

30 **77-23-210**, as renumbered and amended by Chapter 142, Laws of Utah 1994

31 **77-23a-15.5**, as last amended by Chapter 75, Laws of Utah 2005

32 REPEALS:

33 **77-23-201**, as last amended by Chapter 295, Laws of Utah 2001

34 **77-23-202**, as renumbered and amended by Chapter 142, Laws of Utah 1994

35 **77-23-203**, as renumbered and amended by Chapter 142, Laws of Utah 1994

36 **77-23-204**, as repealed and reenacted by Chapter 87, Laws of Utah 2005

37 **77-23-206**, as renumbered and amended by Chapter 142, Laws of Utah 1994

38 **77-23-207**, as renumbered and amended by Chapter 142, Laws of Utah 1994

39 **77-23-208**, as renumbered and amended by Chapter 142, Laws of Utah 1994

40 **77-23-209**, as last amended by Chapter 87, Laws of Utah 2005

41 **77-23-211**, as renumbered and amended by Chapter 142, Laws of Utah 1994

42 **77-23-212**, as last amended by Chapter 215, Laws of Utah 1997

43

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **32A-13-103** is amended to read:

46 **32A-13-103. Searches, seizures, and forfeitures.**

47 (1) The following are subject to forfeiture pursuant to the procedures and substantive
48 protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

49 (a) all alcoholic products possessed, used, offered for sale, sold, given, furnished,
50 supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried,
51 transported, or distributed in violation of this title or commission rules;

52 (b) all packages or property used or intended for use as a container for an alcoholic
53 product in violation of this title or commission rules;

54 (c) all raw materials, products, and equipment used, or intended for use, in
55 manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic
56 product in violation of this title or commission rules;

57 (d) all implements, furniture, fixtures, or other personal property used or kept for any

58 violation of this title or commission rules;

59 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to
60 transport or in any manner facilitate the transportation, sale, receipt, possession, or
61 concealment of property described in Subsection (1)(a), (b), (c), or (d); and

62 (f) all books, records, receipts, ledgers, or other documents used or intended for use in
63 violation of this title or commission rules.

64 (2) Any of the property subject to forfeiture under this title may be seized by any peace
65 officer of this state or any other person authorized by law upon process issued by any court
66 having jurisdiction over the property in accordance with the [~~procedures provided in Title 77,
67 Chapter 23, Part 2, Search Warrants~~] Utah Rules of Criminal Procedure relating to search
68 warrants or administrative warrants. However, seizure without process may be made when:

69 (a) the seizure is incident to an arrest or search under a search warrant or an inspection
70 under an administrative inspection warrant;

71 (b) the property subject to seizure has been the subject of a prior judgment in favor of
72 the state in a criminal injunction or forfeiture proceeding under this title;

73 (c) the peace officer or other person authorized by law has probable cause to believe
74 that the property is directly or indirectly dangerous to health or safety; or

75 (d) the peace officer or other person authorized by law has probable cause to believe
76 that the property is being or has been used, intended to be used, held, or kept in violation of this
77 title or commission rules.

78 (3) If the property is seized pursuant to a search or administrative warrant, the peace
79 officer or other person authorized by law shall [~~make a proper receipt, return, and inventory
80 and ensure the safekeeping of the property as required by Sections 77-23-206 through
81 77-23-208. If the magistrate who issued the warrant is a justice court judge, upon the filing of
82 the return the jurisdiction of the justice court shall cease and the magistrate shall certify the
83 record and all files without delay to the district court of the county in which the property was
84 located. From the time of this filing, the district court has jurisdiction of the case~~] comply with
85 the requirements of the Utah Rules of Criminal Procedure.

86 (4) In the event of seizure of property without process, the peace officer or other person
87 authorized by law shall make a return of his acts without delay directly to the district court of
88 the county in which the property was located, and the district court shall have jurisdiction of
89 the case. The return shall describe all property seized, the place where it was seized, and any
90 persons in apparent possession of the property. The officer or other person shall also promptly
91 deliver a written inventory of anything seized to any person in apparent authority at the
92 premises where the seizure was made, or post it in a conspicuous place at the premises. The
93 inventory shall state the place where the property is being held.

94 (5) Property taken or detained under this section is not repleviable but is considered in
95 custody of the law enforcement agency making the seizure subject only to the orders of the
96 court or the official having jurisdiction. When property is seized under this title, the
97 appropriate person or agency may:

98 (a) place the property under seal;

99 (b) remove the property to a place designated by it or the warrant under which it was
100 seized; or

101 (c) take custody of the property and remove it to an appropriate location for disposition
102 in accordance with law.

103 (6) When any property is subject to forfeiture under this section, proceedings shall be
104 instituted in accordance with the procedures and substantive protections of Title 24, Chapter 1,
105 Utah Uniform Forfeiture Procedures Act.

106 (7) When any property is ordered forfeited under Title 24, Chapter 1, Utah Uniform
107 Forfeiture Procedures Act, by a finding of the court that no person is entitled to recover the
108 property, the property, if an alcoholic product or a package used as a container for an alcoholic
109 product, shall be disposed of as follows:

110 (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or
111 impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in
112 saleable condition, sold in accordance with Section [~~24-1-16~~] 24-1-17.

113 (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its

114 package or container shall be destroyed by the department under competent supervision.

115 Section 2. Section **34A-6-301** is amended to read:

116 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
117 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
118 **Employer and employee representatives -- Request for inspection -- Compilation and**
119 **publication of reports and information -- Rules.**

120 (1) (a) The division or its representatives, upon presenting appropriate credentials to
121 the owner, operator, or agent in charge, may:

122 (i) enter without delay at reasonable times any workplace where work is performed by
123 an employee of an employer;

124 (ii) inspect and investigate during regular working hours and at other reasonable times
125 in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and
126 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,
127 devices, equipment, and materials in the workplace; and

128 (iii) question privately any such employer, owner, operator, agent, or employee.

129 (b) The division, upon an employer's refusal to permit an inspection, may seek a
130 warrant [~~under Section 77-23-211~~] pursuant to the Utah Rules of Criminal Procedure.

131 (2) (a) The division or its representatives may require the attendance and testimony of
132 witnesses and the production of evidence under oath.

133 (b) Witnesses shall receive fees and mileage in accordance with Section 78-46-28.

134 (c) (i) If any person fails or refuses to obey an order of the division to appear, any
135 district court within the jurisdiction of which such person is found, or resides or transacts
136 business, upon the application by the division, shall have jurisdiction to issue to any person an
137 order requiring that person to:

138 (A) appear to produce evidence if, as, and when so ordered; and

139 (B) give testimony relating to the matter under investigation or in question.

140 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be
141 punished by the court as a contempt.

142 (3) (a) The commission shall make rules in accordance with Title 63, Chapter 46a,
143 Utah Administrative Rulemaking Act, requiring employers:

144 (i) to keep records regarding activities related to this chapter considered necessary for
145 enforcement or for the development of information about the causes and prevention of
146 occupational accidents and diseases; and

147 (ii) through posting of notices or other means, to inform employees of their rights and
148 obligations under this chapter including applicable standards.

149 (b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
150 Administrative Rulemaking Act, requiring employers to keep records regarding any
151 work-related death and injury and any occupational disease as provided in this Subsection
152 (3)(b).

153 (i) Each employer shall investigate or cause to be investigated all work-related injuries
154 and occupational diseases and any sudden or unusual occurrence or change of conditions that
155 pose an unsafe or unhealthful exposure to employees.

156 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

157 (A) work-related fatality;

158 (B) disabling, serious, or significant injury; or

159 (C) occupational disease incident.

160 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents
161 within seven days after the occurrence of an injury or occupational disease, after the employer's
162 first knowledge of the occurrence, or after the employee's notification of the same, in the form
163 prescribed by the Division of Industrial Accidents, of any work-related fatality or any
164 work-related injury or occupational disease resulting in:

165 (I) medical treatment;

166 (II) loss of consciousness;

167 (III) loss of work;

168 (IV) restriction of work; or

169 (V) transfer to another job.

170 (B) (I) Each employer shall file a subsequent report with the Division of Industrial
171 Accidents of any previously reported injury or occupational disease that later resulted in death.

172 (II) The subsequent report shall be filed with the Division of Industrial Accidents
173 within seven days following the death or the employer's first knowledge or notification of the
174 death.

175 (iv) A report is not required for minor injuries, such as cuts or scratches that require
176 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's
177 Initial Report of Work Injury or Occupational Disease with the Division of Industrial
178 Accidents.

179 (v) A report is not required:

180 (A) for occupational diseases that manifest after the employee is no longer employed
181 by the employer with which the exposure occurred; or

182 (B) where the employer is not aware of an exposure occasioned by the employment
183 which results in a compensable occupational disease as defined by Section 34A-3-103.

184 (vi) Each employer shall provide the employee with:

185 (A) a copy of the report submitted to the Division of Industrial Accidents; and

186 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
187 rights and responsibilities related to the industrial injury or occupational disease.

188 (vii) Each employer shall maintain a record in a manner prescribed by the commission
189 of all work-related fatalities or work-related injuries and of all occupational diseases resulting
190 in:

191 (A) medical treatment;

192 (B) loss of consciousness;

193 (C) loss of work;

194 (D) restriction of work; or

195 (E) transfer to another job.

196 (viii) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
197 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally

198 recognized rules or standards on the reporting and recording of work-related injuries and
199 occupational diseases.

200 (c) (i) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
201 Administrative Rulemaking Act, requiring employers to keep records regarding exposures to
202 potentially toxic materials or harmful physical agents required to be measured or monitored
203 under Section 34A-6-202.

204 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
205 representatives:

206 (I) to observe the measuring or monitoring; and

207 (II) to have access to the records of the measuring or monitoring, and to records that
208 indicate their exposure to toxic materials or harmful agents.

209 (B) Each employer shall promptly notify employees being exposed to toxic materials or
210 harmful agents in concentrations that exceed prescribed levels and inform any such employee
211 of the corrective action being taken.

212 (4) Information obtained by the division shall be obtained with a minimum burden
213 upon employers, especially those operating small businesses.

214 (5) A representative of the employer and a representative authorized by employees
215 shall be given an opportunity to accompany the division's authorized representative during the
216 physical inspection of any workplace. If there is no authorized employee representative, the
217 division's authorized representative shall consult with a reasonable number of employees
218 concerning matters of health and safety in the workplace.

219 (6) (a) (i) (A) Any employee or representative of employees who believes that a
220 violation of an adopted safety or health standard exists that threatens physical harm, or that an
221 imminent danger exists, may request an inspection by giving notice to the division's authorized
222 representative of the violation or danger. The notice shall be:

223 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

224 (II) signed by the employee or representative of employees.

225 (B) A copy of the notice shall be provided the employer or the employer's agent no

226 later than at the time of inspection.

227 (C) Upon request of the person giving notice, the person's name and the names of
228 individual employees referred to in the notice shall not appear in the copy or on any record
229 published, released, or made available pursuant to Subsection (7).

230 (ii) (A) If upon receipt of the notice the division's authorized representative determines
231 there are reasonable grounds to believe that a violation or danger exists, the authorized
232 representative shall make a special inspection in accordance with this section as soon as
233 practicable to determine if a violation or danger exists.

234 (B) If the division's authorized representative determines there are no reasonable
235 grounds to believe that a violation or danger exists, the authorized representative shall notify
236 the employee or representative of the employees in writing of that determination.

237 (b) (i) Prior to or during any inspection of a workplace, any employee or representative
238 of employees employed in the workplace may notify the division or its representative of any
239 violation of a standard that they have reason to believe exists in the workplace.

240 (ii) The division shall:

241 (A) by rule, establish procedures for informal review of any refusal by a representative
242 of the division to issue a citation with respect to any alleged violation; and

243 (B) furnish the employees or representative of employees requesting review a written
244 statement of the reasons for the division's final disposition of the case.

245 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
246 form, all reports or information obtained under this section, subject to the limitations set forth
247 in Section 34A-6-306.

248 (b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
249 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,
250 including rules for information obtained under this section, subject to the limitations set forth
251 in Section 34A-6-306.

252 (8) Any employer who refuses or neglects to make reports, to maintain records, or to
253 file reports with the commission as required by this section is guilty of a class C misdemeanor

254 and subject to citation under Section 34A-6-302 and a civil assessment as provided under
255 Section 34A-6-307, unless the commission finds that the employer has shown good cause for
256 submitting a report later than required by this section.

257 Section 3. Section **58-37-10** is amended to read:

258 **58-37-10. Search warrants -- Administrative inspection warrants -- Inspections**
259 **and seizures of property without warrant.**

260 (1) Search warrants relating to offenses involving controlled substances may be
261 authorized [~~in the same manner as provided in Title 77, Chapter 23~~] pursuant to the Utah Rules
262 of Criminal Procedure.

263 (2) Issuance and execution of administrative inspection warrants shall be as follows:

264 (a) Any judge or magistrate of this state within his jurisdiction upon proper oath or
265 affirmation showing probable cause, may issue warrants for the purpose of conducting
266 administrative inspections authorized by this act or regulations thereunder and seizures of
267 property appropriate to such inspections. Probable cause for purposes of this act exists upon
268 showing a valid public interest in the effective enforcement of the act or rules promulgated
269 thereunder sufficient to justify administrative inspection of the area, premises, building, or
270 conveyance in the circumstances specified in the application for the warrant.

271 (b) A warrant shall issue only upon an affidavit of an officer or employee duly
272 designated and having knowledge of the facts alleged sworn to before a judge or magistrate
273 which establish the grounds for issuing the warrant. If the judge or magistrate is satisfied that
274 grounds for the application exist or that there is probable cause to believe they exist, he shall
275 issue a warrant identifying the area, premises, building, or conveyance to be inspected, the
276 purpose of the inspection, and if appropriate, the type of property to be inspected, if any. The
277 warrant shall:

278 (i) state the grounds for its issuance and the name of each person whose affidavit has
279 been taken to support it;

280 (ii) be directed to a person authorized by Section 58-37-9 of this act to execute it;

281 (iii) command the person to whom it is directed to inspect the area, premises, building,

282 or conveyance identified for the purpose specified and if appropriate, direct the seizure of the
283 property specified;

284 (iv) identify the item or types of property to be seized, if any; and

285 (v) direct that it be served during normal business hours and designate the judge or
286 magistrate to whom it shall be returned.

287 (c) A warrant issued pursuant to this section must be executed and returned within ten
288 days after its date unless, upon a showing of a need for additional time, the court instructs
289 otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the
290 warrant shall give to the person from whom or from whose premises the property was taken a
291 copy of the warrant and a receipt for the property taken or leave the copy and receipt at the
292 place where the property was taken. Return of the warrant shall be made promptly and be
293 accompanied by a written inventory of any property taken. The inventory shall be made in the
294 presence of the person executing the warrant and of the person from whose possession or
295 premises the property was taken, if they are present, or in the presence of at least one credible
296 person other than the person executing the warrant. A copy of the inventory shall be delivered
297 to the person from whom or from whose premises the property was taken and to the applicant
298 for the warrant.

299 (d) The judge or magistrate who issued the warrant under this section shall attach a
300 copy of the return and all other papers to the warrant and file them with the court.

301 (3) The department is authorized to make administrative inspections of controlled
302 premises in accordance with the following provisions:

303 (a) For purposes of this section only, "controlled premises" means:

304 (i) Places where persons licensed or exempted from licensing requirements under this
305 act are required to keep records.

306 (ii) Places including factories, warehouses, establishments, and conveyances where
307 persons licensed or exempted from licensing requirements are permitted to possess,
308 manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled
309 substance.

310 (b) When authorized by an administrative inspection warrant a law enforcement officer
311 or employee designated in Section 58-37-9, upon presenting the warrant and appropriate
312 credentials to the owner, operator, or agent in charge, has the right to enter controlled premises
313 for the purpose of conducting an administrative inspection.

314 (c) When authorized by an administrative inspection warrant, a law enforcement
315 officer or employee designated in Section 58-37-9 has the right:

316 (i) To inspect and copy records required by this [act] chapter.

317 (ii) To inspect within reasonable limits and a reasonable manner, the controlled
318 premises and all pertinent equipment, finished and unfinished material, containers, and labeling
319 found, and except as provided in Subsection (3)(e), all other things including records, files,
320 papers, processes, controls, and facilities subject to regulation and control by this [act] chapter
321 or by rules promulgated by the department.

322 (iii) To inventory and stock of any controlled substance and obtain samples of any
323 substance.

324 (d) This section shall not be construed to prevent the inspection of books and records
325 without a warrant pursuant to an administrative subpoena issued by a court or the department
326 nor shall it be construed to prevent entries and administrative inspections including seizures of
327 property without a warrant:

328 (i) with the consent of the owner, operator, or agent in charge of the controlled
329 premises;

330 (ii) in situations presenting imminent danger to health or safety;

331 (iii) in situations involving inspection of conveyances where there is reasonable cause
332 to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

333 (iv) in any other exceptional or emergency circumstance where time or opportunity to
334 apply for a warrant is lacking; and

335 (v) in all other situations where a warrant is not constitutionally required.

336 (e) No inspection authorized by this section shall extend to financial data, sales data,
337 other than shipment data, or pricing data unless the owner, operator, or agent in charge of the

338 controlled premises consents in writing.

339 Section 4. Section **77-23-205** is amended to read:

340 **77-23-205. Officer may request assistance.**

341 ~~[(1) The magistrate shall insert a direction in the warrant that it be served in the~~
 342 ~~daytime, unless the affidavits or oral testimony state a reasonable cause to believe a search is~~
 343 ~~necessary in the night to seize the property prior to it being concealed, destroyed, damaged,~~
 344 ~~altered, or for other good reason; in which case he may insert a direction that it be served any~~
 345 ~~time of the day or night.] An officer who is serving a search warrant may request other persons~~
 346 to assist [him] in conducting the search.

347 ~~[(2) The search warrant shall be served within ten days from the date of issuance. Any~~
 348 ~~search warrant not executed within this time shall be void and shall be returned to the court or~~
 349 ~~magistrate as not executed.]~~

350 Section 5. Section **77-23-210** is amended to read:

351 **77-23-210. Force used in executing warrant -- When notice of authority is**
 352 **required as a prerequisite.**

353 When a search warrant has been issued authorizing entry into any building, room,
 354 conveyance, compartment, or other enclosure, the officer executing the warrant may use such
 355 force as is reasonably necessary to enter:

356 (1) if, after notice of [his] the officer's authority and purpose, there is no response or
 357 [he] the officer is not admitted with reasonable promptness; or

358 (2) without notice of [his] the officer's authority and purpose, if the magistrate issuing
 359 the warrant directs in the warrant that the officer need not give notice. [~~The magistrate shall so~~
 360 ~~direct only upon proof, under oath, that the object of the search may be quickly destroyed,~~
 361 ~~disposed of, or secreted, or that physical harm may result to any person if notice were given.]~~

362 Section 6. Section **77-23a-15.5** is amended to read:

363 **77-23a-15.5. Mobile tracking device authorization.**

364 (1) As used in this section, "mobile tracking device" means an electronic or mechanical
 365 device emitting only an electronic locator signal which permits the tracking of the movement of

366 a person or an object.

367 (2) An investigative or law enforcement officer may make application to a district
368 judge for an order authorizing or approving the installation and use of a mobile tracking device.
369 The application must be in writing and signed by the investigative or law enforcement officer
370 and sworn to or affirmed by that officer before the district judge.

371 (3) An application under Subsection (2) must include:

372 (a) a statement of the identity of the applicant and the identity of the law enforcement
373 agency conducting the investigation;

374 (b) a certification by the applicant that the information likely to be obtained is relevant
375 to an ongoing criminal investigation being conducted by the investigating agency;

376 (c) a statement of the offense to which the information likely to be obtained relates;

377 (d) a statement whether it may be necessary to use and monitor the mobile tracking
378 device outside the jurisdiction of the court from which authorization is being sought; and

379 (e) a statement identifying the vehicle, container, or item to which, in which, or on
380 which the mobile tracking device is to be attached or placed and, if known to the applicant, a
381 statement identifying the owner or possessor of that vehicle, container, or item.

382 (4) Upon application made as provided under Subsection [~~(3)~~] (2), the court, if it finds
383 that the certification and statement required by Subsection (3) have been made in the
384 application, may enter an ex parte order authorizing the installation and use of a mobile
385 tracking device. The order may authorize the use of the device within the jurisdiction of the
386 court and outside that jurisdiction but within the state if the device is installed within the
387 jurisdiction of the court.

388 (5) The district judge who issued the order shall be notified by the applicant, in writing,
389 within ten days after the mobile tracking device has been activated in place on or within the
390 vehicle, container, or item. If no notice is received within ten days after issuance of the order,
391 the order shall be returned to the district judge to be recalled.

392 (6) For the purpose of placing a mobile tracking device, entry upon private property,
393 the passenger compartment of a vehicle, or any other area subject to a reasonable expectation

394 of privacy is prohibited unless the applicant first obtains consent or authority for such an entry
395 pursuant to [~~the provisions of Title 77, Chapter 23, Search and Administrative Warrants~~] Utah
396 Rules of Criminal Procedure.

397 (7) The order authorizing use of a mobile tracking device shall expire 60 days after the
398 date the mobile tracking device was activated in place. For good cause shown, the district
399 judge may grant an extension for an additional 60-day period.

400 (8) This part does not prohibit any person, whether or not the person is an investigative
401 or law enforcement officer as defined in Subsection 77-23a-3(11), from installing and using a
402 mobile tracking device upon or with property belonging to and under the lawful dominion and
403 control of that person.

404 Section 7. **Repealer.**

405 This bill repeals:

406 Section **77-23-201, Definitions.**

407 Section **77-23-202, Grounds for issuance.**

408 Section **77-23-203, Conditions precedent to issuance.**

409 Section **77-23-204, Remotely communicated search warrants served in written**
410 **form.**

411 Section **77-23-206, Receipt for property taken.**

412 Section **77-23-207, Return -- Inventory of property taken.**

413 Section **77-23-208, Safekeeping of property.**

414 Section **77-23-209, Return of recorded testimony and warrant to district court.**

415 Section **77-23-211, Violation of health, safety, building, or animal cruelty laws or**
416 **ordinances -- Warrants to obtain evidence.**

417 Section **77-23-212, Evidence seized pursuant to warrant not excluded unless**
418 **unlawful search or seizure substantial -- "Substantial" defined.**