanded:

No nonprofit corporation, association, or club nor any officer, director, managing agent, or employee of a nonprofit corporation, association, or club shall store, sell, serve, or permit consumption of liquor upon its premises, under a permit issued by

⁴⁶UTAH CODE ANN. § 32A-4-6(14) (Supp. 1985). Many cities also require employees to be at least age twenty-one to handle or sell alcoholic beverages. See e.g. SANDY CITY CODE 5-10-3(b) (1979).

⁴⁷UTAH CODE ANN. § 32A-4-6(7) (Supp. 1985).

⁴⁸32A-5-1(2) (Supp. 1985).

⁴⁹UTAH CODE ANN. § 32A-5-1(4) (Supp. 1985). Seasonal licenses are also available for private clubs. UTAH CODE ANN. § 32A-5-1(4) (a) (Supp. 1985). See § 4.2.1. Hotels with more than 150 rooms can also have more than one club on the premises. UTAH CODE ANN. § 32A-5-1(4) (b) (Supp. 1985).

local authority or otherwise, unless a private club liquor license has been first issued by the commission.⁵⁰

This section recognizes the local authority to issue permits for sales and consumption of liquor but requires approval through a two-tier method: state and local. It makes the necessity of a commission license paramount to using a locally issued license, but recognizes local ability to license and regulate clubs. It is also important to note the statute refers to liquor only and does not infringe on local control of light beer. The necessity of two-tiers of approval shows the lack of legislative intent to preempt the field or to reduce local authority to express grants of power.

2. [§ 4.3.2] Application Process

Additional local power is provided through the application process. An application must be filed with the Commission, prior to the Commission issuing a license.⁵¹ Under prior law an applicant needed only to show compliance with local zoning ordinances, proof of a local business license, and for a new licensee, proof that it is not within a radius of 600 feet of any public or private school, church, library, public playground or park. The ABCA requires certain fees, proof of status as a nonprofit corporation or association, a copy of the applicant's current business license, evidence of proximity to any public or private school, church, public library, public playground with a waiver provision and written consent of local authorities.⁵² Such consent gives local authorities considerable powers in the form of requiring prerequisites prior to the granting of consent. This express additional power, in conjunction with the other express and implied grants of local authority refute any argument of preemption or an intent to blanket the area *with state controls*.

3. [§ 4.3.3] Applicant and Employee Qualifications

The statutory language concerning the qualifications of applicants for liquor licenses and their employees has changed.⁵³ Most clubs also have retail light beer licenses and local license regulations for such licenses should be compared to the state requirements to see if they are more restrictive for the applicant or employee and could be amended.⁵⁴ Other local ordinances have additional provisions, the violation of which will

⁵⁰UTAH CODE ANN. § 32A-5-1(3) (Supp. 1985).

⁵¹UTAH CODE ANN. § 32A-5-5 (Supp. 1985).

⁵²*Id.* See § 4.2.2

⁵³UTAH CODE ANN. § 32A-5-3(3) (Supp. 1985). See § 4.2.3.

⁵⁴*E.g.*, PROVO CITY CODE 7.72.090 (2) (1981). There is a five year limitation, effecting the ability to procure a license, on past criminal history for specified misdemeanor violations.

disqualify a retail beer applicant.⁵⁵ Local ordinances should be reviewed to see how they correspond with the state statutory changes.

4. [§ 4.3.4] Local Authority to Regulate Hours of Sales, Two Tiers of Regulation

A new section in Utah Code Annotated Title 32A, Chapter 5 explicitly addresses local authority governing hours of sales and consumption in clubs. A separate paragraph, following Utah Code Annotated § 32A-5-7 (24) (g) (ii) (Supp. 1985), concerns closures on days other than election days and Sundays.

On all other days the liquor storage and sales area in the club shall be closed from 1:00 a.m. until 10:00 a.m., unless provided otherwise by local ordinances governing the hours of liquor sales and consumption, in which case the liquor storage and sales area shall close in accordance with the local ordinance.⁵⁶

This express grant of local authority to regulate the hours of sales and consumption bolsters the argument for a two-tiered regulation since local ordinances can further restrict the times specified in the statute for sale and consumption. Some ambiguity exists since the “close accordance with the local ordinance” may be interpreted to allow additional hours of operation, less hours of operation or both. Regulation of a club’s hours of operation by local authorities would not conflict with State regulations directly or indirectly in this case, except for the possible interpretations of “close.” Since there is explicitly a grant to local authorities preemption could not be claimed. The *Hutchinson* standards would easily be satisfied.

D. [§ 4.4] LIGHT BEER

1. [§ 4.4.1] Local Authority Expanded

In several ways, local authorities have been given even more power in regulating light beer retail sales within their boundaries. The former prohibition of granting a retail beer license to a retailer who has been convicted of a felony, who was not of good moral character or has been convicted of certain misdemeanors (including DUI or other liquor related offenses) has been deleted. This allows local authorities discretion in granting such persons licenses. Prior law was inconsistent in providing that a retail beer license could not be granted to felons and certain misdemeanants while liquor licenses could be granted to such persons.⁵⁷

⁵⁵*E.g.*, OREM CITY CODE 3-2-4 (9) (1984). Applicants must verify they have “never been convicted of any felony or of any law or ordinance relating to alcoholic beverages, or of drunk driving, or of keeping a gambling or disorderly house. . . .”

⁵⁶UTAH CODE ANN. § 32A-5-7(24) (g) (i) (Supp. 1985).

⁵⁷*Compare* UTAH CODE § 32-4-14 with 32-1-16.10 (Code • Co 1984-85) (repealed 1985).

The prior act also contained a more extensive list of disqualifying misdemeanors in the retail beer regulations than in the liquor license regulations.

2. [§ 4.4.2] Extent of Local Authority

In the ABCA, local authorities have been given virtually complete authority in regulating light beer sales and consumption.⁵⁸ They can license, tax, regulate or prohibit such sales. Under the former act, the Commission determined what constituted proximity when granting retail light beer licenses.⁵⁹ This power to determine proximity has been given, statutorily, to the local authority under the ABCA.⁶⁰

E. [§ 4.5] CRIMINAL STATUTES

These statutes are important to local authorities in defining local jurisdiction and should be consulted when drafting local ordinances to insure there are no contradictions between the state and local laws, which according to *Hutchinson* would invalidate the local laws. Additionally, local ordinances may wish to adopt similar language, construction of which, would be aided by judicial decisions of the state statutes.

1. [§ 4.5.1] Portions of Utah Code Annotated Title 76 Incorporated

The alcoholic beverages criminal offenses are consolidated in the ABCA in Utah Code Annotated Title 32A, Chapter 12 which combines statutes from the prior codes Utah Code Annotated Title 32, Chapters 7 and 8. The new statutes specify that Chapters One through Four of Utah Code annotated Title 76, the criminal code, relating to principles of construction, jurisdiction, venue, limitations of actions, multiple prosecutions, double jeopardy, burdens of proof, definitions, principles of criminal responsibility, punishments, and inchoate offenses are also applicable to Utah Code Annotated Title 32A.⁶¹

2. [§ 4.5.2] Burdens of Proof and Inferences

The burdens of proof and statutory inferences have been consolidated in Utah Code Annotated § 32A-12-2 (Supp. 1985).⁶² Paragraph (a)

⁵⁸UTAH CODE ANN. § 32A-10-7 (Supp. 1985). "Retail licenses-Light beer. Citizens and towns within their corporate limits, and counties outside of incorporated cities and towns have the power to license, tax, regulate, or prohibit the sale of light beer, at retail, in bottles, or draft. Licenses shall not be granted to sell beer in the proximity of any church or school. The local authority granted the license has authority to determine in each case what constitutes proximity."

⁵⁹UTAH CODE § 32A-4-17 (Code. Co 1984-85) (repealed 1985).

⁶⁰UTAH CODE ANN. § 32A-10-7 (Supp. 1985).

⁶¹UTAH CODE ANN. § 32A-12-1 (Supp. 1985).

⁶²UTAH CODE ANN. § 32A-12-2 (Supp. 1985). This section applies only to

of the section makes prosecution easier by deleting a requirement of the precise description, quantity or consideration involved in a prosecution. This paragraph makes it easier in a prosecution to obtain a conviction if the evidence was consumed or precise analysis is impossible. In such a case, testimony stating that the suspect consumed a half a glass of what appeared to be whiskey should be sufficient if the declarant has been qualified to make such a statement. In paragraph (b) a prosecutor need not prove actual consumption, sale or transfer if the trier of fact is satisfied that such act occurred or was about to occur. Paragraph (c) creates a rebuttable inference that an alcoholic beverage or product is intoxicating if the witness describes it as such or uses a name for a beverage, such as beer, which is commonly applied to such an intoxicating product. Paragraph (d) allows the rebuttable presumption of a defendant corporation or association's incorporation. Paragraph (e) allows a rebuttable presumption that a certificate purported to be signed by a state chemist as to the ingredients of a beverage is prima facie evidence of the contents and authority of the chemist.

3. [§ 4.5.3] Criminal Responsibility for the Conduct of Another

Statutes regarding the criminal responsibility for the conduct of another are found in Utah Code Annotated § 32A-12-3 (Supp. 1985). The ABCA has only minor changes from the prior law, such as the change concerning the violation by a person in the employ of the licensee. If an employee violates the act the licensee is prima facie considered a party to the offense. In the prior code the occupant was deemed a party.⁶³ The criminal responsibility provisions of Utah Code Annotated § 76-2-201 through 205 U.C.A. have been incorporated into the new ABCA.⁶⁴

4. [§ 4.5.4] Violation of the ABCA and Revocation of Business Licenses

Additional criminal punishments are specified, including the provision that local authorities may revoke the business license for a conviction of the ABCA.⁶⁵ The Department of Alcoholic Beverage Control is charged with notifying the local governmental agency of any conviction for a violation of the ABCA. The statute requires that if such revocation occurs, no license shall be granted for one year upon the first revocation,

prosecutions involving the Commission or the state. Similar local statutes should be drafted. This section incorporates UTAH CODE § 32-8-31 through 36 (Code • Co 1984-85) (repealed 1985).

⁶³UTAH CODE § 32-8-15 (Code • Co 1984-85) (repealed 1985).

⁶⁴UTAH CODE ANN. § 32A-12-3 (Supp. 1985).

⁶⁵UTAH CODE ANN. § 32A-12-5(3) (Supp. 1985).

and for two years upon the second revocation.⁶⁶ It is unclear whether the license that is prohibited from being issued is a business or liquor license, but a business license is all that is mentioned in the specific section. Information concerning violations of local liquor ordinances or of the ABCA should be forwarded by local authorities to the commission, even though it is not mandated, to assist in the enforcement of this section.

5. [§ 4.5.5] **Changes in Penalties Affecting Local Authority to Regulate Conduct**

The sanctions for criminal violations that local authorities enforce have changed in several instances. Unlawful sale of an alcoholic beverage has been classified as a Class A misdemeanor and therefore it is outside municipal authority to enact a similar statute or prosecute such an offense.⁶⁷ Selling or supplying alcoholic beverages to minors is also a Class A misdemeanor.⁶⁸ An alternative municipal charge could be contributing to the delinquency of a minor. This may be classified as a class B misdemeanor and would be within the municipal and county ordinance authority to enact and enforce. The elements can be similar and a contributing charge may apply where an unlawful supplying charge is contemplated.⁶⁹ The definition of "sale or supply" of alcoholic beverages has been expanded to include sales to persons actually or apparently under the influence of intoxicating alcoholic beverages or products or drugs.⁷⁰

⁶⁶UTAH CODE ANN. § 32A-12-5(3) (Supp. 1985).

⁶⁷UTAH CODE ANN. § 32A-12-6 (Supp. 1985). *Compare* UTAH CODE § 32-7-1 (Code•Co 1984-85) (repealed 1985). (Class B misdemeanor).

Local authorities can impose, for violations of their ordinances, a term of confinement up to six months in jail and fines of up to \$299. UTAH CODE ANN. § 10-8-84 (Supp. 1985) and UTAH CODE ANN. § 17-5-77 (Supp. 1985).

A class "B" misdemeanor is one which has a term of confinement not exceeding six months (UTAH CODE ANN. § 76-204 Supp. 1985) and a fine not exceeding \$299 (UTAH CODE ANN. § 76-3-301 Supp. 1985).

Additionally, only county authorities have the power to prosecute class "A" misdemeanors. UTAH CODE ANN. § 17-18-1 (Supp. 1985).

⁶⁸UTAH CODE ANN. § 32A-12-8 (Supp. 1985). *Compare* UTAH CODE § 32-7-14 (Code•Co 1984-85) (repealed 1985).

⁶⁹*E.g.*, LAYTON MUNICIPAL CODE 9.24.070 (1985); *Contributing to the delinquency of minors.*

(1) It is unlawful for any person the age of eighteen years of age or over:

(d) to provide a child with an alcoholic beverage or a controlled substance or to encourage or permit a child to consume an alcoholic beverage or controlled substance.

(In this instance a child is interchangeable with minor and is defined as a person less than eighteen years of age.)

⁷⁰UTAH CODE ANN. § 32A-12-9 (Supp. 1985). *Compare* UTAH CODE § 32-7-14 (Code•Co 1984-85) (repealed 1985).

This alleviates the problem of obtaining a conviction where it is undetermined whether alcohol or drugs or a combination of both caused an individual's intoxication.

Consumption of liquor in a public place, such as a public building, park, or stadium, unless so allowed, has been reduced to a Class C misdemeanor.⁷¹ Local ordinances should reflect the State's change in classification to avoid direct conflict which would invalidate the local ordinance.⁷² Finally, permitting intoxication, as defined in Utah Code Annotated § 76-9-701 (Supp. 1985), is classified as an infraction.⁷³ Local ordinances should again be checked in order to assure compliance with the state's position on such penalty.

6. [§ 4.5.6] Unauthorized Sales Statute Not Helpful in Determining Extent of Local Authority

Sales at unauthorized locations, dates and times⁷⁴ are included in the criminal statute provisions, but the statute only states such sales must comply with Utah Code Annotated Title 32A and Commission rules. This section should be more specific to clarify the relationship of local authority and state law. An additional sentence, specifying which sections are applicable for authorization of times, dates and places of sales or some wording limiting local authorities' ability to expand and/or restrict such times except as specified in Utah Code Annotated § 32A-5-7(24), § 32A-7-6(h) (Supp. 1985), would be helpful.

The chapter also deals with persons operating without a liquor license or permit.

No person shall operate a restaurant, club, or similar organization which allows patrons, customers, members, guests, visitors, or other persons to purchase or consume liquor on the premises, except as provided by this title or the rules of the commission.

⁷¹UTAH CODE ANN. § 32A-12-20 (Supp. 1985). Compare UTAH CODE § 32-7-13 (Code•Co 1984-85) (repealed 1985). (Class B misdemeanor).

⁷²Any direct conflict would run counter to the standard set in *Hutchinson*, 624 P.2d at 1116.

⁷³UTAH CODE ANN. § 32A-12-21(2) (Supp. 1985). This section is similar to UTAH CODE ANN. § 32A-12-9 (Supp. 1985), but only applies to any person permitting a person to become intoxicated or allowing any intoxicated person to consume on the premises. UTAH CODE ANN. § 32A-12-9 (Supp. 1985) refers to any person selling, furnishing or supplying a person actually or apparently under the influence of intoxicating beverages or drugs. UTAH CODE ANN. § 32A-12-9 (Supp. 1985) would only apply if the alcohol was purchased or supplied at the premises. UTAH CODE ANN. § 32A-12-21 (Supp. 1985). Could apply to a homeowner or bartender who allows a partygoer or patron to become intoxicated and consume alcohol on the premises even if he brought the alcohol with him.

⁷⁴UTAH CODE ANN. § 32A-12-7 (Supp. 1985).

Nothing in this section prevents the operator of a restaurant, club, or similar organization from allowing consumption of liquor on the premises if the local authority has authorized consumption.⁷⁵

While the first sentence refers to the necessity for a permit or license from the Commission, the second sentence is particularly important to local authorities. The first sentence is modified by the second, which gives local authority exclusive control over consumption of liquor on the premises of restaurants, clubs, and other similar organizations.

7. [§ 4.5.7] Searches Under the ABCA

The obstruction of an officer (including authorized representatives of the Commission or a law enforcement officer), by a licensee or the person in charge of a licensed establishment, who is attempting to make or making a search while acting under the ABCA is specifically prohibited.⁷⁶ The wording requires only that the officer demand entry under the ABCA. Previously a warrant was required for a search unless a violation was in an officers presence, or a vehicle or person is to be searched.⁷⁷

The changes in the criminal provisions, as discussed, have significant impact on local authorities. Local authorities should be aware of additional avenues for the exercise of their authority and the areas where such exercise of authority has been reduced.

F. [§ 4.6] SINGLE EVENT PERMITS

1. [§ 4.6.1] 72 Hour Permit And Other Restrictions

The single event permit is a new device established with the tourist trade in mind. The single event permit is issued by the Commission for a period not exceeding 72 hours.⁷⁸ The Commission is responsible for liquor permits that allow sale, service and consumption at locations where and during times of special event permits. Light beer permits that allow sale, service and consumption must be obtained from local authorities.⁷⁹ There is also a waiver of the 200/600 foot requirement regarding the proximity to schools, churches and recreational facilities.⁸⁰

2. [§ 4.6.2] Extent of Local Control

The intent of the bills' sponsor was to limit local authority when special event permits were issued. However, local authorities have powers

⁷⁵UTAH CODE ANN. § 32A-12-6 (Supp. 1985).

⁷⁶UTAH CODE ANN. § 32A-12-34 (Supp. 1985).

⁷⁷UTAH CODE § 32-8-17 (Code•Co 1984-85) (repealed 1985).

⁷⁸UTAH CODE ANN. § 32A-7-1(2) (Supp. 1985).

⁷⁹UTAH CODE ANN. § 32A-7-1(2) (Supp. 1985).

⁸⁰UTAH CODE ANN. § 32A-7-1(5) (Supp. 1985).

from two sections of the ABCA that may determine whether such permit can be issued and the permit's usefulness. First, the requirement that local authorities must give written consent prior to application for a single event permit, may be determinative.⁸¹ Secondly, in the event a license is obtained, the hours of sale, service and consumption shall be in accordance with local ordinance restrictions.⁸²

3. [§ 4.6.3] An Additional Argument Against Preemption

This new chapter gives local authorities exclusive control over the hours of sales, other than on days of state or national elections.⁸³ This is another example of the state explicitly granting local authorities power to regulate sales even when permitted, or arguably even when forbidden, by Commission regulations or the ABCA. This bolsters the argument that the state did not intend to preempt local authority to regulate times of sales or that uniform regulation of the times of sales is a major concern of the ABCA.

G. [§ 4.7] PACKAGING AGENCIES⁸⁴

Although packaging agencies are not retail outlets as previously defined, local authority does impact on such distributors, although to a lesser degree. The amount of local control is not specific, but the wording indicates it is less than that of clubs and more than that of state stores.

1. [§ 4.7.1] Quotas and Restricted Areas

A quota of one packaging agency liquor license per 18,000 population is established, but that quota can actually be misleading because of the granting of seasonal licenses.⁸⁵ Local authorities may also impact granting of such licenses through zoning ordinances.⁸⁶

Packaging agencies are restricted in their proximity to public or private schools, churches, public libraries, public playgrounds or

⁸¹UTAH CODE ANN. § 32A-7-4(b) (Supp. 1985).

⁸²UTAH CODE ANN. § 32A-7-6(2) (h) (Supp. 1985).

⁸³UTAH CODE ANN. § 32A-7-6(2) (h), (i) (Supp. 1985).

⁸⁴"Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency. UTAH CODE ANN. § 32A-1-5(25) (Supp. 1985).

Packaging agencies were previously governed by UTAH CODE § 32-1-36.15, 38 (Code•Co 1984-85) (repealed 1985) and are now governed by UTAH CODE ANN. § 32A-3-1 to 8 (Supp. 1985).

⁸⁵UTAH CODE ANN. § 32A-3-1(3) (Supp. 1985). *See* 4.2.2. for further discussion.

⁸⁶*See* § 3.3 for further discussion.

parks.⁸⁷ If local zoning ordinances permit, more than one packaging agency may be located in hotels with more than 150 rooms.⁸⁹

2. [§ 4.7.2] **Local Liquor Ordinance Violations Affect Ability to Obtain Permit**

Local ordinances impact on the ability of an applicant to obtain a permit. The Commission has no discretion and must deny licenses to persons convicted of felonies, crimes of moral turpitude, or violating a state law, federal law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages.⁸⁹ Under prior law, violation of a local alcoholic beverage ordinance was considered by the Commission in issuing a permit, but did not necessarily disqualify the applicant.⁹⁰

3. [§ 4.7.3] **Local Consent**

Under the prior code, the Commission only had to consult with the local governing body and determine that zoning ordinances were not violated.⁹¹ The ABCA makes local written consent a necessary element of a persons liquor license application.⁹² What may be required to obtain local consent is not specified, and such requirements may ultimately determine whether application to the Commission for a permit is feasible.

4. [§ 4.7.4] **Hours of Operation and Local Control**

Operating hours of packaging agencies are regulated by Commission rules and orders and are explicit. Packaging agencies cannot open or sell on Sunday, a State or federal legal holiday, or when the polls are open for a state or federal election.⁹³ Authority for local control of sales or times of sales is not found in the section on packaging agencies. Such authority must be inferred from other sections of the ABCA. Even with the broad reading of *Hutchinson* allowing local authority latitude in exercising their general welfare grant, it is doubtful local authorities have the power to regulate packaging agency hours of operation.

⁸⁷UTAH CODE ANN. § 32A-3-1(4) (Supp. 1985). See § 4.2.1. for further discussion.

⁸⁸UTAH CODE ANN. § 32A-3-1(3) (b) (Supp. 1985). As many as three locations may be in a single hotel if there are more than 150 rooms in that hotel.

⁸⁹UTAH CODE ANN. § 32A-3-2 (Supp. 1985).

⁹⁰Compare UTAH CODE § 32-1-36.15(1) (c) (Code•Co 1984-85) (repealed 1985). The prior code stated the commission only had to consider the applicant's qualifications. There was no mandatory denial language.

⁹¹UTAH CODE § 32-1-36.15(1) (Code•Co 1984-85) (repealed 1985).

⁹²UTAH CODE ANN. § 32A-2-4(1) (b) (Supp. 1985).

⁹³UTAH CODE ANN. § 32A-3-6(10) (Supp. 1985).

5. [§ 4.7.5] On Premises Consumption and Retail Beer Licenses

Consumption or allowing consumption on the premises of a packaging agency is prohibited.⁹⁴ All retail beer license application to local authorities should also be reviewed if a packaging agency is located in the same building. The Commission also does not allow a packaging agency licensee to sell beer from the same location as the packaging agency or to have the effect of a package agency being a part of a restaurant or eating place.⁹⁵

V. [§ 5] COMMENT

A. [§ 5.1] LOCAL CONTROL: A NEED FOR CLARIFICATION

Since local authorities can exercise their general welfare grant with less constraints under *Hutchinson*, local regulation of liquor sales and consumption is expanded. No standards or guidelines were proposed to constrain local authorities; local ordinances should be carefully drafted to clarify the procedures and requirements that must be met for local written consent to be given. Such prerequisites might include complying with local ordinances concerning days of sales and times of sales.

Some ambiguities exist as to the extent local authority can control sales. State stores are exclusively under the control of the Commission. The hours of sales and consumption of light beer is almost exclusively under the control of the local authority. The times and days of sales and consumption at clubs on days other than state and federal legal holidays and Sunday are regulated by local authority explicitly. Hours of sales, service and consumption at "single events" are explicitly controlled by local authorities. When dealing with restaurants the statute specifies that there shall be no sales (1) on the days of state or national elections, (2) on Sunday and state or federal legal holidays after 12:00 midnight and prior to 12:00 noon, or (3) on any other day after 12:00 midnight and prior to 4:00 p.m.⁹⁶ Although the language is specific, it does not rule out the possibility that local authority can regulate other times of sales, as in clubs and single events. Local authorities may imply that there are also two tiers of regulation, state and local, as in the regulation of clubs, that allow local authorities to grant or deny permits.⁹⁷ Additionally, the necessity of a grant of local consent may contain other restrictions on the use of a local liquor permit.⁹⁸

⁹⁴UTAH CODE ANN. § 32A-2-6(7) (Supp. 1985).

⁹⁵UTAH CODE ANN. § 32A-3-2(6) (Supp. 1985).

⁹⁶UTAH CODE ANN. § 32A-4-6(7) (Supp. 1985).

⁹⁷UTAH CODE ANN. § 32A-5-1(3) (Supp. 1985) See § 4.3.4

⁹⁸See § 3.3.

Since we are dealing with liquor control, the first requirement of *Hutchinson*, rationally promoting public health, safety, morals and welfare is easily met. The second standard of direct conflict is not evidenced. No restrictions on local authorities ability to regulate times other than those specified are mentioned. The third criteria of preemption cannot be argued since local authorities are granted broad powers concerning retail beer sales, consumption of liquor, clubs and “single events”. There is no express or implied power concerning state stores, but local control over packaging agencies and restaurants is much more nebulous.

B. [§ 5.2] SUGGESTED AMENDMENTS TO THE ABCA

The ABCA was drafted by the Liquor Control Commission. Some of the sections need to be modified to clarify some of the ambiguities shown in this article. Neither the bill’s sponsor nor representatives from the Alcoholic Beverage Control Commission were able to explain the presence or desirability of the paragraph after Utah Code Annotated § 32A-5-7(24) (g) (ii) (Supp. 1985), which gives local authorities control of hours of sales in clubs except when specifically prohibited. Additionally, neither could explain whether the word “close”, as used in the same paragraph, allowed extension or only shortening of hours.

It is apparent that Utah Code Annotated § 32A-4-6(3) (Supp. 1985), which deals with exceptions to unopened containers in restaurants, should be included as Utah Code annotated § 32A-4-6(2) (f), since it too deals with unsealed container exceptions. Utah Code Annotated §32-A-4-6(2) and (3) (Supp. 1985) should be rewritten to read:

“(2) No alcoholic beverages shall be sold from any restaurant liquor outlet except in sealed packages which are properly marked and labeled in accordance with the commission rules adopted under this title.

(a) A restaurant liquor licensee may use liquor from an unsealed container as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(1) the licensee shall designate the location where the flavorings are stored on the floor plan provided to the department;

(2) all flavoring containers shall be plainly and conspicuously labeled “flavorings”;

(3) the secondary ingredient may be purchased in conjunction with the purchase of a primary liquor from the liquor storage and sales area on the premises;

(4) the secondary ingredient is not the only liquor in the beverage;

(b) Restaurants may also use liquor from an unsealed container as a flavoring on desserts in preparation of flaming food dishes, drinks, and desserts.

(c) Restaurants may sell light beer in open containers and in any size and on draft, if so allowed by local ordinance.

(3) Heavy beer and wine shall be sold in unopened containers, the contents of which do not exceed 750 ml. all other liquor shall be sold in unopened containers, the contents of which do not exceed 50 ml.”

C. [§ 5.3] RECOMMENDED ADDITION TO THE ABCA

An additional section under the general provisions is needed to clarify the extent of local control of liquor. The addition might read:

“Local authority-regulation of places, days and times

(1) Local authorities may reasonably regulate the place, day or time of sale, of alcoholic beverages as allowed by this title but may not totally prohibit such sale.

(2) Local authorities shall not restrict the location of a state store if zoning requirements are met. Local authorities shall not regulate the day or time of sale of state stores.

(3) Local authorities shall not regulate the day or time of sale of packaging agencies once local consent is obtained.

(4) Local authorities may allow or prohibit consumption of alcoholic beverages in clubs. Local authorities may reasonably allow or reasonably prohibit sales of alcoholic beverages in clubs on days and times, provided such regulations do not conflict with Utah Code Annotated § 32A-5-7(24) (g).

(5) Local authorities may allow or prohibit consumption of alcoholic beverages in restaurants. Local authorities may reasonably allow or reasonably prohibit sales of alcoholic beverages in restaurants, provided such regulations do not conflict with Utah Code Annotated § 32A-4-7.

(6) Local authorities may reasonably regulate the place of sales, service and consumption of alcoholic beverages at single events.”

Such wording, or similar wording would clarify local authorities powers and domain. An express determination of state and local authority reduces the *Hutchinson* impact, since any other attempt by local authority to modify places, days and times would be in direct conflict with the state statute. Litigation may arise over “reasonably” restricts, allows or prohibits, but such language allows local authorities to use their general welfare power to determine what is best for the safety, health, morals, and welfare of the community.

D. [§ 5.4] CONCLUSION

The ABCA improves the prior law because it is better organized and, generally, more understandable. The statute expands local authority’s control by requiring local consent, which can include prescribed local

preconditions, prior to application for a liquor permit. Local authorities exercising this control can tailor alcoholic beverage sales and consumption to community needs. However, local ordinances must conform with the ABCA.

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