

FUEL TAX BONDING REQUIREMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends the Motor Fuel part and the Special Fuel part to address bonding requirements.

Highlighted Provisions:

This bill:

- ▶ requires the State Tax Commission to determine whether an applicant for a license to collect a motor fuel tax or a special fuel tax is required to post a bond with the State Tax Commission before the applicant may be issued the license;
- ▶ provides the circumstances under which an applicant for a license to collect a motor fuel tax or a special fuel tax is required to post a bond with the State Tax Commission before the applicant may be issued the license;
- ▶ provides for the calculation of the amount of a bond if a bond is combined with another bond into one bond; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-13-203.1, as last amended by Chapter 322, Laws of Utah 2006

59-13-302, as last amended by Chapter 322, Laws of Utah 2006

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

Section 1. Section **59-13-203.1** is amended to read:

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

(1) As used in this section:

(a) "applicant" means a person that:

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

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

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

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

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

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

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

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

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

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

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

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

- 58 (B) is a director of the licensee described in Subsection (1)(d)(i);
- 59 (C) is an employee of the licensee described in Subsection (1)(d)(i);
- 60 (D) is a partner of the licensee described in Subsection (1)(d)(i);
- 61 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
- 62 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
- 63 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
- 64 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
- 65 Rulemaking Act;
- 66 (e) "license" means a license under this section; and
- 67 (f) "licensee" means a person that is licensed under this section by the commission.
- 68 (2) A person that is required to collect a tax under this part is guilty of a criminal
- 69 violation as provided in Section 59-1-401 if before obtaining a license under this section that
- 70 person engages in business within the state.
- 71 (3) The license described in Subsection (2):
- 72 (a) shall be granted and issued:
- 73 (i) by the commission in accordance with this section;
- 74 (ii) without a license fee; and
- 75 (iii) if:
- 76 (A) an applicant:
- 77 (I) states the applicant's name and address in the application; and
- 78 (II) provides other information in the application that the commission may require; and
- 79 (B) the person meets the requirements of this section to be granted a license as
- 80 determined by the commission;
- 81 (b) may not be assigned to another person; and
- 82 (c) is valid:
- 83 (i) only for the person named on the license; and
- 84 (ii) until:
- 85 (A) the person described in Subsection (3)(c)(i):

- 86 (I) ceases to do business; or
- 87 (II) changes that person's business address; or
- 88 (B) the commission revokes the license.
- 89 (4) The commission shall review an application and determine whether:
- 90 (a) the applicant meets the requirements of this section to be issued a license[-]; and
- 91 (b) a bond is required to be posted with the commission in accordance with Subsection
- 92 (5) before the applicant may be issued a license.

93 (5) (a) An applicant shall post a bond with the commission before the commission may
 94 issue the applicant a license[-] if:

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

96 (A) the applicant;

97 (B) a fiduciary of the applicant; or

98 (C) a person for which the applicant or the fiduciary of the applicant is required to
 99 collect, truthfully account for, and pay over a tax under this part; or

100 (ii) there is a delinquency in paying a tax under this part for:

101 (A) the applicant;

102 (B) a fiduciary of the applicant; or

103 (C) a person for which the applicant or the fiduciary of the applicant is required to
 104 collect, truthfully account for, and pay over a tax under this part.

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

107 (i) for a licensee that has not posted a bond under this section with the commission,
 108 post a bond with the commission in accordance with Subsections (5)(c) through (g); or

109 (ii) for a licensee that has posted a bond under this section with the commission,
 110 increase the amount of [a] the bond posted with the commission.

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

112 (i) executed by:

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

114 (B) for a licensee, the licensee as principal, with a corporate surety; and
115 (ii) payable to the commission conditioned upon the faithful performance of all of the
116 requirements of this part including:
117 (A) the payment of all taxes under this part;
118 (B) the payment of any:
119 (I) penalty as provided in Section 59-1-401; or
120 (II) interest as provided in Section 59-1-402; or
121 (C) any other obligation of the:
122 (I) applicant under this part; or
123 (II) licensee under this part.
124 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
125 of a bond under this Subsection (5) on the basis of:
126 (i) commission estimates of:
127 (A) an applicant's tax liability under this part; or
128 (B) a licensee's tax liability under this part; and
129 (ii) the amount of a delinquency described in Subsection (5)(e) if:
130 (A) a license under this section was revoked for a delinquency under this part for:
131 (I) (Aa) an applicant; or
132 (Bb) a licensee;
133 (II) a fiduciary of the:
134 (Aa) applicant; or
135 (Bb) licensee; or
136 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
137 of the licensee is required to collect, truthfully account for, and pay over a tax under this part;
138 or
139 (B) there is a delinquency in paying a tax under this part for:
140 (I) (Aa) an applicant; or
141 (Bb) a licensee;

- 142 (II) a fiduciary of the:
- 143 (Aa) applicant; or
- 144 (Bb) licensee; or
- 145 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
- 146 of the licensee is required to collect, truthfully account for, and pay over a tax under this part.
- 147 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
- 148 (i) for an applicant, the amount of the delinquency is the sum of:
- 149 (A) the amount of any delinquency that served as a basis for revoking the license under
- 150 this section of:
- 151 (I) the applicant;
- 152 (II) a fiduciary of the applicant; or
- 153 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 154 collect, truthfully account for, and pay over a tax under this part; or
- 155 (B) the amount of tax that any of the following owe under this part:
- 156 (I) the applicant;
- 157 (II) a fiduciary of the applicant; and
- 158 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 159 collect, truthfully account for, and pay over a tax under this part; or
- 160 (ii) for a licensee, the amount of the delinquency is the sum of:
- 161 (A) the amount of any delinquency that served as a basis for revoking the license under
- 162 this section of:
- 163 (I) the licensee;
- 164 (II) a fiduciary of the licensee; or
- 165 (III) a person for which the licensee or the fiduciary of the licensee is required to
- 166 collect, truthfully account for, and pay over a tax under this part; or
- 167 (B) the amount of tax that any of the following owe under this part:
- 168 (I) the licensee;
- 169 (II) a fiduciary of the licensee; and

170 (III) a person for which the licensee or the fiduciary of the licensee is required to
171 collect, truthfully account for, and pay over a tax under this part.

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

174 (i) be less than \$10,000; or

175 (ii) exceed \$500,000.

176 (g) ~~(A)~~ (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be
177 combined into one bond with any other bond required by this chapter.

178 (ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined
179 into one bond with any other bond required by this chapter, the amount of that combined bond
180 is determined by:

181 (A) calculating the separate amount of each bond required for each type of fuel
182 included in the combined bond; and

183 (B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

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

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

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

187 (A) reasonable notice; and

188 (B) a hearing.

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

192 (i) paying any:

193 (A) tax due under this part;

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

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

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

197 Section 2. Section **59-13-302** is amended to read:

198 **59-13-302. Definitions -- License requirements -- Penalty -- Application process**
199 **and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon**
200 **property.**

201 (1) As used in this section:

202 (a) "applicant" means a person that:

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

204 (ii) submits an application:

205 (A) to the commission; and

206 (B) for a license under this section;

207 (b) "application" means an application for a license under this section;

208 (c) "fiduciary of the applicant" means a person that:

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

211 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

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

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

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

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

216 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
217 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
218 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
219 Rulemaking Act;

220 (d) "fiduciary of the licensee" means a person that:

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

223 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

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

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

226 (D) is a partner of the licensee described in Subsection (1)(d)(i);
227 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
228 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
229 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
230 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
231 Rulemaking Act;

232 (e) "license" means a license under this section; and
233 (f) "licensee" means a person that is licensed under this section by the commission.

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

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

238 (a) shall be granted and issued:

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

240 (ii) without a license fee; and

241 (iii) if:

242 (A) an applicant:

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

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

245 (B) the person meets the requirements of this section to be granted a license as
246 determined by the commission;

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

248 (c) is valid:

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

250 (ii) until:

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

252 (I) ceases to do business; or

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

254 (B) the commission revokes the license.
255 (4) The commission shall review an application and determine whether;
256 (a) the applicant meets the requirements of this section to be issued a license[-]; and
257 (b) a bond is required to be posted with the commission in accordance with Subsection
258 (5) before the applicant may be issued a license.

259 (5) (a) An applicant shall post a bond with the commission before the commission may
260 issue the applicant a license[-] if:

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

262 (A) the applicant;

263 (B) a fiduciary of the applicant; or

264 (C) a person for which the applicant or the fiduciary of the applicant is required to
265 collect, truthfully account for, and pay over a tax under this part; or

266 (ii) there is a delinquency in paying a tax under this part for:

267 (A) the applicant;

268 (B) a fiduciary of the applicant; or

269 (C) a person for which the applicant or the fiduciary of the applicant is required to
270 collect, truthfully account for, and pay over a tax under this part.

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

273 (i) for a licensee that has not posted a bond under this section with the commission,
274 post a bond with the commission in accordance with Subsections (5)(c) through (g); or

275 (ii) for a licensee that has posted a bond under this section with the commission,
276 increase the amount of [a] the bond posted with the commission.

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

278 (i) executed by:

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

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

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

282 requirements of this part including:

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

284 (B) the payment of any:

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

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

287 (C) any other obligation of the:

288 (I) applicant under this part; or

289 (II) licensee under this part.

290 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount

291 of a bond under this Subsection (5) on the basis of:

292 (i) commission estimates of:

293 (A) an applicant's liability for any amount under this part; or

294 (B) a licensee's liability for any amount under this part; and

295 (ii) the amount of a delinquency described in Subsection (5)(e) if:

296 (A) a license under this section was revoked for a delinquency under this part for:

297 (I) (Aa) an applicant; or

298 (Bb) a licensee;

299 (II) a fiduciary of the:

300 (Aa) applicant; or

301 (Bb) licensee; or

302 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary

303 of the licensee is required to collect, truthfully account for, and pay over an amount under this

304 part; or

305 (B) there is a delinquency in paying an amount under this part for:

306 (I) (Aa) an applicant; or

307 (Bb) a licensee;

308 (II) a fiduciary of the:

309 (Aa) applicant; or

310 (Bb) licensee; or
311 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary
312 of the licensee is required to collect, truthfully account for, and pay over an amount under this
313 part.
314 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
315 (i) for an applicant, the amount of the delinquency is the sum of:
316 (A) the amount of any delinquency that served as a basis for revoking the license under
317 this section of:
318 (I) the applicant;
319 (II) a fiduciary of the applicant; or
320 (III) a person for which the applicant or the fiduciary of the applicant is required to
321 collect, truthfully account for, and pay over an amount under this part; or
322 (B) the amount that any of the following owe under this part:
323 (I) the applicant;
324 (II) a fiduciary of the applicant; and
325 (III) a person for which the applicant or the fiduciary of the applicant is required to
326 collect, truthfully account for, and pay over an amount under this part; or
327 (ii) for a licensee, the amount of the delinquency is the sum of:
328 (A) the amount of any delinquency that served as a basis for revoking the license under
329 this section of:
330 (I) the licensee;
331 (II) a fiduciary of the licensee; or
332 (III) a person for which the licensee or the fiduciary of the licensee is required to
333 collect, truthfully account for, and pay over an amount under this part; or
334 (B) the amount that any of the following owe under this part:
335 (I) the licensee;
336 (II) a fiduciary of the licensee; and
337 (III) a person for which the licensee or the fiduciary of the licensee is required to

338 collect, truthfully account for, and pay over an amount under this part.

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

341 (i) be less than \$10,000; or

342 (ii) exceed \$500,000.

343 (g) ~~(i)~~ (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be
344 combined into one bond with any other bond required by this chapter.

345 (ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined
346 into one bond with any other bond required by this chapter, the amount of that combined bond
347 is determined by:

348 (A) calculating the separate amount of each bond required for each type of fuel
349 included in the combined bond; and

350 (B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

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

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

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

354 (A) reasonable notice; and

355 (B) a hearing.

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

359 (i) paying any:

360 (A) amounts due under this part;

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

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

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

364 (7) (a) If any person ceases to be a supplier within the state by reason of the
365 discontinuance, sale, or transfer of the person's business, the supplier shall notify the

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

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

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

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

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

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