

Part 3 Nuisance Retail Licensee Act

32B-3-301 Title.

This part is known as the "Nuisance Retail Licensee Act."

Enacted by Chapter 276, 2010 General Session

32B-3-302 Definitions.

As used in this part:

- (1) "Nuisance activity" means:
 - (a) a judicial finding that a licensed establishment is a nuisance under Section 32B-4-208; or
 - (b) an act described in Section 32B-3-303.
- (2) "Objecting governmental entity" means:
 - (a) a local government entity;
 - (b) a prosecutor's office; or
 - (c) a law enforcement agency.

Enacted by Chapter 276, 2010 General Session

32B-3-303 Acts making a person subject to this part.

- (1) One or more of the following acts constitute a nuisance activity:
 - (a) a single felony conviction within the last two years of:
 - (i) a retail licensee; or
 - (ii) supervisory or managerial level staff of the retail licensee;
 - (b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act:
 - (i)
 - (A) of a retail licensee; or
 - (B) staff of the retail licensee;
 - (ii) within the last two years; and
 - (iii) made on the basis of an act that occurs on the licensed premises;
 - (c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37, Utah Controlled Substances Act, if:
 - (i) the convictions are made on the basis of an act that occurs on the licensed premises; and
 - (ii) there is evidence that the retail licensee knew or should have known of the illegal activity;
 - (d) a single conviction within the last two years of a retail licensee or staff of the retail licensee that is made on the basis of:
 - (i) pornographic and harmful materials:
 - (A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances; and
 - (B) if the violation occurs on the licensed premises;
 - (ii) prostitution;
 - (iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;
 - (iv) having any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;

- (v) on the licensed premises engaging in or permitting a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value;
- (vi) a disturbance of the peace that occurs on the licensed premises; or
- (vii) disorderly conduct that occurs on the licensed premises; or
- (e) three or more adjudicated violations of this title within the last two years by a retail licensee or by staff of the retail licensee that result in a criminal citation or an administrative referral to the department relating to:
 - (i) the sale, offer for sale, or furnishing of an alcoholic product to a minor;
 - (ii) the sale, offer for sale, or furnishing of an alcoholic product to a person actually, apparently, or obviously intoxicated;
 - (iii) the sale, offer for sale, or furnishing of an alcoholic product after the lawful hours for the sale or furnishing; or
 - (iv) acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title.
- (2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership, corporation, or limited liability company, a conviction under Subsection (1)(c) includes a conviction of any of the following for an offense described in Subsection (1)(c):
 - (a) a partner;
 - (b) a managing agent;
 - (c) a manager;
 - (d) an officer;
 - (e) a director;
 - (f) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate retail licensee; or
 - (g) a member who owns at least 20% of a limited liability company retail licensee.

Amended by Chapter 307, 2011 General Session

32B-3-304 Rulemaking.

In accordance with this chapter, the commission may make rules that govern the filing under this chapter of:

- (1) a formal objection to the renewal of a retail license; and
- (2) a request for hearing filed by a retail licensee.

Enacted by Chapter 276, 2010 General Session

32B-3-305 Commission to prohibit nuisance activity by licensee -- License not renewed.

- (1) In accordance with Section 32B-1-104, the commission shall require a retail licensee as a condition of being licensed under this title to operate in a manner so as not to endanger the public health, peace, safety, welfare, or morals of the community.
- (2)
 - (a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, and Sections 32B-3-306 and 32B-3-307, the commission may deny the renewal of a retail license if:
 - (i) a formal objection to the renewal is filed; and

- (ii) the commission determines that the retail licensee has engaged in a nuisance activity to such an extent that the nuisance activity has adversely impacted the public health, peace, safety, welfare, or morals of the neighboring community of the licensed premises.
- (b) In making a determination under this Subsection (2), the commission may consider:
 - (i) the type of nuisance activity in which a retail licensee engages;
 - (ii) the frequency or pattern of the nuisance activity; and
 - (iii) the retail licensee's notice of and failure to abate or correct the nuisance activity.

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32B-3-306 Formal objections to renewal.

- (1) The department shall notify governmental entities that in accordance with this part an objecting governmental entity may file with the commission an objection to the renewal of a retail licensee's license in the objecting governmental entity's community.
- (2) The department or an objecting governmental entity may file with the commission a formal objection to a retail license being renewed by the commission if the formal objection:
 - (a) is filed on the basis of a nuisance activity;
 - (b) is filed no later than 60 days before the expiration date of the retail licensee's license; and
 - (c) states with particularity all relevant facts and circumstances relating to the nuisance activity that forms the basis for the formal objection.

Enacted by Chapter 276, 2010 General Session

32B-3-307 Hearing on formal objections to renewal.

- (1) Upon receipt of a formal objection that meets the requirements of Section 32B-3-306, the department shall:
 - (a) issue a notice of agency action; and
 - (b) serve on the retail licensee no later than 30 days before the expiration of the retail licensee's license:
 - (i) the notice of agency action; and
 - (ii) a copy of the formal objection.
- (2)
 - (a) A retail licensee against whom a notice of agency action is served under Subsection (1) may request a hearing.
 - (b) The request for hearing described in Subsection (2)(a) shall be:
 - (i) in writing; and
 - (ii) filed with the commission within 10 days of the day on which the notice of agency action is served on the retail licensee.
 - (c) If a retail licensee fails to file a request for hearing in accordance with this Subsection (2), the commission may not renew the license of the retail licensee.
- (3)
 - (a) Upon receipt of a request for hearing meeting the requirements of Subsection (2), the department shall immediately schedule a hearing that shall be:
 - (i) held no later than 10 days before the expiration date of the retail licensee's license; and
 - (ii) electronically recorded by the department.
 - (b) The retail licensee or an objecting governmental entity, at its own expense, may have a reporter approved by the department prepare a transcript from the department's record of the hearing.

- (c)
 - (i) The department shall present information at the hearing that supports a finding that a nuisance activity occurred.
 - (ii) The information described in Subsection (3)(c)(i) shall be made a part of the record of the hearing.
- (d) A retail licensee shall:
 - (i) have the opportunity to challenge or explain whether any of the nuisance activity that forms the basis for the formal objection occurred; and
 - (ii) be permitted to:
 - (A) testify;
 - (B) present evidence; and
 - (C) comment on the issues at the hearing.
- (4)
 - (a) A hearing held under this part shall be conducted under the authority of the commission.
 - (b) The commission is responsible for rendering a final order on whether a retail licensee's license shall be renewed.
 - (c) Notwithstanding Subsections (4)(a) and (b), the commission may appoint a necessary hearing examiner to administer the hearing process.
 - (d) The commission or the hearing examiner appointed by the commission shall serve as the presiding officer at a hearing held under this section.
 - (e) The presiding officer at a hearing held under this section:
 - (i) shall evaluate:
 - (A) the information presented at the hearing in support of the formal objection; and
 - (B) any explanation and evidence offered by the retail licensee; and
 - (ii) may consider such factors as:
 - (A) the length of time the retail licensee has operated the licensed premises;
 - (B) the condition of the licensed premises;
 - (C) whether the retail licensee knew or should have known of the nuisance activity in question;
 - (D) whether the retail licensee failed to:
 - (I) make a substantial effort to correct the nuisance activity; and
 - (II) work with law enforcement to curtail the nuisance activity;
 - (E) whether the nuisance activity has been ongoing or temporary;
 - (F) whether the retail licensee or the retail licensee's staff:
 - (I) initiated contact with the law enforcement agency on the nuisance activity; and
 - (II) cooperated with the law enforcement agency's investigation; and
 - (G) whether prior efforts to stop the nuisance activity by the community or the retail licensee have been unsuccessful.
- (5) An order issued under this section shall:
 - (a) be based on the evidence presented at the hearing; and
 - (b) state whether:
 - (i) the continued operation of the licensed premises will endanger the public health, peace, safety, welfare, or morals of the community; and
 - (ii) the retail license should or should not be renewed.
- (6)
 - (a) If the presiding officer is a hearing examiner appointed by the commission, the hearing officer shall issue a signed order in writing that:
 - (i) complies with Subsection (5);

- (ii) recommends to the commission whether the retail license should or should not be renewed;
 - (iii) states the reasons for the hearing officer's decision; and
 - (iv) notifies the retail licensee and the objecting governmental entity that the hearing examiner's order will be considered by the commission at the next regularly scheduled meeting of the commission.
- (b) The department shall promptly mail a copy of the hearing examiner's order to:
- (i) the retail licensee; and
 - (ii) any objecting governmental entity.
- (c) The commission at its next regularly scheduled meeting after receipt of a hearing examiner's order, shall decide whether to renew or not renew the retail license on the basis of:
- (i) the record and evidence presented at the hearing; and
 - (ii) the hearing examiner's recommendation.
- (7)
- (a) As an alternative to ordering that a retail license not be renewed under this section, the commission may conditionally renew a retail license by requiring that:
- (i) the retail licensee and the licensed premises be closely monitored during the licensing year by:
 - (A) the department;
 - (B) local government officials; and
 - (C) law enforcement; and
 - (ii) the matter be reviewed before the next renewal period.
- (b) The commission may conditionally renew a retail license contingent on a person listed in Subsection (7)(b)(ii) divesting all interest in the retail licensed business if:
- (i) the retail licensee is a partnership, corporation, or limited liability company; and
 - (ii) the formal objection filed under this section is filed solely on the basis of a felony conviction:
 - (A) of:
 - (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 corporate licensee; or
 - (VII) a member who owns at least 20% of a limited liability company licensee; and
 - (B) for illegal activity that occurred off of the licensed premises.
- (8)
- (a) In accordance with this section, the commission shall issue a written order setting forth the commission's decision and the reason for the commission's decision.
- (b) The order described in Subsection (8)(a) is considered final on the date the order becomes effective.
- (c) The department shall serve a copy of the order on the retail licensee.
- (9) A retail licensee whose retail license is not renewed by order of the commission may seek judicial review under the procedures provided in Section 32B-3-207.
- (10) A retail licensee whose retail license is not renewed may not reapply for a license under this title for three years from the date the retail license is not renewed.

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