

Part 2 Disciplinary Proceedings

32B-3-201 Nature of adjudicative proceedings under title.

- (1) An adjudicative proceeding under this title, including a disciplinary proceeding, is a civil action, notwithstanding whether at issue in the adjudicative proceeding is a violation of statute that can be prosecuted criminally.
- (2) Unless specifically adopted in this title, a procedure or principle that is applicable to a criminal proceeding does not apply to an adjudicative proceeding permitted under this title including:
 - (a) Title 76, Chapter 1, General Provisions;
 - (b) Title 76, Chapter 2, Principles of Criminal Responsibility;
 - (c) Title 76, Chapter 3, Punishments; and
 - (d) Title 76, Chapter 4, Inchoate Offenses.
- (3)
 - (a) The burden of proof in an adjudicative proceeding under this title is by a preponderance of the evidence.
 - (b) If the subject of an adjudicative proceeding under this title asserts an affirmative defense, the subject has the burden of proof to establish the affirmative defense by the preponderance of the evidence.
- (4) In an adjudicative proceeding under this title, to find a violation of this title the commission:
 - (a) is required to determine whether the conduct that constitutes the violation occurred; and
 - (b) is not required to make a finding of knowledge or intent unless knowledge or intent is expressly made an element of the violation by statute.

Amended by Chapter 258, 2015 General Session

32B-3-202 Timing of reporting violations.

Except when the person subject to administrative action is staff:

- (1) A disciplinary proceeding may not be initiated or maintained by the commission or department on the basis, in whole or in part, of a violation of this title unless a person subject to administrative action against whom the violation is alleged is notified by the department of the violation in accordance with this section.
- (2)
 - (a) A nondepartment enforcement agency or nondepartment enforcement officer may not report a violation of this title to the department more than eight business days after the day on which a nondepartment enforcement officer or agency completes an investigation that finds a violation of this title.
 - (b) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged in a report described in Subsection (2)(a), the department shall notify a person subject to administrative action who is alleged by the report to have violated this title:
 - (i) by no later than eight business days of the day on which the department receives the report described in Subsection (2)(a); and
 - (ii) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.
- (3) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged by a report of a department

compliance officer, the department shall notify a person subject to administrative action who is alleged by the report to have violated this title:

- (a) by no later than eight business days of the day on which the department compliance officer completes an investigation that finds a violation of this title; and
 - (b) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.
- (4)
- (a) A notice required by this section may be done orally, if after the oral notification the department provides written notification.
 - (b) The written notification described in Subsection (4)(a) may be sent outside the time periods required by this section.
- (5) The department shall maintain a record of a notification required by this section that includes:
- (a) the name of the person notified; and
 - (b) the date of the notification.

Enacted by Chapter 276, 2010 General Session

32B-3-203 Initiating a disciplinary proceeding.

Subject to Section 32B-3-202:

- (1) The department may initiate a disciplinary proceeding described in Subsection (2) if the department receives:
- (a) a report from an investigator alleging that a person subject to administrative action violated this title or the rules of the commission;
 - (b) a final adjudication of criminal liability against a person subject to administrative action on the basis of an alleged violation of this title; or
 - (c) a final adjudication of civil liability in accordance with Chapter 15, Alcoholic Product Liability Act, against a person subject to administrative action on the basis of an alleged violation of this title.
- (2) If the condition of Subsection (1) is met, the department may initiate a disciplinary proceeding to determine:
- (a) whether a person subject to administrative action violated this title or rules of the commission; and
 - (b) if a violation is found, the appropriate sanction to be imposed.
- (3)
- (a) Unless waived by the respondent, a disciplinary proceeding shall be held:
 - (i) if required by law;
 - (ii) before revoking or suspending a license, permit, or certificate of approval issued under this title; or
 - (iii) before imposing a fine against a person subject to administrative action.
 - (b) Inexcusable failure of a respondent to appear at a scheduled disciplinary proceeding hearing after receiving proper notice is an admission of the charged violation.
 - (c) The validity of a disciplinary proceeding is not affected by the failure of a person to attend or remain in attendance.

Amended by Chapter 369, 2012 General Session

32B-3-204 Disciplinary proceeding procedure.

- (1)

- (a) Subject to Section 32B-3-202, the following may conduct an adjudicative proceeding to inquire into a matter necessary and proper for the administration of this title and rules adopted under this title:
 - (i) the commission;
 - (ii) a hearing examiner appointed by the commission to conduct a suspension, non-renewal, or revocation hearing required by law;
 - (iii) the director; and
 - (iv) the department.
 - (b) Except as provided in this section or Section 32B-2-605, a person described in Subsection (1) (a) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.
 - (c) Except when otherwise provided by law, an adjudicative proceeding before the commission or a hearing examiner appointed by the commission shall be:
 - (i) video or audio recorded; and
 - (ii) subject to Subsection (3)(b), conducted in accordance with Title 52, Chapter 4, Open and Public Meetings Act.
 - (d) A person listed in Subsection (1)(a) shall conduct an adjudicative proceeding concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.
 - (e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures made by the commission, director, or department.
- (2)
- (a) Subject to Section 32B-3-202, a disciplinary proceeding shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on a disciplinary matter.
 - (b)
 - (i) The commission may appoint a necessary officer, including a hearing examiner, from within or without the department, to administer the disciplinary proceeding process.
 - (ii) A hearing examiner appointed by the commission:
 - (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and
 - (B) shall submit to the commission a report including:
 - (I) findings of fact determined on the basis of a preponderance of the evidence presented at the hearing;
 - (II) conclusions of law; and
 - (III) recommendations.
 - (iii) A report of a hearing examiner under this Subsection (2)(b) may not recommend a penalty more severe than that initially sought by the department in the notice of agency action.
 - (iv) A copy of a hearing examiner report under this Subsection (2)(b) shall be served upon the respective parties.
 - (v) Before final commission action, the commission shall give a respondent and the department reasonable opportunity to file a written objection to a hearing examiner report.
- (3)
- (a) The commission or an appointed hearing examiner shall preside over a disciplinary proceeding hearing.
 - (b) A disciplinary proceeding hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.

- (c)
 - (i) The commission or its hearing examiner as part of a disciplinary proceeding hearing may:
 - (A) administer an oath or affirmation;
 - (B) take evidence;
 - (C) take a deposition within or without this state; and
 - (D) require by subpoena from a place within this state:
 - (I) the testimony of a person at a hearing; and
 - (II) the production of a record or other evidence considered relevant to the inquiry.
 - (ii) A person subpoenaed in accordance with this Subsection (3)(c) shall testify and produce a record or tangible thing as required in the subpoena.
 - (iii) A witness subpoenaed, called to testify, or called to produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney or district attorney in the jurisdiction where the privilege is claimed or where the witness resides setting forth the circumstance of the claimed privilege.
 - (iv)
 - (A) A person is not excused from obeying a subpoena without just cause.
 - (B) A district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to:
 - (I) appear before the issuing party; and
 - (II)
 - (Aa) produce documentary evidence if so ordered; or
 - (Bb) give evidence regarding the matter in question.
 - (C) Failure to obey an order of the court may be punished by the court as contempt.
 - (d) In a case heard by the commission, the commission shall issue its final decision and order in accordance with Subsection (2).
- (4)
 - (a) The commission shall:
 - (i) render a final decision and order on a disciplinary action; and
 - (ii) cause its final order to be prepared in writing, issued, and served on all parties.
 - (b) An order of the commission is final on the date the order is issued.
 - (c) The commission, after the commission renders its final decision and order, may require the director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.
- (5)
 - (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by the commission or a hearing examiner appointed by the commission shall proceed formally in accordance with Sections 63G-4-204 through 63G-4-209 if:
 - (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health, and welfare;
 - (ii) the alleged violation involves:
 - (A) selling or furnishing an alcoholic product to a minor;
 - (B) attire, conduct, or entertainment prohibited by Chapter 1, Part 5, Attire, Conduct, and Entertainment Act;
 - (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf of the respondent;
 - (D) interfering or refusing to cooperate with:

- (I) an authorized official of the department or the state in the discharge of the official's duties in relation to the enforcement of this title; or
 - (II) a peace officer in the discharge of the peace officer's duties in relation to the enforcement of this title;
 - (E) an unlawful trade practice under Chapter 4, Part 7, Trade Practices Act;
 - (F) unlawful importation of an alcoholic product; or
 - (G) unlawful supply of liquor by a liquor industry member, as defined in Section 32B-4-702, to a person other than the department or a military installation, except to the extent permitted by this title; or
 - (iii) the department determines to seek in a disciplinary proceeding hearing:
 - (A) an administrative fine exceeding \$3,000;
 - (B) a suspension of a license, permit, or certificate of approval of more than 10 days; or
 - (C) a revocation of a license, permit, or certificate of approval.
 - (b) If a respondent does not request a disciplinary proceeding hearing, a hearing shall proceed informally unless it is designated as a formal proceeding pursuant to rules adopted by the commission in accordance with Subsection (5)(c).
 - (c) The commission shall make rules to provide a procedure to implement this Subsection (5).
- (6)
- (a) If the department recommends nonrenewal of a license, the department shall notify the licensee of the recommendation at least 15 days before the commission takes action on the nonrenewal.
 - (b) Notwithstanding Subsection (2), the commission shall appoint a hearing examiner to conduct an adjudicative hearing in accordance with this section if the licensee files a request for a hearing within 10 days of receipt of the notice under Subsection (6)(a).

Amended by Chapter 365, 2012 General Session

32B-3-205 Penalties.

- (1) If the commission is satisfied that a person subject to administrative action violates this title or the commission's rules, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commission may:
 - (a) suspend or revoke the person's license, permit, or certificate of approval;
 - (b) subject to Subsection (2), impose a fine against the person, including individual staff of a licensee, permittee, or certificate holder;
 - (c) assess the administrative costs of a disciplinary proceeding to the person if the person is a licensee, permittee, or certificate holder; or
 - (d) take a combination of actions described in this Subsection (1).
- (2)
 - (a) A fine imposed may not exceed \$25,000 in the aggregate for:
 - (i) a single notice of agency action; or
 - (ii) a single action against a package agency.
 - (b) The commission shall by rule establish a schedule setting forth a range of fines for each violation.
- (3) The commission shall transfer the costs assessed under this section into the General Fund in accordance with Section 32B-2-301.
- (4)
 - (a) If a license or permit is suspended under this section, the licensee or permittee shall prominently display a sign provided by the department:

- (i) during the suspension; and
 - (ii) at the entrance of the premises of the licensee or permittee.
 - (b) The sign required by this Subsection (4) shall:
 - (i) read "The Utah Alcoholic Beverage Control Commission has suspended the alcoholic product license or permit of this establishment. An alcoholic product may not be sold, offered for sale, furnished, or consumed on these premises during the period of suspension."; and
 - (ii) include the dates of the suspension period.
 - (c) A licensee or permittee may not remove, alter, obscure, or destroy a sign required to be displayed under this Subsection (4) during the suspension period.
- (5)
- (a) If a license or permit is revoked, the commission may order the revocation of a bond posted by the licensee or permittee under this title.
 - (b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a licensee or permittee for money owed the department under this title without the commission first revoking the license or permit.
- (6) A licensee or permittee whose license or permit is revoked may not reapply for a license or permit under this title for three years from the date on which the license or permit is revoked.
- (7) If a staff member of a licensee, permittee, or certificate holder is found to have violated this title, in addition to imposing another penalty authorized by this title, the commission may prohibit the staff member from handling, selling, furnishing, distributing, manufacturing, wholesaling, or warehousing an alcoholic product in the course of acting as staff with a licensee, permittee, or certificate holder under this title for a period determined by the commission.
- (8)
- (a) If the commission makes the finding described in Subsection (8)(b), in addition to other penalties prescribed by this title, the commission may order:
 - (i) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's from the department's sales list; and
 - (ii) a suspension of the department's purchase of an alcoholic product described in Subsection (8)(a)(i) for a period determined by the commission.
 - (b) The commission may take the action described in Subsection (8)(a) if:
 - (i) a manufacturer, supplier, or importer of liquor or its staff or representative violates this title; and
 - (ii) the manufacturer, supplier, or importer:
 - (A) directly commits the violation; or
 - (B) solicits, requests, commands, encourages, or intentionally aids another to engage in the violation.
- (9) If the commission makes a finding that the brewer holding a certificate of approval violates this title or rules of the commission, the commission may take an action against the brewer holding a certificate of approval that the commission could take against a licensee including:
- (a) suspension or revocation of the certificate of approval; and
 - (b) imposition of a fine.
- (10) Notwithstanding the other provisions of this title, the commission may not order a disciplinary action or fine in accordance with this section if the disciplinary action or fine is ordered on the basis of a violation:
- (a) of a provision in this title related to intoxication or becoming intoxicated; and

- (b) if the violation is first investigated by a law enforcement officer, as defined in Section 53-13-103, who has not received training regarding the requirements of this title related to responsible alcoholic product sale or service.

Enacted by Chapter 276, 2010 General Session

32B-3-206 Dishonored checks.

- (1) If a check issued in payment of a fee or cost authorized or required by this title is returned to the department as dishonored:
 - (a) the department may assess a service charge in an amount set by commission rule against the person on whose behalf the check was tendered;
 - (b) if the check that is returned to the department is from a package agent, licensee, or permittee, the commission may:
 - (i) suspend or revoke the license or permit; or
 - (ii) suspend or terminate the operation of the package agency;
 - (c) the department may require that the person who payed with the dishonored check only pay money owed to the department under this title with cash for the time period determined by the department; or
 - (d) the department or commission may take a combination of actions as provided in this Subsection (1).
- (2)
 - (a) If a license or permit is revoked under this section, the commission may require the forfeiture of the bond of the licensee or permittee.
 - (b) Notwithstanding Subsection (2)(a), the department may make a claim against a bond posted by a licensee or permittee for money owed the department under this title without the commission first revoking the license or permit.
- (3)
 - (a) If the operation of a package agency is terminated under this section and the department has posted a bond for the package agency, the commission may require the forfeiture of the bond.
 - (b) Notwithstanding Subsection (3)(a), the department may make a claim against a bond posted for a package agency without the commission first terminating the operation of the package agency.

Enacted by Chapter 276, 2010 General Session

32B-3-207 Judicial review -- Enforcement.

- (1) In a disciplinary proceeding, a respondent found in a final order of the commission to have violated this title or rules of the commission made under this title may seek judicial review in a court of competent jurisdiction pursuant to the judicial review provisions of Sections 63G-4-401 through 63G-4-405.
- (2) Notwithstanding Subsection 63G-4-403(4)(g), an appellate court may not grant relief on the basis that a finding of fact by the commission in a formal disciplinary proceeding is not supported, if the commission's finding of fact is supported by any evidence of substance in the record of the formal disciplinary proceeding when viewed in light of the whole record before the court.
- (3) In addition to another remedy provided by law, the commission may seek enforcement of a commission order in a disciplinary proceeding by seeking civil enforcement in a state district court in accordance with Section 63G-4-501.

Enacted by Chapter 276, 2010 General Session