

## **Utah Food Industry Association / Utah Retail Merchants Association 2011 Legislative Wrap Up**

The 2011 Utah legislative session came to an end at midnight on March 10<sup>th</sup>. During each day of the legislative session, your association staff was on the hill protecting the interests of the industry. Association staff tracked or worked on over 100 bills during the session and the Utah Food Industry and Utah Retail Merchants joint Government Relations Committee met weekly during the session to take positions on bills and receive updates from staff. The following “wrap-up” is a summary of many of the key issues staff addressed during the session but is not exhaustive. If your company has questions about any issue not contained in the summary please feel free to contact Dave Davis or Kate Bradshaw at the Association’s offices.

### ***Vendor Discount***

Last year’s legislative session started off with a bang as Utah Governor Gary Herbert proposed repealing retailers’ 1.31% vendor discount. The Governor made this proposal in an effort to fill budget shortfalls as a result of declining tax collections. Staff and the industry were successful in defeating last year’s proposal and during this last year met with the Governor’s office to educate staff on the negative impacts to retailers of losing this compensation. As a result of efforts by your association, the Governor did not include the repeal of the vendor discount in his FY 2012 budget. Staff was also able to hold off any legislative attempts to repeal or reduce this vendor allowance. Retaining this allowance means tens of millions of dollars for Utah retailers each year.

### ***Significant Bills that Passed***

#### **Service Animals (HB 172) - Passed**

Many of our retailers have struggled with the definition of what constitutes a legitimate service animal (allowed in a retail establishment) and what is a comfort animal (not allowed in a retail establishment). Several months back the US Department of Labor promulgated rules that more clearly defined that a service animal must be a dog and must perform some essential function. HB 172 amended the Utah definition of service animal to make it consistent with the federal definition. This should help Utah retailers to better manage customers who bring animals into retail establishments.

#### **Fireworks (HB 22) - Passed**

This bill provided retailers with the opportunity to sell a new line of firework products in Utah. Prior to the passage of this bill Utah retailers were limited to a small variety of fireworks that were not “aerial” in nature. With the passage of HB 22 retailers can now sale aerial cakes that shoot mortars into the air but come down “cold”. While there were several attempts to amend the bill to only allow for the sale of these products at outdoor stands, the association was successful in holding off these efforts and maintaining the opportunity for our

retailers to sell these products in permanent indoor facilities. This bill will provide a new marketing and selling opportunity for Utah retailers.

### **RFID (2<sup>nd</sup> Sub. HB 224) – Amended - Passed**

There was an attempt by Representative Wayne Harper (R-West Jordan) to regulate the use of Radio Frequency Identification devices in the manufacturing and retailing environment. This bill would have placed significant restrictions on the use of RFID devices and had the potential to encumber “just in time manufacturing” and inventory management. The association staff was successful in amending this bill to remove all impacts to retail, wholesale or manufacturing. The amended bill, which ultimately passed, dealt only with the subcutaneous implantation of RFID devices and once amended the association took no position on the bill.

### **Joint Resolution Urging Congress to Limit the Freeze on Longer Combination Vehicle Use in the Western States (SJR 6) - Passed**

SJR 6 was a Joint Resolution urging Congress to repeal the freeze on longer combination vehicle (LCV) use in the western states. This resolution was important to our members that move freight throughout the western United States. If Congress were to lift this freeze it would allow neighboring states to become more consistent in weight and length requirements and better allow the free flow of goods across state lines. The freeze is requiring retailers / wholesalers to “short weight” trucks traveling across state lines and literally costing our members ten’s of millions of dollars annually.

### **Medicaid Pharmacy Funding (SB 3) – Passed**

The association and its members enjoyed a significant win in the area of Medicaid pharmacy funding. Due to budget shortages the Social Services Appropriations subcommittee proposed the following cuts to pharmacy reimbursements: (1) \$1.8 million cut through more aggressively updating Maximum Allowable Cost (MAC) pricing; (2) \$3.3 million cut through not funding any drug cost inflation. If passed in this form it would have hit pharmacy reimbursements by over \$17 million or 11.5% (when federal matching dollars were taken into account). The association staff spend many hours with the appropriations chairs educating them about the real impacts of this type of a significant cut. Based on these efforts the chairs restored 100% of the \$3.3 million drug inflation cut and \$922,800 of the \$1.8 million proposed MAC adjustment cut. This appropriations work by the association will save our pharmacy members millions of dollars over the course of the next fiscal year.

### **Local Government Fee Authority (1<sup>st</sup> Sub. HB 226) - Passed**

In 2010 Salt Lake County imposed a new police “fee” on all residents and businesses that were living or operating businesses within unincorporated Salt Lake County. This fee was imposed to fill the \$13 million budget shortfall of the Salt Lake County Unified Police Department. The structuring of the fee caused convenience stores operating in the unincorporated county to pay an additional \$4,500 per unit, traditional grocery stores to pay an additional \$45,000 per unit and big box retail was hit with an \$80,000 tab per unit. The association worked in

conjunction with the business community to run SB 226 that will require this fee be repealed by 2012.

### **Prepaid Wireless Fees (HB 303) – Passed**

Rep. Brad Dee (R – Ogden) introduced HB 303 that required the emergency 911 (E-911) fee that is collected on post paid wireless accounts to be collected on pre-paid accounts. There was a battle over whether the carriers or the retailers should collect and remit this fee. At the urging of the National Emergency Number Association (NENA), the National Conference of State Legislatures (NCSL) and several local E-911 boards the bill was drafted to require collection at the point of sale. This means that both carriers and retailers will be required to collect and remit the fee. The association was able to negotiate a vendor credit of 3% to cover the collection costs of this new responsibility.

### **Sale Tax Exemption for Textbooks (SB 69) - Passed**

In 2009, the tax commission made a ruling that all non-profit universities were not required to collect and remit sales tax on textbook purchases. This put several private bookstores that specialize in competing in the textbook arena at a significant competitive disadvantage. SB 69 provided that stores that deal primarily in the sale of textbooks would also enjoy a sales tax exemption when selling approved textbooks. This legislation will allow some of our smaller members to continue to compete with large universities and colleges.

### **Secured Creditor Amendments (SB 272) – Passed**

SB 272 was an important bill to help our members that are engaged in consumer credit financing. This bill made important clarifications regarding deficiency judgments in consumer credit sales and addressed the appropriate surrender of collateral. Specifically, the bill preserves the right of a creditor to repossess the collateral if the creditor has previously elected to obtain a judgment and the buyer engages in conduct that would make the judgment unenforceable including the filing for bankruptcy.

## ***Significant Bills that Failed***

### **Sales Tax on Food (1<sup>st</sup> Sub. HB 282 & SB 270) - Failed**

While there was a lot of hoopla surrounding the restoration of sales tax on food this session, in the end the status quo prevailed. Many lawmakers continue to believe that putting food back into the sales tax base will address volatility in collections, however the political will has not reached critical mass. We anticipate that this issue will be back in future sessions and the staff will continue to monitor its progress.

### **Nicotine Products (1<sup>st</sup> Sub. HB 170) - Failed**

There was another assault on nicotine-based products this legislative session. Rep. Paul Ray (R – Clearfield) ran HB 170 that would have required any clerk who sold tobacco products to be at least 19 years old, banned e-cigarettes with flavors; banned moist snuff with flavors and banned all products<sup>1</sup> that contained nicotine but did not contain tobacco. The association took a high profile opposition position to this bill and was successful in defeating the bill, despite the sponsor’s efforts to water the bill down prior to the committee meeting. This bill would have placed an undue burden on Utah’s retailers and would have prevented the sale of “lower harm” nicotine products that may be developed in the future.

### **Protection Against Unfair Competition Through Misappropriated Technology Act / Microsoft Anti-Piracy Bill (SB 201) – Failed**

Microsoft made an attempt to run its model bill regarding the unauthorized use of its software overseas. As introduced, SB 201 would have placed significant and unreasonable burdens on retailers and manufacturers. Microsoft had this bill introduced during the closing days of the legislative session and attempted to push it through under the radar and without much discussion. The association engaged fully on the bill and was able to prevent its passage. The association continues to stand in favor of addressing software piracy in a responsible manner and without the draconian penalties and burdens that are contained within Microsoft’s current model bill.

### **Money Transmitter Transaction Tax (HB 416) - Failed**

Representative Steve Sandstrom (R – Utah County) wanted to place a surcharge on all wire transfers. Rep. Sandstrom wanted to both prevent illegal immigrants from sending money to their home countries and provide a funding source for his illegal immigration bill. If passed, this bill could have been devastating for retailers’ Western Union / money transfer business. The association staff worked with the rules committee chair and was able to prevent this bill from getting a committee hearing.

### **Construction Contracts Amendments (SB 208) - Failed**

SB 208 would have invalidated and made unenforceable any provisions of a construction contract that limits the right of a party to collect damages for a performance delay. These performance clauses are routinely used our members’ construction contracts to ensure that critical timelines are met by our contractors. The association partnered with several members of the Utah business coalition to defeat this bill and preserve this important contracting right for businesses.

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<sup>1</sup> Only those products that were FDA approved for nicotine replacement therapy would have been permitted.