

**STATE TAX COMMISSION BONDING AND
LICENSING AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ repeals definitions relating to an agent for purposes of bonding and licensing with the State Tax Commission;
- ▶ repeals provisions relating to an agent for purposes of bonding requirements with the State Tax Commission and calculating the amount of a bond;
- ▶ reduces the minimum amount of a bond for purposes of certain taxes;
- ▶ repeals language establishing the minimum amount of a bond for purposes of the aviation fuel tax;
- ▶ repeals obsolete language; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **59-10-405.5**, as enacted by Chapter 198, Laws of Utah 2005
- 29 **59-12-106**, as last amended by Chapter 198, Laws of Utah 2005
- 30 **59-13-203.1**, as enacted by Chapter 198, Laws of Utah 2005
- 31 **59-13-302**, as last amended by Chapter 198, Laws of Utah 2005
- 32 **59-13-403**, as last amended by Chapter 179, Laws of Utah 1999



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

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

36 **59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --**

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

38 (1) As used in this section:

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

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

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

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

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

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

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

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

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

50 (ii) submits an application:

51 (A) to the commission; and

52 (B) for a license under this section;

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

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

55 (i) is required to collect, truthfully account for, and pay over an amount under this part
56 for an applicant; and

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

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

59 (1)~~(d)~~(c)(i);
 60 (B) is a director of the applicant described in Subsection (1)~~(d)~~(c)(i);
 61 (C) is an employee of the applicant described in Subsection (1)~~(d)~~(c)(i);
 62 (D) is a partner of the applicant described in Subsection (1)~~(d)~~(c)(i);
 63 (E) is a trustee of the applicant described in Subsection (1)~~(d)~~(c)(i); or
 64 (F) has a relationship to the applicant described in Subsection (1)~~(d)~~(c)(i) that is
 65 similar to a relationship described in Subsections (1)~~(d)~~(iii)(c)(ii)(A) through (E) as
 66 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
 67 Administrative Rulemaking Act;

68 ~~(e)~~ (d) "fiduciary of the licensee" means a person that:
 69 (i) is required to collect, truthfully account for, and pay over an amount under this part
 70 for a licensee; and

71 ~~(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and~~
 72 ~~(iii)~~ (ii) (A) is a corporate officer of the licensee described in Subsection
 73 (1)~~(e)~~(d)(i);

74 (B) is a director of the licensee described in Subsection (1)~~(e)~~(d)(i);
 75 (C) is an employee of the licensee described in Subsection (1)~~(e)~~(d)(i);
 76 (D) is a partner of the licensee described in Subsection (1)~~(e)~~(d)(i);
 77 (E) is a trustee of the licensee described in Subsection (1)~~(e)~~(d)(i); or
 78 (F) has a relationship to the licensee described in Subsection (1)~~(e)~~(d)(i) that is
 79 similar to a relationship described in Subsections (1)~~(e)~~(iii)(d)(ii)(A) through (E) as
 80 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
 81 Administrative Rulemaking Act;

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

85 (2) The following persons are guilty of a criminal violation as provided in Section
 86 59-1-401:

87 (a) a person that:
 88 (i) is required to withhold, report, or remit any amounts under this part; and
 89 (ii) engages in business within the state before obtaining a license under this section; or

- 90 (b) a person that:
- 91 (i) pays wages under this part; and
- 92 (ii) engages in business within the state before obtaining a license under this section[;
- 93 or].
- 94 [~~(c) an agent that:~~
- 95 [~~(i) is required to withhold, report, or remit any amounts under this part; and]~~
- 96 [~~(ii) takes the action described in Subsection (2)(c)(i) before obtaining a license under~~
- 97 ~~this section.]~~
- 98 (3) The license described in Subsection (2):
- 99 (a) shall be granted and issued:
- 100 (i) by the commission in accordance with this section;
- 101 (ii) without a license fee; and
- 102 (iii) if:
- 103 (A) an applicant:
- 104 (I) states the applicant's name and address in the application; and
- 105 (II) provides other information in the application that the commission may require; and
- 106 (B) the person meets the requirements of this section to be granted a license as
- 107 determined by the commission;
- 108 (b) may not be assigned to another person; and
- 109 (c) is valid:
- 110 (i) only for the person named on the license; and
- 111 (ii) until:
- 112 (A) the person described in Subsection (3)(c)(i):
- 113 (I) ceases to do business; or
- 114 (II) changes that person's business address; or
- 115 (B) the commission revokes the license.
- 116 (4) The commission shall review an application and determine whether:
- 117 (a) the applicant meets the requirements of this section to be issued a license; and
- 118 (b) a bond is required to be posted with the commission in accordance with
- 119 Subsections (5) and (6) before the applicant may be issued a license.
- 120 (5) (a) An applicant shall post a bond with the commission before the commission may

121 issue the applicant a license if:

122 (i) a license under this section was revoked for a delinquency under this part for:

123 (A) the applicant;

124 (B) a fiduciary of the applicant; or

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

127 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
128 part for:

129 (A) an applicant;

130 (B) a fiduciary of the applicant; or

131 (C) a person for which the applicant or the fiduciary of the applicant is required to
132 collect, truthfully account for, and pay over an amount under this part.

133 (b) If the commission determines it is necessary to ensure compliance with this part,
134 the commission may require a licensee to:

135 (i) for a licensee that has not posted a bond under this section with the commission,
136 post a bond with the commission in accordance with Subsection (6); or

137 (ii) for a licensee that has posted a bond under this section with the commission,
138 increase the amount of the bond posted with the commission.

139 ~~[(c) An agent shall post a bond with the commission before the commission may issue
140 the agent a license under this section.]~~

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

142 (i) executed by:

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

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

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

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

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

149 (B) the payment of any:

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

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

152 (C) any other obligation of the:
153 (I) applicant under this part; or
154 (II) licensee under this part[~~;~~or].
155 [~~(III) agent under this part.~~]
156 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount
157 of a bond required by Subsection (5) on the basis of:
158 (i) commission estimates of:
159 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this
160 part; or
161 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this
162 part; [~~or~~] and
163 [~~(C) for an agent, any amounts the agent withholds, reports, or remits under this part;~~
164 ~~and~~]
165 (ii) any amount of a delinquency described in Subsection (6)(c).
166 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
167 (i) for an applicant, the amount of the delinquency is the sum of:
168 (A) the amount of any delinquency that served as a basis for revoking the license under
169 this section of:
170 (I) the applicant;
171 (II) a fiduciary of the applicant; or
172 (III) a person for which the applicant or the fiduciary of the applicant is required to
173 collect, truthfully account for, and pay over an amount under this part; or
174 (B) the amount that any of the following owe under this part:
175 (I) the applicant;
176 (II) a fiduciary of the applicant; and
177 (III) a person for which the applicant or the fiduciary of the applicant is required to
178 collect, truthfully account for, and pay over an amount under this part; or
179 (ii) for a licensee, the amount of the delinquency is the sum of:
180 (A) the amount of any delinquency that served as a basis for revoking the license under
181 this section of:
182 (I) the licensee;

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

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

187 (I) the licensee;

188 (II) a fiduciary of the licensee; and

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

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

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

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

195 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may
 196 not:

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

198 (ii) exceed \$500,000.

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

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

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

202 (A) reasonable notice; and

203 (B) a hearing.

204 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),
 205 the commission may not issue another license to that licensee until that licensee complies with
 206 the requirements of this part, including:

207 (i) paying any:

208 (A) amounts due under this part;

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

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

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

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

213 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**

214 Application process and requirements -- No fee -- Bonds -- Presumption of taxability --
215 Exemption certificates -- Exemption certificate license number to accompany contract
216 bids.

217 (1) As used in this section:

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

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

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

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

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

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

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

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

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

229 (ii) submits an application:

230 (A) to the commission; and

231 (B) for a license under this section;

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

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

234 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
235 for an applicant; and

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

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

238 (1)[~~(d)~~](c)(i);

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

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

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

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

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

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

245 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
 246 Administrative Rulemaking Act;

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

248 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
 249 for a licensee; and

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

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

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

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

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

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

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

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

259 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
 260 Administrative Rulemaking Act;

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

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

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

266 (b) The license described in Subsection (2)(a):

267 (i) shall be granted and issued by the commission;

268 (ii) is not assignable;

269 (iii) is valid only for the person in whose name the license is issued;

270 (iv) is valid until:

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

272 (I) ceases to do business; or

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

274 (B) the license is revoked by the commission; and

275 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an

276 application that:

277 (A) states the name and address of the applicant; and

278 (B) provides other information the commission may require.

279 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
280 commission shall notify the applicant of the responsibilities and liability of a business owner
281 successor under Section 59-12-112.

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

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

284 (ii) is required to post a bond with the commission in accordance with Subsections
285 (2)(e) and (f) before the applicant may be issued a license.

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

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

289 (I) the applicant;

290 (II) a fiduciary of the applicant; or

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

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

294 (I) the applicant;

295 (II) a fiduciary of the applicant; or

296 (III) a person for which the applicant or the fiduciary of the applicant is required to
297 collect, truthfully account for, and pay over a tax under this chapter.

298 (ii) If the commission determines it is necessary to ensure compliance with this
299 chapter, the commission may require a licensee to:

300 (A) for a licensee that has not posted a bond under this section with the commission,
301 post a bond with the commission in accordance with Subsection (2)(f); or

302 (B) for a licensee that has posted a bond under this section with the commission,
303 increase the amount of the bond posted with the commission.

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

305 (A) executed by:

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

- 307 (II) for a licensee, the licensee as principal, with a corporate surety; and
- 308 (B) payable to the commission conditioned upon the faithful performance of all of the
- 309 requirements of this chapter including:
 - 310 (I) the payment of any tax under this chapter;
 - 311 (II) the payment of any:
 - 312 (Aa) penalty as provided in Section 59-1-401; or
 - 313 (Bb) interest as provided in Section 59-1-402; or
 - 314 (III) any other obligation of the:
 - 315 (Aa) applicant under this chapter; or
 - 316 (Bb) licensee under this chapter.
- 317 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
- 318 amount of a bond required by Subsection (2)(e) on the basis of:
 - 319 (A) commission estimates of:
 - 320 (I) an applicant's tax liability under this chapter; or
 - 321 (II) a licensee's tax liability under this chapter; and
 - 322 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
 - 323 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
 - 324 (2)(f)(ii)(B):
 - 325 (A) for an applicant, the amount of the delinquency is the sum of:
 - 326 (I) the amount of any delinquency that served as a basis for revoking the license under
 - 327 this section of:
 - 328 (Aa) the applicant;
 - 329 (Bb) a fiduciary of the applicant; or
 - 330 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
 - 331 collect, truthfully account for, and pay over a tax under this chapter; or
 - 332 (II) the amount of tax that any of the following owe under this chapter:
 - 333 (Aa) the applicant;
 - 334 (Bb) a fiduciary of the applicant; and
 - 335 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
 - 336 collect, truthfully account for, and pay over a tax under this chapter; or
 - 337 (B) for a licensee, the amount of the delinquency is the sum of:

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

340 (Aa) the licensee;

341 (Bb) a fiduciary of the licensee; or

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

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

345 (Aa) the licensee;

346 (Bb) a fiduciary of the licensee; and

347 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
348 collect, truthfully account for, and pay over a tax under this chapter.

349 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
350 (2)(e) may not:

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

352 (B) exceed \$500,000.

353 (g) If business is transacted at two or more separate places by one person, a separate
354 license for each place of business is required.

355 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
356 license of any licensee violating any provisions of this chapter.

357 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the
358 licensee has complied with the requirements of this chapter, including:

359 (A) paying any:

360 (I) tax due under this chapter;

361 (II) penalty as provided in Section 59-1-401; or

362 (III) interest as provided in Section 59-1-402; and

363 (B) posting a bond in accordance with Subsections (2)(e) and (f).

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

367 (j) A license:

368 (i) is not required for any person engaged exclusively in the business of selling

369 commodities that are exempt from taxation under this chapter; and

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

371 (3) (a) For the purpose of the proper administration of this chapter and to prevent

372 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal

373 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for

374 delivery in this state is sold for storage, use, or other consumption in this state unless the

375 person selling the property, item, or service has taken from the purchaser an exemption

376 certificate:

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

378 (ii) providing that the property, item, or service was exempted under Section

379 59-12-104.

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

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

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

383 (c) Except as provided in Subsection (3)(d), a seller that has taken an exemption

384 certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction

385 is not liable to collect a tax under this chapter:

386 (i) on that transaction; and

387 (ii) if the commission or a court of competent jurisdiction subsequently determines that

388 the purchaser improperly claimed the exemption.

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

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

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

392 under this chapter.

393 (4) A person filing a contract bid with the state or a political subdivision of the state for

394 the sale of tangible personal property or any other taxable transaction under Subsection

395 59-12-103(1) shall include with the bid the number of the license issued to that person under

396 Subsection (2).

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

398 **59-13-203.1. Definitions -- License requirements -- Penalty -- Application process**

399 **and requirements -- Fee not required -- Bonds.**

400 (1) As used in this section:

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

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

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

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

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

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

407 tax under this part for the:]

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

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

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

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

412 (ii) submits an application:

413 (A) to the commission; and

414 (B) for a license under this section;

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

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

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

418 applicant; and

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

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

421 (1)[~~(d)~~](c)(i);

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

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

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

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

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

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

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

429 Administrative Rulemaking Act;

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

431 (i) is required to collect, truthfully account for, and pay over a tax under this part for a
 432 licensee; and

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

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

435 (1)[~~(e)~~](d)(i);

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

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

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

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

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

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

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

443 Administrative Rulemaking Act;

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

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

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

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

451 (a) shall be granted and issued:

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

453 (ii) without a license fee; and

454 (iii) if:

455 (A) an applicant:

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

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

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

459 determined by the commission;

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

461 (c) is valid:

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

463 (ii) until:

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

465 (I) ceases to do business; or

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

467 (B) the commission revokes the license.

468 (4) The commission shall review an application and determine whether the applicant
469 meets the requirements of this section to be issued a license.

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

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

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

476 (i) executed by:

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

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

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

481 (A) the payment of all taxes under this part;

482 (B) the payment of any:

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

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

485 (C) any other obligation of the:

486 (I) applicant under this part; or

487 (II) licensee under this part.

488 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
489 of a bond under this Subsection (5) on the basis of:

490 (i) commission estimates of:

491 (A) an applicant's tax liability under this part; or

492 (B) a licensee's tax liability under this part; and

493 (ii) the amount of a delinquency described in Subsection (5)(e) if:
494 (A) a license under this section was revoked for a delinquency under this part for:
495 (I) (Aa) an applicant; or
496 (Bb) a licensee;
497 (II) a fiduciary of the:
498 (Aa) applicant; or
499 (Bb) licensee; or
500 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
501 of the licensee is required to collect, truthfully account for, and pay over a tax under this part;
502 or

503 (B) there is a delinquency in paying a tax under this part for:
504 (I) (Aa) an applicant; or
505 (Bb) a licensee;
506 (II) a fiduciary of the:
507 (Aa) applicant; or
508 (Bb) licensee; or
509 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
510 of the licensee is required to collect, truthfully account for, and pay over a tax under this part.

511 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
512 (i) for an applicant, the amount of the delinquency is the sum of:
513 (A) the amount of any delinquency that served as a basis for revoking the license under
514 this section of:

515 (I) the applicant;
516 (II) a fiduciary of the applicant; or
517 (III) a person for which the applicant or the fiduciary of the applicant is required to
518 collect, truthfully account for, and pay over a tax under this part; or

519 (B) the amount of tax that any of the following owe under this part:
520 (I) the applicant;
521 (II) a fiduciary of the applicant; and
522 (III) a person for which the applicant or the fiduciary of the applicant is required to
523 collect, truthfully account for, and pay over a tax under this part; or

524 (ii) for a licensee, the amount of the delinquency is the sum of:
525 (A) the amount of any delinquency that served as a basis for revoking the license under
526 this section of:
527 (I) the licensee;
528 (II) a fiduciary of the licensee; or
529 (III) a person for which the licensee or the fiduciary of the licensee is required to
530 collect, truthfully account for, and pay over a tax under this part; or
531 (B) the amount of tax that any of the following owe under this part:
532 (I) the licensee;
533 (II) a fiduciary of the licensee; and
534 (III) a person for which the licensee or the fiduciary of the licensee is required to
535 collect, truthfully account for, and pay over a tax under this part.
536 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)
537 may not:
538 (i) be less than [~~\$50,000~~] \$25,000; or
539 (ii) exceed \$500,000.
540 (6) (a) The commission shall revoke a license under this section if:
541 (i) a licensee violates any provision of this part; and
542 (ii) before the commission revokes the license the commission provides the licensee:
543 (A) reasonable notice; and
544 (B) a hearing.
545 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),
546 the commission may not issue another license to that licensee until that licensee complies with
547 the requirements of this part, including:
548 (i) paying any:
549 (A) tax due under this part;
550 (B) penalty as provided in Section 59-1-401; or
551 (C) interest as provided in Section 59-1-402; and
552 (ii) posting a bond in accordance with Subsection (5).
553 Section 4. Section **59-13-302** is amended to read:
554 **59-13-302. Definitions -- License requirements -- Penalty -- Application process**

555 **and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon**
 556 **property.**

557 (1) As used in this section:

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

559 [~~(i)~~ remits any amounts under this part for:]

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

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

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

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

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

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

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

569 (ii) submits an application:

570 (A) to the commission; and

571 (B) for a license under this section;

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

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

574 (i) is required to collect, truthfully account for, and pay over an amount under this part
 575 for an applicant; and

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

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

578 (1)[~~(d)~~](c)(i);

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

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

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

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

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

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

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

586 Administrative Rulemaking Act;

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

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

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

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

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

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

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

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

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

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

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

600 Administrative Rulemaking Act;

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

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

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

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

608 (a) shall be granted and issued:

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

610 (ii) without a license fee; and

611 (iii) if:

612 (A) an applicant:

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

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

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

616 determined by the commission;

- 617 (b) may not be assigned to another person; and
- 618 (c) is valid:
- 619 (i) only for the person named on the license; and
- 620 (ii) until:
- 621 (A) the person described in Subsection (3)(c)(i):
- 622 (I) ceases to do business; or
- 623 (II) changes that person's business address; or
- 624 (B) the commission revokes the license.
- 625 (4) The commission shall review an application and determine whether the applicant
- 626 meets the requirements of this section to be issued a license.
- 627 (5) (a) An applicant shall post a bond with the commission before the commission may
- 628 issue the applicant a license.
- 629 (b) If the commission determines it is necessary to ensure compliance with this part,
- 630 the commission may require a licensee to increase the amount of a bond posted with the
- 631 commission.
- 632 (c) A bond under this Subsection (5) shall be:
- 633 (i) executed by:
- 634 (A) for an applicant, the applicant as principal, with a corporate surety; or
- 635 (B) for a licensee, the licensee as principal, with a corporate surety; and
- 636 (ii) payable to the commission conditioned upon the faithful performance of all of the
- 637 requirements of this part including:
- 638 (A) the payment of all amounts under this part;
- 639 (B) the payment of any:
- 640 (I) penalty as provided in Section 59-1-401; or
- 641 (II) interest as provided in Section 59-1-402; or
- 642 (C) any other obligation of the:
- 643 (I) applicant under this part; or
- 644 (II) licensee under this part.
- 645 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
- 646 of a bond under this Subsection (5) on the basis of:
- 647 (i) commission estimates of:

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

- 679 (II) a fiduciary of the applicant; and
- 680 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 681 collect, truthfully account for, and pay over an amount under this part; or
- 682 (ii) for a licensee, the amount of the delinquency is the sum of:
- 683 (A) the amount of any delinquency that served as a basis for revoking the license under
- 684 this section of:
- 685 (I) the licensee;
- 686 (II) a fiduciary of the licensee; or
- 687 (III) a person for which the licensee or the fiduciary of the licensee is required to
- 688 collect, truthfully account for, and pay over an amount under this part; or
- 689 (B) the amount that any of the following owe under this part:
- 690 (I) the licensee;
- 691 (II) a fiduciary of the licensee; and
- 692 (III) a person for which the licensee or the fiduciary of the licensee is required to
- 693 collect, truthfully account for, and pay over an amount under this part.
- 694 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)
- 695 may not:
- 696 (i) be less than [~~\$50,000~~] \$25,000; or
- 697 (ii) exceed \$500,000.
- 698 (6) (a) The commission shall revoke a license under this section if:
- 699 (i) a licensee violates any provision of this part; and
- 700 (ii) before the commission revokes the license the commission provides the licensee:
- 701 (A) reasonable notice; and
- 702 (B) a hearing.
- 703 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),
- 704 the commission may not issue another license to that licensee until that licensee complies with
- 705 the requirements of this part, including:
- 706 (i) paying any:
- 707 (A) amounts due under this part;
- 708 (B) penalty as provided in Section 59-1-401; or
- 709 (C) interest as provided in Section 59-1-402; and

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

711 (7) (a) If any person ceases to be a supplier within the state by reason of the
712 discontinuance, sale, or transfer of the person's business, the supplier shall notify the
713 commission in writing at the time the discontinuance, sale, or transfer takes effect.

714 (b) The notice shall give the date of discontinuance and, in the event of a sale, the date
715 of the sale and the name and address of the purchaser or transferee.

716 (c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale,
717 or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

718 (d) The supplier shall make a report and pay all taxes, interest, and penalties and
719 surrender to the commission the license certificate that was issued to the supplier by the
720 commission.

721 (8) (a) The tax imposed by this part shall be a lien upon the property of any supplier
722 liable for an amount of tax that is required to be collected, if the supplier sells the business,
723 stock of goods, or quits business, and if the supplier fails to make a final return and payment
724 within 15 days after the date of selling or quitting business.

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

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

733 **59-13-403. Administration and penalties -- Bond requirements.**

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

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

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

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

Legislative Review Note
as of 1-16-06 5:10 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel