

Part 3 Qualifications and Background

32B-1-301 Title.

This part is known as "Qualifications and Background."

Enacted by Chapter 276, 2010 General Session

32B-1-302 Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-1-303 Qualifications related to employment with the department.

- (1) The department may not employ a person if that person has been convicted of:
 - (a) a felony under a federal law or state law;
 - (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
 - (c) a crime involving moral turpitude; or
 - (d) on two or more occasions within the five years before the day on which the department employs the person, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.
- (2) The director may terminate a department employee or take other disciplinary action consistent with Title 67, Chapter 19, Utah State Personnel Management Act, if:
 - (a) after the day on which the department employs the department employee, the department employee is found to have been convicted of an offense described in Subsection (1) before being employed by the department; or
 - (b) on or after the day on which the department employs the department employee, the department employee:
 - (i) is convicted of an offense described in Subsection (1)(a), (b), or (c); or
 - (ii)
 - (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and
 - (B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).
- (3) The director may immediately suspend a department employee for the period during which a criminal matter is being adjudicated if the department employee:
 - (a) is arrested on a charge for an offense described in Subsection (1)(a), (b), or (c); or
 - (b)
 - (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and
 - (ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

Enacted by Chapter 276, 2010 General Session

32B-1-304 Qualifications for a package agency, license, or permit -- Minors.

- (1)
 - (a) The commission may not issue a package agency, license, or permit to a person who has been convicted of:
 - (i) a felony under a federal law or state law;
 - (ii) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
 - (iii) a crime involving moral turpitude; or
 - (iv) on two or more occasions within the five years before the day on which the package agency, license, or permit is issued, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.
 - (b) If the person is a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of an offense described in Subsection (1)(a):
 - (i) a partner;
 - (ii) a managing agent;
 - (iii) a manager;
 - (iv) an officer;
 - (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
 - (vii) a member who owns at least 20% of the limited liability company.
 - (c) The proscription under Subsection (1)(a) applies if a person who is employed to act in a supervisory or managerial capacity for a package agency, licensee, or permittee has been convicted of an offense described in Subsection (1)(a).
- (2) The commission may immediately suspend or revoke a package agency, license, or permit, and terminate a package agency agreement, if a person described in Subsection (1):
 - (a) after the day on which the package agency, license, or permit is issued, is found to have been convicted of an offense described in Subsection (1)(a) before the package agency, license, or permit is issued; or
 - (b) on or after the day on which the package agency, license, or permit is issued:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii)
 - (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and
 - (B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).
- (3) The director may take emergency action by immediately suspending the operation of the package agency, licensee, or permittee for the period during which a criminal matter is being adjudicated if a person described in Subsection (1):
 - (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (b)
 - (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

- (ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).
- (4)
- (a)
 - (i) The commission may not issue a package agency, license, or permit to a person who has had any type of agency, license, or permit issued under this title revoked within the last three years.
 - (ii) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if a partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the corporation, or member who owns at least 20% of the limited liability company is or was:
 - (A) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;
 - (B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or
 - (C) a manager or member who owns or owned at least 20% of a limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.
 - (b) The commission may not issue a package agency, licence, or permit to a partnership, corporation, or limited liability company if any of the following had any type of agency, license, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:
 - (i) a partner or managing agent of a partnership;
 - (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of a corporation; or
 - (iii) a manager or member who owns at least 20% of a limited liability company.
 - (c) The commission may not issue a package agency, license, or permit to a person acting in an individual capacity if that person was:
 - (i) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;
 - (ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or
 - (iii) a manager or member who owned at least 20% of the limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.
- (5)
- (a) The commission may not issue a package agency, license, or permit to a minor.
 - (b) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if any of the following is a minor:
 - (i) a partner or managing agent of the partnership;
 - (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
 - (iii) a manager or member who owns at least 20% of the limited liability company.
- (6) If a package agent, licensee, or permittee no longer possesses the qualifications required by this title for obtaining a package agency, license, or permit, the commission may terminate the package agency agreement, or revoke the license or permit.

Enacted by Chapter 276, 2010 General Session

32B-1-305 Requirement for a background check.

- (1) The department shall require an individual listed in Subsection (2), in accordance with this part, to:
 - (a) provide a signed waiver from the individual whose fingerprints may be registered in the Federal Bureau of Investigation Rap Back system that notifies the signee:
 - (i) that a criminal history background check will be conducted;
 - (ii) who will see the information; and
 - (iii) how the information will be used;
 - (b) submit to a background check in a form acceptable to the department; and
 - (c) consent to a background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.
- (2) The following shall comply with Subsection (1):
 - (a) an individual applying for employment with the department if:
 - (i) the department makes the decision to offer the individual employment with the department; and
 - (ii) once employed, the individual will receive benefits;
 - (b) an individual applying to the commission to operate a package agency;
 - (c) an individual applying to the commission for a license;
 - (d) an individual who with regard to an entity that is applying to the commission to operate a package agency or for a license is:
 - (i) a partner;
 - (ii) a managing agent;
 - (iii) a manager;
 - (iv) an officer;
 - (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporation;
 - (vii) a member who owns at least 20% of a limited liability company; or
 - (viii) an individual employed to act in a supervisory or managerial capacity; or
 - (e) an individual who becomes involved with an entity that operates a package agency or holds a license, if the individual is in a capacity listed in Subsection (2)(d) on or after the day on which the entity:
 - (i) is approved to operate a package agency; or
 - (ii) is licensed by the commission.
- (3) The department shall require compliance with Subsection (2)(e) as a condition of an entity's:
 - (a) continued operation of a package agency; or
 - (b) renewal of a license.
- (4) The department may require as a condition of continued employment that a department employee:
 - (a) submit to a background check in a form acceptable to the department; and
 - (b) consent to a fingerprint criminal background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

Amended by Chapter 351, 2015 General Session

32B-1-306 Use of information from a criminal background check.

The commission or department may use information obtained pursuant to Section 32B-1-305 only for one or more of the following purposes:

- (1) enforcing this title;
- (2) determining whether an individual is convicted of any of the following offenses that disqualify the individual under this title from acting in a capacity described in Subsection 32B-1-305(2):
 - (a) a felony under federal law or state law;
 - (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
 - (c) a crime involving moral turpitude; or
 - (d) on two or more occasions within the previous five years, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs;
- (3) determining whether an individual fails to accurately disclose the individual's criminal history on an application or document filed with the department or commission;
- (4) approving or denying an application for employment with the department;
- (5) taking disciplinary action against a department employee, including possible termination of employment;
- (6) issuing or denying an application to operate a package agency;
- (7) issuing or denying an application for a license;
- (8) issuing or denying the renewal of a package agency agreement;
- (9) issuing or denying the renewal of a license;
- (10) suspending the operation of a package agency;
- (11) terminating a package agency contract; or
- (12) suspending or revoking a license.

Amended by Chapter 307, 2011 General Session

32B-1-307 Background check procedure.

- (1)
 - (a) An individual described in Subsections 32B-1-305(2)(b) through (e) shall submit to a background check in a form acceptable to the department, including submitting fingerprints, at the expense of the individual.
 - (b) The department shall pay the expense of obtaining a background check, including obtaining fingerprints, required of:
 - (i) an individual applying for employment with the department; or
 - (ii) a department employee.
- (2)
 - (a) The department shall establish a procedure for obtaining and evaluating relevant information from a criminal history record maintained by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for a purpose outlined in Section 32B-1-306.
 - (b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (2) (a).
 - (c) The department shall pay the expense of obtaining the criminal history record required for:
 - (i) an individual applying for employment with the department; or

- (ii) a department employee.
- (3)
- (a) The department shall submit fingerprints obtained under Subsection (1) of an individual to the Utah Bureau of Criminal Identification to be forwarded to the Federal Bureau of Investigation for a nationwide criminal history record check.
 - (b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (3) (a).
 - (c) The department shall pay the expense of obtaining the criminal history record required for:
 - (i) an individual applying for employment with the department; or
 - (ii) a department employee.
- (4)
- (a) The Utah Bureau of Criminal Identification:
 - (i) shall check the fingerprints submitted under Subsection (1) against the applicable state and regional criminal records databases and submit the fingerprints to national criminal records databases;
 - (ii) shall maintain a separate file of fingerprints submitted under Subsection (1) for search by future submissions to the state and regional records databases, including latent prints, and notify the department when a new entry is made against a person whose fingerprints are held in the separate file;
 - (iii) shall release to the department all information received in response to the department's request; and
 - (iv) may request that the fingerprints be retained in the Federal Bureau of Investigation Rap Back system for search by future submissions to national criminal records databases, including latent prints.
 - (b) The department shall establish a privacy risk mitigation strategy to ensure that the department only receives notifications for individuals with whom the department maintains a regulatory or employment relationship.
- (5) The department shall pay the Utah Bureau of Criminal Identification the costs incurred in providing the department criminal background information.
- (6)
- (a) The following may not disseminate a criminal history record obtained under this part to any person except for a purpose described in Section 32B-1-306:
 - (i) the commission;
 - (ii) a commissioner;
 - (iii) the director;
 - (iv) the department; or
 - (v) a department employee.
 - (b)
 - (i) Notwithstanding Subsection (6)(a), a criminal history record obtained under this part may be provided by the department to the individual who is the subject of the criminal history record.
 - (ii) The department shall provide an individual who is the subject of a criminal history record and who requests the criminal history record an opportunity to:
 - (A) review the criminal history record; and
 - (B) respond to information in the criminal history record.
- (7) If an individual described in Subsection 32B-1-305(2) is determined to be disqualified under Subsection 32B-1-306(2)(b), the department shall provide the individual with:
- (a) notice of the reason for the disqualification; and

(b) an opportunity to respond to the disqualification.

Amended by Chapter 351, 2015 General Session