

1 STATE TAX COMMISSION BONDING AND
2 LICENSING AMENDMENTS

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Wayne A. Harper

6 Senate Sponsor: Curtis S. Bramble

8 LONG TITLE

9 General Description:

10 This bill amends the Revenue and Taxation title relating to bonding and licensing.

11 Highlighted Provisions:

12 This bill:

13 ▶ repeals definitions relating to an agent for purposes of bonding and licensing with
14 the State Tax Commission;

15 ▶ repeals provisions relating to an agent for purposes of bonding requirements with
16 the State Tax Commission and calculating the amount of a bond;

17 ▶ reduces the minimum amount of a bond for purposes of certain taxes;

18 ▶ repeals language establishing the minimum amount of a bond for purposes of the
19 aviation fuel tax;

20 ▶ allows a bond to be combined with another bond into one bond under certain
21 circumstances;

22 ▶ repeals obsolete language; and

23 ▶ makes technical changes.

24 Monies Appropriated in this Bill:

25 None

26 Other Special Clauses:

27 None

28 Utah Code Sections Affected:

29 AMENDS:

- 30 **59-10-405.5**, as enacted by Chapter 198, Laws of Utah 2005
- 31 **59-12-106**, as last amended by Chapter 198, Laws of Utah 2005
- 32 **59-13-203.1**, as enacted by Chapter 198, Laws of Utah 2005
- 33 **59-13-302**, as last amended by Chapter 198, Laws of Utah 2005
- 34 **59-13-403**, as last amended by Chapter 179, Laws of Utah 1999

35

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

37 Section 1. Section **59-10-405.5** is amended to read:

38 **59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --**

39 **Application process and requirements -- Fee not required -- Bonds.**

40 (1) As used in this section:

41 ~~[(a) "agent" means a person that:]~~

42 ~~[(i) withholds, reports, or remits any amounts under this part for:]~~

43 ~~[(A) an applicant; or]~~

44 ~~[(B) a licensee; and]~~

45 ~~[(ii) in accordance with an agreement between the person and the applicant or licensee~~
46 ~~described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an~~
47 ~~amount under this part for the:]~~

48 ~~[(A) applicant; or]~~

49 ~~[(B) licensee;]~~

50 ~~[(b)]~~ (a) "applicant" means a person that:

51 (i) is required by this section to obtain a license; and

52 (ii) submits an application:

53 (A) to the commission; and

54 (B) for a license under this section;

55 ~~[(c)]~~ (b) "application" means an application for a license under this section;

56 ~~[(d)]~~ (c) "fiduciary of the applicant" means a person that:

57 (i) is required to collect, truthfully account for, and pay over an amount under this part

58 for an applicant; and

59 ~~[(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and]~~

60 ~~[(iii)]~~ (ii) (A) is a corporate officer of the applicant described in Subsection

61 (1)~~(d)~~(c)(i);

62 (B) is a director of the applicant described in Subsection (1)~~(d)~~(c)(i);

63 (C) is an employee of the applicant described in Subsection (1)~~(d)~~(c)(i);

64 (D) is a partner of the applicant described in Subsection (1)~~(d)~~(c)(i);

65 (E) is a trustee of the applicant described in Subsection (1)~~(d)~~(c)(i); or

66 (F) has a relationship to the applicant described in Subsection (1)~~(d)~~(c)(i) that is

67 similar to a relationship described in Subsections (1)~~(d)~~~~(iii)~~(c)(ii)(A) through (E) as

68 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah

69 Administrative Rulemaking Act;

70 ~~(e)~~ (d) "fiduciary of the licensee" means a person that:

71 (i) is required to collect, truthfully account for, and pay over an amount under this part

72 for a licensee; and

73 ~~[(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and]~~

74 ~~[(iii)]~~ (ii) (A) is a corporate officer of the licensee described in Subsection

75 (1)~~(e)~~(d)(i);

76 (B) is a director of the licensee described in Subsection (1)~~(e)~~(d)(i);

77 (C) is an employee of the licensee described in Subsection (1)~~(e)~~(d)(i);

78 (D) is a partner of the licensee described in Subsection (1)~~(e)~~(d)(i);

79 (E) is a trustee of the licensee described in Subsection (1)~~(e)~~(d)(i); or

80 (F) has a relationship to the licensee described in Subsection (1)~~(e)~~(d)(i) that is

81 similar to a relationship described in Subsections (1)~~(e)~~~~(iii)~~(d)(ii)(A) through (E) as

82 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah

83 Administrative Rulemaking Act;

84 ~~(f)~~ (e) "license" means a license under this section; and

85 ~~(g)~~ (f) "licensee" means a person that is licensed under this section by the

86 commission.

87 (2) The following persons are guilty of a criminal violation as provided in Section
88 59-1-401:

89 (a) a person that:

90 (i) is required to withhold, report, or remit any amounts under this part; and

91 (ii) engages in business within the state before obtaining a license under this section; or

92 (b) a person that:

93 (i) pays wages under this part; and

94 (ii) engages in business within the state before obtaining a license under this section[;

95 ~~or~~].

96 [~~(c) an agent that:~~

97 [~~(i) is required to withhold, report, or remit any amounts under this part; and]~~

98 [~~(ii) takes the action described in Subsection (2)(c)(i) before obtaining a license under~~
99 ~~this section.]~~

100 (3) The license described in Subsection (2):

101 (a) shall be granted and issued:

102 (i) by the commission in accordance with this section;

103 (ii) without a license fee; and

104 (iii) if:

105 (A) an applicant:

106 (I) states the applicant's name and address in the application; and

107 (II) provides other information in the application that the commission may require; and

108 (B) the person meets the requirements of this section to be granted a license as

109 determined by the commission;

110 (b) may not be assigned to another person; and

111 (c) is valid:

112 (i) only for the person named on the license; and

113 (ii) until:

114 (A) the person described in Subsection (3)(c)(i):
115 (I) ceases to do business; or
116 (II) changes that person's business address; or
117 (B) the commission revokes the license.
118 (4) The commission shall review an application and determine whether:
119 (a) the applicant meets the requirements of this section to be issued a license; and
120 (b) a bond is required to be posted with the commission in accordance with
121 Subsections (5) and (6) before the applicant may be issued a license.
122 (5) (a) An applicant shall post a bond with the commission before the commission may
123 issue the applicant a license if:
124 (i) a license under this section was revoked for a delinquency under this part for:
125 (A) the applicant;
126 (B) a fiduciary of the applicant; or
127 (C) a person for which the applicant or the fiduciary of the applicant is required to
128 collect, truthfully account for, and pay over an amount under this part; or
129 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
130 part for:
131 (A) an applicant;
132 (B) a fiduciary of the applicant; or
133 (C) a person for which the applicant or the fiduciary of the applicant is required to
134 collect, truthfully account for, and pay over an amount under this part.
135 (b) If the commission determines it is necessary to ensure compliance with this part,
136 the commission may require a licensee to:
137 (i) for a licensee that has not posted a bond under this section with the commission,
138 post a bond with the commission in accordance with Subsection (6); or
139 (ii) for a licensee that has posted a bond under this section with the commission,
140 increase the amount of the bond posted with the commission.
141 ~~[(c) An agent shall post a bond with the commission before the commission may issue~~

142 ~~the agent a license under this section.]~~

143 (6) (a) A bond required by Subsection (5) shall be:

144 (i) executed by:

145 (A) for an applicant, the applicant as principal, with a corporate surety; or

146 (B) for a licensee, the licensee as principal, with a corporate surety; [~~or~~] and

147 [~~(C) for an agent, the agent as principal, with a corporate surety; and]~~

148 (ii) payable to the commission conditioned upon the faithful performance of all of the
149 requirements of this part including:

150 (A) the withholding or remitting of any amount under this part;

151 (B) the payment of any:

152 (I) penalty as provided in Section 59-1-401; or

153 (II) interest as provided in Section 59-1-402; or

154 (C) any other obligation of the:

155 (I) applicant under this part; or

156 (II) licensee under this part[; ~~or~~].

157 [~~(III) agent under this part.]~~

158 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount
159 of a bond required by Subsection (5) on the basis of:

160 (i) commission estimates of:

161 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this
162 part; or

163 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this
164 part; [~~or~~] and

165 [~~(C) for an agent, any amounts the agent withholds, reports, or remits under this part;~~
166 ~~and]~~

167 (ii) any amount of a delinquency described in Subsection (6)(c).

168 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):

169 (i) for an applicant, the amount of the delinquency is the sum of:

170 (A) the amount of any delinquency that served as a basis for revoking the license under
171 this section of:

172 (I) the applicant;

173 (II) a fiduciary of the applicant; or

174 (III) a person for which the applicant or the fiduciary of the applicant is required to
175 collect, truthfully account for, and pay over an amount under this part; or

176 (B) the amount that any of the following owe under this part:

177 (I) the applicant;

178 (II) a fiduciary of the applicant; and

179 (III) a person for which the applicant or the fiduciary of the applicant is required to
180 collect, truthfully account for, and pay over an amount under this part; or

181 (ii) for a licensee, the amount of the delinquency is the sum of:

182 (A) the amount of any delinquency that served as a basis for revoking the license under
183 this section of:

184 (I) the licensee;

185 (II) a fiduciary of the licensee; or

186 (III) a person for which the licensee or the fiduciary of the licensee is required to
187 collect, truthfully account for, and pay over an amount under this part; or

188 (B) the amount that any of the following owe under this part:

189 (I) the licensee;

190 (II) a fiduciary of the licensee; and

191 (III) a person for which the licensee or the fiduciary of the licensee is required to
192 collect, truthfully account for, and pay over an amount under this part[~~;~~or].

193 [~~(iii) for an agent, the amount of the delinquency is the sum of:]~~

194 [~~(A) the amount of any delinquency that served as a basis for revoking the agent's
195 license under this section; or]~~

196 [~~(B) the amount that the agent owes under this part.]~~

197 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may

198 not:

199 (i) be less than [~~\$50,000~~] \$25,000; or

200 (ii) exceed \$500,000.

201 (7) (a) The commission shall revoke a license under this section if:

202 (i) a licensee violates any provision of this part; and

203 (ii) before the commission revokes the license the commission provides the licensee:

204 (A) reasonable notice; and

205 (B) a hearing.

206 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),

207 the commission may not issue another license to that licensee until that licensee complies with

208 the requirements of this part, including:

209 (i) paying any:

210 (A) amounts due under this part;

211 (B) penalty as provided in Section 59-1-401; or

212 (C) interest as provided in Section 59-1-402; and

213 (ii) posting a bond in accordance with Subsections (5) and (6).

214 Section 2. Section **59-12-106** is amended to read:

215 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**

216 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**

217 **Exemption certificates -- Exemption certificate license number to accompany contract**

218 **bids.**

219 (1) As used in this section:

220 [~~(a) "agent" means a person that:~~]

221 [~~(i) remits a tax under this chapter for:~~]

222 [~~(A) an applicant; or~~]

223 [~~(B) a licensee; and~~]

224 [~~(ii) in accordance with an agreement between the person and the applicant or licensee~~

225 ~~described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over a~~

226 tax under this chapter for the:]
 227 ~~[(A) applicant; or]~~
 228 ~~[(B) licensee;]~~
 229 ~~[(b)]~~ (a) "applicant" means a person that:
 230 (i) is required by this section to obtain a license; and
 231 (ii) submits an application:
 232 (A) to the commission; and
 233 (B) for a license under this section;
 234 ~~[(c)]~~ (b) "application" means an application for a license under this section;
 235 ~~[(d)]~~ (c) "fiduciary of the applicant" means a person that:
 236 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
 237 for an applicant; and
 238 ~~[(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and]~~
 239 ~~[(iii)]~~ (ii) (A) is a corporate officer of the applicant described in Subsection
 240 (1)~~[(d)]~~(c)(i);
 241 (B) is a director of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 242 (C) is an employee of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 243 (D) is a partner of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 244 (E) is a trustee of the applicant described in Subsection (1)~~[(d)]~~(c)(i); or
 245 (F) has a relationship to the applicant described in Subsection (1)~~[(d)]~~(c)(i) that is
 246 similar to a relationship described in Subsections (1)~~[(d)]~~(iii)~~[(c)]~~(ii)(A) through (E) as
 247 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
 248 Administrative Rulemaking Act;
 249 ~~[(e)]~~ (d) "fiduciary of the licensee" means a person that:
 250 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
 251 for a licensee; and
 252 ~~[(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and]~~
 253 ~~[(iii)]~~ (ii) (A) is a corporate officer of the licensee described in Subsection

254 (1)~~(e)~~(d)(i);
255 (B) is a director of the licensee described in Subsection (1)~~(e)~~(d)(i);
256 (C) is an employee of the licensee described in Subsection (1)~~(e)~~(d)(i);
257 (D) is a partner of the licensee described in Subsection (1)~~(e)~~(d)(i);
258 (E) is a trustee of the licensee described in Subsection (1)~~(e)~~(d)(i); or
259 (F) has a relationship to the licensee described in Subsection (1)~~(e)~~(d)(i) that is
260 similar to a relationship described in Subsections (1)~~(e)~~(iii)(d)(ii)(A) through (E) as
261 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
262 Administrative Rulemaking Act;

263 ~~(f)~~ (e) "license" means a license under this section; and
264 ~~(g)~~ (f) "licensee" means a person that is licensed under this section by the
265 commission.

266 (2) (a) It is unlawful for any person required to collect a tax under this chapter to
267 engage in business within the state without first having obtained a license to do so.

268 (b) The license described in Subsection (2)(a):
269 (i) shall be granted and issued by the commission;
270 (ii) is not assignable;
271 (iii) is valid only for the person in whose name the license is issued;
272 (iv) is valid until:

273 (A) the person described in Subsection (2)(b)(iii):

274 (I) ceases to do business; or
275 (II) changes that person's business address; or
276 (B) the license is revoked by the commission; and

277 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
278 application that:

279 (A) states the name and address of the applicant; and
280 (B) provides other information the commission may require.

281 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the

282 commission shall notify the applicant of the responsibilities and liability of a business owner
283 successor under Section 59-12-112.

284 (d) The commission shall review an application and determine whether the applicant:

285 (i) meets the requirements of this section to be issued a license; and

286 (ii) is required to post a bond with the commission in accordance with Subsections

287 (2)(e) and (f) before the applicant may be issued a license.

288 (e) (i) An applicant shall post a bond with the commission before the commission may
289 issue the applicant a license if:

290 (A) a license under this section was revoked for a delinquency under this chapter for:

291 (I) the applicant;

292 (II) a fiduciary of the applicant; or

293 (III) a person for which the applicant or the fiduciary of the applicant is required to

294 collect, truthfully account for, and pay over a tax under this chapter; or

295 (B) there is a delinquency in paying a tax under this chapter for:

296 (I) the applicant;

297 (II) a fiduciary of the applicant; or

298 (III) a person for which the applicant or the fiduciary of the applicant is required to

299 collect, truthfully account for, and pay over a tax under this chapter.

300 (ii) If the commission determines it is necessary to ensure compliance with this

301 chapter, the commission may require a licensee to:

302 (A) for a licensee that has not posted a bond under this section with the commission,

303 post a bond with the commission in accordance with Subsection (2)(f); or

304 (B) for a licensee that has posted a bond under this section with the commission,

305 increase the amount of the bond posted with the commission.

306 (f) (i) A bond required by Subsection (2)(e) shall be:

307 (A) executed by:

308 (I) for an applicant, the applicant as principal, with a corporate surety; or

309 (II) for a licensee, the licensee as principal, with a corporate surety; and

310 (B) payable to the commission conditioned upon the faithful performance of all of the
311 requirements of this chapter including:

312 (I) the payment of any tax under this chapter;

313 (II) the payment of any:

314 (Aa) penalty as provided in Section 59-1-401; or

315 (Bb) interest as provided in Section 59-1-402; or

316 (III) any other obligation of the:

317 (Aa) applicant under this chapter; or

318 (Bb) licensee under this chapter.

319 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
320 amount of a bond required by Subsection (2)(e) on the basis of:

321 (A) commission estimates of:

322 (I) an applicant's tax liability under this chapter; or

323 (II) a licensee's tax liability under this chapter; and

324 (B) any amount of a delinquency described in Subsection (2)(f)(iii).

325 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
326 (2)(f)(ii)(B):

327 (A) for an applicant, the amount of the delinquency is the sum of:

328 (I) the amount of any delinquency that served as a basis for revoking the license under
329 this section of:

330 (Aa) the applicant;

331 (Bb) a fiduciary of the applicant; or

332 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
333 collect, truthfully account for, and pay over a tax under this chapter; or

334 (II) the amount of tax that any of the following owe under this chapter:

335 (Aa) the applicant;

336 (Bb) a fiduciary of the applicant; and

337 (Cc) a person for which the applicant or the fiduciary of the applicant is required to

338 collect, truthfully account for, and pay over a tax under this chapter; or
339 (B) for a licensee, the amount of the delinquency is the sum of:
340 (I) the amount of any delinquency that served as a basis for revoking the license under
341 this section of:
342 (Aa) the licensee;
343 (Bb) a fiduciary of the licensee; or
344 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
345 collect, truthfully account for, and pay over a tax under this chapter; or
346 (II) the amount of tax that any of the following owe under this chapter:
347 (Aa) the licensee;
348 (Bb) a fiduciary of the licensee; and
349 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
350 collect, truthfully account for, and pay over a tax under this chapter.
351 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
352 (2)(e) may not:
353 (A) be less than [~~\$50,000~~] \$25,000; or
354 (B) exceed \$500,000.
355 (g) If business is transacted at two or more separate places by one person, a separate
356 license for each place of business is required.
357 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
358 license of any licensee violating any provisions of this chapter.
359 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the
360 licensee has complied with the requirements of this chapter, including:
361 (A) paying any:
362 (I) tax due under this chapter;
363 (II) penalty as provided in Section 59-1-401; or
364 (III) interest as provided in Section 59-1-402; and
365 (B) posting a bond in accordance with Subsections (2)(e) and (f).

366 (i) Any person required to collect a tax under this chapter within this state without
367 having secured a license to do so is guilty of a criminal violation as provided in Section
368 59-1-401.

369 (j) A license:

370 (i) is not required for any person engaged exclusively in the business of selling
371 commodities that are exempt from taxation under this chapter; and

372 (ii) shall be issued to the person by the commission without a license fee.

373 (3) (a) For the purpose of the proper administration of this chapter and to prevent
374 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
375 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
376 delivery in this state is sold for storage, use, or other consumption in this state unless the
377 person selling the property, item, or service has taken from the purchaser an exemption
378 certificate:

379 (i) bearing the name and address of the purchaser; and

380 (ii) providing that the property, item, or service was exempted under Section
381 59-12-104.

382 (b) An exemption certificate described in Subsection (3)(a):

383 (i) shall contain information as prescribed by the commission; and

384 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.

385 (c) Except as provided in Subsection (3)(d), a seller that has taken an exemption
386 certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction
387 is not liable to collect a tax under this chapter:

388 (i) on that transaction; and

389 (ii) if the commission or a court of competent jurisdiction subsequently determines that
390 the purchaser improperly claimed the exemption.

391 (d) Notwithstanding Subsection (3)(c), Subsection (3)(c) does not apply to a seller that:

392 (i) fraudulently fails to collect a tax under this chapter; or

393 (ii) solicits a purchaser to participate in improperly claiming an exemption from a tax

394 under this chapter.

395 (4) A person filing a contract bid with the state or a political subdivision of the state for
396 the sale of tangible personal property or any other taxable transaction under Subsection
397 59-12-103(1) shall include with the bid the number of the license issued to that person under
398 Subsection (2).

399 Section 3. Section **59-13-203.1** is amended to read:

400 **59-13-203.1. Definitions -- License requirements -- Penalty -- Application process**
401 **and requirements -- Fee not required -- Bonds.**

402 (1) As used in this section:

403 [~~(a) "agent" means a person that:~~]

404 [~~(i) remits a tax under this part for:~~]

405 [~~(A) an applicant; or~~]

406 [~~(B) a licensee; and~~]

407 [~~(ii) in accordance with an agreement between the person and the applicant or licensee~~
408 ~~described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over a~~
409 ~~tax under this part for the:]~~

410 [~~(A) applicant; or~~]

411 [~~(B) licensee;]~~

412 [~~(b)~~] (a) "applicant" means a person that:

413 (i) is required by this section to obtain a license; and

414 (ii) submits an application:

415 (A) to the commission; and

416 (B) for a license under this section;

417 [~~(c)~~] (b) "application" means an application for a license under this section;

418 [~~(d)~~] (c) "fiduciary of the applicant" means a person that:

419 (i) is required to collect, truthfully account for, and pay over a tax under this part for an
420 applicant; and

421 [~~(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and]~~

422 ~~[(iii)]~~ (ii) (A) is a corporate officer of the applicant described in Subsection
423 (1)~~[(d)]~~(c)(i);
424 (B) is a director of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
425 (C) is an employee of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
426 (D) is a partner of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
427 (E) is a trustee of the applicant described in Subsection (1)~~[(d)]~~(c)(i); or
428 (F) has a relationship to the applicant described in Subsection (1)~~[(d)]~~(c)(i) that is
429 similar to a relationship described in Subsections (1)~~[(d)]~~(iii)](c)(ii)(A) through (E) as
430 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
431 Administrative Rulemaking Act;

432 ~~[(e)]~~ (d) "fiduciary of the licensee" means a person that:
433 (i) is required to collect, truthfully account for, and pay over a tax under this part for a
434 licensee; and

435 ~~[(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and]~~
436 ~~[(iii)]~~ (ii) (A) is a corporate officer of the licensee described in Subsection
437 (1)~~[(e)]~~(d)(i);
438 (B) is a director of the licensee described in Subsection (1)~~[(e)]~~(d)(i);
439 (C) is an employee of the licensee described in Subsection (1)~~[(e)]~~(d)(i);
440 (D) is a partner of the licensee described in Subsection (1)~~[(e)]~~(d)(i);
441 (E) is a trustee of the licensee described in Subsection (1)~~[(e)]~~(d)(i); or
442 (F) has a relationship to the licensee described in Subsection (1)~~[(e)]~~(d)(i) that is
443 similar to a relationship described in Subsections (1)~~[(e)]~~(iii)](d)(ii)(A) through (E) as
444 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
445 Administrative Rulemaking Act;

446 ~~[(f)]~~ (e) "license" means a license under this section; and
447 ~~[(g)]~~ (f) "licensee" means a person that is licensed under this section by the
448 commission.

449 (2) A person that is required to collect a tax under this part is guilty of a criminal

450 violation as provided in Section 59-1-401 if before obtaining a license under this section that
451 person engages in business within the state.

452 (3) The license described in Subsection (2):

453 (a) shall be granted and issued:

454 (i) by the commission in accordance with this section;

455 (ii) without a license fee; and

456 (iii) if:

457 (A) an applicant:

458 (I) states the applicant's name and address in the application; and

459 (II) provides other information in the application that the commission may require; and

460 (B) the person meets the requirements of this section to be granted a license as

461 determined by the commission;

462 (b) may not be assigned to another person; and

463 (c) is valid:

464 (i) only for the person named on the license; and

465 (ii) until:

466 (A) the person described in Subsection (3)(c)(i):

467 (I) ceases to do business; or

468 (II) changes that person's business address; or

469 (B) the commission revokes the license.

470 (4) The commission shall review an application and determine whether the applicant

471 meets the requirements of this section to be issued a license.

472 (5) (a) An applicant shall post a bond with the commission before the commission may
473 issue the applicant a license.

474 (b) If the commission determines it is necessary to ensure compliance with this part,
475 the commission may require a licensee to increase the amount of a bond posted with the
476 commission.

477 (c) A bond under this Subsection (5) shall be:

- 478 (i) executed by:
- 479 (A) for an applicant, the applicant as principal, with a corporate surety; or
- 480 (B) for a licensee, the licensee as principal, with a corporate surety; and
- 481 (ii) payable to the commission conditioned upon the faithful performance of all of the
- 482 requirements of this part including:
- 483 (A) the payment of all taxes under this part;
- 484 (B) the payment of any:
- 485 (I) penalty as provided in Section 59-1-401; or
- 486 (II) interest as provided in Section 59-1-402; or
- 487 (C) any other obligation of the:
- 488 (I) applicant under this part; or
- 489 (II) licensee under this part.
- 490 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
- 491 of a bond under this Subsection (5) on the basis of:
- 492 (i) commission estimates of:
- 493 (A) an applicant's tax liability under this part; or
- 494 (B) a licensee's tax liability under this part; and
- 495 (ii) the amount of a delinquency described in Subsection (5)(e) if:
- 496 (A) a license under this section was revoked for a delinquency under this part for:
- 497 (I) (Aa) an applicant; or
- 498 (Bb) a licensee;
- 499 (II) a fiduciary of the:
- 500 (Aa) applicant; or
- 501 (Bb) licensee; or
- 502 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
- 503 of the licensee is required to collect, truthfully account for, and pay over a tax under this part;
- 504 or
- 505 (B) there is a delinquency in paying a tax under this part for:

506 (I) (Aa) an applicant; or
507 (Bb) a licensee;
508 (II) a fiduciary of the:
509 (Aa) applicant; or
510 (Bb) licensee; or
511 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
512 of the licensee is required to collect, truthfully account for, and pay over a tax under this part.
513 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
514 (i) for an applicant, the amount of the delinquency is the sum of:
515 (A) the amount of any delinquency that served as a basis for revoking the license under
516 this section of:
517 (I) the applicant;
518 (II) a fiduciary of the applicant; or
519 (III) a person for which the applicant or the fiduciary of the applicant is required to
520 collect, truthfully account for, and pay over a tax under this part; or
521 (B) the amount of tax that any of the following owe under this part:
522 (I) the applicant;
523 (II) a fiduciary of the applicant; and
524 (III) a person for which the applicant or the fiduciary of the applicant is required to
525 collect, truthfully account for, and pay over a tax under this part; or
526 (ii) for a licensee, the amount of the delinquency is the sum of:
527 (A) the amount of any delinquency that served as a basis for revoking the license under
528 this section of:
529 (I) the licensee;
530 (II) a fiduciary of the licensee; or
531 (III) a person for which the licensee or the fiduciary of the licensee is required to
532 collect, truthfully account for, and pay over a tax under this part; or
533 (B) the amount of tax that any of the following owe under this part:

534 (I) the licensee;
 535 (II) a fiduciary of the licensee; and
 536 (III) a person for which the licensee or the fiduciary of the licensee is required to
 537 collect, truthfully account for, and pay over a tax under this part.

538 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)
 539 may not:

540 (i) be less than [~~\$50,000~~] \$10,000; or

541 (ii) exceed \$500,000.

542 (g) A bond required by this section may be combined into one bond with any other
 543 bond required by this chapter.

544 (6) (a) The commission shall revoke a license under this section if:

545 (i) a licensee violates any provision of this part; and

546 (ii) before the commission revokes the license the commission provides the licensee:

547 (A) reasonable notice; and

548 (B) a hearing.

549 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),
 550 the commission may not issue another license to that licensee until that licensee complies with
 551 the requirements of this part, including:

552 (i) paying any:

553 (A) tax due under this part;

554 (B) penalty as provided in Section 59-1-401; or

555 (C) interest as provided in Section 59-1-402; and

556 (ii) posting a bond in accordance with Subsection (5).

557 Section 4. Section **59-13-302** is amended to read:

558 **59-13-302. Definitions -- License requirements -- Penalty -- Application process**
 559 **and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon**
 560 **property.**

561 (1) As used in this section:

562 ~~[(a) "agent" means a person that:]~~
 563 ~~[(i) remits any amounts under this part for:]~~
 564 ~~[(A) an applicant; or]~~
 565 ~~[(B) a licensee; and]~~
 566 ~~[(ii) in accordance with an agreement between the person and the applicant or licensee~~
 567 ~~described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an~~
 568 ~~amount under this part for the:]~~
 569 ~~[(A) applicant; or]~~
 570 ~~[(B) licensee;]~~
 571 ~~[(b)]~~ (a) "applicant" means a person that:
 572 (i) is required by this section to obtain a license; and
 573 (ii) submits an application:
 574 (A) to the commission; and
 575 (B) for a license under this section;
 576 ~~[(c)]~~ (b) "application" means an application for a license under this section;
 577 ~~[(d)]~~ (c) "fiduciary of the applicant" means a person that:
 578 (i) is required to collect, truthfully account for, and pay over an amount under this part
 579 for an applicant; and
 580 ~~[(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and]~~
 581 ~~[(iii)]~~ (ii) (A) is a corporate officer of the applicant described in Subsection
 582 (1)~~[(d)]~~(c)(i);
 583 (B) is a director of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 584 (C) is an employee of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 585 (D) is a partner of the applicant described in Subsection (1)~~[(d)]~~(c)(i);
 586 (E) is a trustee of the applicant described in Subsection (1)~~[(d)]~~(c)(i); or
 587 (F) has a relationship to the applicant described in Subsection (1)~~[(d)]~~(c)(i) that is
 588 similar to a relationship described in Subsections (1)~~[(d)]~~(iii)~~[(c)]~~(ii)(A) through (E) as
 589 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah

590 Administrative Rulemaking Act;

591 ~~[(e)]~~ (d) "fiduciary of the licensee" means a person that:

592 (i) is required to collect, truthfully account for, and pay over an amount under this part
593 for a licensee; and

594 ~~[(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and]~~

595 ~~[(iii)]~~ (ii) (A) is a corporate officer of the licensee described in Subsection
596 (1)~~[(e)]~~(d)(i);

597 (B) is a director of the licensee described in Subsection (1)~~[(e)]~~(d)(i);

598 (C) is an employee of the licensee described in Subsection (1)~~[(e)]~~(d)(i);

599 (D) is a partner of the licensee described in Subsection (1)~~[(e)]~~(d)(i);

600 (E) is a trustee of the licensee described in Subsection (1)~~[(e)]~~(d)(i); or

601 (F) has a relationship to the licensee described in Subsection (1)~~[(e)]~~(d)(i) that is

602 similar to a relationship described in Subsections (1)~~[(e)(iii)]~~(d)(ii)(A) through (E) as

603 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah

604 Administrative Rulemaking Act;

605 ~~[(f)]~~ (e) "license" means a license under this section; and

606 ~~[(g)]~~ (f) "licensee" means a person that is licensed under this section by the
607 commission.

608 (2) A person that is required to collect an amount under this part is guilty of a criminal
609 violation as provided in Section 59-1-401 if before obtaining a license under this section that
610 person engages in business within the state.

611 (3) The license described in Subsection (2):

612 (a) shall be granted and issued:

613 (i) by the commission in accordance with this section;

614 (ii) without a license fee; and

615 (iii) if:

616 (A) an applicant:

617 (I) states the applicant's name and address in the application; and

618 (II) provides other information in the application that the commission may require; and

619 (B) the person meets the requirements of this section to be granted a license as

620 determined by the commission;

621 (b) may not be assigned to another person; and

622 (c) is valid:

623 (i) only for the person named on the license; and

624 (ii) until:

625 (A) the person described in Subsection (3)(c)(i):

626 (I) ceases to do business; or

627 (II) changes that person's business address; or

628 (B) the commission revokes the license.

629 (4) The commission shall review an application and determine whether the applicant

630 meets the requirements of this section to be issued a license.

631 (5) (a) An applicant shall post a bond with the commission before the commission may

632 issue the applicant a license.

633 (b) If the commission determines it is necessary to ensure compliance with this part,

634 the commission may require a licensee to increase the amount of a bond posted with the

635 commission.

636 (c) A bond under this Subsection (5) shall be:

637 (i) executed by:

638 (A) for an applicant, the applicant as principal, with a corporate surety; or

639 (B) for a licensee, the licensee as principal, with a corporate surety; and

640 (ii) payable to the commission conditioned upon the faithful performance of all of the

641 requirements of this part including:

642 (A) the payment of all amounts under this part;

643 (B) the payment of any:

644 (I) penalty as provided in Section 59-1-401; or

645 (II) interest as provided in Section 59-1-402; or

- 646 (C) any other obligation of the:
- 647 (I) applicant under this part; or
- 648 (II) licensee under this part.
- 649 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
- 650 of a bond under this Subsection (5) on the basis of:
- 651 (i) commission estimates of:
- 652 (A) an applicant's liability for any amount under this part; or
- 653 (B) a licensee's liability for any amount under this part; and
- 654 (ii) the amount of a delinquency described in Subsection (5)(e) if:
- 655 (A) a license under this section was revoked for a delinquency under this part for:
- 656 (I) (Aa) an applicant; or
- 657 (Bb) a licensee;
- 658 (II) a fiduciary of the:
- 659 (Aa) applicant; or
- 660 (Bb) licensee; or
- 661 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
- 662 of the licensee is required to collect, truthfully account for, and pay over an amount under this
- 663 part; or
- 664 (B) there is a delinquency in paying an amount under this part for:
- 665 (I) (Aa) an applicant; or
- 666 (Bb) a licensee;
- 667 (II) a fiduciary of the:
- 668 (Aa) applicant; or
- 669 (Bb) licensee; or
- 670 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
- 671 of the licensee is required to collect, truthfully account for, and pay over an amount under this
- 672 part.
- 673 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):

674 (i) for an applicant, the amount of the delinquency is the sum of:
675 (A) the amount of any delinquency that served as a basis for revoking the license under
676 this section of:
677 (I) the applicant;
678 (II) a fiduciary of the applicant; or
679 (III) a person for which the applicant or the fiduciary of the applicant is required to
680 collect, truthfully account for, and pay over an amount under this part; or
681 (B) the amount that any of the following owe under this part:
682 (I) the applicant;
683 (II) a fiduciary of the applicant; and
684 (III) a person for which the applicant or the fiduciary of the applicant is required to
685 collect, truthfully account for, and pay over an amount under this part; or
686 (ii) for a licensee, the amount of the delinquency is the sum of:
687 (A) the amount of any delinquency that served as a basis for revoking the license under
688 this section of:
689 (I) the licensee;
690 (II) a fiduciary of the licensee; or
691 (III) a person for which the licensee or the fiduciary of the licensee is required to
692 collect, truthfully account for, and pay over an amount under this part; or
693 (B) the amount that any of the following owe under this part:
694 (I) the licensee;
695 (II) a fiduciary of the licensee; and
696 (III) a person for which the licensee or the fiduciary of the licensee is required to
697 collect, truthfully account for, and pay over an amount under this part.
698 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)
699 may not:
700 (i) be less than [~~\$50,000~~] \$10,000; or
701 (ii) exceed \$500,000.

702 (g) A bond required by this section may be combined into one bond with any other
703 bond required by this chapter.

704 (6) (a) The commission shall revoke a license under this section if:

705 (i) a licensee violates any provision of this part; and

706 (ii) before the commission revokes the license the commission provides the licensee:

707 (A) reasonable notice; and

708 (B) a hearing.

709 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),

710 the commission may not issue another license to that licensee until that licensee complies with

711 the requirements of this part, including:

712 (i) paying any:

713 (A) amounts due under this part;

714 (B) penalty as provided in Section 59-1-401; or

715 (C) interest as provided in Section 59-1-402; and

716 (ii) posting a bond in accordance with Subsection (5).

717 (7) (a) If any person ceases to be a supplier within the state by reason of the

718 discontinuance, sale, or transfer of the person's business, the supplier shall notify the

719 commission in writing at the time the discontinuance, sale, or transfer takes effect.

720 (b) The notice shall give the date of discontinuance and, in the event of a sale, the date

721 of the sale and the name and address of the purchaser or transferee.

722 (c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale,

723 or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

724 (d) The supplier shall make a report and pay all taxes, interest, and penalties and

725 surrender to the commission the license certificate that was issued to the supplier by the

726 commission.

727 (8) (a) The tax imposed by this part shall be a lien upon the property of any supplier

728 liable for an amount of tax that is required to be collected, if the supplier sells the business,

729 stock of goods, or quits business, and if the supplier fails to make a final return and payment

730 within 15 days after the date of selling or quitting business.

731 (b) The successor or assigns, if any, shall be required to withhold a sufficient amount
732 of the purchase money to cover the amount of the taxes that are required to be collected and
733 interest or penalties due and paid under Sections 59-1-401 and 59-1-402 until the former owner
734 produces a receipt from the commission showing that the taxes have been paid or a certificate
735 stating that no amount of tax is due. If the purchaser of a business or stock of goods fails to
736 withhold sufficient purchase money, the purchaser shall be personally liable for the payment of
737 the amount that is due.

738 Section 5. Section **59-13-403** is amended to read:

739 **59-13-403. Administration and penalties -- Bond requirements.**

740 (1) All administrative and penalty provisions of Part 2, Motor Fuel, apply to the
741 administration of Part 4, Aviation Fuel.

742 (2) ~~[(a)]~~ Notwithstanding Subsection (1) ~~[and Subsection 59-13-203(3), and except as~~
743 ~~provided in Subsection (2)(b), the bond may not be less than \$2,000. (b) A],~~ a distributor is not
744 required to furnish a bond if the distributor:

745 ~~[(i)]~~ (a) meets the definition of distributor under Subsection 59-13-102(5)(d); and

746 ~~[(ii)]~~ (b) has an average tax liability of \$500 or less per month.