

**Representative Ryan D. Wilcox** proposes the following substitute bill:

**ALCOHOLIC BEVERAGE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

Senate Sponsor: John L. Valentine

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**LONG TITLE**

**General Description:**

This bill modifies the Alcoholic Beverage Control Act, the Public Safety Code, and revenue and taxation provisions to address the tracking of the effects of the abuse of alcoholic products and collection and use of certain mark ups and taxes.

**Highlighted Provisions:**

This bill:

- ▶ creates the Mark Up Holding Fund;
- ▶ provides for the remittance of a mark up to the State Tax Commission;
- ▶ creates a committee to establish a process to collect information related to abuse of alcoholic products;
- ▶ addresses certain reporting requirements related to the beer tax; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:



- 26           **32B-2-301**, as enacted by Laws of Utah 2010, Chapter 276
- 27           **32B-2-304**, as enacted by Laws of Utah 2010, Chapter 276
- 28           **32B-2-305**, as enacted by Laws of Utah 2011, Chapter 334
- 29           **59-1-401**, as last amended by Laws of Utah 2010, Chapter 233
- 30           **59-1-402**, as last amended by Laws of Utah 2010, Chapter 233
- 31           **59-1-1402**, as last amended by Laws of Utah 2010, Chapter 233
- 32           **59-15-106**, as last amended by Laws of Utah 1998, Chapter 270

33 ENACTS:

34           **53-1-119**, Utah Code Annotated 1953



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

37           Section 1. Section **32B-2-301** is amended to read:

38           **32B-2-301. State property -- Liquor Control Fund -- Mark Up Holding Fund.**

39           (1) The following are property of the state:

40           (a) the money received [~~by the department~~] in the administration of this title, except as  
41 otherwise provided; and

42           (b) property acquired, administered, possessed, or received by the department.

43           (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

44           (b) Except as provided in [~~Section~~] Sections 32B-3-205 and 32B-2-304, money  
45 received in the administration of this title shall be [~~paid to the department and~~] transferred to  
46 the Liquor Control Fund.

47           (3) (a) There is created an enterprise fund known as the "Mark Up Holding Fund."

48           (b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit  
49 revenue remitted to the State Tax Commission from the mark up imposed under Section  
50 32B-2-304 into the Mark Up Holding Fund.

51           (c) Money deposited into the Mark Up Holding Fund may be expended:

52           (i) to the extent appropriated by the Legislature; and

53           (ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection  
54 32B-2-305(4).

55           ~~(c)~~ (4) The state treasurer shall by warrant draw from the Liquor Control Fund and, to  
56 the extent appropriated by the Legislature, from the Mark up Holding Fund, the expenses,

57 debts, and liabilities incurred by the department in connection with the administration of this  
58 title or any other expense necessary for the administration of this title, including:

59 ~~[(i)]~~ (a) salaries;

60 ~~[(ii)]~~ (b) premiums, if any, on a bond for which the department pays premiums; and

61 ~~[(iii)]~~ (c) an expenditure incurred in establishing, operating, or maintaining a state store  
62 or package agency.

63 ~~[(d)]~~ (5) The department shall transfer annually from the Liquor Control Fund and the  
64 State Tax Commission shall transfer annually from the Mark Up Holding Fund to the General  
65 Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding  
66 transfer of money under this Subsection ~~[(2)(d)]~~ (5). The ~~[transfer]~~ transfers shall be calculated  
67 by no later than September 1 and made by no later than September 30 after a fiscal year.

68 ~~[(3)]~~ (6) (a) By the end of each day, the department shall:

69 (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and

70 (ii) report the deposit to the state treasurer.

71 (b) A commissioner or department employee is not personally liable for a loss caused  
72 by the default or failure of a qualified depository.

73 (c) Money deposited in a qualified depository is entitled to the same priority of  
74 payment as other public funds of the state.

75 ~~[(4)]~~ (7) If the cash balance of the Liquor Control Fund is not adequate to cover a  
76 warrant drawn against the Liquor Control Fund by the state treasurer, the cash resources of the  
77 General Fund may be used to the extent necessary. At no time may the fund equity of the  
78 Liquor Control Fund fall below zero.

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

80 **32B-2-304. Liquor price -- School lunch program -- Remittance of mark up.**

81 (1) For purposes of this section:

82 (a) (i) "Landed case cost" means:

83 (A) the cost of the product; and

84 (B) inbound shipping costs incurred by the department.

85 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse  
86 of the department to a state store.

87 (b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

88 (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who  
89 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt  
90 beverage.

91 (2) Except as provided in Subsection (3):

92 (a) spirituous liquor sold by the department within the state shall be marked up in an  
93 amount not less than 86% above the landed case cost to the department;

94 (b) wine sold by the department within the state shall be marked up in an amount not  
95 less than 86% above the landed case cost to the department;

96 (c) heavy beer sold by the department within the state shall be marked up in an amount  
97 not less than 64.5% above the landed case cost to the department; and

98 (d) a flavored malt beverage sold by the department within the state shall be marked up  
99 in an amount not less than 86% above the landed case cost to the department.

100 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked  
101 up in an amount not less than 15% above the landed case cost to the department.

102 (b) Except for spirituous liquor sold by the department to a military installation in  
103 Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%  
104 above the landed case cost to the department if:

105 (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000  
106 proof gallons of spirituous liquor in a calendar year; and

107 (ii) the manufacturer applies to the department for a reduced markup.

108 (c) Except for wine sold by the department to a military installation in Utah, wine that  
109 is sold by the department within the state shall be marked up 47% above the landed case cost to  
110 the department if:

111 (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of  
112 wine in a calendar year; and

113 (ii) the manufacturer applies to the department for a reduced markup.

114 (d) Except for heavy beer sold by the department to a military installation in Utah,  
115 heavy beer that is sold by the department within the state shall be marked up 30% above the  
116 landed case cost to the department if:

117 (i) a small brewer manufactures the heavy beer; and

118 (ii) the small brewer applies to the department for a reduced markup.

119 (e) The department shall verify an amount described in Subsection (3)(b) [~~or~~], (c), or  
120 (d) pursuant to a federal or other verifiable production report.

121 (4) The department shall deposit 10% of the total gross revenue from sales of liquor  
122 with the state treasurer to be credited to the Uniform School Fund and used to support the  
123 school lunch program administered by the State Board of Education under Section  
124 53A-19-201.

125 (5) This section does not prohibit the department from selling discontinued items at a  
126 discount.

127 (6) (a) The department shall collect the mark up and remit the mark up collected by the  
128 department under this section:

129 (i) to the State Tax Commission monthly on or before the last day of the month  
130 immediately following the last day of the previous month; and

131 (ii) using a form prescribed by the State Tax Commission.

132 (b) For liquor provided to a package agency on consignment, the department shall  
133 remit the mark up to the State Tax Commission for the month during which the liquor is  
134 provided to the package agency regardless of when the package agency pays the department for  
135 the liquor provided to the package agency.

136 (c) The State Tax Commission shall deposit revenues remitted to it under Subsection  
137 (6)(a) into the Mark Up Holding Fund created in Section 32B-2-301.

138 (d) The assessment, collection, and refund of a mark up under this section shall be in  
139 accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

140 (e) The department if it fails to comply with this Subsection (6) is subject to penalties  
141 as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

142 (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter  
143 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

144 Section 3. Section **32B-2-305** is amended to read:

145 **32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.**

146 (1) As used in this section:

147 (a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.

148 (b) "Enforcement ratio" is as defined in Section 32B-1-201.

149 (c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in

150 this section.

151 (2) There is created a restricted special revenue fund known as the "Alcoholic  
152 Beverage Control Act Enforcement Fund."

153 (3) (a) The fund consists of:

154 (i) deposits made under Subsection (4); and

155 (ii) interest earned on the fund.

156 (b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

157 (4) After the deposit made under Section 32B-2-304 for the school lunch program, the  
158 department shall deposit 1% of the total gross revenue from the sale of liquor with the state  
159 treasurer to be credited to the fund to be used by the Department of Public Safety as provided  
160 in Subsection (5).

161 (5) The Department of Public Safety shall expend money from the fund to supplement  
162 appropriations by the Legislature so that the Department of Public Safety maintains a sufficient  
163 number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each  
164 year the enforcement ratio as of July 1 is equal to or less than the number specified in Section  
165 32B-1-201.

166 Section 4. Section **53-1-119** is enacted to read:

167 **53-1-119. Tracking effects of abuse of alcoholic products.**

168 (1) There is created a committee within the department known as the "Alcohol Abuse  
169 Tracking Committee" that consists of:

170 (a) the commissioner, or the commissioner's designee;

171 (b) the executive director of the Department of Health, or the executive director's  
172 designee;

173 (c) the executive director of the Department of Human Services, or the executive  
174 director's designee;

175 (d) the director of the Department of Alcoholic Beverage Control, or the director's  
176 designee;

177 (e) the executive director of the Department of Workforce Services, or the executive  
178 director's designee;

179 (f) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee;

180 (g) the state court administrator or the state court administrator's designee; and

181 (h) the executive director of the Department of Technology Services, or the executive  
182 director's designee.

183 (2) The commissioner, or the commissioner's designee, shall chair the committee.

184 (3) (a) Four members of the committee constitutes a quorum.

185 (b) A vote of the majority of the committee members present when a quorum is present  
186 is an action of the committee.

187 (4) The committee shall meet at the call of the chair, except that the chair shall call a  
188 meeting at least quarterly.

189 (5) The committee may adopt additional procedures or requirements for:

190 (a) voting, when there is a tie of the committee members;

191 (b) how meetings are to be called; and

192 (c) the frequency of meetings.

193 (6) The committee shall establish a process to collect for each fiscal year the following  
194 information:

195 (a) the number of individuals statewide who are convicted of, plead guilty to, plead no  
196 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a  
197 violation related to underage drinking of alcohol;

198 (b) the number of individuals statewide who are convicted of, plead guilty to, plead no  
199 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a  
200 violation related to driving under the influence of alcohol;

201 (c) the number of violations statewide of Title 32B, Alcoholic Beverage Control Act,  
202 related to over-serving or over-consumption of an alcoholic product;

203 (d) the cost of social services provided by the state related to abuse of alcohol,  
204 including services provided by the Division of Child and Family Services within the  
205 Department of Human Services;

206 (e) where the alcoholic products are obtained that results in the violations or costs  
207 described in Subsections (6)(a) through (d); and

208 (f) any information the committee determines can be collected and relates to the abuse  
209 of alcoholic products.

210 (7) (a) The committee shall begin to collect the information described in Subsection (6)  
211 by January 1, 2013. For fiscal year 2012-13, the committee is required only to report the

212 information collected between January 1, 2013 and June 30, 2013.

213 (b) Beginning December 31, 2013, the committee shall report the information collected  
214 under Subsection (6) annually to the governor and Legislature by no later than the December  
215 31 immediately following the fiscal year for which the information is collected.

216 (8) Prior to the October 2012 Interim meeting of the Business and Labor Interim  
217 Committee, the committee shall report to the Business and Labor Interim Committee:

218 (a) a list of information to be collected;

219 (b) standards to be used in collecting the information;

220 (c) criteria to be used in determining the level and extent that alcohol is related or  
221 contributed to the activities for which data is to be collected; and

222 (d) how the collection of data will verify the presence of alcohol, blood alcohol levels,  
223 and differentiate between persons using other substances of impairment and persons consuming  
224 alcoholic beverages.

225 Section 5. Section **59-1-401** is amended to read:

226 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**  
227 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**  
228 **interest.**

229 (1) As used in this section:

230 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the  
231 commission:

232 (i) has implemented the commission's GenTax system; and

233 (ii) at least 30 days before implementing the commission's GenTax system as described  
234 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website  
235 stating:

236 (A) the date the commission will implement the GenTax system with respect to the tax,  
237 fee, or charge; and

238 (B) that, at the time the commission implements the GenTax system with respect to the  
239 tax, fee, or charge:

240 (I) a person that files a return after the due date as described in Subsection (2)(a) is  
241 subject to the penalty described in Subsection (2)(c)(ii); and

242 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is

243 subject to the penalty described in Subsection (3)(b)(ii).

244 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or  
245 charge, the later of:

246 (i) the date on which the commission implements the commission's GenTax system  
247 with respect to the tax, fee, or charge; or

248 (ii) 30 days after the date the commission provides the notice described in Subsection  
249 (1)(a)(ii) with respect to the tax, fee, or charge.

250 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

251 (A) a tax, fee, or charge the commission administers under:

252 (I) this title;

253 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

254 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

255 (IV) Section 19-6-410.5;

256 (V) Section 19-6-714;

257 (VI) Section 19-6-805;

258 (VII) Section 32B-2-304;

259 [~~(VIII)~~] (VIII) Section 34A-2-202;

260 [~~(IX)~~] (IX) Section 40-6-14;

261 [~~(X)~~] (X) Section 69-2-5;

262 [~~(XI)~~] (XI) Section 69-2-5.5; or

263 [~~(XII)~~] (XII) Section 69-2-5.6; or

264 (B) another amount that by statute is subject to a penalty imposed under this section.

265 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

266 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

267 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

268 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

269 (D) Chapter 3, Tax Equivalent Property Act; or

270 (E) Chapter 4, Privilege Tax.

271 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated  
272 tax, fee, or charge.

273 (2) (a) The due date for filing a return is:

274 (i) if the person filing the return is not allowed by law an extension of time for filing  
275 the return, the day on which the return is due as provided by law; or

276 (ii) if the person filing the return is allowed by law an extension of time for filing the  
277 return, the earlier of:

278 (A) the date the person files the return; or

279 (B) the last day of that extension of time as allowed by law.

280 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a  
281 return after the due date described in Subsection (2)(a).

282 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

283 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated  
284 tax, fee, or charge:

285 (A) \$20; or

286 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

287 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,  
288 fee, or charge, beginning on the activation date for the tax, fee, or charge:

289 (A) \$20; or

290 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is  
291 filed no later than five days after the due date described in Subsection (2)(a);

292 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed  
293 more than five days after the due date but no later than 15 days after the due date described in  
294 Subsection (2)(a); or

295 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is  
296 filed more than 15 days after the due date described in Subsection (2)(a).

297 (d) This Subsection (2) does not apply to:

298 (i) an amended return; or

299 (ii) a return with no tax due.

300 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

301 (i) the person files a return on or before the due date for filing a return described in  
302 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due  
303 date;

304 (ii) the person:

305 (A) is subject to a penalty under Subsection (2)(b); and  
306 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the  
307 due date for filing a return described in Subsection (2)(a);  
308 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and  
309 (B) the commission estimates an amount of tax due for that person in accordance with  
310 Subsection 59-1-1406(2);  
311 (iv) the person:  
312 (A) is mailed a notice of deficiency; and  
313 (B) within a 30-day period after the day on which the notice of deficiency described in  
314 Subsection (3)(a)(iv)(A) is mailed:  
315 (I) does not file a petition for redetermination or a request for agency action; and  
316 (II) fails to pay the tax, fee, or charge due on a return;  
317 (v) (A) the commission:  
318 (I) issues an order constituting final agency action resulting from a timely filed petition  
319 for redetermination or a timely filed request for agency action; or  
320 (II) is considered to have denied a request for reconsideration under Subsection  
321 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
322 request for agency action; and  
323 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period  
324 after the date the commission:  
325 (I) issues the order constituting final agency action described in Subsection  
326 (3)(a)(v)(A)(I); or  
327 (II) is considered to have denied the request for reconsideration described in  
328 Subsection (3)(a)(v)(A)(II); or  
329 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date  
330 of a final judicial decision resulting from a timely filed petition for judicial review.  
331 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:  
332 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
333 respect to an unactivated tax, fee, or charge:  
334 (A) \$20; or  
335 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

336 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
337 respect to an activated tax, fee, or charge, beginning on the activation date:

338 (A) \$20; or

339 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated  
340 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a  
341 return described in Subsection (2)(a);

342 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,  
343 fee, or charge due on the return is paid more than five days after the due date for filing a return  
344 described in Subsection (2)(a) but no later than 15 days after that due date; or

345 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated  
346 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a  
347 return described in Subsection (2)(a).

348 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or  
349 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there  
350 shall be added a penalty in an amount determined by applying the interest rate provided under  
351 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period  
352 of the underpayment.

353 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the  
354 excess of the required installment over the amount, if any, of the installment paid on or before  
355 the due date for the installment.

356 (ii) The period of the underpayment shall run from the due date for the installment to  
357 whichever of the following dates is the earlier:

358 (A) the original due date of the tax return, without extensions, for the taxable year; or

359 (B) with respect to any portion of the underpayment, the date on which that portion is  
360 paid.

361 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited  
362 against unpaid required installments in the order in which the installments are required to be  
363 paid.

364 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a  
365 person allowed by law an extension of time for filing a corporate franchise or income tax return  
366 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return

367 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in  
368 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not  
369 including the extension of time, the person fails to pay:

370 (i) for a person filing a corporate franchise or income tax return under Chapter 7,  
371 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

372 (ii) for a person filing an individual income tax return under Chapter 10, Individual  
373 Income Tax Act, the payment required by Subsection 59-10-516(2).

374 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the  
375 extension of time for filing the return is an amount equal to 2% of the tax due on the return,  
376 unpaid as of the day on which the return is due as provided by law.

377 (6) If a person does not file a return within an extension of time allowed by Section  
378 59-7-505 or 59-10-516, the person:

379 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

380 (b) is subject to a penalty in an amount equal to the sum of:

381 (i) a late file penalty in an amount equal to the greater of:

382 (A) \$20; or

383 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as  
384 provided by law, not including the extension of time; and

385 (ii) a late pay penalty in an amount equal to the greater of:

386 (A) \$20; or

387 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is  
388 due as provided by law, not including the extension of time.

389 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided  
390 in this Subsection (7)(a).

391 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,  
392 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that  
393 is due to negligence.

394 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a  
395 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire  
396 underpayment.

397 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,

398 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

399 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or  
400 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

401 (b) If the commission determines that a person is liable for a penalty imposed under  
402 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed  
403 penalty.

404 (i) The notice of proposed penalty shall:

405 (A) set forth the basis of the assessment; and

406 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

407 (ii) Upon receipt of the notice of proposed penalty, the person against whom the  
408 penalty is proposed may:

409 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

410 or

411 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

412 (iii) A person against whom a penalty is proposed in accordance with this Subsection  
413 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with  
414 the commission.

415 (iv) (A) If the commission determines that a person is liable for a penalty under this  
416 Subsection (7), the commission shall assess the penalty and give notice and demand for  
417 payment.

418 (B) The commission shall mail the notice and demand for payment described in  
419 Subsection (7)(b)(iv)(A):

420 (I) to the person's last-known address; and

421 (II) in accordance with Section 59-1-1404.

422 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not  
423 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

424 (i) a court of competent jurisdiction issues a final unappealable judgment or order  
425 determining that:

426 (A) the seller meets one or more of the criteria described in Subsection  
427 59-12-107(1)(a); and

428 (B) the commission or a county, city, or town may require the seller to collect a tax

429 under Subsections 59-12-103(2)(a) through (d); or  
430 (ii) the commission issues a final unappealable administrative order determining that:  
431 (A) the seller meets one or more of the criteria described in Subsection  
432 59-12-107(1)(a); and  
433 (B) the commission or a county, city, or town may require the seller to collect a tax  
434 under Subsections 59-12-103(2)(a) through (d).  
435 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not  
436 subject to the penalty under Subsection (7)(a)(ii) if:  
437 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order  
438 determining that:  
439 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);  
440 and  
441 (II) the commission or a county, city, or town may require the seller to collect a tax  
442 under Subsections 59-12-103(2)(a) through (d); or  
443 (B) the commission issues a final unappealable administrative order determining that:  
444 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);  
445 and  
446 (II) the commission or a county, city, or town may require the seller to collect a tax  
447 under Subsections 59-12-103(2)(a) through (d); and  
448 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a  
449 nonfrivolous argument for the extension, modification, or reversal of existing law or the  
450 establishment of new law.  
451 (8) The penalty for failure to file an information return, information report, or a  
452 complete supporting schedule is \$50 for each information return, information report, or  
453 supporting schedule up to a maximum of \$1,000.  
454 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay  
455 or impede administration of a law relating to a tax, fee, or charge and files a purported return  
456 that fails to contain information from which the correctness of reported tax, fee, or charge  
457 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is  
458 substantially incorrect, the penalty is \$500.  
459 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by

460 Subsection 59-12-108(1)(a):

461 (i) is subject to a penalty described in Subsection (2); and

462 (ii) may not retain the percentage of sales and use taxes that would otherwise be  
463 allowable under Subsection 59-12-108(2).

464 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as  
465 required by Subsection 59-12-108(1)(a)(ii)(B):

466 (i) is subject to a penalty described in Subsection (2); and

467 (ii) may not retain the percentage of sales and use taxes that would otherwise be  
468 allowable under Subsection 59-12-108(2).

469 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

470 (i) commits an act described in Subsection (11)(b) with respect to one or more of the  
471 following documents:

472 (A) a return;

473 (B) an affidavit;

474 (C) a claim; or

475 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

476 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)  
477 will be used in connection with any material matter administered by the commission; and

478 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection  
479 with any material matter administered by the commission, would result in an understatement of  
480 another person's liability for a tax, fee, or charge.

481 (b) The following acts apply to Subsection (11)(a)(i):

482 (i) preparing any portion of a document described in Subsection (11)(a)(i);

483 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

484 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

485 (iv) advising in the preparation or presentation of any portion of a document described  
486 in Subsection (11)(a)(i);

487 (v) aiding in the preparation or presentation of any portion of a document described in  
488 Subsection (11)(a)(i);

489 (vi) assisting in the preparation or presentation of any portion of a document described  
490 in Subsection (11)(a)(i); or

491 (vii) counseling in the preparation or presentation of any portion of a document  
492 described in Subsection (11)(a)(i).

493 (c) For purposes of Subsection (11)(a), the penalty:

494 (i) shall be imposed by the commission;

495 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which  
496 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

497 (iii) is in addition to any other penalty provided by law.

498 (d) The commission may seek a court order to enjoin a person from engaging in  
499 conduct that is subject to a penalty under this Subsection (11).

500 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
501 commission may make rules prescribing the documents that are similar to Subsections  
502 (11)(a)(i)(A) through (C).

503 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as  
504 provided in Subsections (12)(b) through (e).

505 (b) (i) A person who is required by this title or any laws the commission administers or  
506 regulates to register with or obtain a license or permit from the commission, who operates  
507 without having registered or secured a license or permit, or who operates when the registration,  
508 license, or permit is expired or not current, is guilty of a class B misdemeanor.

509 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the  
510 penalty may not:

511 (A) be less than \$500; or

512 (B) exceed \$1,000.

513 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this  
514 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return  
515 or to supply information within the time required by law, or who makes, renders, signs, or  
516 verifies a false or fraudulent return or statement, or who supplies false or fraudulent  
517 information, is guilty of a third degree felony.

518 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the  
519 penalty may not:

520 (A) be less than \$1,000; or

521 (B) exceed \$5,000.

522 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or  
523 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,  
524 guilty of a second degree felony.

525 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the  
526 penalty may not:

527 (A) be less than \$1,500; or

528 (B) exceed \$25,000.

529 (e) (i) A person is guilty of a second degree felony if that person commits an act:

530 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following  
531 documents:

532 (I) a return;

533 (II) an affidavit;

534 (III) a claim; or

535 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

536 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in  
537 Subsection (12)(e)(i)(A):

538 (I) is false or fraudulent as to any material matter; and

539 (II) could be used in connection with any material matter administered by the  
540 commission.

541 (ii) The following acts apply to Subsection (12)(e)(i):

542 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

543 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

544 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

545 (D) advising in the preparation or presentation of any portion of a document described  
546 in Subsection (12)(e)(i)(A);

547 (E) aiding in the preparation or presentation of any portion of a document described in  
548 Subsection (12)(e)(i)(A);

549 (F) assisting in the preparation or presentation of any portion of a document described  
550 in Subsection (12)(e)(i)(A); or

551 (G) counseling in the preparation or presentation of any portion of a document  
552 described in Subsection (12)(e)(i)(A).

- 553 (iii) This Subsection (12)(e) applies:
- 554 (A) regardless of whether the person for which the document described in Subsection
- 555 (12)(e)(i)(A) is prepared or presented:
- 556 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 557 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
- 558 (B) in addition to any other penalty provided by law.
- 559 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
- 560 penalty may not:
- 561 (A) be less than \$1,500; or
- 562 (B) exceed \$25,000.
- 563 (v) The commission may seek a court order to enjoin a person from engaging in
- 564 conduct that is subject to a penalty under this Subsection (12)(e).
- 565 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 566 the commission may make rules prescribing the documents that are similar to Subsections
- 567 (12)(e)(i)(A)(I) through (III).
- 568 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
- 569 the later of six years:
- 570 (i) from the date the tax should have been remitted; or
- 571 (ii) after the day on which the person commits the criminal offense.
- 572 (13) Upon making a record of its actions, and upon reasonable cause shown, the
- 573 commission may waive, reduce, or compromise any of the penalties or interest imposed under
- 574 this part.
- 575 Section 6. Section **59-1-402** is amended to read:
- 576 **59-1-402. Definitions -- Interest.**
- 577 (1) As used in this section:
- 578 (a) "Final judicial decision" means a final ruling by a court of this state or the United
- 579 States for which the time for any further review or proceeding has expired.
- 580 (b) "Retroactive application of a judicial decision" means the application of a final
- 581 judicial decision that:
- 582 (i) invalidates a state or federal taxation statute; and
- 583 (ii) requires the state to provide a refund for an overpayment that was made:

- 584 (A) prior to the final judicial decision; or  
585 (B) during the 180-day period after the final judicial decision.  
586 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:  
587 (A) a tax, fee, or charge the commission administers under:  
588 (I) this title;  
589 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
590 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;  
591 (IV) Section 19-6-410.5;  
592 (V) Section 19-6-714;  
593 (VI) Section 19-6-805;  
594 (VII) Section 32B-2-304;  
595 [~~VIII~~] (VIII) Section 34A-2-202;  
596 [~~VIII~~] (IX) Section 40-6-14;  
597 [~~IX~~] (X) Section 69-2-5;  
598 [~~X~~] (XI) Section 69-2-5.5; or  
599 [~~XI~~] (XII) Section 69-2-5.6; or  
600 (B) another amount that by statute is subject to interest imposed under this section.  
601 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:  
602 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;  
603 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;  
604 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;  
605 (D) Chapter 3, Tax Equivalent Property Act;  
606 (E) Chapter 4, Privilege Tax; or  
607 (F) Chapter 13, Part 5, Interstate Agreements.  
608 (2) Except as otherwise provided for by law, the interest rate for a calendar year for a  
609 tax, fee, or charge administered by the commission shall be calculated based on the federal  
610 short-term rate determined by the Secretary of the Treasury under Section 6621, Internal  
611 Revenue Code, in effect for the preceding fourth calendar quarter.  
612 (3) The interest rate calculation shall be as follows:  
613 (a) except as provided in Subsection (7), in the case of an overpayment or refund,  
614 simple interest shall be calculated at the rate of two percentage points above the federal

615 short-term rate; or

616 (b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be  
617 calculated at the rate of two percentage points above the federal short-term rate.

618 (4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain  
619 installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes,  
620 shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in  
621 Section 59-7-112.

622 (5) (a) Except as provided in Subsection (5)(c), interest may not be allowed on an  
623 overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded  
624 within:

625 (i) 45 days after the last date prescribed for filing the return with respect to a tax under  
626 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,  
627 if the return is filed electronically; or

628 (ii) 90 days after the last date prescribed for filing the return:

629 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate  
630 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

631 (B) if the return is not filed electronically.

632 (b) Except as provided in Subsection (5)(c), if the return is filed after the last date  
633 prescribed for filing the return, interest may not be allowed on the overpayment if the  
634 overpayment is refunded within:

635 (i) 45 days after the date the return is filed:

636 (A) with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or  
637 Chapter 10, Individual Income Tax Act; and

638 (B) if the return is filed electronically; or

639 (ii) 90 days after the date the return is filed:

640 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate  
641 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

642 (B) if the return is not filed electronically.

643 (c) (i) In the case of an amended return, interest on an overpayment shall be allowed:

644 (A) for a time period:

645 (I) that begins on the later of:

646 (Aa) the date the original return was filed; or

647 (Bb) the due date for filing the original return not including any extensions for filing

648 the original return; and

649 (II) that ends on the date the commission receives the amended return; and

650 (B) if the commission does not make a refund of an overpayment under this Subsection

651 (5)(c):

652 (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise

653 and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,

654 within a 45-day period after the date the commission receives the amended return, for a time

655 period:

656 (Aa) that begins 46 days after the commission receives the amended return; and

657 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission

658 completes processing the refund of the overpayment; or

659 (II) if the amended return is with respect to a tax, fee, or charge except for a tax under

660 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,

661 or is not filed electronically, within a 90-day period after the date the commission receives the

662 amended return, for a time period:

663 (Aa) that begins 91 days after the commission receives the amended return; and

664 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission

665 completes processing the refund of the overpayment.

666 (ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall

667 be calculated forward from the preparation date of the refund document to allow for

668 processing.

669 (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge

670 shall be computed from the time the original return is due, excluding any filing or payment

671 extensions, to the date the payment is received.

672 (7) Interest on a refund relating to a tax, fee, or charge may not be paid on any

673 overpayment that arises from a statute that is determined to be invalid under state or federal

674 law or declared unconstitutional under the constitution of the United States or Utah if the basis

675 for the refund is the retroactive application of a judicial decision upholding the claim of

676 unconstitutionality or the invalidation of a statute.

677 Section 7. Section **59-1-1402** is amended to read:

678 **59-1-1402. Definitions.**

679 As used in this part:

680 (1) "Administrative cost" means a fee imposed to cover:

681 (a) the cost of filing;

682 (b) the cost of administering a garnishment; or

683 (c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule  
684 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

685 (2) "Books and records" means the following made available in printed or electronic  
686 format:

687 (a) an account;

688 (b) a book;

689 (c) an invoice;

690 (d) a memorandum;

691 (e) a paper;

692 (f) a record; or

693 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission  
694 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

695 (3) "Deficiency" means:

696 (a) the amount by which a tax, fee, or charge exceeds the difference between:

697 (i) the sum of:

698 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

699 (B) any amount previously assessed, or collected without assessment, as a deficiency;

700 and

701 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect  
702 to that tax, fee, or charge; or

703 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,  
704 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

705 (i) the amount previously assessed, or collected without assessment, as a deficiency;

706 and

707 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

708 to that tax, fee, or charge.

709 (4) "Garnishment" means any legal or equitable procedure through which one or more  
710 of the following are required to be withheld for payment of an amount a person owes:

711 (a) an asset of the person held by another person; or

712 (b) the earnings of the person.

713 (5) "Liability" means the following that a person is required to remit to the  
714 commission:

715 (a) a tax, fee, or charge;

716 (b) an addition to a tax, fee, or charge;

717 (c) an administrative cost;

718 (d) interest that accrues in accordance with Section 59-1-402; or

719 (e) a penalty that accrues in accordance with Section 59-1-401.

720 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section  
721 6213(g)(2), Internal Revenue Code.

722 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)  
723 means:

724 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable  
725 year; or

726 (ii) a corresponding or comparable provision of the Internal Revenue Code as  
727 amended, redesignated, or reenacted.

728 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

729 (i) a tax, fee, or charge the commission administers under:

730 (A) this title;

731 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

732 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

733 (D) Section 19-6-410.5;

734 (E) Section 19-6-714;

735 (F) Section 19-6-805;

736 (G) Section 32B-2-304;

737 [~~(G)~~] (H) Section 34A-2-202;

738 [~~(H)~~] (I) Section 40-6-14;

- 739           ~~[(H)]~~ (J) Section 69-2-5;  
 740           ~~[(I)]~~ (K) Section 69-2-5.5; or  
 741           ~~[(K)]~~ (L) Section 69-2-5.6; or  
 742           (ii) another amount that by statute is administered by the commission.  
 743           (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:  
 744           (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;  
 745           (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;  
 746           (iii) Chapter 2, Property Tax Act;  
 747           (iv) Chapter 3, Tax Equivalent Property Act;  
 748           (v) Chapter 4, Privilege Tax; or  
 749           (vi) Chapter 13, Part 5, Interstate Agreements.  
 750           (8) "Transferee" means:  
 751           (a) a devisee;  
 752           (b) a distributee;  
 753           (c) a donee;  
 754           (d) an heir;  
 755           (e) a legatee; or  
 756           (f) a person similar to Subsections (8)(a) through (e) as determined by the commission

757 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

758 Section 8. Section **59-15-106** is amended to read:

759 **59-15-106. Reports by brewers, wholesalers, and distributors outside the state.**

760 ~~[(1) Every motor carrier as defined under Section 72-9-102 delivering any beer that has~~  
 761 ~~been shipped from outside of this state to a point within this state shall, before the last day of~~  
 762 ~~each month, report in writing all deliveries during the preceding month to the commission.~~  
 763 ~~The report shall be on forms prescribed by, and contain any information required by, the~~  
 764 ~~commission.]~~

765           ~~[(2)]~~ Every brewer, wholesaler, or distributor outside the state, shipping beer into the  
 766 state, for sale, use, or consumption within the state shall, before the last day of each month,  
 767 ~~[report in writing upon forms prescribed by the commission]~~ file with the commission a return  
 768 prescribed by the commission for the preceding calendar month and containing any information  
 769 required by the commission.

770 Section 9. **Effective date.**

771 Except for Section 53-1-119 which takes effect May 8, 2012, this bill takes effect on

772 July 1, 2012.