

1 **ALCOHOLIC BEVERAGE AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ryan D. Wilcox**

5 Senate Sponsor: John L. Valentine

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Alcoholic Beverage Control Act, the Public Safety Code, and
10 revenue and taxation provisions to address the tracking of the effects of the abuse of
11 alcoholic products and collection and use of certain markups and taxes.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ creates the Markup Holding Fund;
- 15 ▶ provides for the remittance of a markup to the State Tax Commission;
- 16 ▶ creates a committee to establish a process to collect information related to abuse of
17 alcoholic products;
- 18 ▶ addresses certain reporting requirements related to the beer tax; and
- 19 ▶ makes technical and conforming amendments.

20 **Money Appropriated in this Bill:**

21 This bill appropriates:

- 22 ▶ to the Department of Alcoholic Beverage Control - Alcoholic Beverage Control, as
23 an ongoing appropriation
- 24 • from the Markup Holding Fund, \$6,377,800.

25 **Other Special Clauses:**

26 This bill provides an effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **32B-2-301**, as enacted by Laws of Utah 2010, Chapter 276

- 30 **32B-2-304**, as enacted by Laws of Utah 2010, Chapter 276
- 31 **32B-2-305**, as enacted by Laws of Utah 2011, Chapter 334
- 32 **59-1-401**, as last amended by Laws of Utah 2010, Chapter 233
- 33 **59-1-402**, as last amended by Laws of Utah 2010, Chapter 233
- 34 **59-1-1402**, as last amended by Laws of Utah 2010, Chapter 233
- 35 **59-15-106**, as last amended by Laws of Utah 1998, Chapter 270

36 ENACTS:

37 **53-1-119**, Utah Code Annotated 1953



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

40 Section 1. Section **32B-2-301** is amended to read:

41 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

42 (1) The following are property of the state:

43 (a) the money received [~~by the department~~] in the administration of this title, except as
44 otherwise provided; and

45 (b) property acquired, administered, possessed, or received by the department.

46 (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

47 (b) Except as provided in [~~Section~~] Sections 32B-3-205 and 32B-2-304, money
48 received in the administration of this title shall be [~~paid to the department and~~] transferred to
49 the Liquor Control Fund.

50 (3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

51 (b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit
52 revenue remitted to the State Tax Commission from the markup imposed under Section
53 32B-2-304 into the Markup Holding Fund.

54 (c) Money deposited into the Markup Holding Fund may be expended:

55 (i) to the extent appropriated by the Legislature; and

56 (ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection
57 32B-2-305(4).

58 ~~[(e)]~~ (4) The state treasurer shall by warrant draw from the Liquor Control Fund and, to
59 the extent appropriated by the Legislature, from the Markup Holding Fund, the expenses, debts,
60 and liabilities incurred by the department in connection with the administration of this title or
61 any other expense necessary for the administration of this title, including:

- 62 ~~[(i)]~~ (a) salaries;
- 63 ~~[(ii)]~~ (b) premiums, if any, on a bond for which the department pays premiums; and
- 64 ~~[(iii)]~~ (c) an expenditure incurred in establishing, operating, or maintaining a state store
65 or package agency.

66 ~~[(d)]~~ (5) The department shall transfer annually from the Liquor Control Fund and the
67 State Tax Commission shall transfer annually from the Markup Holding Fund to the General
68 Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding
69 transfer of money under this Subsection ~~[(2)(d)]~~ (5). The ~~[transfer]~~ transfers shall be calculated
70 by no later than September 1 and made by no later than September 30 after a fiscal year.

- 71 ~~[(3)]~~ (6) (a) By the end of each day, the department shall:
 - 72 (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
 - 73 (ii) report the deposit to the state treasurer.
- 74 (b) A commissioner or department employee is not personally liable for a loss caused
75 by the default or failure of a qualified depository.
- 76 (c) Money deposited in a qualified depository is entitled to the same priority of
77 payment as other public funds of the state.

78 ~~[(4)]~~ (7) If the cash balance of the Liquor Control Fund is not adequate to cover a
79 warrant drawn against the Liquor Control Fund by the state treasurer, the cash resources of the
80 General Fund may be used to the extent necessary. At no time may the fund equity of the
81 Liquor Control Fund fall below zero.

82 Section 2. Section **32B-2-304** is amended to read:

83 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

- 84 (1) For purposes of this section:
- 85 (a) (i) "Landed case cost" means:

- 86 (A) the cost of the product; and
- 87 (B) inbound shipping costs incurred by the department.
- 88 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse
- 89 of the department to a state store.
- 90 (b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.
- 91 (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who
- 92 manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt
- 93 beverage.
- 94 (2) Except as provided in Subsection (3):
- 95 (a) spirituous liquor sold by the department within the state shall be marked up in an
- 96 amount not less than 86% above the landed case cost to the department;
- 97 (b) wine sold by the department within the state shall be marked up in an amount not
- 98 less than 86% above the landed case cost to the department;
- 99 (c) heavy beer sold by the department within the state shall be marked up in an amount
- 100 not less than 64.5% above the landed case cost to the department; and
- 101 (d) a flavored malt beverage sold by the department within the state shall be marked up
- 102 in an amount not less than 86% above the landed case cost to the department.
- 103 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked
- 104 up in an amount not less than 15% above the landed case cost to the department.
- 105 (b) Except for spirituous liquor sold by the department to a military installation in
- 106 Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%
- 107 above the landed case cost to the department if:
- 108 (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000
- 109 proof gallons of spirituous liquor in a calendar year; and
- 110 (ii) the manufacturer applies to the department for a reduced markup.
- 111 (c) Except for wine sold by the department to a military installation in Utah, wine that
- 112 is sold by the department within the state shall be marked up 47% above the landed case cost to
- 113 the department if:

114 (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of
115 wine in a calendar year; and

116 (ii) the manufacturer applies to the department for a reduced markup.

117 (d) Except for heavy beer sold by the department to a military installation in Utah,
118 heavy beer that is sold by the department within the state shall be marked up 30% above the
119 landed case cost to the department if:

120 (i) a small brewer manufactures the heavy beer; and

121 (ii) the small brewer applies to the department for a reduced markup.

122 (e) The department shall verify an amount described in Subsection (3)(b) [~~or~~], (c), or
123 (d) pursuant to a federal or other verifiable production report.

124 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
125 with the state treasurer to be credited to the Uniform School Fund and used to support the
126 school lunch program administered by the State Board of Education under Section
127 53A-19-201.

128 (5) This section does not prohibit the department from selling discontinued items at a
129 discount.

130 (6) (a) The department shall collect the markup and remit the markup collected by the
131 department under this section:

132 (i) to the State Tax Commission monthly on or before the last day of the month
133 immediately following the last day of the previous month; and

134 (ii) using a form prescribed by the State Tax Commission.

135 (b) For liquor provided to a package agency on consignment, the department shall
136 remit the markup to the State Tax Commission for the month during which the liquor is
137 provided to the package agency regardless of when the package agency pays the department for
138 the liquor provided to the package agency.

139 (c) The State Tax Commission shall deposit revenues remitted to it under Subsection
140 (6)(a) into the Markup Holding Fund created in Section 32B-2-301.

141 (d) The assessment, collection, and refund of a markup under this section shall be in

142 accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

143 (e) The department if it fails to comply with this Subsection (6), is subject to penalties
144 as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

145 (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter
146 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

147 Section 3. Section **32B-2-305** is amended to read:

148 **32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.**

149 (1) As used in this section:

150 (a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.

151 (b) "Enforcement ratio" is as defined in Section 32B-1-201.

152 (c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in
153 this section.

154 (2) There is created a restricted special revenue fund known as the "Alcoholic
155 Beverage Control Act Enforcement Fund."

156 (3) (a) The fund consists of:

157 (i) deposits made under Subsection (4); and

158 (ii) interest earned on the fund.

159 (b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

160 (4) After the deposit made under Section 32B-2-304 for the school lunch program, the
161 department shall deposit 1% of the total gross revenue from the sale of liquor with the state
162 treasurer to be credited to the fund to be used by the Department of Public Safety as provided
163 in Subsection (5).

164 (5) The Department of Public Safety shall expend money from the fund to supplement
165 appropriations by the Legislature so that the Department of Public Safety maintains a sufficient
166 number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each
167 year the enforcement ratio as of July 1 is equal to or less than the number specified in Section
168 32B-1-201.

169 Section 4. Section **53-1-119** is enacted to read:

170 **53-1-119. Tracking effects of abuse of alcoholic products.**

171 (1) There is created a committee within the department known as the "Alcohol Abuse
172 Tracking Committee" that consists of:

173 (a) the commissioner, or the commissioner's designee;

174 (b) the executive director of the Department of Health, or the executive director's
175 designee;

176 (c) the executive director of the Department of Human Services, or the executive
177 director's designee;

178 (d) the director of the Department of Alcoholic Beverage Control, or the director's
179 designee;

180 (e) the executive director of the Department of Workforce Services, or the executive
181 director's designee;

182 (f) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee;

183 (g) the state court administrator or the state court administrator's designee; and

184 (h) the executive director of the Department of Technology Services, or the executive
185 director's designee.

186 (2) The commissioner, or the commissioner's designee, shall chair the committee.

187 (3) (a) Four members of the committee constitute a quorum.

188 (b) A vote of the majority of the committee members present when a quorum is present
189 is an action of the committee.

190 (4) The committee shall meet at the call of the chair, except that the chair shall call a
191 meeting at least quarterly.

192 (5) The committee may adopt additional procedures or requirements for:

193 (a) voting, when there is a tie of the committee members;

194 (b) how meetings are to be called; and

195 (c) the frequency of meetings.

196 (6) The committee shall establish a process to collect for each fiscal year the following
197 information:

198 (a) the number of individuals statewide who are convicted of, plead guilty to, plead no
199 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
200 violation related to underage drinking of alcohol;

201 (b) the number of individuals statewide who are convicted of, plead guilty to, plead no
202 contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
203 violation related to driving under the influence of alcohol;

204 (c) the number of violations statewide of Title 32B, Alcoholic Beverage Control Act,
205 related to over-serving or over-consumption of an alcoholic product;

206 (d) the cost of social services provided by the state related to abuse of alcohol,
207 including services provided by the Division of Child and Family Services within the
208 Department of Human Services;

209 (e) where the alcoholic products are obtained that results in the violations or costs
210 described in Subsections (6)(a) through (d); and

211 (f) any information the committee determines can be collected and relates to the abuse
212 of alcoholic products.

213 (7) (a) The committee shall begin to collect the information described in Subsection (6)
214 by January 1, 2013. For fiscal year 2012-13, the committee is required only to report the
215 information collected between January 1, 2013 and June 30, 2013.

216 (b) Beginning December 31, 2013, the committee shall report the information collected
217 under Subsection (6) annually to the governor and Legislature by no later than the December
218 31 immediately following the fiscal year for which the information is collected.

219 (8) Prior to the October 2012 Interim meeting of the Business and Labor Interim
220 Committee, the committee shall report to the Business and Labor Interim Committee:

221 (a) a list of information to be collected;

222 (b) standards to be used in collecting the information;

223 (c) criteria to be used in determining the level and extent that alcohol is related or
224 contributed to the activities for which data is to be collected; and

225 (d) how the collection of data will verify the presence of alcohol, blood alcohol levels,

226 and differentiate between persons using other substances of impairment and persons consuming
227 alcoholic beverages.

228 Section 5. Section **59-1-401** is amended to read:

229 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
230 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
231 **interest.**

232 (1) As used in this section:

233 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
234 commission:

235 (i) has implemented the commission's GenTax system; and

236 (ii) at least 30 days before implementing the commission's GenTax system as described
237 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
238 stating:

239 (A) the date the commission will implement the GenTax system with respect to the tax,
240 fee, or charge; and

241 (B) that, at the time the commission implements the GenTax system with respect to the
242 tax, fee, or charge:

243 (I) a person that files a return after the due date as described in Subsection (2)(a) is
244 subject to the penalty described in Subsection (2)(c)(ii); and

245 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
246 subject to the penalty described in Subsection (3)(b)(ii).

247 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
248 charge, the later of:

249 (i) the date on which the commission implements the commission's GenTax system
250 with respect to the tax, fee, or charge; or

251 (ii) 30 days after the date the commission provides the notice described in Subsection
252 (1)(a)(ii) with respect to the tax, fee, or charge.

253 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

- 254 (A) a tax, fee, or charge the commission administers under:
- 255 (I) this title;
- 256 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 257 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 258 (IV) Section 19-6-410.5;
- 259 (V) Section 19-6-714;
- 260 (VI) Section 19-6-805;
- 261 (VII) Section 32B-2-304;
- 262 [~~(VII)~~] (VIII) Section 34A-2-202;
- 263 [~~(VIII)~~] (IX) Section 40-6-14;
- 264 [~~(IX)~~] (X) Section 69-2-5;
- 265 [~~(X)~~] (XI) Section 69-2-5.5; or
- 266 [~~(XI)~~] (XII) Section 69-2-5.6; or
- 267 (B) another amount that by statute is subject to a penalty imposed under this section.
- 268 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 269 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 270 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 271 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 272 (D) Chapter 3, Tax Equivalent Property Act; or
- 273 (E) Chapter 4, Privilege Tax.
- 274 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 275 tax, fee, or charge.
- 276 (2) (a) The due date for filing a return is:
- 277 (i) if the person filing the return is not allowed by law an extension of time for filing
- 278 the return, the day on which the return is due as provided by law; or
- 279 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 280 return, the earlier of:
- 281 (A) the date the person files the return; or

282 (B) the last day of that extension of time as allowed by law.

283 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
284 return after the due date described in Subsection (2)(a).

285 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

286 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
287 tax, fee, or charge:

288 (A) \$20; or

289 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

290 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
291 fee, or charge, beginning on the activation date for the tax, fee, or charge:

292 (A) \$20; or

293 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
294 filed no later than five days after the due date described in Subsection (2)(a);

295 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
296 more than five days after the due date but no later than 15 days after the due date described in
297 Subsection (2)(a); or

298 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
299 filed more than 15 days after the due date described in Subsection (2)(a).

300 (d) This Subsection (2) does not apply to:

301 (i) an amended return; or

302 (ii) a return with no tax due.

303 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

304 (i) the person files a return on or before the due date for filing a return described in
305 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
306 date;

307 (ii) the person:

308 (A) is subject to a penalty under Subsection (2)(b); and

309 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the

310 due date for filing a return described in Subsection (2)(a);
311 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
312 (B) the commission estimates an amount of tax due for that person in accordance with
313 Subsection 59-1-1406(2);
314 (iv) the person:
315 (A) is mailed a notice of deficiency; and
316 (B) within a 30-day period after the day on which the notice of deficiency described in
317 Subsection (3)(a)(iv)(A) is mailed:
318 (I) does not file a petition for redetermination or a request for agency action; and
319 (II) fails to pay the tax, fee, or charge due on a return;
320 (v) (A) the commission:
321 (I) issues an order constituting final agency action resulting from a timely filed petition
322 for redetermination or a timely filed request for agency action; or
323 (II) is considered to have denied a request for reconsideration under Subsection
324 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
325 request for agency action; and
326 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
327 after the date the commission:
328 (I) issues the order constituting final agency action described in Subsection
329 (3)(a)(v)(A)(I); or
330 (II) is considered to have denied the request for reconsideration described in
331 Subsection (3)(a)(v)(A)(II); or
332 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
333 of a final judicial decision resulting from a timely filed petition for judicial review.
334 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
335 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
336 respect to an unactivated tax, fee, or charge:
337 (A) \$20; or

338 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
339 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
340 respect to an activated tax, fee, or charge, beginning on the activation date:
341 (A) \$20; or
342 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
343 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
344 return described in Subsection (2)(a);
345 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
346 fee, or charge due on the return is paid more than five days after the due date for filing a return
347 described in Subsection (2)(a) but no later than 15 days after that due date; or
348 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
349 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
350 return described in Subsection (2)(a).
351 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
352 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
353 shall be added a penalty in an amount determined by applying the interest rate provided under
354 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
355 of the underpayment.
356 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
357 excess of the required installment over the amount, if any, of the installment paid on or before
358 the due date for the installment.
359 (ii) The period of the underpayment shall run from the due date for the installment to
360 whichever of the following dates is the earlier:
361 (A) the original due date of the tax return, without extensions, for the taxable year; or
362 (B) with respect to any portion of the underpayment, the date on which that portion is
363 paid.
364 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
365 against unpaid required installments in the order in which the installments are required to be

366 paid.

367 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
368 person allowed by law an extension of time for filing a corporate franchise or income tax return
369 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
370 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
371 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
372 including the extension of time, the person fails to pay:

373 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
374 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

375 (ii) for a person filing an individual income tax return under Chapter 10, Individual
376 Income Tax Act, the payment required by Subsection 59-10-516(2).

377 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
378 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
379 unpaid as of the day on which the return is due as provided by law.

380 (6) If a person does not file a return within an extension of time allowed by Section
381 59-7-505 or 59-10-516, the person:

382 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

383 (b) is subject to a penalty in an amount equal to the sum of:

384 (i) a late file penalty in an amount equal to the greater of:

385 (A) \$20; or

386 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
387 provided by law, not including the extension of time; and

388 (ii) a late pay penalty in an amount equal to the greater of:

389 (A) \$20; or

390 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
391 due as provided by law, not including the extension of time.

392 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
393 in this Subsection (7)(a).

394 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
395 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
396 is due to negligence.

397 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
398 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
399 underpayment.

400 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
401 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

402 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
403 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

404 (b) If the commission determines that a person is liable for a penalty imposed under
405 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
406 penalty.

407 (i) The notice of proposed penalty shall:

408 (A) set forth the basis of the assessment; and

409 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

410 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
411 penalty is proposed may:

412 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

413 or

414 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

415 (iii) A person against whom a penalty is proposed in accordance with this Subsection
416 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
417 the commission.

418 (iv) (A) If the commission determines that a person is liable for a penalty under this
419 Subsection (7), the commission shall assess the penalty and give notice and demand for
420 payment.

421 (B) The commission shall mail the notice and demand for payment described in

422 Subsection (7)(b)(iv)(A):

423 (I) to the person's last-known address; and

424 (II) in accordance with Section 59-1-1404.

425 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
426 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

427 (i) a court of competent jurisdiction issues a final unappealable judgment or order
428 determining that:

429 (A) the seller meets one or more of the criteria described in Subsection
430 59-12-107(1)(a); and

431 (B) the commission or a county, city, or town may require the seller to collect a tax
432 under Subsections 59-12-103(2)(a) through (d); or

433 (ii) the commission issues a final unappealable administrative order determining that:

434 (A) the seller meets one or more of the criteria described in Subsection
435 59-12-107(1)(a); and

436 (B) the commission or a county, city, or town may require the seller to collect a tax
437 under Subsections 59-12-103(2)(a) through (d).

438 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
439 subject to the penalty under Subsection (7)(a)(ii) if:

440 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
441 determining that:

442 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
443 and

444 (II) the commission or a county, city, or town may require the seller to collect a tax
445 under Subsections 59-12-103(2)(a) through (d); or

446 (B) the commission issues a final unappealable administrative order determining that:

447 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
448 and

449 (II) the commission or a county, city, or town may require the seller to collect a tax

450 under Subsections 59-12-103(2)(a) through (d); and

451 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
452 nonfrivolous argument for the extension, modification, or reversal of existing law or the
453 establishment of new law.

454 (8) The penalty for failure to file an information return, information report, or a
455 complete supporting schedule is \$50 for each information return, information report, or
456 supporting schedule up to a maximum of \$1,000.

457 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
458 or impede administration of a law relating to a tax, fee, or charge and files a purported return
459 that fails to contain information from which the correctness of reported tax, fee, or charge
460 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
461 substantially incorrect, the penalty is \$500.

462 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
463 Subsection 59-12-108(1)(a):

464 (i) is subject to a penalty described in Subsection (2); and

465 (ii) may not retain the percentage of sales and use taxes that would otherwise be
466 allowable under Subsection 59-12-108(2).

467 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
468 required by Subsection 59-12-108(1)(a)(ii)(B):

469 (i) is subject to a penalty described in Subsection (2); and

470 (ii) may not retain the percentage of sales and use taxes that would otherwise be
471 allowable under Subsection 59-12-108(2).

472 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

473 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
474 following documents:

475 (A) a return;

476 (B) an affidavit;

477 (C) a claim; or

478 (D) a document similar to Subsections (11)(a)(i)(A) through (C);
479 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
480 will be used in connection with any material matter administered by the commission; and
481 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
482 with any material matter administered by the commission, would result in an understatement of
483 another person's liability for a tax, fee, or charge.

484 (b) The following acts apply to Subsection (11)(a)(i):
485 (i) preparing any portion of a document described in Subsection (11)(a)(i);
486 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
487 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
488 (iv) advising in the preparation or presentation of any portion of a document described
489 in Subsection (11)(a)(i);
490 (v) aiding in the preparation or presentation of any portion of a document described in
491 Subsection (11)(a)(i);
492 (vi) assisting in the preparation or presentation of any portion of a document described
493 in Subsection (11)(a)(i); or
494 (vii) counseling in the preparation or presentation of any portion of a document
495 described in Subsection (11)(a)(i).

496 (c) For purposes of Subsection (11)(a), the penalty:
497 (i) shall be imposed by the commission;
498 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
499 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
500 (iii) is in addition to any other penalty provided by law.

501 (d) The commission may seek a court order to enjoin a person from engaging in
502 conduct that is subject to a penalty under this Subsection (11).

503 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
504 commission may make rules prescribing the documents that are similar to Subsections
505 (11)(a)(i)(A) through ©.

506 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
507 provided in Subsections (12)(b) through (e).

508 (b) (i) A person who is required by this title or any laws the commission administers or
509 regulates to register with or obtain a license or permit from the commission, who operates
510 without having registered or secured a license or permit, or who operates when the registration,
511 license, or permit is expired or not current, is guilty of a class B misdemeanor.

512 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
513 penalty may not:

514 (A) be less than \$500; or

515 (B) exceed \$1,000.

516 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
517 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
518 or to supply information within the time required by law, or who makes, renders, signs, or
519 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
520 information, is guilty of a third degree felony.

521 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
522 penalty may not:

523 (A) be less than \$1,000; or

524 (B) exceed \$5,000.

525 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
526 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
527 guilty of a second degree felony.

528 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
529 penalty may not:

530 (A) be less than \$1,500; or

531 (B) exceed \$25,000.

532 (e) (i) A person is guilty of a second degree felony if that person commits an act:

533 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following

534 documents:

535 (I) a return;

536 (II) an affidavit;

537 (III) a claim; or

538 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

539 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in

540 Subsection (12)(e)(i)(A):

541 (I) is false or fraudulent as to any material matter; and

542 (II) could be used in connection with any material matter administered by the

543 commission.

544 (ii) The following acts apply to Subsection (12)(e)(i):

545 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

546 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

547 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

548 (D) advising in the preparation or presentation of any portion of a document described

549 in Subsection (12)(e)(i)(A);

550 (E) aiding in the preparation or presentation of any portion of a document described in

551 Subsection (12)(e)(i)(A);

552 (F) assisting in the preparation or presentation of any portion of a document described

553 in Subsection (12)(e)(i)(A); or

554 (G) counseling in the preparation or presentation of any portion of a document

555 described in Subsection (12)(e)(i)(A).

556 (iii) This Subsection (12)(e) applies:

557 (A) regardless of whether the person for which the document described in Subsection

558 (12)(e)(i)(A) is prepared or presented:

559 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

560 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

561 (B) in addition to any other penalty provided by law.

562 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
563 penalty may not:

564 (A) be less than \$1,500; or

565 (B) exceed \$25,000.

566 (v) The commission may seek a court order to enjoin a person from engaging in
567 conduct that is subject to a penalty under this Subsection (12)(e).

568 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
569 the commission may make rules prescribing the documents that are similar to Subsections
570 (12)(e)(i)(A)(I) through (III).

571 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
572 the later of six years:

573 (i) from the date the tax should have been remitted; or

574 (ii) after the day on which the person commits the criminal offense.

575 (13) Upon making a record of its actions, and upon reasonable cause shown, the
576 commission may waive, reduce, or compromise any of the penalties or interest imposed under
577 this part.

578 Section 6. Section **59-1-402** is amended to read:

579 **59-1-402. Definitions -- Interest.**

580 (1) As used in this section:

581 (a) "Final judicial decision" means a final ruling by a court of this state or the United
582 States for which the time for any further review or proceeding has expired.

583 (b) "Retroactive application of a judicial decision" means the application of a final
584 judicial decision that:

585 (i) invalidates a state or federal taxation statute; and

586 (ii) requires the state to provide a refund for an overpayment that was made:

587 (A) prior to the final judicial decision; or

588 (B) during the 180-day period after the final judicial decision.

589 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

- 590 (A) a tax, fee, or charge the commission administers under:
- 591 (I) this title;
- 592 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 593 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 594 (IV) Section 19-6-410.5;
- 595 (V) Section 19-6-714;
- 596 (VI) Section 19-6-805;
- 597 (VII) Section 32B-2-304;
- 598 [~~VIII~~] (VIII) Section 34A-2-202;
- 599 [~~VIII~~] (IX) Section 40-6-14;
- 600 [~~IX~~] (X) Section 69-2-5;
- 601 [~~X~~] (XI) Section 69-2-5.5; or
- 602 [~~XI~~] (XII) Section 69-2-5.6; or
- 603 (B) another amount that by statute is subject to interest imposed under this section.
- 604 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 605 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 606 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 607 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 608 (D) Chapter 3, Tax Equivalent Property Act;
- 609 (E) Chapter 4, Privilege Tax; or
- 610 (F) Chapter 13, Part 5, Interstate Agreements.
- 611 (2) Except as otherwise provided for by law, the interest rate for a calendar year for a
- 612 tax, fee, or charge administered by the commission shall be calculated based on the federal
- 613 short-term rate determined by the Secretary of the Treasury under Section 6621, Internal
- 614 Revenue Code, in effect for the preceding fourth calendar quarter.
- 615 (3) The interest rate calculation shall be as follows:
- 616 (a) except as provided in Subsection (7), in the case of an overpayment or refund,
- 617 simple interest shall be calculated at the rate of two percentage points above the federal

618 short-term rate; or

619 (b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be
620 calculated at the rate of two percentage points above the federal short-term rate.

621 (4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain
622 installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes,
623 shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in
624 Section 59-7-112.

625 (5) (a) Except as provided in Subsection (5)(c), interest may not be allowed on an
626 overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded
627 within:

628 (i) 45 days after the last date prescribed for filing the return with respect to a tax under
629 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,
630 if the return is filed electronically; or

631 (ii) 90 days after the last date prescribed for filing the return:

632 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate
633 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

634 (B) if the return is not filed electronically.

635 (b) Except as provided in Subsection (5)(c), if the return is filed after the last date
636 prescribed for filing the return, interest may not be allowed on the overpayment if the
637 overpayment is refunded within:

638 (i) 45 days after the date the return is filed:

639 (A) with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or
640 Chapter 10, Individual Income Tax Act; and

641 (B) if the return is filed electronically; or

642 (ii) 90 days after the date the return is filed:

643 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate
644 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

645 (B) if the return is not filed electronically.

646 (c) (i) In the case of an amended return, interest on an overpayment shall be allowed:
647 (A) for a time period:
648 (I) that begins on the later of:
649 (Aa) the date the original return was filed; or
650 (Bb) the due date for filing the original return not including any extensions for filing
651 the original return; and
652 (II) that ends on the date the commission receives the amended return; and
653 (B) if the commission does not make a refund of an overpayment under this Subsection
654 (5)(c):
655 (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise
656 and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,
657 within a 45-day period after the date the commission receives the amended return, for a time
658 period:
659 (Aa) that begins 46 days after the commission receives the amended return; and
660 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission
661 completes processing the refund of the overpayment; or
662 (II) if the amended return is with respect to a tax, fee, or charge except for a tax under
663 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,
664 or is not filed electronically, within a 90-day period after the date the commission receives the
665 amended return, for a time period:
666 (Aa) that begins 91 days after the commission receives the amended return; and
667 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission
668 completes processing the refund of the overpayment.
669 (ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall
670 be calculated forward from the preparation date of the refund document to allow for
671 processing.
672 (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge
673 shall be computed from the time the original return is due, excluding any filing or payment

674 extensions, to the date the payment is received.

675 (7) Interest on a refund relating to a tax, fee, or charge may not be paid on any
676 overpayment that arises from a statute that is determined to be invalid under state or federal
677 law or declared unconstitutional under the constitution of the United States or Utah if the basis
678 for the refund is the retroactive application of a judicial decision upholding the claim of
679 unconstitutionality or the invalidation of a statute.

680 Section 7. Section **59-1-1402** is amended to read:

681 **59-1-1402. Definitions.**

682 As used in this part:

683 (1) "Administrative cost" means a fee imposed to cover:

684 (a) the cost of filing;

685 (b) the cost of administering a garnishment; or

686 (c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule
687 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

688 (2) "Books and records" means the following made available in printed or electronic
689 format:

690 (a) an account;

691 (b) a book;

692 (c) an invoice;

693 (d) a memorandum;

694 (e) a paper;

695 (f) a record; or

696 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission
697 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

698 (3) "Deficiency" means:

699 (a) the amount by which a tax, fee, or charge exceeds the difference between:

700 (i) the sum of:

701 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

702 (B) any amount previously assessed, or collected without assessment, as a deficiency;
703 and

704 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
705 to that tax, fee, or charge; or

706 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,
707 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

708 (i) the amount previously assessed, or collected without assessment, as a deficiency;
709 and

710 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
711 to that tax, fee, or charge.

712 (4) "Garnishment" means any legal or equitable procedure through which one or more
713 of the following are required to be withheld for payment of an amount a person owes:

714 (a) an asset of the person held by another person; or

715 (b) the earnings of the person.

716 (5) "Liability" means the following that a person is required to remit to the
717 commission:

718 (a) a tax, fee, or charge;

719 (b) an addition to a tax, fee, or charge;

720 (c) an administrative cost;

721 (d) interest that accrues in accordance with Section 59-1-402; or

722 (e) a penalty that accrues in accordance with Section 59-1-401.

723 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
724 6213(g)(2), Internal Revenue Code.

725 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
726 means:

727 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
728 year; or

729 (ii) a corresponding or comparable provision of the Internal Revenue Code as

730 amended, redesignated, or reenacted.

731 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

732 (i) a tax, fee, or charge the commission administers under:

733 (A) this title;

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

735 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

736 (D) Section 19-6-410.5;

737 (E) Section 19-6-714;

738 (F) Section 19-6-805;

739 (G) Section 32B-2-304;

740 [~~(G)~~] (H) Section 34A-2-202;

741 [~~(H)~~] (I) Section 40-6-14;

742 [~~(I)~~] (J) Section 69-2-5;

743 [~~(J)~~] (K) Section 69-2-5.5; or

744 [~~(K)~~] (L) Section 69-2-5.6; or

745 (ii) another amount that by statute is administered by the commission.

746 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

747 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

748 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

749 (iii) Chapter 2, Property Tax Act;

750 (iv) Chapter 3, Tax Equivalent Property Act;

751 (v) Chapter 4, Privilege Tax; or

752 (vi) Chapter 13, Part 5, Interstate Agreements.

753 (8) "Transferee" means:

754 (a) a devisee;

755 (b) a distributee;

756 (c) a donee;

757 (d) an heir;

758 (e) a legatee; or

759 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
760 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

761 Section 8. Section **59-15-106** is amended to read:

762 **59-15-106. Reports by brewers, wholesalers, and distributors outside the state.**

763 [~~(1) Every motor carrier as defined under Section 72-9-102 delivering any beer that has
764 been shipped from outside of this state to a point within this state shall, before the last day of
765 each month, report in writing all deliveries during the preceding month to the commission.
766 The report shall be on forms prescribed by, and contain any information required by, the
767 commission.]~~

768 [(2)] Every brewer, wholesaler, or distributor outside the state, shipping beer into the
769 state, for sale, use, or consumption within the state shall, before the last day of each month,
770 [~~report in writing upon forms prescribed by the commission]~~ file with the commission a return
771 prescribed by the commission for the preceding calendar month and containing any information
772 required by the commission.

773 Section 9. **Appropriation.**

774 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
775 following sums of money are appropriated from resources not otherwise appropriated, or
776 reduced from amounts previously appropriated, out of the funds or accounts indicated for the
777 fiscal year July 1, 2012 and ending June 30, 2013. These are additions to any amounts
778 previously appropriated for fiscal year 2013.

779 To Department of Alcoholic Beverage Control - Alcoholic Beverage Control

780 From: Markup Holding Fund \$6,377,800

781 Schedule of Programs:

782 Warehouse and Distribution \$3,700,500

783 Stores and Agencies \$2,677,300

784 Section 10. **Effective date.**

785 Except for Section 53-1-119 which takes effect May 8, 2012, this bill takes effect on

786 July 1, 2012.