

Senator Jani Iwamoto proposes the following substitute bill:

RETAIL BAG IMPACT REDUCTION PROGRAM

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: _____

LONG TITLE

General Description:

This bill creates the Retail Bag Impact Reduction Program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Retail Bag Impact Reduction Program;
- ▶ imposes a fee on single-use retail bags;
- ▶ creates the Retail Bag Impact Reduction Fund;
- ▶ provides for allocation of the funds to achieve the purposes of the program;
- ▶ provides guidance for the administration of the fund;
- ▶ requires a report; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



26 **59-1-306**, as enacted by Laws of Utah 2011, Chapter 309
27 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50

28 ENACTS:

- 29 **19-6-1301**, Utah Code Annotated 1953
- 30 **19-6-1302**, Utah Code Annotated 1953
- 31 **19-6-1303**, Utah Code Annotated 1953
- 32 **19-6-1304**, Utah Code Annotated 1953
- 33 **19-6-1305**, Utah Code Annotated 1953
- 34 **19-6-1306**, Utah Code Annotated 1953
- 35 **19-6-1307**, Utah Code Annotated 1953

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

38 Section 1. Section **19-6-1301** is enacted to read:

39 **Part 13. Retail Bag Impact Reduction Program**

40 **19-6-1301. Title.**

41 This part is known as the "Retail Bag Impact Reduction Program."

42 Section 2. Section **19-6-1302** is enacted to read:

43 **19-6-1302. Legislative findings.**

44 (1) The Legislature finds that the disposal of single-use retail bags is a statewide
45 concern and that reducing the use, while promoting the responsible disposal, of single-use retail
46 bags will provide valuable health and environmental benefits.

47 (2) The Legislature further finds that a reduction in the use of single-use retail bags will
48 reduce the impact on landfills while promoting the use of more sustainable, reusable bags.

49 (3) It is the intent of the Legislature in adopting this part to encourage the development
50 of recycling programs and education regarding the impacts of, and alternatives to, single-use
51 retail bags.

52 Section 3. Section **19-6-1303** is enacted to read:

53 **19-6-1303. Definitions.**

54 As used in this chapter:

55 (1) "Commission" means the State Tax Commission.

56 (2) "Retail bag" means a bag provided by a retail business to a customer, typically at

57 the point of sale, for the purpose of transporting purchases or merchandise.

58 (3) "Retail business" means any commercial enterprise that provides retail bags to its
59 customers.

60 (4) "Reusable bag" means a bag designed for or used multiple times that is constructed
61 using cloth, fabric, or other durable materials, whether woven or non-woven.

62 (5) (a) "Single-use retail bag" means a retail bag, whether paper or plastic, designed for
63 one use before disposal.

64 (b) "Single-use retail bag" does not include:

65 (i) laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of
66 multiple bags intended for use as garbage, pet waste, or yard waste bags;

67 (ii) bags provided by pharmacists or veterinarians to contain prescription drugs or other
68 medical necessities;

69 (iii) bags used by a consumer inside a retail business to:

70 (A) contain bulk items such as produce, nuts, grains, candy, or small hardware items;

71 (B) contain or wrap frozen foods, meat, or fish;

72 (C) contain or wrap flowers, potted plants, or other items to prevent moisture damage
73 to other purchases; or

74 (D) contain unwrapped prepared foods or bakery goods;

75 (iv) small bags used in restaurants, not intended for carry out, to contain or deliver
76 prepared foods;

77 (v) small bags used in retail businesses, not issued at the point of sale, used to contain
78 small items;

79 (vi) bags used by a non-profit entity or other charitable organization to collect or
80 distribute food, grocery products, clothing, or other household items; or

81 (vii) bags used to transport chemicals, including pesticides, drain-cleaning chemicals,
82 or other caustic chemicals sold by a retail business.

83 Section 4. Section **19-6-1304** is enacted to read:

84 **19-6-1304. Single-use retail bag fee.**

85 (1) (a) A fee is imposed upon each single-use retail bag provided by a retail business to
86 a customer or patron.

87 (b) The customer or patron shall pay the fee to the retail business at the time of

88 purchase.

89 (2) The fee for each single-use retail bag is 10 cents.

90 (3) (a) Except as provided in Subsection (3)(b), a restaurant is not required to charge a
91 fee for a paper single-use retail bag used to protect or transport prepared foods, beverages, or
92 other loose items associated with the sale of prepared foods.

93 (b) A restaurant may irrevocably notify the commission of the restaurant's intent to
94 charge a fee for a paper single-use retail bag used to protect or transport prepared foods,
95 beverages, or other loose items associated with the sale of prepared foods.

96 (4) A unit of local government may not impose a similar or additional fee on single-use
97 retail bags.

98 Section 5. Section **19-6-1305** is enacted to read:

99 **19-6-1305. Special revenue fund -- Creation -- Deposits.**

100 (1) There is created an expendable special revenue fund called the "Retail Bag Impact
101 Reduction Fund."

102 (2) The fund shall consist of the proceeds of the fee imposed under Section [19-6-1304](#).

103 (3) (a) After a retail business located in an unincorporated area of a county retains four
104 cents of the fee described in Subsection [19-6-1306](#)(1)(b), the commission shall distribute the
105 remaining six cents generated by the fee as follows:

106 (i) four cents to the county in which the retail business is located; and

107 (ii) two cents to the Department of Environmental Quality.

108 (b) After a retail business located in an incorporated municipality retains four cents of
109 the fee described in Subsection [19-6-1306](#)(1)(b), the commission shall distribute the remaining
110 six cents generated by the fee as follows:

111 (i) four cents to the incorporated municipality in which the retail business is located;

112 and

113 (ii) two cents to the Department of Environmental Quality.

114 (c) Local government units may enter into interlocal agreements that provide for
115 alternative distribution of the single-use retail bag fee between local government units in
116 accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

117 (4) Counties, municipalities, and the Department of Environmental Quality may only
118 use proceeds of the single-use retail bag fee for:

- 119 (a) promoting the use of reusable bags or other sustainable alternatives to replace
120 single-use retail bags;
- 121 (b) increasing awareness of environmental impacts of single-use retail bags;
- 122 (c) providing access to recycling bins and facilities in retail businesses and in areas of
123 the community having limited access to recycling;
- 124 (d) developing and implementing strategies and practices to prevent and remediate
125 litter;
- 126 (e) educating the public about materials that are difficult to recycle and hazardous to
127 the environment;
- 128 (f) promoting and facilitating recycling; and
- 129 (g) encouraging environmental sustainability.

130 Section 6. Section **19-6-1306** is enacted to read:

131 **19-6-1306. Payment of the single-use retail bag fee -- Administrative charge.**

132 (1) (a) Except as provided in Subsection (1)(b), a retail business shall remit to the
133 commission the single-use retail bag fee collected from the customer:

134 (i) monthly, on or before the last day of the month immediately following the last day
135 of the previous month if:

136 (A) the retail business is required to file a sales and use tax return with the commission
137 monthly under Section [59-12-108](#); or

138 (B) the retail business is not required to file a sales and use tax return under Title 59,
139 Chapter 12, Sales and Use Tax Act; or

140 (ii) quarterly, on or before the last day of the month immediately following the last day
141 of the previous quarter, if the retail business is required to file a sales and use tax return with
142 the commission quarterly under Section [59-12-108](#).

143 (b) A retail business may retain four cents of the single-use retail bag fee collected by
144 the retail business under Section [19-6-1304](#).

145 (2) The payment shall be accompanied by a form prescribed by the commission.

146 (3) (a) The commission shall transfer proceeds of the fee to the fund for payment to
147 each recipient described in Section [19-6-1305](#).

148 (b) (i) The commission shall retain and deposit an administrative charge in accordance
149 with Section [59-1-306](#) from the revenues the commission collects from a fee under Section

150 [19-6-1304.](#)

151 (ii) The commission shall retain and deposit the administrative charge described in
152 Subsection (3)(b)(i) solely from the two cents portion of the fee allocated to the Department of
153 Environmental Quality in Subsections [19-6-1305\(3\)\(a\)\(ii\)](#) and [19-6-1305\(3\)\(b\)\(iii\)](#).

154 (4) (a) The commission shall administer, collect, and enforce the fee authorized under
155 this part in accordance with the same procedures used in the administration, collection, and
156 enforcement of the state sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act,
157 and Title 59, Chapter 1, General Taxation Policies.

158 (b) A retail business may use the retail business's portion of the single-use retail bag
159 fee collected and retained under this part for the cost incurred by the retail business in
160 collecting the fee and administering the program.

161 (c) The exemptions described in Section [59-12-104](#) do not apply to this part.

162 Section 7. Section **19-6-1307** is enacted to read:

163 **19-6-1307. Reporting.**

164 Before December 1, 2017, the commission shall report to the Business and Labor
165 Interim Committee data associated with the program, including the amount of money collected
166 and the number of retail bags for which the fee was imposed.

167 Section 8. Section **59-1-306** is amended to read:

168 **59-1-306. Definition -- State Tax Commission Administrative Charge Account --**
169 **Amount of administrative charge -- Deposit of revenues into the restricted account --**
170 **Interest deposited into General Fund -- Expenditure of money deposited into the**
171 **restricted account.**

172 (1) As used in this section, "qualifying tax, fee, or charge" means a tax, fee, or charge
173 the commission administers under:

174 ~~[(b)]~~ (a) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

175 ~~[(c)]~~ (b) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

176 ~~[(d)]~~ (c) Section [19-6-714](#);

177 ~~[(e)]~~ (d) Section [19-6-805](#);

178 (e) Section [19-6-1304](#);

179 ~~[(a)]~~ (f) Chapter 12, Sales and Use Tax Act, other than a tax under Chapter 12, Part 1,
180 Tax Collection, or Chapter 12, Part 18, Additional State Sales and Use Tax Act;

- 181 ~~(f)~~ (g) Section 59-27-105;
- 182 ~~(g)~~ (h) Section 69-2-5;
- 183 ~~(h)~~ (i) Section 69-2-5.5; or
- 184 ~~(i)~~ (j) Section 69-2-5.6.

185 (2) There is created a restricted account within the General Fund known as the "State
 186 Tax Commission Administrative Charge Account."

187 (3) Subject to the other provisions of this section, the restricted account shall consist of
 188 administrative charges the commission retains and deposits in accordance with this section.

189 (4) For purposes of this section, the administrative charge is a percentage of revenues
 190 the commission collects from each qualifying tax, fee, or charge of not to exceed the lesser of:

- 191 (a) 1.5%; or
- 192 (b) an equal percentage of revenues the commission collects from each qualifying tax,
 193 fee, or charge sufficient to cover the cost to the commission of administering the qualifying
 194 taxes, fees, or charges.

195 (5) The commission shall deposit an administrative charge into the restricted account.

196 (6) Interest earned on the restricted account shall be deposited into the General Fund.

197 (7) The commission shall expend money appropriated by the Legislature to the
 198 commission from the restricted account to administer qualifying taxes, fees, or charges.

199 Section 9. Section 59-12-108 is amended to read:

200 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
 201 **Certain amounts allocated to local taxing jurisdictions.**

202 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
 203 chapter of \$50,000 or more for the previous calendar year shall:

- 204 (i) file a return with the commission:
 - 205 (A) monthly on or before the last day of the month immediately following the month
 206 for which the seller collects a tax under this chapter; and
 - 207 (B) for the month for which the seller collects a tax under this chapter; and

208 (ii) except as provided in Subsection (1)(b), remit with the return required by
 209 Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,
 210 fee, or charge described in Subsection (1)(c):

- 211 (A) if that seller's tax liability under this chapter for the previous calendar year is less

212 than \$96,000, by any method permitted by the commission; or

213 (B) if that seller's tax liability under this chapter for the previous calendar year is
214 \$96,000 or more, by electronic funds transfer.

215 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
216 the amount the seller is required to remit to the commission for each tax, fee, or charge
217 described in Subsection (1)(c) if that seller:

218 (i) is required by Section [59-12-107](#) to file the return electronically; or

219 (ii) (A) is required to collect and remit a tax under Section [59-12-107](#); and

220 (B) files a simplified electronic return.

221 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

222 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

223 (ii) a fee under Section [19-6-714](#);

224 (iii) a fee under Section [19-6-805](#);

225 (iv) a fee under Section [19-6-1304](#);

226 [~~(iv)~~] (v) a charge under Section [69-2-5](#);

227 [~~(v)~~] (vi) a charge under Section [69-2-5.5](#);

228 [~~(vi)~~] (vii) a charge under Section [69-2-5.6](#); or

229 [~~(vii)~~] (viii) a tax under this chapter.

230 (d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3,
231 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
232 for making same-day payments other than by electronic funds transfer if making payments by
233 electronic funds transfer fails.

234 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
235 commission shall establish by rule procedures and requirements for determining the amount a
236 seller is required to remit to the commission under this Subsection (1).

237 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
238 seller described in Subsection (4) may retain each month the amount allowed by this
239 Subsection (2).

240 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
241 each month 1.31% of any amounts the seller is required to remit to the commission:

242 (i) for a transaction described in Subsection [59-12-103](#)(1) that is subject to a state tax

243 and a local tax imposed in accordance with the following, for the month for which the seller is
244 filing a return in accordance with Subsection (1):

- 245 (A) Subsection 59-12-103(2)(a);
- 246 (B) Subsection 59-12-103(2)(b); and
- 247 (C) Subsection 59-12-103(2)(d); and
- 248 (ii) for an agreement sales and use tax.

249 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
250 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
251 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
252 accordance with Subsection 59-12-103(2)(c).

253 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
254 equal to the sum of:

255 (A) 1.31% of any amounts the seller is required to remit to the commission for:

256 (I) the state tax and the local tax imposed in accordance with Subsection

257 59-12-103(2)(c);

258 (II) the month for which the seller is filing a return in accordance with Subsection (1);

259 and

260 (III) an agreement sales and use tax; and

261 (B) 1.31% of the difference between:

262 (I) the amounts the seller would have been required to remit to the commission:

263 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
264 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

265 (Bb) for the month for which the seller is filing a return in accordance with Subsection
266 (1); and

267 (Cc) for an agreement sales and use tax; and

268 (II) the amounts the seller is required to remit to the commission for:

269 (Aa) the state tax and the local tax imposed in accordance with Subsection

270 59-12-103(2)(c);

271 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
272 and

273 (Cc) an agreement sales and use tax.

274 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
275 each month 1% of any amounts the seller is required to remit to the commission:

276 (i) for the month for which the seller is filing a return in accordance with Subsection
277 (1); and

278 (ii) under:

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

280 (B) Subsection 59-12-603(1)(a)(i)(A); or

281 (C) Subsection 59-12-603(1)(a)(i)(B).

282 (3) A state government entity that is required to remit taxes monthly in accordance
283 with Subsection (1) may not retain any amount under Subsection (2).

284 (4) A seller that has a tax liability under this chapter for the previous calendar year of
285 less than \$50,000 may:

286 (a) voluntarily meet the requirements of Subsection (1); and

287 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
288 amounts allowed by Subsection (2).

289 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
290 remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to
291 18% of any amounts the seller would otherwise remit to the commission:

292 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
293 January 1, 2014; and

294 (ii) for:

295 (A) an agreement sales and use tax; and

296 (B) the time period for which the seller files a return in accordance with this section.

297 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
298 other amount under this section.

299 (c) If a seller retains an amount under this Subsection (5), the commission may require
300 the seller to file a return by:

301 (i) electronic means; or

302 (ii) a means other than electronic means.

303 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
304 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

305 (6) Penalties for late payment shall be as provided in Section 59-1-401.

306 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
307 to the commission under this part, the commission shall each month calculate an amount equal
308 to the difference between:

309 (i) the total amount retained for that month by all sellers had the percentages listed
310 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

311 (ii) the total amount retained for that month by all sellers at the percentages listed
312 under Subsections (2)(b) and (2)(c)(ii).

313 (b) The commission shall each month allocate the amount calculated under Subsection
314 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
315 tax that the commission distributes to each county, city, and town for that month compared to
316 the total agreement sales and use tax that the commission distributes for that month to all
317 counties, cities, and towns.

318 (c) The amount the commission calculates under Subsection (7)(a) may not include an
319 amount collected from a tax that:

320 (i) the state imposes within a county, city, or town, including the unincorporated area
321 of a county; and

322 (ii) is not imposed within the entire state.

323 Section 10. **Effective date.**

324 This bill takes effect on January 1, 2017.