

**“LIQUOR WAREHOUSE LICENSE”
APPLICATION CHECKLIST**

The items below should be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. All licensing requirements must be fully satisfied in order to complete your application. You will be notified of the next Utah Alcoholic Beverage Control Commission meeting when your application will be considered for issuance of a license.

1. ___ Completed application form (enclosed).
2. ___ Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of articles of incorporation;
 - b) if a partnership, submit a copy of written agreement;
 - c) if a limited liability company, submit a copy of articles of organization.
3. ___ Criminal History background Check information (see application form).
4. ___ Written consent from either city/town council or county commission whichever is applicable (form enclosed).
5. ___ Copy of current local business license.
6. ___ **\$10,000** Liquor Warehouse cash or corporate surety bond (form enclosed).
7. ___ **Certificate** of public liability insurance.
8. ___ Scaled floor plan of warehouse premises (8 1/2 x 11) highlighting areas where liquor, wine and heavy beer will be stored.
9. ___ **\$300** application fee (non-refundable).
10. ___ **\$850** license fee (refundable if license is not granted). Make checks payable to UDABC.

Enclosed for your information are copies of Utah law and commission rules pertaining to liquor warehouses. If you have any questions concerning these forms or the application process, please contact our Licensing and Compliance Division at (801) 977-6800.

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
APPLICATION FOR
LIQUOR WAREHOUSE LICENSE**

1. Applicant/Organization: _____

2. Business Name: _____

3. Location: _____
Street
City
State
Zip

4. Mailing address: _____
Street or P O Box
City
State
Zip

5. Warehouse phone: _____ e-mail: _____ Fax: _____

6. Contact person: _____ Phone: _____

7. Owner of real property and building: _____

8. Ownership: Check appropriate box and provide the requested information in the space below.
 (add additional sheets if necessary)

Applicant is an **individual**: List below information for: (a) Individual
 (b) Managers

Applicant is a **partnership**: List below information for: (a) All Partners
 (b) Managers

Applicant is a **corporation**: List below information for: (a) Any Stockholder owning at
 least 20% of the corporation
 (b) All Corporate officers and
 Directors
 (c) All Managers

Applicant is a **limited liability company (LLC)**:
 List below information for: (a) Any members owning at least
 20% of the company
 (b) All Managers

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

9 Criminal History. The law prohibits any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages from being in the alcoholic beverage business. The law also prohibits any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been convicted of driving under the influence of alcohol, or any drug, or the combination of alcohol and any drug from being in the alcohol business. This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to an person employed to act in a supervisory or managerial capacity.

Please list *all* criminal offenses *other than minor traffic offenses* of which you or any of the above persons have ever been convicted:

<u>NAME</u>	<u>CRIMINAL OFFENSE</u>	<u>DATE OF CONVICTION</u>
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In addition, a criminal history background check must be furnished on each person listed above and in subparagraph 6. This may be done as follows:

- a. Utah residents:** If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.
- b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years** shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I)**.

An informed consent and release of liability form is included with this information.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$20.00 per card for BCI background checks, or
- \$39.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

10. Applicant agrees to immediately notify the department of any change in ownership, management, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of license.
11. Have you as an applicant, or proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years? _____ If so, please explain.

12. List any other alcoholic beverage licenses held by applicant/principals: _____

13. List any other warehouse locations: _____

14. List alcoholic products to be stored on premises: _____

15. Geographical area of distribution for heavy beer, liquor and wine: _____

16. By signing below, the applicant attests that:
- a) the applicant is at least 21 years of age.
 - b) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the license holder.
 - c) he/she has read and will abide by the provisions of Section 32B, Utah Code and all rules and directives of the Utah Department of Alcoholic Beverage Control; and understands that failure to adhere thereto shall constitute grounds for removal of said license.
 - d) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

e) he/she has read and understands the statements made herein; that execution thereof is done voluntarily and by authorization of said organization, and that any false statement made on this application or any related document is a second degree felony.

18. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a Liquor Warehouse license and certifies that the information contained herein and attached hereto to be true and correct.

Date: _____

Applicant/owner of business

Authorized signature

Name/title

STATE OF _____
COUNTY OF _____
Subscribed & sworn to before me this _____ day of _____, _____.
_____ Notary Public
SEAL:

**LOCAL CONSENT
LIQUOR WAREHOUSING LICENSE**

Date _____

Utah Department of Alcoholic Beverage Control
Licensing and Compliance Section
1625 So 900 West
PO Box 30408
Salt Lake City, Utah 84130

Gentlemen:

_____ (City)(Town)(County) hereby

grants its consent to the issuance of a Liquor Warehousing license to:

Business Name: _____

Applicant / Business Owner: _____

Location Address: _____

pursuant to the provisions of Section 32B-12, Utah Code for the purpose of warehousing, distribution, and transportation of liquor.

Authorized Signature

Name/Title

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 S 900 W • PO Box 30408 • Salt Lake City, UT 84130-0408 • Phone (801) 977-6800 • Fax (801) 977-6889

“LIQUOR WAREHOUSING BOND”

BOND # _____

KNOW ALL PERSONS BY THESE PRESENTS:

That **Principal**, _____, a liquor warehousing licensee, doing business as _____, and **Surety**, _____, a corporation organized and existing under the laws of the state of _____ and authorized to do business in Utah, are held and bound unto the Utah Department of Alcoholic Beverage Control in the sum of **\$10,000**, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this _____ day of _____, _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for a liquor warehousing licensee pursuant to the provisions of 32B-12, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32B, Utah Code, and the rules and directives of the Utah Alcoholic Beverage Control Commission and the Utah Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules and directives or orders as the commission or department may issue, then this bond shall be in full force and effect and payable to the Utah Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective _____ unless canceled by service of written notice upon the Utah Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said licensee / principal.

Surety

Principal / Licensee

Attorney in fact

Authorized signature

{ *Corporate Seal* }

Name / Title

STATUTORY AFFIDAVIT FOR CORPORATE SURETY

STATE OF: _____

COUNTY OF: _____

On the _____ day of _____, _____, personally appeared before me, _____, who, being by me duly sworn, did say that he / she is the attorney in fact of _____, **Surety**, and that said instrument was signed in behalf of said surety by authority, and acknowledged to me that he / she as such attorney in fact executed the same.

Notary Public Signature & Seal

Note: Corporate surety's own affidavit also acceptable

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32B-1-305, 306, and 307, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

Driver License# or ID card# / state issued

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC for a third-party national criminal background check)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s).**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if a criminal history report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

TITLE 32B – ALCOHOLIC BEVERAGE CONTROL ACT

CHAPTER 12

LIQUOR WAREHOUSING LICENSE ACT

Effective July 1, 2011

Part 1 General Provisions

subsection

- 32B-12-101 Title
- 32B-12-102 Definitions

Part 2 Liquor Warehousing License Process

- 32B-12-201 Commission's power to issue liquor warehousing license
- 32B-12-202 Application requirements for liquor warehousing license
- 32B-12-203 Renewal requirements for liquor warehousing license
- 32B-12-204 Specific qualifications for liquor warehousing license
- 32B-12-205 Duties of commission and department before issuing liquor warehousing license.
- 32B-12-206 Bond for liquor warehousing license

Part 3 Operational Requirements for Liquor Warehouses

- 32B-12-301 General operational requirements for liquor warehousing license
- 32B-12-302 Notifying the department of change in ownership

Part 1 General Provisions

32B-12-101. Title.
This chapter is known as the "Liquor Warehousing License Act."

32B-12-102. Definitions.
Reserved

Part 2 Liquor Warehousing License Process

- 32B-12-201.** Commission's power to issue liquor warehousing license.
- (1) (a) Before a person may warehouse, distribute, or transport liquor for resale to a wholesale or retail customer, the person shall first obtain a liquor warehousing license issued by the commission in accordance with this chapter.
 - (b) A separate liquor warehousing license is required for each warehousing facility.
 - (c) A violation of this Subsection (1) is a class B misdemeanor.
 - (2) The commission may issue a liquor warehousing license in accordance with this chapter for the warehousing, distribution, and transportation of liquor.

32B-12-202. Application requirements for liquor warehousing license.

To obtain a liquor warehousing license, a person shall submit to the department:

- (1) a written application in a form prescribed by the department;
- (2) a nonrefundable \$300 application fee;
- (3) an initial license fee of \$850, which is refundable if a liquor warehousing license is not issued;
- (4) written consent of the local authority;
- (5) a copy of the person's current business license;
- (6) a bond as specified by Section 32B-12-206;
- (7) a floor plan of the person's warehouse, including the area in which the person proposes that liquor be stored;
- (8) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
- (9) a signed consent form stating that the liquor warehousing licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
- (10) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
- (11) any other information the commission or department may require.

32B-12-203. Renewal requirements for liquor warehousing license.

- (1) A liquor warehousing license expires on December 31 of each year.
- (2) To renew a liquor warehousing license, a person shall submit to the department by no later than November 30 of the year the license expires:
 - (a) a completed renewal application in a form prescribed by the department; and
 - (b) a renewal fee of \$1,200.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the liquor warehousing license effective on the date the existing liquor warehousing license expires.

32B-12-204. Specific qualifications for liquor warehousing license.

- (1) The commission may not issue a liquor warehousing license to a person who is disqualified under Section 32B-1-304.

(2) A person, through its staff, or otherwise, either directly or indirectly, may not hold at the same time both a liquor warehousing license and another kind of package agency, license, or permit issued under this title except:

- (a) a temporary beer event permit;
- (b) a manufacturing license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act; or
- (c) a beer wholesaling license issued in accordance with this chapter.

(3) If a person to whom a liquor warehousing license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that liquor warehousing license, the commission may suspend or revoke that liquor warehousing license.

32B-12-205. Duties of commission and department before issuing liquor warehousing license.

(1) (a) Before the commission may issue a warehousing license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a liquor warehousing license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a liquor warehousing license, the commission shall:

(a) determine that the person filed a complete application and has complied with Sections 32B-12-202 and 32B-12-204;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the premises where it is proposed that liquor be warehoused, such as:

(i) location;

(ii) proximity to transportation; and

(iii) condition, size, and security of the licensed premises;

(d) consider the person's ability to properly use the liquor warehousing license within the requirements of this title and the commission rules including:

(i) the types of products other than liquor that the person is warehousing;

(ii) the brands of liquor the person intends to warehouse; and

(iii) the means the person intends to use to distribute the liquor; and

(e) consider any other factor the commission considers necessary.

32B-12-206. Bond for liquor warehousing license.

(1) (a) A liquor warehouse licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.

(b) A liquor warehouse licensee shall procure and maintain the bond required by this section for as long as the liquor warehouse licensee continues to operate as a liquor warehouse licensee.

(2) A bond posted under this section shall be:

- (a) in a form approved by the attorney general; and

(b) conditioned upon the liquor warehouse licensee's faithful compliance with this title and the rules of the commission.

(3) If a surety bond posted by a liquor warehouse licensee under this section is canceled due to a liquor warehouse licensee's negligence, the department may assess a \$300 reinstatement fee.

(4) No part of a bond posted under this section may be withdrawn during the period the liquor warehousing license is in effect.

(5) (a) A bond posted by a liquor warehouse licensee may be forfeited if the liquor warehousing license is revoked.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a liquor warehouse licensee for money owed the department under this title without the commission first revoking the liquor warehousing license.

Part 3

Operational Requirements for Liquor Warehouses

32B-12-301. General operational requirements for liquor warehousing license.

(1) (a) A liquor warehouse licensee and staff of the liquor warehouse licensee shall comply with this title and the rules of the commission.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a liquor warehouse licensee;
- (ii) individual staff of a liquor warehouse licensee; or
- (iii) both a liquor warehouse licensee and staff of the liquor warehouse licensee.

(2) (a) A liquor warehouse licensee shall make and maintain records required by the department.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) A liquor warehousing license may not be transferred from one location to another location, without prior written approval of the commission.

(4) (a) A liquor warehouse licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A liquor warehousing license has no monetary value for any type of disposition.

(5) A liquor warehouse licensee may not employ a minor to handle an alcoholic product.

(6) Liquor that is warehoused in this state and sold to an out-of-state consignee, may be transported out of the state only by a motor carrier regulated under Title 72, Chapter 9, Motor Carrier Safety Act.

(7) Liquor that is warehoused in this state and sold to the department may be transported only by a motor carrier approved by the department.

(8) Liquor transported to or from a liquor warehouser licensee's licensed premises shall be carried in a sealed conveyance that is made available for inspection by the department while en route within the state.

(9) A liquor warehouser licensee may not ship, convey, distribute, or remove liquor from a warehouse in less than a full case lot.

(10) A liquor warehouser licensee may not ship, convey, distribute, or remove liquor from a warehouse to a consignee outside the state that is not licensed as a liquor wholesaler or retailer by the state in which the consignee is domiciled.

(11) A liquor warehouser licensee may not receive, warehouse, distribute, transport, ship, or convey liquor that the commission has not authorized the liquor warehouser licensee to handle through its warehouse.

(12) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of licensees relating to:

- (a) physical facilities;
- (b) conditions of storage, distribution, or transport of liquor; and
- (c) other matters considered appropriate by the commission.

32B-12-302. Notifying the department of change in ownership.

The commission may suspend or revoke a liquor warehousing license if a liquor warehouser licensee does not immediately notify the department of a change in:

(1) ownership of the liquor warehouser licensee;

(2) for a corporate owner, the:

- (a) corporate officers or directors; or
- (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or

(3) for a limited liability company:

- (a) managers; or
- (b) members owning at least 20% of the limited liability company.

R81. Alcoholic Beverage Control, Administration.

R81-9. Liquor Warehousing License.

R81-9-1. Application. (proposed)

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a liquor warehousing license when the requirements of Sections [~~32A-9-102, 32A-9-103 and 105~~] 32B-1-304 and 32B-12-202, -204 and -206 have been met, a completed application has been received by the department, and the warehouse premises have been inspected by the department.

R81-9-2. Transportation. (proposed)

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters [~~9 and 11~~] 12 and 13 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

R81-9-3. Records. (existing)

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

R81-9-4. Audits. (existing)

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

R81-9-5. Inspection. (existing)

A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

TITLE 32B – ALCOHOLIC BEVERAGE CONTROL ACT
(updated through July 1, 2011)

Chapter 4 – CRIMINAL OFFENSES AND PROCEDURE ACT

Part 2 Criminal Procedures

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.

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

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

- (a) the governor;
- (b) a commissioner;
- (c) the director;
- (d) an official, inspector, or department employee;
- (e) a prosecuting official of the state or its political subdivisions;
- (f) a county, city, or town;
- (g) a peace officer, sheriff, deputy sheriff, constable, marshal, or law enforcement official;
- (h) a state health official; and
- (i) a clerk of the court.

(2) Immediately upon conviction of a person for violation of this title or of a local ordinance relating to an alcoholic product, it is the duty of the clerk of the court to notify the department of the conviction in writing on forms supplied by the department.

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).

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.

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) (a) A prosecution for a violation of this title shall be commenced by the return of an indictment or the filing of an information with the district court of 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.

(b) An offense prescribed by this title that is not described in Subsection (3)(a) shall be filed before a court having jurisdiction of the offense committed.

(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.

32B-4-206. Searches, seizures, forfeitures, and fines.

(1) The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

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

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

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

(d) implements, furniture, fixtures, or other personal property used or kept for a violation of this title or commission rules;

(e) conveyances including an aircraft, vehicle, or vessel used or intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Subsection (1)(a), (b), (c), or (d); and

(f) a record used or intended for use in violation of this title or commission rules.

(2) (a) Property subject to forfeiture under this title may be seized by a peace officer of this state or any other person authorized by law upon process issued by a court having jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.

(b) Notwithstanding Subsection (2)(a), seizure without process may be made when:

- (i) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;
- (ii) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title;
- (iii) the peace officer or other person authorized by law has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (iv) the peace officer or other person authorized by law has probable cause to believe that the property is being or has been used, intended to be used, held, or kept in violation of this title or commission rules.

(3) If property is seized pursuant to a search or administrative warrant, a peace officer or other person authorized by law shall comply with the requirements of the Utah Rules of Criminal Procedure.

(4) (a) If property is seized without process:

- (i) the peace officer or other person authorized by law shall make a return of the peace officer's or person's acts without delay directly to the district court of the county in which the property was located; and

- (ii) the district court shall have jurisdiction of the case.

(b) A return shall describe:

- (i) the property seized;

- (ii) the place where the property is seized; and

- (iii) any person in apparent possession of the property.

(c) A peace officer or other person described in Subsection (4)(a) shall promptly:

- (i) deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure is made; or

- (ii) post a written inventory of anything seized in a conspicuous place at the premises.

(d) A written inventory under this Subsection (4) shall state the place where the property is being held.

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

- (a) place the property under seal;

- (b) remove the property to a place designated by:

- (i) the person or agency; or

- (ii) the warrant under which the property is seized; or

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

(6) When property is subject to forfeiture under this section, a proceeding shall be instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

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

(a) An alcoholic product shall be sold in accordance with Section 24-1-17 if the alcoholic product is:

(i) unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid; and

(ii) otherwise in saleable condition.

(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the department shall destroy the alcoholic product and its container under competent supervision.

(8) 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.

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.

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 76-10-804, 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.

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.

32B-4-210. Sentencing considerations.

(1) In sentencing an actor for a misdemeanor violation of Section 32B-4-403 or Subsection 32B-4-409(1), the court shall consider the elements under Subsection (2) as a mitigating factor.

(2) The mitigating factor referred to in Subsection (1) is:

(a) the actor committed an offense under Subsection (1) in the course of the same event regarding which the actor contacted a law enforcement agency for emergency assistance for a person whom the actor reasonably believed was, at the time the call was made, in need of medical care due to having apparently consumed an excessive amount of alcohol;

(b) the actor was younger than 21 years of age at the time of the offense;

(c) the actor was present during the incident of alcohol consumption that resulted in the actor's call to law enforcement under this section, but the actor was not involved in coercing or encouraging the endangered person to consume alcohol; and

(d) the actor was not charged with any other criminal conduct during the incident when the actor committed the offense listed under Subsection (1).