

Part 2

Criminal Procedure

32B-4-201 Applicability of Utah Code of Criminal Procedure.

Except as otherwise provided in this title, the procedure in a criminal case arising under this title is governed by Title 77, Utah Code of Criminal Procedure, and any other rules adopted by the Utah Supreme Court.

Enacted by Chapter 276, 2010 General Session

32B-4-202 Duties to enforce this title.

It is the duty of the following to diligently enforce this title in their respective capacities:

- (1) the governor;
- (2) a commissioner;
- (3) the director;
- (4) an official, inspector, or department employee;
- (5) a prosecuting official of the state or its political subdivisions;
- (6) a county, city, or town;
- (7) a peace officer, sheriff, deputy sheriff, constable, marshal, or law enforcement official;
- (8) a state health official; and
- (9) a clerk of the court.

Amended by Chapter 438, 2024 General Session

32B-4-203 Authority to inspect.

- (1)
 - (a) This Subsection (1) applies to:
 - (i) a commissioner;
 - (ii) an authorized representative of the commission or department; or
 - (iii) a law enforcement or peace officer.
 - (b) An individual described in Subsection (1)(a):
 - (i) shall be given access, ingress, and egress to and from premises or a conveyance used in the storage, sale, furnishing, manufacture, or transportation of an alcoholic product;
 - (ii) may open a container containing, or supposed to contain, an article sold, or exposed for sale, held in possession, or manufactured with intent to sell in violation of this title or commission rules; and
 - (iii) may inspect the contents and take samples of the contents for analysis from a container described in this Subsection (1).
- (2) The following shall assist, when requested by a person described in Subsection (1), in tracing, finding, or discovering the presence of an article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights:
 - (a) a dealer;
 - (b) a clerk;
 - (c) a bookkeeper;
 - (d) an express agent;
 - (e) a railroad or airline official;

- (f) a common or other carrier; and
- (g) an employee of a person listed in this Subsection (2).

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-204 Arrests.

- (1) Except as otherwise provided in this chapter, an arrest of a person for a violation of this title shall be made in accordance with:
 - (a) Title 77, Chapter 7, Arrest, by Whom, and How Made; and
 - (b) Rules 6 and 7, Utah Rules of Criminal Procedure.
- (2) A summons in lieu of a warrant of arrest shall be in accordance with Rule 6, Utah Rules of Criminal Procedure.

Enacted by Chapter 276, 2010 General Session

32B-4-205 Prosecutions.

- (1)
 - (a) A prosecution for a violation of this title shall be in the name of the state.
 - (b) A criminal action for violation of a county or municipal ordinance enacted in furtherance of this title shall be in the name of the governmental entity involved.
- (2)
 - (a) A prosecution for violation of this title shall be brought by the county attorney of the county or district attorney of the prosecution district where the violation occurs. If a county attorney or district attorney fails to initiate or diligently pursue a prosecution authorized and warranted under this title, the attorney general shall exercise supervisory authority over the county attorney or district attorney to ensure prosecution is initiated and diligently pursued.
 - (b) If a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of a city attorney.
 - (c) A city or town prosecutor has the responsibility of initiating and diligently pursuing prosecutions for a violation of a local ordinance enacted in furtherance of this title or commission rules.
- (3) Notwithstanding Section 76-1-201, a prosecuting attorney shall commence a prosecution by the return of an indictment or the filing of an information in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, in the county in which the offense occurs or where the premises are located upon which an alcoholic product is seized, if the offense involves an alcoholic product.
- (4)
 - (a) Unless otherwise provided by law, an information may not be filed charging the commission of a felony or class A misdemeanor under this title unless authorized by a prosecuting attorney.
 - (b) This Subsection (4) does not apply if the magistrate has reasonable cause to believe that the person to be charged may avoid apprehension or escape before approval can be obtained.
- (5)
 - (a) In describing an offense respecting the sale, keeping for sale, or other disposal of an alcoholic product, or the possessing, keeping, purchasing, consumption, or giving of an alcoholic product in an information, indictment, summons, judgment, warrant, or proceeding under this

title, it is sufficient to state the possessing, purchasing, keeping, sale, keeping for sale, giving, consumption, or disposal of the alcoholic product without stating:

- (i) the name or kind of alcoholic product;
 - (ii) the price of the alcoholic product;
 - (iii) any person to whom the alcoholic product is sold or disposed of;
 - (iv) by whom the alcoholic product is taken or consumed; or
 - (v) from whom the alcoholic product is purchased or received.
- (b) It is not necessary to state the quantity of alcoholic product possessed, purchased, kept, kept for sale, sold, given, consumed, or disposed of, except in the case of an offense when the quantity is essential, and then it is sufficient to allege the sale or disposal of more or less than the quantity.
- (6) If an offense is committed under a local ordinance enacted to carry out this title, it is sufficient if the charging document refers to the chapter and section of the ordinance under which the offense is committed.

Amended by Chapter 158, 2024 General Session

32B-4-206 Disposition of fines and forfeitures.

Except when otherwise provided, a fine or forfeiture levied under this title shall be paid to the county treasurer of the county in which the prosecution occurred.

Amended by Chapter 394, 2013 General Session

32B-4-207 Right of appeal.

In a case arising under this title, the commission or the state has the right of appeal as to a question of law.

Enacted by Chapter 276, 2010 General Session

32B-4-208 Nuisances.

- (1) As used in this section, "nuisance" means:
- (a) a room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance where an alcoholic product is possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title; or
 - (b) an alcoholic product, container, equipment, or other property kept or used in maintaining an item or property described in Subsection (1)(a).
- (2) A person who maintains or assists in maintaining a nuisance is guilty of a class B misdemeanor.
- (3) If a person has knowledge that, or has reason to believe that the person's room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used as a nuisance, or allows it to be occupied or used as a nuisance, the nuisance property is subject to a lien for and may be sold to pay the fines and costs assessed against the person guilty of the common nuisance. This lien may be enforced by action in a court having jurisdiction.
- (4)
- (a) The department shall bring an action to abate a nuisance in the name of the department in a court having jurisdiction.
 - (b) An action brought under this Subsection (4) is an action in equity.

- (c) The department may not be required to post a bond to initiate an action under this Subsection (4).
- (d) A court may issue:
 - (i) if it appears that a nuisance exists, a temporary writ of injunction restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial; and
 - (ii) an order restraining the defendant and any other person from removing or interfering with an alcoholic product, container, equipment, or other property kept or used in violation of this title or commission rules.
- (e) In an action to abate or enjoin a nuisance, the court need not find that the property involved is being unlawfully used at the time of the hearing.
- (f) On finding that a material allegation of a petition or complaint is true, the court shall order that an alcoholic product may not be possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated, in any portion of the room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance.
- (g) Upon judgment of a court ordering abatement of the nuisance, the court may order that the premises or conveyance in question may not be occupied or used for any purpose for one year, except under Subsection (4)(h).
- (h) A court may permit premises or conveyance described in Subsection (4)(g) to be occupied or used:
 - (i) if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety, approved by the court, payable to the state;
 - (ii) on the condition that an alcoholic product will not be present in or on the premises or the conveyance; and
 - (iii) on the condition that payment of the fines, costs, and damages assessed for violation of this title or commission rules will be made.
- (5) If a tenant of the premises uses the premises or any part of the premises in maintaining a nuisance, or knowingly permits use by another, the lease is void and the right to possession reverts to the owner or lessor who is entitled to the remedy provided by law for forcible detention of the premises.
- (6) A person is guilty of assisting in maintaining a nuisance as provided in Section 76-9-1305, if that person:
 - (a) knowingly permits a building or premises owned or leased by the person, or under the person's control, or any part of a building or premises, to be used in maintaining a nuisance; or
 - (b) after being notified in writing by a prosecutor or other citizen of the unlawful use, fails to take all proper measures to:
 - (i) abate the nuisance; or
 - (ii) remove the one or more persons from the premises.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-209 Lawful detention.

- (1)
 - (a) To inform a peace officer of a suspected violation and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:

- (i) detain a person; and
 - (ii) hold any form of identification presented by the person.
- (b) The following may take an action described in Subsection (1)(a):
 - (i) a state store employee;
 - (ii) a package agent;
 - (iii) a licensee or permittee;
 - (iv) a beer retailer; or
 - (v) staff of a person described in Subsections (1)(b)(ii) through (iv).
- (c) A person described in Subsection (1)(b) may take an action described in Subsection (1)(a) only:
 - (i) if that person has reason to believe that the person against whom the action is taken is:
 - (A) in a facility where liquor or beer is sold; and
 - (B) in violation of Section 32B-4-409, 32B-4-412, or 32B-4-413;
 - (ii) in a reasonable manner; and
 - (iii) for a reasonable length of time.
- (2) Unless the detention is unreasonable under all circumstances, the detention or failure to detain does not create criminal or civil liability for:
 - (a) false arrest;
 - (b) false imprisonment;
 - (c) slander; or
 - (d) unlawful detention.

Enacted by Chapter 276, 2010 General Session