

Businesses who do not hold a DABS License:

Question: May a business establishment like a spa, beauty salon, art gallery, hotel, theater, etc. that is open to the general public (even if there is a guest list or they bought a ticket) serve alcohol to its patrons?

Answer: No! There is no DABS license currently available for these types of public businesses.



In March of 2004, agents from the state Bureau of Investigation and Salt Lake County Sheriff's office held a press conference to announce that they had cited several day spas for serving wine to their customers. In one instance, the spa allegedly had used underage employees to serve the wine. The Salt Lake Tribune reported that the law enforcement agencies wanted to spread the word among those in the spa industry that the practice is illegal. It is still illegal.

Apparently, many of the spas were unaware of the following state laws.



Unlawful Selling Without a License.

Utah Code Section 32B-4-401 (7) says that it is unlawful for any person or business to sell any alcoholic beverage directly or *indirectly* unless they are licensed to do so.

- **What does selling indirectly mean?** If a member of the general public comes into an establishment for a service such as a massage or a manicure, and the business offers that

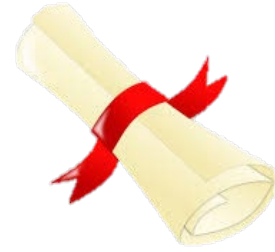
These businesses may NOT provide any alcohol to their patrons, neither for free nor to sell.

person an alcoholic beverage, the beverage is included in the price of the service. The price of the service is the same whether the person accepts the beverage or not. The cost of the beverage is part of the cost of doing business, the same as the cost of magazine subscriptions, coffee, soft drinks, etc. for the waiting area. All patrons bear the cost of the overhead of the business in the price of the service. Patrons must be in

the establishment to buy the service. If that service includes an alcoholic beverage, then the business *is indirectly selling* the beverage or the *sale of alcohol without a license*.

Why does state law require licensing?

Licensing laws set up the parameters of how liquor and beer may be sold, served, dispensed, and stored. Otherwise, there would be no controls to prohibit minors from selling and serving alcohol, employees consuming and being intoxicated on duty, patrons leaving with open containers, alcohol being stored in unlocked areas accessible to minors, free-pouring, unlimited sizing of the drinks, unlimited hours, etc. Other restrictions in the licensing laws also prohibit providing free alcohol to patrons. Current licensing laws do not contemplate licensing businesses that want to provide alcohol in settings other than restaurants, cafes, clubs, taverns, etc. Such licensing would require new legislation.



Unlawful "Brown-Bagging"

Utah Code Section 32B-4-415 says that a person may not bring for on-premise consumption any alcoholic beverage onto the premises of "any establishment open to the general public" subject to the following exceptions:

- Bottled wine into a licensed restaurant or private club.
- Any alcohol as a passenger in a limousine or chartered bus (under certain guidelines).
- At a "privately hosted event" that is not open to the public.
 - A privately hosted event is defined in 32B-1-102 (89) as a specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests. It does not include an event or function to which the general public is invited, whether for an admission fee or not.

Thus, a business open to the general public that brings alcoholic beverages onto its premises to serve to its patrons with or without charge would be in violation and may be subject to a citation.



Offering "Free" Alcohol Utah Code Section 32B-1-206 (5) provides that the advertising or use of any means or media to offer an alcoholic product to the general public without charge is prohibited.