

Senator Howard A. Stephenson proposes the following substitute bill:

SEXUALLY EXPLICIT BUSINESS AND

ESCORT SERVICE TAX

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

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



- 26 **59-26-103**, Utah Code Annotated 1953
- 27 **59-26-104**, Utah Code Annotated 1953
- 28 **59-26-105**, Utah Code Annotated 1953
- 29 **59-26-106**, Utah Code Annotated 1953
- 30 **59-26-107**, Utah Code Annotated 1953
- 31 **59-26-108**, Utah Code Annotated 1953

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

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

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

37 **59-26-101. Title.**

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

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

40 **59-26-102. Definitions.**

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

43 (a) companionship; and

44 (b) (i) a salary;

45 (ii) a fee;

46 (iii) a commission;

47 (iv) hire;

48 (v) profit; or

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

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

52 (a) companionship; and

53 (b) (i) a salary;

54 (ii) a fee;

55 (iii) a commission;

56 (iv) hire;

- 57 (v) profit; or
- 58 (vi) any amount similar to an amount listed in this Subsection (2)(b).
- 59 (3) "Nude or partially denuded individual" means an individual with any of the
- 60 following less than completely and opaquely covered:
- 61 (a) genitals;
- 62 (b) the pubic region; or
- 63 (c) a female breast below a point immediately above the top of the areola.
- 64 (4) "Sexually explicit business" means a business at which any nude or partially
- 65 denuded individual, regardless of whether the nude or partially denuded individual is an
- 66 employee of the sexually explicit business or an independent contractor, performs any service:
- 67 (a) personally on the premises of the sexually explicit business;
- 68 (b) during at least 30 consecutive or nonconsecutive days within a calendar year; and
- 69 (c) for:
- 70 (i) a salary;
- 71 (ii) a fee;
- 72 (iii) a commission;
- 73 (iv) hire;
- 74 (v) profit; or
- 75 (vi) any amount similar to an amount listed in this Subsection (4)(c).

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

77 **59-26-103. Tax imposed on a sexually explicit business -- Tax imposed on an**

78 **escort service.**

- 79 (1) A tax is imposed on a sexually explicit business equal to 10% of amounts paid to or
- 80 charged by the sexually explicit business for the following transactions:
- 81 (a) an admission fee;
- 82 (b) a user fee;
- 83 (c) a retail sale of tangible personal property made within the state;
- 84 (d) a sale of:
- 85 (i) food and food ingredients as defined in Section 59-12-102; or
- 86 (ii) prepared food as defined in Section 59-12-102;
- 87 (e) a sale of a beverage; and

88 (f) any service.

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

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

94 (3) The tax imposed by this section:

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

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

99 (4) The commission shall administer this chapter in accordance with Chapter 12, Part
100 1, Tax Collection.

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

102 **59-26-104. Payment of tax.**

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

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

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

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

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

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

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

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

121 (i) a salary;

122 (ii) a fee;

123 (iii) a commission;

124 (iv) hire; or

125 (v) profit.

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

127 **59-26-105. Sexually explicit business and escort service fund.**

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

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

132 (b) (i) The monies in the fund shall be invested by the state treasurer pursuant to Title
133 51, Chapter 7, State Money Management Act.

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

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

138 (a) 1.5%; or

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

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

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

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

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

146 (c) The Adult Probation and Parole section of the Department of Corrections shall use
147 15% of the monies in the fund to provide outpatient treatment services to individuals who:

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

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

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

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

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

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

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

160 **59-26-106. Records.**

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

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

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

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

173 **59-26-107. Action for collection of tax -- Action for refund or credit of tax.**

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

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

180 (2) The commission may assess a tax at any time if a sexually explicit business or

181 escort service subject to the tax imposed by this chapter:

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

183 (b) does not file a return.

184 (3) The commission may extend the period to make an assessment or to commence a

185 proceeding to collect the tax under this chapter if:

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

187 (b) the commission and the sexually explicit business or escort service subject to the

188 tax imposed by this chapter sign a written agreement:

189 (i) authorizing the extension; and

190 (ii) providing for the length of the extension.

191 (4) If the commission delays an audit at the request of a sexually explicit business or

192 escort service subject to the tax imposed by this chapter, the commission may make an

193 assessment as provided in Subsection (5) if:

194 (a) the sexually explicit business or escort service subject to the tax imposed by this

195 chapter subsequently refuses to agree to an extension request by the commission; and

196 (b) the three-year period under Subsection (1) expires before the commission

197 completes the audit.

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

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

200 because of the expiration of the three-year period; and

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

202 (i) the commission's estimate of the amount of tax the sexually explicit business or

203 escort service subject to the tax imposed by this chapter would have been assessed for the time

204 period described in Subsection (5)(a); and

205 (ii) the amount of tax the sexually explicit business or escort service subject to the tax

206 imposed by this chapter actually paid for the time period described in Subsection (5)(a).

207 (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit

208 or refund unless the sexually explicit business or escort service subject to the tax imposed by

209 this chapter files a claim with the commission within three years of the date of overpayment.

210 (b) Notwithstanding Subsection (6)(a), the commission shall extend the period for a

211 taxpayer to file a claim under Subsection (6)(a) if:

- 212 (i) the three-year period under Subsection (6)(a) has not expired; and
213 (ii) the commission and the sexually explicit business or escort service subject to the
214 tax imposed by this chapter sign a written agreement:
215 (A) authorizing the extension; and
216 (B) providing for the length of the extension.
217 Section 8. Section **59-26-108** is enacted to read:
218 **59-26-108. Penalties and interest.**
219 An owner or operator of a sexually explicit business or escort service that fails to
220 comply with this chapter is subject to:
221 (1) penalties provided in Section 59-1-401; and
222 (2) interest provided in Section 59-1-402.
223 Section 9. **Effective date.**
224 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 3-3-04 4:25 PM

This bill imposes a tax on sexually explicit businesses and escort services, and might be challenged as violating the First Amendment of the United States Constitution. The U.S. Supreme Court has not decided a case addressing taxation of sexually explicit businesses or escort services, but has decided cases involving a tax on other activities protected by the First Amendment. Under those rulings, if this bill were challenged, a court would first determine whether sexually explicit businesses and escort services are obscene, and not protected by the First Amendment. If a court decides they are not obscene, and are therefore protected by the First Amendment, the court could uphold the bill if the court determined that the tax is necessary to serve a compelling state interest, and is narrowly drawn to achieve that interest.

Office of Legislative Research and General Counsel