

1 **ALCOHOL WORK REQUIREMENT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Walt Brooks**

5 Senate Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Alcoholic Beverage Control Act related to
10 employment and licensure requirements.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ establishes a period of time for which certain criminal convictions disqualify an
14 individual from obtaining employment with the Department of Alcoholic Beverage
15 Control or a license under the Alcoholic Beverage Control Act; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **32B-1-303**, as enacted by Laws of Utah 2010, Chapter 276

24 **32B-1-304**, as enacted by Laws of Utah 2010, Chapter 276

25 **32B-1-306**, as last amended by Laws of Utah 2011, Chapter 307

26 **32B-1-307**, as last amended by Laws of Utah 2015, Chapter 351

27 **32B-8-501**, as enacted by Laws of Utah 2010, Chapter 276

28
29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **32B-1-303** is amended to read:

31 **32B-1-303. Qualifications related to employment with the department.**

32 (1) The department may not employ a person if that person has been convicted of:

33 (a) within seven years before the day on which the department employs the person, a
34 felony under a federal law or state law;

35 (b) within four years before the day on which the department employs the person:

36 ~~[(b)]~~ (i) a violation of a federal law, state law, or local ordinance concerning the sale,
37 offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an
38 alcoholic product; or

39 ~~[(e)]~~ (ii) a crime involving moral turpitude; or

40 ~~[(d)]~~ (c) on two or more occasions within the five years before the day on which the
41 department employs the person, driving under the influence of alcohol, drugs, or the combined
42 influence of alcohol and drugs.

43 (2) The director may terminate a department employee or take other disciplinary action
44 consistent with Title 67, Chapter 19, Utah State Personnel Management Act, if:

45 (a) after the day on which the department employs the department employee, the
46 department employee is found to have been convicted of an offense described in Subsection (1)
47 before being employed by the department; or

48 (b) on or after the day on which the department employs the department employee, the
49 department employee:

50 (i) is convicted of an offense described in Subsection (1)(a)~~[(b), or (e)]~~ or (b); or

51 (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined
52 influence of alcohol and drugs; and

53 (B) was convicted of driving under the influence of alcohol, drugs, or the combined
54 influence of alcohol and drugs within five years before the day on which the person is
55 convicted of the offense described in Subsection (2)(b)(ii)(A).

56 (3) The director may immediately suspend a department employee for the period
57 during which a criminal matter is being adjudicated if the department employee:

58 (a) is arrested on a charge for an offense described in Subsection (1)(a)~~[-(b), or (c)]~~ or
59 (b); or

60 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
61 drugs, or the combined influence of alcohol and drugs; and

62 (ii) was convicted of driving under the influence of alcohol, drugs, or the combined
63 influence of alcohol and drugs within five years before the day on which the person is arrested
64 on a charge described in Subsection (3)(b)(i).

65 Section 2. Section **32B-1-304** is amended to read:

66 **32B-1-304. Qualifications for a package agency, license, or permit -- Minors.**

67 (1) (a) The commission may not issue a package agency, license, or permit to a person
68 who has been convicted of:

69 (i) within seven years before the day on which the commission issues the package
70 agency, license, or permit, a felony under a federal law or state law;

71 (ii) within four years before the day on which the commission issues the package
72 agency, license, or permit:

73 ~~[(ii)]~~ (A) a violation of a federal law, state law, or local ordinance concerning the sale,
74 offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an
75 alcoholic product; or

76 ~~[(iii)]~~ (B) a crime involving moral turpitude; or

77 ~~[(iv)]~~ (iii) on two or more occasions within the five years before the day on which the
78 package agency, license, or permit is issued, driving under the influence of alcohol, drugs, or
79 the combined influence of alcohol and drugs.

80 (b) If the person is a partnership, corporation, or limited liability company, the
81 proscription under Subsection (1)(a) applies if any of the following has been convicted of an
82 offense described in Subsection (1)(a):

83 (i) a partner;

84 (ii) a managing agent;

85 (iii) a manager;

- 86 (iv) an officer;
- 87 (v) a director;
- 88 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
- 89 the corporation; or
- 90 (vii) a member who owns at least 20% of the limited liability company.

91 (c) The proscription under Subsection (1)(a) applies if a person who is employed to act
92 in a supervisory or managerial capacity for a package agency, licensee, or permittee has been
93 convicted of an offense described in Subsection (1)(a).

94 (2) The commission may immediately suspend or revoke a package agency, license, or
95 permit, and terminate a package agency agreement, if a person described in Subsection (1):

96 (a) after the day on which the package agency, license, or permit is issued, is found to
97 have been convicted of an offense described in Subsection (1)(a) before the package agency,
98 license, or permit is issued; or

99 (b) on or after the day on which the package agency, license, or permit is issued:

100 (i) is convicted of an offense described in Subsection (1)(a)(i)~~[(ii), or (iii)]~~ or (ii); or

101 (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined
102 influence of alcohol and drugs; and

103 (B) was convicted of driving under the influence of alcohol, drugs, or the combined
104 influence of alcohol and drugs within five years before the day on which the person is
105 convicted of the offense described in Subsection (2)(b)(ii)(A).

106 (3) The director may take emergency action by immediately suspending the operation
107 of the package agency, licensee, or permittee for the period during which a criminal matter is
108 being adjudicated if a person described in Subsection (1):

109 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i)~~[(ii), or (iii)]~~
110 or (ii); or

111 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
112 drugs, or the combined influence of alcohol and drugs; and

113 (ii) was convicted of driving under the influence of alcohol, drugs, or the combined

114 influence of alcohol and drugs within five years before the day on which the person is arrested
115 on a charge described in Subsection (3)(b)(i).

116 (4) (a) (i) The commission may not issue a package agency, license, or permit to a
117 person who has had any type of agency, license, or permit issued under this title revoked within
118 the last three years.

119 (ii) The commission may not issue a package agency, license, or permit to a
120 partnership, corporation, or limited liability company if a partner, managing agent, manager,
121 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
122 of the corporation, or member who owns at least 20% of the limited liability company is or
123 was:

124 (A) a partner or managing agent of a partnership that had any type of agency, license,
125 or permit issued under this title revoked within the last three years;

126 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
127 of the total issued and outstanding stock of any corporation that had any type of agency,
128 license, or permit issued under this title revoked within the last three years; or

129 (C) a manager or member who owns or owned at least 20% of a limited liability
130 company that had any type of agency, license, or permit issued under this title revoked within
131 the last three years.

132 (b) The commission may not issue a package agency, licence, or permit to a
133 partnership, corporation, or limited liability company if any of the following had any type of
134 agency, license, or permit issued under this title revoked while acting in that person's individual
135 capacity within the last three years:

136 (i) a partner or managing agent of a partnership;

137 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
138 total issued and outstanding stock of a corporation; or

139 (iii) a manager or member who owns at least 20% of a limited liability company.

140 (c) The commission may not issue a package agency, license, or permit to a person
141 acting in an individual capacity if that person was:

142 (i) a partner or managing agent of a partnership that had any type of agency, license, or
143 permit issued under this title revoked within the last three years;

144 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
145 total issued and outstanding stock of a corporation that had any type of agency, license, or
146 permit issued under this title revoked within the last three years; or

147 (iii) a manager or member who owned at least 20% of the limited liability company
148 that had any type of agency, license, or permit issued under this title revoked within the last
149 three years.

150 (5) (a) The commission may not issue a package agency, license, or permit to a minor.

151 (b) The commission may not issue a package agency, license, or permit to a
152 partnership, corporation, or limited liability company if any of the following is a minor:

153 (i) a partner or managing agent of the partnership;

154 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
155 total issued and outstanding stock of the corporation; or

156 (iii) a manager or member who owns at least 20% of the limited liability company.

157 (6) If a package agent, licensee, or permittee no longer possesses the qualifications
158 required by this title for obtaining a package agency, license, or permit, the commission may
159 terminate the package agency agreement, or revoke the license or permit.

160 Section 3. Section **32B-1-306** is amended to read:

161 **32B-1-306. Use of information from a criminal background check.**

162 The commission or department may use information obtained pursuant to Section
163 **32B-1-305** only for one or more of the following purposes:

164 (1) enforcing this title;

165 (2) determining whether an individual is convicted of any of the following offenses
166 that disqualify the individual under this title from acting in a capacity described in Subsection

167 **32B-1-305(2)**:

168 (a) within the previous seven years, a felony under federal law or state law;

169 (b) within the previous four years:

170 ~~[(b)]~~ (i) a violation of a federal law, state law, or local ordinance concerning the sale,
171 offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an
172 alcoholic product; or

173 ~~[(c)]~~ (ii) a crime involving moral turpitude; or

174 ~~[(d)]~~ (c) on two or more occasions within the previous five years, driving under the
175 influence of alcohol, drugs, or the combined influence of alcohol and drugs;

176 (3) determining whether an individual fails to accurately disclose the individual's
177 criminal history on an application or document filed with the department or commission;

178 (4) approving or denying an application for employment with the department;

179 (5) taking disciplinary action against a department employee, including possible
180 termination of employment;

181 (6) issuing or denying an application to operate a package agency;

182 (7) issuing or denying an application for a license;

183 (8) issuing or denying the renewal of a package agency agreement;

184 (9) issuing or denying the renewal of a license;

185 (10) suspending the operation of a package agency;

186 (11) terminating a package agency contract; or

187 (12) suspending or revoking a license.

188 Section 4. Section **32B-1-307** is amended to read:

189 **32B-1-307. Background check procedure.**

190 (1) (a) An individual described in Subsections **32B-1-305**(2)(b) through (e) shall
191 submit to a background check in a form acceptable to the department, including submitting
192 fingerprints, at the expense of the individual.

193 (b) The department shall pay the expense of obtaining a background check, including
194 obtaining fingerprints, required of:

195 (i) an individual applying for employment with the department; or

196 (ii) a department employee.

197 (2) (a) The department shall establish a procedure for obtaining and evaluating relevant

198 information from a criminal history record maintained by the Utah Bureau of Criminal
199 Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for a
200 purpose outlined in Section [32B-1-306](#).

201 (b) An individual described in Subsections [32B-1-305](#)(2)(b) through (e) shall pay to the
202 department the expense of obtaining the criminal history record described in Subsection (2)(a).

203 (c) The department shall pay the expense of obtaining the criminal history record
204 required for:

- 205 (i) an individual applying for employment with the department; or
- 206 (ii) a department employee.

207 (3) (a) The department shall submit fingerprints obtained under Subsection (1) of an
208 individual to the Utah Bureau of Criminal Identification to be forwarded to the Federal Bureau
209 of Investigation for a nationwide criminal history record check.

210 (b) An individual described in Subsections [32B-1-305](#)(2)(b) through (e) shall pay to the
211 department the expense of obtaining the criminal history record described in Subsection (3)(a).

212 (c) The department shall pay the expense of obtaining the criminal history record
213 required for:

- 214 (i) an individual applying for employment with the department; or
- 215 (ii) a department employee.

216 (4) (a) The Utah Bureau of Criminal Identification:

217 (i) shall check the fingerprints submitted under Subsection (1) against the applicable
218 state and regional criminal records databases and submit the fingerprints to national criminal
219 records databases;

220 (ii) shall maintain a separate file of fingerprints submitted under Subsection (1) for
221 search by future submissions to the state and regional records databases, including latent prints,
222 and notify the department when a new entry is made against a person whose fingerprints are
223 held in the separate file;

224 (iii) shall release to the department all information received in response to the
225 department's request; and

226 (iv) may request that the fingerprints be retained in the Federal Bureau of Investigation
227 Rap Back system for search by future submissions to national criminal records databases,
228 including latent prints.

229 (b) The department shall establish a privacy risk mitigation strategy to ensure that the
230 department only receives notifications for individuals with whom the department maintains a
231 regulatory or employment relationship.

232 (5) The department shall pay the Utah Bureau of Criminal Identification the costs
233 incurred in providing the department criminal background information.

234 (6) (a) The following may not disseminate a criminal history record obtained under this
235 part to any person except for a purpose described in Section 32B-1-306:

236 (i) the commission;

237 (ii) a commissioner;

238 (iii) the director;

239 (iv) the department; or

240 (v) a department employee.

241 (b) (i) Notwithstanding Subsection (6)(a), a criminal history record obtained under this
242 part may be provided by the department to the individual who is the subject of the criminal
243 history record.

244 (ii) The department shall provide an individual who is the subject of a criminal history
245 record and who requests the criminal history record an opportunity to:

246 (A) review the criminal history record; and

247 (B) respond to information in the criminal history record.

248 (7) If an individual described in Subsection 32B-1-305(2) is determined to be
249 disqualified under Subsection 32B-1-306(2)~~(b)~~, the department shall provide the individual
250 with:

251 (a) notice of the reason for the disqualification; and

252 (b) an opportunity to respond to the disqualification.

253 Section 5. Section 32B-8-501 is amended to read:

254 **32B-8-501. Enforcement of qualifications for resort license or sublicense.**

255 (1) The commission or department may not take an action described in Subsection (2)
256 with regard to a resort license unless the person who is found not to meet the qualifications of
257 Section 32B-8-203 is one of the following who is engaged in the management of the resort:

258 (a) a partner;

259 (b) a managing agent;

260 (c) a manager;

261 (d) an officer;

262 (e) a director;

263 (f) a stockholder who holds at least 20% of the total issued and outstanding stock of the
264 corporation;

265 (g) a member who owns at least 20% of the limited liability company; or

266 (h) a person employed to act in a supervisory or managerial capacity for the resort
267 licensee.

268 (2) Subsection (1) applies to:

269 (a) the commission immediately suspending or revoking a resort license, if after the
270 day on which the resort license is issued, a person described in Subsection 32B-8-203(1):

271 (i) is found to have been convicted of an offense described in Subsection

272 32B-1-304(1)(a) before the resort license is issued; or

273 (ii) on or after the day on which the resort license is issued:

274 (A) is convicted of an offense described in Subsection 32B-1-304(1)(a)(i)[, (ii), or (iii)]

275 or (ii); or

276 (B) (I) is convicted of driving under the influence of alcohol, a drug, or the combined
277 influence of alcohol and a drug; and

278 (II) was convicted of driving under the influence of alcohol, a drug, or the combined
279 influence of alcohol and a drug within five years before the day on which the person is
280 convicted of the offense described in Subsection (2)(b)(ii)(A);

281 (b) the director taking an emergency action by immediately suspending the operation of

282 a resort license in accordance with Title 63G, Chapter 4, Administrative Procedures Act, for
283 the period during which the criminal matter is being adjudicated if a person described in
284 Subsection 32B-8-203(1):

285 (i) is arrested on a charge for an offense described in Subsection 32B-1-304(1)(a)(i)[;
286 ~~(ii), or (iii)] or (ii); or~~

287 (ii) (A) is arrested on a charge for the offense of driving under the influence of alcohol,
288 a drug, or the combined influence of alcohol and a drug; and

289 (B) was convicted of driving under the influence of alcohol, a drug, or the combined
290 influence of alcohol and a drug within five years before the day on which the person is arrested
291 on a charge described in Subsection (2)(b)(ii)(A); and

292 (c) the commission suspending or revoking a resort license because a person to whom a
293 resort license is issued under this chapter no longer possesses the qualifications required by this
294 title for obtaining the resort license.

295 (3) This section does not prevent the commission from suspending or revoking a
296 sublicense that is part of a resort license if a person employed to act in a supervisory or
297 managerial capacity for a sublicense no longer meets the qualification requirements in the
298 provisions applicable to the sublicense.