

1                   **ALCOHOLIC BEVERAGE CONTROL AMENDMENTS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Jerry W. Stevenson**

5                                   House Sponsor: Michael E. Noel

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies the Alcoholic Beverage Control Act to address criminal background  
10 checks.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ modifies language regarding obtaining fingerprints and requiring background  
14 checks;
- 15           ▶ addresses the role of the Utah Bureau of Criminal Investigation in the background  
16 checks;
- 17           ▶ requires federal background checks for all persons subject to background checks;  
18 and
- 19           ▶ makes technical and conforming amendments.

20 **Money Appropriated in this Bill:**

21           None

22 **Other Special Clauses:**

23           None

24 **Utah Code Sections Affected:**

25 AMENDS:

26           **32B-1-305**, as enacted by Laws of Utah 2010, Chapter 276

27           **32B-1-307**, as enacted by Laws of Utah 2010, Chapter 276

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

30 Section 1. Section **32B-1-305** is amended to read:

31 **32B-1-305. Requirement for a background check.**

32 (1) The department shall require an individual listed in Subsection (2) [~~to~~], in  
33 accordance with this part, to:

34 (a) provide a signed waiver from the individual whose fingerprints may be registered in  
35 the Federal Bureau of Investigation Rap Back system that notifies the signee:

36 (i) that a criminal history background check will be conducted;

37 (ii) who will see the information; and

38 (iii) how the information will be used;

39 [~~(a)~~] (b) submit [a fingerprint card] to a background check in a form acceptable to the  
40 department; and

41 [~~(b)~~] (c) consent to a [fingerprint criminal] background check by:

42 (i) the Utah Bureau of Criminal Identification; and

43 (ii) the Federal Bureau of Investigation.

44 (2) The following shall comply with Subsection (1):

45 (a) an individual applying for employment with the department if:

46 (i) the department makes the decision to offer the individual employment with the  
47 department; and

48 (ii) once employed, the individual will receive benefits;

49 (b) an individual applying to the commission to operate a package agency;

50 (c) an individual applying to the commission for a license;

51 (d) an individual who with regard to an entity that is applying to the commission to  
52 operate a package agency or for a license is:

53 (i) a partner;

54 (ii) a managing agent;

55 (iii) a manager;

56 (iv) an officer;

57 (v) a director;

58 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of a  
59 corporation;

60 (vii) a member who owns at least 20% of a limited liability company; or

61 (viii) an individual employed to act in a supervisory or managerial capacity; or

62 (e) an individual who becomes involved with an entity that operates a package agency  
63 or holds a license, if the individual is in a capacity listed in Subsection (2)(d) on or after the day  
64 on which the entity:

65 (i) is approved to operate a package agency; or

66 (ii) is licensed by the commission.

67 (3) The department shall require compliance with Subsection (2)(e) as a condition of  
68 an entity's:

69 (a) continued operation of a package agency; or

70 (b) renewal of a license.

71 (4) The department may require as a condition of continued employment that a  
72 department employee:

73 (a) submit [~~a fingerprint card~~] to a background check in a form acceptable to the  
74 department; and

75 (b) consent to a fingerprint criminal background check by:

76 (i) the Utah Bureau of Criminal Identification; and

77 (ii) the Federal Bureau of Investigation.

78 Section 2. Section **32B-1-307** is amended to read:

79 **32B-1-307. Background check procedure.**

80 (1) (a) An individual described in Subsections **32B-1-305**(2)(b) through (e) shall  
81 submit [~~a fingerprint card~~] to a background check in a form acceptable to the department,  
82 including submitting fingerprints, at the expense of the individual.

83 (b) The department shall pay the expense of obtaining [~~a fingerprint card~~] a  
84 background check, including obtaining fingerprints, required of:

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

86 (ii) a department employee.

87 (2) (a) The department shall ~~[obtain]~~ establish a procedure for obtaining and evaluating  
88 relevant information from a criminal history record maintained by the Utah Bureau of Criminal  
89 Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for a  
90 purpose outlined in Section 32B-1-306.

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

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

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

96 (ii) a department employee.

97 (3) (a) The department shall submit ~~[a fingerprint card]~~ fingerprints obtained under  
98 ~~[Section 32B-1-305]~~ Subsection (1) of an individual ~~[who has not resided in the state for at~~  
99 ~~least two years before the day on which the fingerprint card is submitted]~~ to the Utah Bureau of  
100 Criminal Identification to be forwarded to the Federal Bureau of Investigation for a nationwide  
101 criminal history record check.

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

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

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

107 (ii) a department employee.

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

109 (i) shall check the fingerprints submitted under Subsection (1) against the applicable  
110 state and regional criminal records databases and submit the fingerprints to national criminal  
111 records databases;

112 (ii) shall maintain a separate file of fingerprints submitted under Subsection (1) for  
113 search by future submissions to the state and regional records databases, including latent prints,

114 and notify the department when a new entry is made against a person whose fingerprints are  
115 held in the separate file;

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

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

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

124 ~~[(4)]~~ (5) The department shall pay the Utah Bureau of Criminal Identification the costs  
125 incurred in providing the department criminal background information.

126 ~~[(5)]~~ (6) (a) The following may not disseminate a criminal history record obtained  
127 under this part to any person except for a purpose described in Section 32B-1-306:

128 (i) the commission;

129 (ii) a commissioner;

130 (iii) the director;

131 (iv) the department; or

132 (v) a department employee.

133 (b) (i) Notwithstanding Subsection ~~[(5)]~~ (6)(a), a criminal history record obtained  
134 under this part may be provided by the department to the individual who is the subject of the  
135 criminal history record.

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

138 (A) review the criminal history record; and

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

140 ~~[(6)]~~ (7) If an individual described in Subsection 32B-1-305(2) is determined to be  
141 disqualified under Subsection 32B-1-306(2)(b), the department shall provide the individual

142 with:

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

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

145 ~~[(7) The department shall maintain the following in one or more separate files so that~~  
146 ~~they may be accessed only for a purpose under Section [32B-1-306](#);~~

147 ~~[(a) a fingerprint card submitted under this part; and]~~

148 ~~[(b) a criminal history record received from:]~~

149 ~~[(i) the Utah Bureau of Criminal Identification; and]~~

150 ~~[(ii) the Federal Bureau of Investigation.]~~