

**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



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  
 79a **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 ~~H~~ [not] ~~h~~ subject to ~~H~~ [any] **AN AGREEMENT** ~~h~~ sales ~~H~~ [or] **AND** ~~h~~ use tax  
 97a ~~H~~ [collected or paid] ~~h~~ under Chapter 12, Sales and  
 98 Use Tax 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) ~~It~~ (i) ~~It~~ The monies in the fund shall be invested by the state treasurer pursuant to Title~~  
 132a ~~51,~~

133 ~~Chapter 7, State Money Management Act ~~It~~ [, except that] .~~

133a ~~———— (ii) ~~It~~ ~~It~~ [all] ~~All~~ ~~It~~ interest or other earnings derived~~  
 134 ~~from the fund monies shall be deposited in the fund.~~

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

137 ~~———— (a) 1.5%; or~~

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

139 ~~———— (4) (a) Fund monies shall be used as provided in this Subsection (4):~~

140 ~~———— (b) The Department of Corrections shall use 50% of the monies in the fund, in addition~~  
 141 ~~to existing budgets, to implement treatment programs in community correctional centers, as~~  
 142 ~~defined in Section 64-13-1, for crisis intervention services, case management services, and to~~  
 143 ~~offset costs resulting from fees of treatment service providers who are providing or will~~  
 144 ~~provide treatment services to nonworking or indigent adults who:~~

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

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

148 ~~———— (c) The Adult Probation and Parole section of the Department of Corrections shall use~~  
 149 ~~15% of the monies in the fund to provide outpatient treatment services and to offset costs~~  
 150 ~~resulting from partial payments or nonpayments from individuals receiving outpatient~~  
 151 ~~treatment services who:] §~~

152           § ~~(i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual~~  
 153 ~~Offenses; and~~  
 154 ~~(ii) are not currently confined or incarcerated in a jail or prison.~~  
 155 ~~(d) The Department of Corrections shall use 10% of the monies in the fund, in addition~~  
 156 ~~to existing budgets, to implement treatment programs for juveniles who have been convicted of~~  
 157 ~~an offense under Title 76, Chapter 5, Part 4, Sexual Offenses.~~  
 158 ~~(e) The Department of Corrections shall use 10% of the monies in the fund to provide~~  
 159 ~~an executive director and other funding for any task force:~~  
 160 ~~(i) administered through the Department of Corrections; and~~  
 161 ~~(ii) that provides training relating to sex offender supervision and treatment.~~  
 162 ~~(f) The attorney general shall use 15% of the monies in the fund to provide funding for~~  
 163 ~~any task force:~~  
 164 ~~(i) administered through the Office of the Attorney General; and~~  
 165 ~~(ii) that investigates and prosecutes individuals who use the Internet to commit crimes~~  
 166 ~~against children.] §~~

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

168           **59-26-106. Records.**

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

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

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

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

181           **59-26-107. Action for collection of tax -- Action for refund or credit of tax.**

182           (1) (a) Except as provided in Subsections (2) through (5), the commission shall assess

183 a tax under this chapter within three years after a sexually explicit business or escort service  
184 subject to the tax imposed by this chapter files a return.

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

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

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

191 (b) does not file a return.

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

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

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

197 (i) authorizing the extension; and

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

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

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

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

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

207 (a) for the time period for which the commission could not make an assessment  
208 because of the expiration of the three-year period; and

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

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

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

214 imposed by this chapter actually paid for the time period described in Subsection (5)(a).  
 215 (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit  
 216 or refund unless the sexually explicit business or escort service subject to the tax imposed by  
 217 this chapter files a claim with the commission within three years of the date of overpayment.  
 218 (b) Notwithstanding Subsection (6)(a), the commission shall extend the period for a  
 219 taxpayer to file a claim under Subsection (6)(a) if:  
 220 (i) the three-year period under Subsection (6)(a) has not expired; and  
 221 (ii) the commission and the sexually explicit business or escort service subject to the  
 222 tax imposed by this chapter sign a written agreement:  
 223 (A) authorizing the extension; and  
 224 (B) providing for the length of the extension.  
 225 Section 8. Section **59-26-108** is enacted to read:  
 226 **59-26-108. Penalties and interest.**  
 227 An owner or operator of a sexually explicit business or escort service that fails to  
 228 comply with this chapter is subject to:  
 229 (1) penalties provided in Section 59-1-401; and  
 230 (2) interest provided in Section 59-1-402.  
 231 Section 9. **Effective date.**  
 232 This bill takes effect on July 1, 2004.

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**Legislative Review Note**  
**as of 12-22-03 8:36 AM**

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**



**State Impact**

Passage of this bill could increase restricted funds by \$510,000 in FY 2005 and by \$1,020,000 in FY 2006. The bill specifies appropriations in the bill 85 percent of the revenue accrues to the Department of Corrections and 15 percent of the collections accrue to the Attorney General's Office. The tax commission is authorized to keep 1.5 percent of the revenue for administration. This bill has a Legislative Review Note. There may be additional costs to the state if there is a challenge in the courts.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Restricted Funds	\$510,000	\$1,020,000	\$510,000	\$1,020,000
<b>TOTAL</b>	<b>\$510,000</b>	<b>\$1,020,000</b>	<b>\$510,000</b>	<b>\$1,020,000</b>

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**Individual and Business Impact**

Individuals using the services identified in the bill will pay a 10 percent tax on services.

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