



UTAH BUSINESS UTAH COUNTY

# Utah Hospitality Association files suit over ban on alcoholic drink specials

By Pat Reavy | @DNewsCrimeTeam | Jul 1, 2011, 3:15pm MDT

SALT LAKE CITY — A group that promotes tourism in Utah is not happy over the elimination of happy hour.

On the eve of new liquor laws going into effect in Utah, the Utah Hospitality Association has filed a federal civil lawsuit against the state.

Starting Friday, clubs and bars in Utah are no longer allowed to give discounts on alcoholic drinks. Next year, liquor licenses for social clubs will be based on the number of public safety officers employed by Utah in addition population quotas.

The hospitality association, along with two John Does — one listed as a local club owner and the other a person denied a club license — filed a lawsuit Thursday listing Gov. Gary Herbert, Attorney General Mark Shurtleff and members of the Alcoholic Beverage Control Commission as defendants.

The bill that made the new laws, [SB314](#), was signed into law by Herbert in March.

If the law is allowed to take effect, the hospitality association said it would "significantly harm" the state and visitors, "particularly consumers and the social clubs that operate in the state of Utah," according to court documents.

By not allowing drink specials, the hospitality association claims the Sherman Act, which does not allow the resale prices of alcoholic drinks to be fixed, is being violated.

"SB314 amounts to private price-fixing arrangement," according to court documents.

Unrestricted competition in the market has been restrained, suppressed and eliminated, the association said in court documents.

Ken Wynn, who served as director of the DABC for 30 years before retiring in 2007 and now sits on the UHA board, admitted that filing the suit was a "gamble," but alcohol distributors are tired of "being walked over."

"We finally just got tired of it. It's time to fight back," he said. "It's ridiculous, not allowing discounted drinks."

The new law was passed without any input from the UHA, Wynn said.

While the state claims the law was made to promote the state's interest in "temperance" under the 21st Amendment, plaintiffs say fixing the prices on drinks "has no significant effect on the consumption of alcoholic beverages or upon temperance," court documents state.

"Social clubs have been damaged in that the prices they must establish and then to which they must adhere force them to lose significant income. Their consumers must pay more for the products they order," according to the lawsuit.

Sen. John Valentine, R-Orem, who sponsored SB314, said he was "really surprised and disappointed" by the lawsuit.

As for discounted drinks, Valentine said they have always been illegal in Utah. SB314 simply clarified the previous law.

"We were seeing what I thought were abuses of what the prior law was. Before, there was wiggle room. Now, I have made it absolutely crystal clear," he said.

Valentine said to him, the lawsuit will ultimately come down to more than a dispute over alleged unfair marketing practices.

"This actually goes much deeper than that for me," he said.

The legal question to be answered is whether the 21st Amendment trumps the Sherman Act. The 21st Amendment, Valentine said, gives states the ability to control alcohol consumption and distribution.

"I don't know how we can have a federal law that seems to conflict with the right states have under the 21st Amendment," he said.

As for the quota issue, "They're trying to repeal a bill that made no changes to the social club quotas," Valentine said.

The Hospitality Association also calls the proposal to allow clubs with existing liquor licenses to sell them privately an "unreasonable restraint" on the trade considering the scarcity of liquor licenses in Utah, the lawsuit states.

Wynn said while state leaders talk about economic development, he called the laws being passed in regard to alcohol "economic stagnation."

He hopes ultimately the lawsuit will lead to SB314 being repealed. In court documents, the UHA is asking immediately for injunctive relief against SB314, and for the long run asking that SB314 be found in violation of the Sherman Act and "decreed to be in unreasonable restraint of trade or commerce."

The UHA is also asking for undisclosed compensation for damages sustained by the plaintiffs.

Valentine said the UHA isn't looking at all that SB314 does. If SB314 is repealed, it would mean the end of room service for alcohol at hotels, restaurants could no longer start serving alcohol at 11:30 a.m. and 40 additional restaurant licenses would be taken away.

E-mail: [preavy@desnews.com](mailto:preavy@desnews.com)

Twitter: [DNewsCrimeTeam](#)