

**SEXUALLY EXPLICIT BUSINESS AND  
ESCORT SERVICE TAX**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Duane E. Bourdeaux**

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**LONG TITLE**

**General Description:**

This bill enacts the Sexually Explicit Business and Escort Service Tax.

**Highlighted Provisions:**

This bill:

- ▶ imposes a tax on transactions conducted by a sexually explicit business or escort service;
- ▶ provides for administration of the tax imposed by the bill; and
- ▶ dedicates the revenue generated by the tax imposed by the bill to a restricted special revenue fund for various treatment programs and task forces dealing with sex offenders.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2004.

**Utah Code Sections Affected:**

ENACTS:

**59-26-101**, Utah Code Annotated 1953

**59-26-102**, Utah Code Annotated 1953

**59-26-103**, Utah Code Annotated 1953

**59-26-104**, Utah Code Annotated 1953

**59-26-105**, Utah Code Annotated 1953

**59-26-106**, Utah Code Annotated 1953

59-26-107, Utah Code Annotated 1953

59-26-108, Utah Code Annotated 1953

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

Section 1. Section 59-26-101 is enacted to read:

**CHAPTER 26. SEXUALLY EXPLICIT BUSINESS AND ESCORT  
SERVICE TAX**

**59-26-101. Title.**

This chapter is known as the "Sexually Explicit Business and Escort Service Tax."

Section 2. Section 59-26-102 is enacted to read:

**59-26-102. Definitions.**

(1) "Escort" means any individual who is available to the public for the purpose of accompanying another individual for:

(a) companionship; and

(b) (i) a salary;

(ii) a fee;

(iii) a commission;

(iv) hire;

(v) profit; or

(vi) any amount similar to an amount listed in this Subsection (1)(b).

(2) "Escort service" means any person who furnishes or arranges for an escort to accompany another individual for:

(a) companionship; and

(b) (i) a salary;

(ii) a fee;

(iii) a commission;

(iv) hire;

(v) profit; or

(vi) any amount similar to an amount listed in this Subsection (2)(b).

(3) "Nude or partially denuded individual" means an individual with any of the following less than completely and opaquely covered:

(a) genitals;

(b) the pubic region; or

(c) a female breast below a point immediately above the top of the areola.

(4) "Sexually explicit business" means a business at which any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually explicit business or an independent contractor, performs any service:

(a) personally on the premises of the sexually explicit business;

(b) during at least 30 consecutive or nonconsecutive days within a calendar year; and

(c) for:

(i) a salary;

(ii) a fee;

(iii) a commission;

(iv) hire;

(v) profit; or

(vi) any amount similar to an amount listed in this Subsection (4)(c).

Section 3. Section **59-26-103** is enacted to read:

**59-26-103. Tax imposed on a sexually explicit business -- Tax imposed on an escort service.**

(1) A tax is imposed on a sexually explicit business equal to 10% of amounts paid to or charged by the sexually explicit business for the following transactions:

(a) an admission fee;

(b) a user fee;

(c) a retail sale of tangible personal property made within the state;

(d) a sale of:

(i) food and food ingredients as defined in Section 59-12-102; or

(ii) prepared food as defined in Section 59-12-102;

(e) a sale of a beverage; and

(f) any service.

(2) (a) Except as provided in Subsection (2)(b), a tax is imposed on an escort service equal to 10% of amounts paid or charged by the escort service for any transaction that involves providing an escort to another individual.

(b) Notwithstanding Subsection (2)(a), the tax imposed by Subsection (2)(a) does not apply to a transaction that is subject to the tax imposed in Subsection (1).

(3) The tax imposed by this section:

(a) may not be imposed on any sales and use tax collected or paid under Chapter 12, Sales and Use Tax Act; and

(b) is subject to an agreement sales and use tax under Chapter 12, Sales and Use Tax Act.

(4) The commission shall administer this chapter in accordance with Chapter 12, Part 1, Tax Collection.

Section 4. Section **59-26-104** is enacted to read:

**59-26-104. Payment of tax.**

(1) Subject to Subsection (2), a sexually explicit business or escort service subject to the tax imposed by this chapter shall file a return with the commission and pay the tax calculated on the return to the commission:

(a) quarterly on or before the last day of the month immediately following the last day of the previous calendar quarter if:

(i) the sexually explicit business or escort service is required to file a quarterly sales and use tax return with the commission under Section 59-12-107; or

(ii) the sexually explicit business or escort service is not required to file a sales and use tax return with the commission under Chapter 12, Sales and Use Tax Act; or

(b) monthly on or before the last day of the month immediately following the last day of the previous calendar month if the sexually explicit business is required to file a monthly sales and use tax return with the commission under Section 59-12-108.

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules to:

(a) establish standards for determining whether an operation is a sexually explicit business or escort service; and

(b) determine, for purposes of Section 59-26-102, amounts that are similar to an amount paid for:

(i) a salary;

(ii) a fee;

(iii) a commission;

(iv) hire; or

(v) profit.

Section 5. Section **59-26-105** is enacted to read:

**59-26-105. Sexually explicit business and escort service fund.**

(1) There is created a restricted special revenue fund called the "Sexually Explicit Business and Escort Service Fund."

(2) (a) Except as provided in Subsection (3), the fund consists of all amounts collected by the commission under this chapter.

(b) (i) The monies in the fund shall be invested by the state treasurer pursuant to Title 51, Chapter 7, State Money Management Act.

(ii) All interest or other earnings derived from the fund monies shall be deposited in the fund.

(3) Notwithstanding any other provisions of this chapter, the commission may retain an amount of tax collected under this chapter of not to exceed the lesser of:

(a) 1.5%; or

(b) an amount equal to the cost to the commission of administering this chapter.

(4) (a) Fund monies shall be used as provided in this Subsection (4).

(b) The Department of Corrections shall use 60% of the monies in the fund, in addition to existing budgets, to provide treatment services to nonworking or indigent adults who:

(i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses;  
and

(ii) are not currently confined or incarcerated in a jail or prison.

(c) The Adult Probation and Parole section of the Department of Corrections shall use 15% of the monies in the fund to provide outpatient treatment services to individuals who:

(i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses;  
and

(ii) are not currently confined or incarcerated in a jail or prison.

(d) The Department of Corrections shall use 10% of the monies in the fund, in addition to existing budgets, to implement treatment programs for juveniles who have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses.

(e) The attorney general shall use 15% of the monies in the fund to provide funding for any task force:

(i) administered through the Office of the Attorney General; and

(ii) that investigates and prosecutes individuals who use the Internet to commit crimes against children.

Section 6. Section **59-26-106** is enacted to read:

**59-26-106. Records.**

(1) An owner or operator of a sexually explicit business or escort service shall maintain records, statements, books, or accounts necessary to determine the amount of tax for which the owner or operator is liable to pay under this chapter.

(2) The commission may require an owner or operator of a sexually explicit business or escort service, by notice served on the person, to make or keep the records, statements, books, or accounts described in Subsection (1) in a manner in which the commission considers sufficient to show the amount of tax for which the owner or operator is liable to pay under this chapter.

(3) After notice by the commission, the owner or operator of a sexually explicit business or escort service shall open the records, statements, books, or accounts specified in this section for examination by the commission or an authorized agent of the commission.

Section 7. Section **59-26-107** is enacted to read:

**59-26-107. Action for collection of tax -- Action for refund or credit of tax.**

(1) (a) Except as provided in Subsections (2) through (5), the commission shall assess a tax under this chapter within three years after a sexually explicit business or escort service subject to the tax imposed by this chapter files a return.

(b) Except as provided in Subsections (2) through (5), if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax.

(2) The commission may assess a tax at any time if a sexually explicit business or escort service subject to the tax imposed by this chapter:

(a) files a false or fraudulent return with intent to evade; or

(b) does not file a return.

(3) The commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

(a) the three-year period under Subsection (1) has not expired; and

(b) the commission and the sexually explicit business or escort service subject to the tax imposed by this chapter sign a written agreement:

(i) authorizing the extension; and

(ii) providing for the length of the extension.

(4) If the commission delays an audit at the request of a sexually explicit business or escort service subject to the tax imposed by this chapter, the commission may make an assessment as provided in Subsection (5) if:

(a) the sexually explicit business or escort service subject to the tax imposed by this chapter subsequently refuses to agree to an extension request by the commission; and

(b) the three-year period under Subsection (1) expires before the commission completes the audit.

(5) An assessment under Subsection (4) shall be:

(a) for the time period for which the commission could not make an assessment because

of the expiration of the three-year period; and

(b) in an amount equal to the difference between:

(i) the commission's estimate of the amount of tax the sexually explicit business or escort service subject to the tax imposed by this chapter would have been assessed for the time period described in Subsection (5)(a); and

(ii) the amount of tax the sexually explicit business or escort service subject to the tax imposed by this chapter actually paid for the time period described in Subsection (5)(a).

(6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the sexually explicit business or escort service subject to the tax imposed by this chapter files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (6)(a), the commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

(i) the three-year period under Subsection (6)(a) has not expired; and

(ii) the commission and the sexually explicit business or escort service subject to the tax imposed by this chapter sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 8. Section **59-26-108** is enacted to read:

**59-26-108. Penalties and interest.**

An owner or operator of a sexually explicit business or escort service that fails to comply with this chapter is subject to:

(1) penalties provided in Section 59-1-401; and

(2) interest provided in Section 59-1-402.

Section 9. **Effective date.**

This bill takes effect on July 1, 2004.