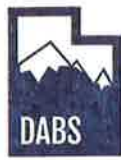




State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor



Department of
Alcoholic Beverage Services

TIFFANY CLASON
Executive Director

November 17, 2022

Juliette Tennert, Chair
Alcoholic Beverage Services Commission

Dear Chair Tennert:

On October 27, 2022, management received the internal audit report (number 23-01) governing Licensing & Compliance Specialists Licensee Audit Process, completed by the department's internal auditor, Traci Santillanes. This audit was conducted pursuant to Utah Code Ann. §32B-2-302.5. Actions taken or contemplated with regard to specific recommendations are outlined below. We appreciate the time and attention given to this audit given that management has prioritized a "makeover" for the compliance division's operations- internally and externally. This is a division that historically has been neglected by both agency leadership and legislators. It has been in desperate need of resources and organizational restructuring in order to run efficiently, carry out its mission in accordance with policies and procedures and rules, as well as provide excellent service to our customers- Utah's small, medium, and large-sized businesses in the hospitality and tourism industries.

1. Finding: Compliance specialists lack up-to-date tools and technology that would assist in conducting more efficient compliance audits. Currently, specialists are carrying hard copies of paperwork and using individual spreadsheets for tracking, documentation and notes. They do have laptops and cell phones, but standardized auditing tools are deficient.

Recommendation: Internal audit strongly recommends the following:

- Tablets with wi-fi and cellular capability (for use where no wi-fi is available) for each compliance specialist,
- Access to software with checklists for each license type, required notes section, required documentation section, scheduling, templates, forms, etc.,
- The ability to easily access and query organized statute, rule, and P&P while working in the field, even in remote areas with no wifi,
- A licensee portal for uploading of information, or electronic access to licensee renewal applications showing supporting documentation so information can be previewed prior to site visits

Software will greatly improve the systematic audit practice and methods of communication and document delivery between Licensing & Compliance specialists, supervisors, directors and management, and licensees. Sharing of documentation in common software should prohibit having to ask licensees more than once for the same information, but should allow compliance specialists to be able to review and examine documentation pre-audit and post-audit. Document storage is expensive and cumbersome, and there should be a system to prevent document storage of out of date documents, or historical documents; except for violations and extraordinary conditions. Only current documents would need to be reviewed or kept until the next audit. Management should review GRAMA requirements for what documents would need to be retained within the software, and for what length of time. This would include documentation, photographs, schematics, and all other.

DABS Response: The department is currently working closely with OpenGov, the vendor that is building our digital licensing and compliance platform, to create a robust online system that will greatly increase efficiency, accuracy, and accountability for both DABS staff and its licensee partners. The department anticipates that once this platform is fully established and implemented, compliance specialists will have tablets or similar devices that will allow them to successfully add robust audit notes, pictures, and other data directly into the digital database. Part of our partnership with OpenGov includes updating existing checklists to enhance uniformity and transparency.

2. Finding: Current Licensing & Compliance Procedures Number 06-01 lists eight procedures for conducting an audit, and eight items for bringing to the audit. Some of the instruction is ambiguous and lacks specific instruction. For example, 06-01(f) "review financial and other business records, operating procedures, dispensing records, and procedures." The procedure does not define what records or procedures are required to be reviewed in order to determine licensee compliance. Examples of some of the records explicitly named in Statute *are (this list is not all inclusive; Refer to Appendix C)*:

- filing federal and state taxes, including contributions to unemployment and insurance funds (32B-1-203)
- maintaining their percentage of food sales over alcohol sales (32B-6-203, 32B-6-603, 32B-6-703, 32B-6-902, 32B-8-102, 32B-8B-301, 32B-8C-202)
- ensuring employees have the proper training (32B-1-702)
- a responsible alcohol service plan (if required; 32B-5-201)

Compliance staff currently have a general list in the form of an Excel Spreadsheet, showing items to review at each visit; it is sorted by license type. Some of the required items are not on the current checklist, for example confirming tax payments. To more effectively manage time and resources, it is important during the audit process to use standardized tools, such as a checklist (as part of a software module), that provide comprehensive, systematic review. Also, forced completion of a task within a software module would not allow any required information to be

bypassed. It would be unnecessary to list all requirements in procedures, but the procedures could refer the reader to the software module and other tools that are more specific.

Recommendation: Update the P&P 06-01 procedures to refer to 32B-5-302 and R82-5-109, or provide a checklist (as part of the software module) to include records necessary for review, to avoid any ambiguity. Records reviewed should include a source document (example: a payroll report or sales tax report; provides total) and a verification document (example: an official tax filing balancing to the amount shown on the report; provides evidence). These examples are not to be indicative of conducting a payroll or other financial audit, only to provide assurance that a licensee is in compliance with statutory requirements, and that records being reviewed by compliance specialists are not fraudulent or falsified. Software would also improve time management by reducing the chance that compliance specialists would be distracted by reviewing records that are not required. Refer to Appendix A for a generalized example of a checklist. IA is not recommending duplication of this material and is only referring to it as a guide.

DABS Response: The department is in the process of reviewing and updating a variety of current policies and procedures. The department will be sure to specifically review and update those that relate to compliance audits.

3. Finding: Staff reported a lack of structured training related to new hires, and also training or notification of changes to Legislation and how it affects the compliance review process. It was reported that in some cases, staff felt overwhelmed or confused, and learning occurred through error. Staff did report current, ongoing training related to the compliance specialist position; usually at monthly Division meetings.

Recommendation: Training for new compliance specialist employees. Recommend structured training approach. Defer to Management to create training program, but as an example, week 01: office orientation, reading statute, rules, P&P, assistance with Q&A, week 02: software training, week 03: job shadowing, etc. Also recommend annual structured training for any changes in legislation that affect licensee compliance audits.

DABS Response: The department continues to review its current training initiatives and seeks input from staff regarding any perceived deficiencies. Currently, the training program manager with the Licensing & Compliance Division trains new compliance specialists regarding a wide variety of subjects including onboarding, statutes and rules, and compliance database access and usage. Job shadowing is also part of this process, nevertheless, the department will review whether additional efforts are needed in this regard. Legislative updates are provided to licensing and compliance staff during each legislative session, and staff receive a summary of the salient modifications to 32B at the end of the session. Additionally, a PowerPoint training is provided at the end of the session. Staff will continue to evaluate whether additional measures are needed.

4. Finding: Auditing is a systematic approach to gathering and reviewing information. Currently there is a lack of formality of process among Licensing & Compliance specialists and the way in which audits are conducted.

Recommendation: The following steps are routine to every audit. These steps should be part of the software module, and should include deadlines and reminders for time tracking purposes. If additional information from the licensee is found to be necessary when an auditor arrives at a licensee location, a fixed deadline (e.g., 1 week, 2 weeks, etc.) should be imposed to the licensee for returning the information, to create uniformity for the time it takes to conduct an audit from start to finish. Audits of similar license types should take approximately the same amount of time by using a more systematic approach. All records and other paperwork should be reviewed prior to the audit site visit or after the audit site visit, rather than on licensed premises during a site visit. Compliance specialists often perform site visits when licensee's businesses are operational and busy. Reviewing pre and post audit allows for more focus, a more thorough examination of records and increases the ability to prove compliance.

Audit Steps:

- Step 1 -- *Identifying licensee:* determining license type, notifying the licensee: scheduling, calendar;
- Step 2 -- *Planning:* knowing what will be required for review/examination, identifying location or multiple locations, weather, traffic, identifying who specialist will be meeting with, other considerations;
- Step 3 -- *Gathering reviewing and examining information:* management changes, management qualifications, records (separate records for each license if applicable), other licenses including sub-licenses, previous audits, exceptional circumstances, change of location, etc.;
- Step 4 -- *Fieldwork:* site visit(s), observation, photos, measurements, signage, etc.;
- Step 5 -- *Reporting:* final audit information should be a part of the software module. Reporting or finalization should be uniform and only exceptions, extraordinary conditions, deficiencies and violations should be noted. If specialist was unable to complete audit, justification and robust documentation should be included in marking the audit complete within a software module.

DABS Response: The department agrees that clearly defining the audit process and expectations will enhance consistency and transparency. The licensing and compliance division will work closely with OpenGov to ensure that these items are incorporated into the digital licensing and compliance platform that is currently being created.

5. Finding: DABS Policy 06-01 states "audits will be conducted as frequently as required by Statute." The following statutes *specifically state* at least one required audit annually.:

- 32B-6-205.2(14)(b) full service restaurant
- 32B-6-305.2(14)(b) limited service restaurant
- 32B-6-406 bar
- 32B-6-902 beer only restaurant

- 32B-6-1005 hospitality amenity license
- 32B-8D-205 spa license

32B-5-202 Retail License Act states the department *may* audit a retail licensee's responsible alcohol service plan. 32B-5-302 states records *will be made and maintained, and audits will occur at times the department considers advisable*.

32B-5-301(6) Retail License Act General Operational Requirements *allows for complete inspection of premises and records without hindrance* (does not specify frequency).

Staff reported that the following license types require annual auditing, but Statute does not specifically mention annual auditing except for those aforementioned.

- Airport Lounge (AL)
- Banquet / Catering (BC) (not subject to 32B-5-302 Recordkeeping)
- On Premise Beer Recreational (BE)
- Bar Establishments (CL)
- Hospitality Amenity (HA)
- Hotel (HL)
- * Licensed as a Bar (LB)
- * Licensed as a Restaurant (LR)
- Restaurant Beer Only (RB)
- Reception Center (RC)
- Full Service Restaurant (RE)
- Limited Service Restaurant (RL)
- Resort (RS)
- Tavern (TV) (on-premise beer retailer)

These licenses are retail licenses as defined in Statute 32B-1-102(111), but the list does not specifically mention Master Full-service Restaurant License nor Master Limited-Service Restaurant License nor Arena. This could create a misunderstanding, especially to new employees during the training process.

Recommendation: Frequency of auditing requirements, by license type, should be stated in policy/procedures to avoid ambiguity and create accountability. A system of internal controls (SICS) is equivalent to policies and procedures. Internal controls are designed to provide reasonable assurance regarding the achievement of objectives in the following areas:

- a. effectiveness and efficiency of operations
- b. reliability of financial reporting (in this case, compliance reporting)
- c. compliance with applicable laws and regulation

DABS Response: The department is currently reviewing and updating licensing and compliance policies and procedures and will address this issue. Additionally, the department will work closely with OpenGov to ensure that these expectations are captured in our online platform.

6. Finding: Section 32B-6-703(2)(e)(i)(A) refers the reader to Subsection (2)(e)(iv) regarding contracts with political subdivisions. There is no Subsection (2)(e)(iv). This should refer to the reader to Subsection (2)(e)(iii).

Recommendation: This finding was sent to the Director of Compliance prior to the completion of this audit report. The Director responded 08/03/2022 that this issue would be flagged for legislative Alcohol policy leads, as it requires a Legislative fix. Response to this finding can be provided with the 120 day follow up.

DABS Response: The department has verified that the above-referenced statute has been updated and is currently accurate.

7. Finding: Rule R82-8-103 refers the reader to 32B-5-310, 32B-8-204, 32B-8-302, 32B-8-304, 32B-8-402; none of the aforementioned statutes are active. The rule should refer the reader to 32B-5-301:311 and 32B-8-401, 32B-8d-202:205 (for spa operations).

Recommendation: Amend Rule R82-8 as necessary.

DABS Response: The department will engage in non-substantive rulemaking to make these corrections.

8. Finding: Policy 06-01 procedures state that specialists will note any deficiencies in the department's compliance database. Compliance specialists are required to indicate "incomplete" in the existing compliance database when a licensee audit is not completed, and to document why it was not completed. It was reported that this process has not been done in every case.

Recommendation: Every license that is required to be audited should have controls that require the audit to be marked as complete, incomplete, pending, etc. If an audit is unable to be completed, justifications or documentation should be noted and/or uploaded to database so queries can be performed, and so that analysis of compliance data is correct. Implementation of new software should include these controls and not allow any required audit to be left incomplete or open ended.

DABS Response: The department agrees that we must improve our operations to ensure this is mitigated. We are working with OpenGov to put "fail safes" in the new system that will guard against this. In addition to making improvements in software and standard operations procedures there must also be operational oversight. For example, we are working to have all audits completed by the compliance specialist on site and submitted/uploaded to the licensing and compliance digital platform and provided immediately to the licensee before the compliance specialist leaves the site. OpenGov will also have a suite of reporting tools to help identify trends/problems that might be problematic.

9. Finding: 32B-5-301(8) requires employees of retail licensees to wear name badges. Employee of retail licensee had no identification during audit observation; licensee was not informed of this during the site visit.

Recommendation: Compliance audit procedures should include verification of this statute. Current general checklist includes "Server Training/ID's". Licensee should be informed at the site visit that name badges are a statutory requirement.

DABS Response: The department agrees. Staff know this is an expectation. Division leadership will follow up with staff accordingly.

10. Finding: A report was provided that listed compliance specialist employees. There were 14 employees; all 14 employees showed under Job ID 22381, Job Title: Alcoholic Beverage Services Specialist, Working Title: Licensing/Compliance Specialist. Of those 14 employees, 13 showed under Employee Schedule Code "B," one employee under Employee Schedule Code "TL." Three of the 14 employees perform compliance audits at Package Agencies, and also conduct breakage and cash count activities at state stores; they do not perform licensee audits. They are classified under the same Job ID. DHRM provided job descriptions for:

- Job Title: Alcoholic Beverage Services Specialist, Job ID 22381, Effective Date 06/25/2022, Category: Compliance and Regulation. The Alcoholic Beverage Services Specialist job description assigns duties outside the scope of Compliance audit staff in the "Purpose & Distinguishing Characteristics" section. Including but not limited to "develop policies and procedures," "license liquor and beer outlets," "establishes, implements, and maintains procedures and requirements for each license type."
- Job Title: Licensing/Compliance Specialist, Job ID 22381, Effective Date 12/01/2018. Licensing & Compliance Specialist job description includes "Write newsletter articles" in the "Purpose & Distinguishing Characteristics" section. This duty is outside the scope of Compliance audit staff.

Recommendation: Management should review and consider revising job descriptions for Licensing & Compliance Specialists, and Alcoholic Beverage Services Specialists, as necessary, or consider combining the descriptions. Duties that are outside the scope of the compliance employee should be reframed or removed. For example, development of policies and procedures is the responsibility of Management. Also as an example, licensing liquor and beer outlets is the responsibility of the Commission. Further, Compliance employees should inspect, audit and report on statute, rule and P&P; terms such as development, implementation and enforcement are outside the scope of Compliance personnel performance. Also recommend changing policies to read "Licensing & Compliance Specialist," and remove any reference to Compliance Officer or Compliance Auditor. This includes DABS P&P Manual Chapter 3, Chapter 4, Chapter 6.

DABS Response: The department is working with DHRM to conduct a full review and prioritize what

changes need to be made. The department feels strongly that cross training is important and that all Licensing and Compliance staff should be trained in statute, rules, policies, and procedures.

11. Finding: One full restaurant licensee and one limited restaurant licensee were found to be missing signage near a bar entrance area warning patrons that anyone under 21 are not allowed. Procedures 06-01 lists warning signs as one of the items compliance specialists should bring to an audit. Compliance specialist did not have sample signage or offer it to the licensee.

Recommendation: Licensing & Compliance Specialists should have sample signage with measurements, fonts and verbiage outlined in statute to offer to licensees. Examples, 32B-5-301(3), 32B-6-1005(9), 32B-7-202(6)(a)(ii) (not all inclusive; refer to Appendix C).

DABS Response: The department agrees. Staff know this is an expectation. Division leadership will follow up with staff accordingly.

12. Finding: One licensee observed held more than one type of license. No signage was posted to distinguish between restaurant and bar, or banquet area; 32B-5-207(4). The banquet area was in the basement of the premises. No evidence was provided to show 32B-5-207(3)(a)(iii) in compliance. Licensee did not qualify for the banquet license type 32B-6-603, 32B-1-102(8). The original license was issued in 2007. Licensee moved to a new location in 2016. The new location does not qualify for a banquet license. It was reported that the licensee had been audited on a regular basis, but discovery of this issue was not made until September, 2022.

Recommendation: This issue was escalated prior to the final audit report. The license is not being recommended for renewal. Routine licensee review and audit completion, with software forced controls, should assist in determining compliance.

DABS Response: The department has resolved this specific issue with the licensee. Proper "guard rails" in a new compliance software system as well as thoughtful operational oversight (pulling reports, etc.) will mitigate this from happening in the future. The issue of licensee's operational constraints (lack of portability on premise, etc.) is a matter being discussed by legislative leads- it *might* be resolved in the omni-bus bill.

13. Finding: One licensee observed had not been audited since 2017; another licensee audit observed had not been audited since 2018. One licensee was a full service restaurant; the other was a limited service restaurant. According to 32B-6-305.2(14)(b) and 32B-6-205.2(14)(b), both license types should be audited annually.

Recommendation: Software implemented specifically for Compliance will increase the ability for justification and accountability. Also recommend adding more Licensing & Compliance specialists positions as population numbers grow and licensees increase.

DABS Response: The department agrees.

14. Finding: Staff members were observed conducting audits. Staff reported having an average of 219 accounts to audit annually. At the time of this audit, 3,904 licenses were in effect; 2,007 of those requiring annual audit. There are currently 14 employees assigned as "Licensing & Compliance Specialist." However, reporting showed that 3 of those individuals perform different duties, leaving 11 employees who perform licensee compliance audits. There are 260 work days per year less 12 paid holidays, allowing 248 work days; excluding annual leave, sick leave, bereavement leave, etc. Compliance specialists are currently allowed to telework one day per week. Staff reported using this day to conduct administrative tasks and write up audit visits, but are not allowed to use this day to conduct audits. Other days of the week are comprised of weekly office meetings and fieldwork. Compliance specialists conduct fieldwork an average of three days per week. They are currently assigned compliance zones for a three year period. Generally, zones are two areas, local and rural. Fieldwork requires extensive time management skills. Scheduling can be complicated and re-scheduling, sometimes more than once, can affect the ability to complete an audit. Weather, logistics, travel and traffic, no shows, licensees who may forget an appointment, etc. can all affect the accountability of a compliance specialist. On average, audits are scheduled approximately two weeks in advance. Staff reported that approximately 8% of audits are in need of re-scheduling.

Recommendation: Long term employees annual leave and sick leave increases over time, allowing for less than 248 work days to complete audits. Also, when one compliance specialist is on extended leave or away from their assigned work location, another specialist must assume the added responsibility. This can cause inadequate work/life balance, the ability to perform focused and effective reviews, and interruption in efficiency of processes. As the population of Utah grows, and the license quotas increase, Internal Audit would strongly recommend adding additional positions to this job classification to retain the ability to regulate with assurance.

DABS Response: The department agrees. In addition to better organizing current staff structure, creating compliance zones, and executing an efficient and intuitive software system, the department is working to secure funding for a compliance specialist to focus on Single Events and Temporary Beer Permits.

Observations:

1. Observation: Translation services may be required for some compliance audits.

Recommendation: Software should include a yes/no checkbox if translation services are required, and a drop down selection for language. This should be identified during the planning stage of the audit.

DABS Response: The department is working on how to best operationalize this.

2. Observation: 32B-1-206 and R82-1-104 do not mention advertising on electronic media. R82-1-104 does state "on any other media."

Recommendation: As the authoritative rule making body, the Commission may want to consider adding verbiage specifying electronic media, for example website(s).

DABS Response: The department will work closely with the commission to adjust the administrative rules as desired.

3. Observation: 32B-14: No procedures or policy in place for tracking Distributor Agreements.

Recommendation: Create a policy, procedure or system of internal controls for tracking Distributor Agreements, changes, terminations, etc. Should an agreement be terminated, the terminated party would then be operating outside of the scope of regulation and the Agency may not be aware. Additionally, should the party terminating the agreement, terminate the agreement or engage in conduct prohibited by 32B-14-302, both parties to the agreement would be operating outside the scope of this statute. Finally, should any agreements be terminated without following the timelines and details outlined in 32B-14, again, both parties would be operating outside the scope of this statute, and therefore the issue of agreement would need to lead to the required arbitration and judicial remedies. These requirements may be outside the purview of compliance specialists conducting audits to renew licenses, but in order to support the policy of the Legislature as stated in this chapter, the agency should have a structured program in place for tracking distributor agreements.

32B-11-201 requires manufacturing licensees to have an agreement with beer wholesalers.

32B-11-503 requires brewery manufacturing licensees to have an agreement with beer wholesalers.

32B-13-201 requires beer wholesaling licensees to have an agreement with the above

32B-13-301 requires licensee not to distribute outside of the agreement (with exceptions)

32B-14-102(2):

(a) "Distributorship agreement" means a written agreement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer manufactured, imported, or distributed by the supplier.

(b) For purposes of this chapter, a separate agreement between a supplier and a wholesaler is considered to be part of a distributorship agreement if it relates to:

(i) the relationship between the supplier and the wholesaler; or

(ii) the duties of either the supplier or the wholesaler under a distributorship agreement.

DABS Response: A policy and procedure is currently in development with shared responsibility

between the Off Premise Program Manager and the Package Agency/Manufacturing Program Manager and engagement with distributors.

4. Observation: 32B-17 Liquor Transport Licenses: Please refer to Internal Audit Report 21-04, dated June 15, 2021. Compliance has no policies and procedures in place for determining compliance for Liquor Transport Licensees. This is an observation and internal audit will defer to management to make a determination as to whether an annual review or audit should be conducted on these licensees.

Recommendation: Should management decide to include this in the scope of Compliance auditing, Internal Audit would recommend including information in DABS Policy 06-01 that includes considerations during the audit process.

DABS Response: The department will examine methods to assess statutory compliance for liquor transport (LT) licensees. With the exception of one LT licensee that is an airport central receiving and distribution center, an LT licensee may only transport liquor from a state store or package agency to a retail alcohol licensee. Thus, there are no premises to inspect. However, the department could easily verify other requirements such as bond, insurance, and business licensing requirements to ensure statutory fidelity.

5. Observation: Logistics for field employees can be particularly difficult in certain cases. As an example, an individual may live in a north or south county in the State, and drive to Salt Lake City to retrieve a fleet vehicle. They then may be required to drive back the north or south direction to conduct audits. This can have an affect on time management and department resources.

Recommendation: Management may want to revisit the measurements and targets set by GOPB's Remote Work Project. Allowances could be made for specialists to perform fieldwork on a limited basis, for licensees who are bypassed by specialists on their way to and from the administrative office.

<https://gopb.utah.gov/a-new-workplace-modernizing-where-how-and-when-utah-works/>

DABS Response: There are many factors to consider for the planning and execution of audit travel. The department of Government Operations divisions- Fleet and Risk have certain directives to drive decision making on this issue. The department is working to balance the need to be compliant with these state divisions. The compliance zone assignments are well thought out such that staff do not backtrack to their domicile location to perform audits.

Please let me know if you have any questions or concerns about the department's proposed course of action in response to the internal audit.

Sincerely,

A handwritten signature in dark ink, reading "Tiffany Clason". The signature is written in a cursive, flowing style.

Tiffany Clason, Executive Director
Department of Alcoholic Beverage Services

cc: Cade Meier, Deputy Director
Tara Thue, Commissioner
Jacquelyn Orton, Commissioner
Stan Parrish, Commissioner
Tom Jacobson, Commissioner
Jennifer Tarazon, Commissioner
Natalie Randall, Commissioner
Traci Santillanes, Internal Audit Director