

HB0354S02 compared with HB0354S01

~~{deleted text}~~ shows text that was in HB0354S01 but was deleted in HB0354S02.

inserted text shows text that was not in HB0354S01 but was inserted into HB0354S02.

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~~{Representative Ryan D. Wilcox}~~Senator John L. Valentine proposes the following substitute bill:

ALCOHOLIC BEVERAGE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: ~~{~~John L. Valentine

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act, the Public Safety Code, and revenue and taxation provisions to address the tracking of the effects of the abuse of alcoholic products and collection and use of certain ~~{mark ups}~~markups and taxes.

Highlighted Provisions:

This bill:

- ▶ creates the ~~{Mark Up}~~Markup Holding Fund;
- ▶ provides for the remittance of a ~~{mark up}~~markup to the State Tax Commission;
- ▶ creates a committee to establish a process to collect information related to abuse of alcoholic products;
- ▶ addresses certain reporting requirements related to the beer tax; and

HB0354S02 compared with HB0354S01

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

~~{None}~~ This bill appropriates:

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

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

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

32B-2-304, as enacted by Laws of Utah 2010, Chapter 276

32B-2-305, as enacted by Laws of Utah 2011, Chapter 334

59-1-401, as last amended by Laws of Utah 2010, Chapter 233

59-1-402, as last amended by Laws of Utah 2010, Chapter 233

59-1-1402, as last amended by Laws of Utah 2010, Chapter 233

59-15-106, as last amended by Laws of Utah 1998, Chapter 270

ENACTS:

53-1-119, Utah Code Annotated 1953

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

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

32B-2-301. State property -- Liquor Control Fund -- ~~{Mark-Up}~~ Markup Holding Fund.

(1) The following are property of the state:

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

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

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

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

HB0354S02 compared with HB0354S01

the Liquor Control Fund.

(3) (a) There is created an enterprise fund known as the "~~{Mark Up}~~Markup Holding Fund."

(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the ~~{mark-up}~~markup imposed under Section 32B-2-304 into the ~~{Mark Up}~~Markup Holding Fund.

(c) Money deposited into the ~~{Mark Up}~~Markup Holding Fund may be expended:

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

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

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

~~[(+)]~~ (a) salaries;

~~[(+)]~~ (b) premiums, if any, on a bond for which the department pays premiums; and

~~[(+)]~~ (c) an expenditure incurred in establishing, operating, or maintaining a state store or package agency.

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

~~[(3)]~~ (6) (a) By the end of each day, the department shall:

(i) make a deposit to a qualified depository, as defined in Section 51-7-3; and

(ii) report the deposit to the state treasurer.

(b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.

(c) Money deposited in a qualified depository is entitled to the same priority of

HB0354S02 compared with HB0354S01

payment as other public funds of the state.

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

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

**32B-2-304. Liquor price -- School lunch program -- Remittance of ~~mark~~
~~up~~ markup.**

(1) For purposes of this section:

(a) (i) "Landed case cost" means:

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

(ii) "Landed case cost" does not include the outbound shipping cost from a warehouse of the department to a state store.

(b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.

(2) Except as provided in Subsection (3):

(a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(b) wine sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(c) heavy beer sold by the department within the state shall be marked up in an amount not less than 64.5% above the landed case cost to the department; and

(d) a flavored malt beverage sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department.

(3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than 15% above the landed case cost to the department.

(b) Except for spirituous liquor sold by the department to a military installation in Utah, spirituous liquor that is sold by the department within the state shall be marked up 47%

HB0354S02 compared with HB0354S01

above the landed case cost to the department if:

(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and

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

(c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up 47% above the landed case cost to the department if:

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

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

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

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

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

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

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

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

(6) (a) The department shall collect the ~~{mark up}~~markup and remit the ~~{mark up}~~markup collected by the department under this section:

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

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

(b) For liquor provided to a package agency on consignment, the department shall remit the ~~{mark up}~~markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the

HB0354S02 compared with HB0354S01

department for the liquor provided to the package agency.

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

(d) The assessment, collection, and refund of a ~~{mark up}~~markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

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

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

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

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

(1) As used in this section:

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

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

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

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

(3) (a) The fund consists of:

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

(ii) interest earned on the fund.

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

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

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

HB0354S02 compared with HB0354S01

32B-1-201.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) how meetings are to be called; and

(c) the frequency of meetings.

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

(a) the number of individuals statewide who are convicted of, plead guilty to, plead no

HB0354S02 compared with HB0354S01

contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a violation related to underage drinking of alcohol;

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

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

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

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

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

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

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

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

(a) a list of information to be collected;

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

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

(d) how the collection of data will verify the presence of alcohol, blood alcohol levels, and differentiate between persons using other substances of impairment and persons consuming alcoholic beverages.

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

59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute

HB0354S02 compared with HB0354S01

of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

(I) this title;

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

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

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

HB0354S02 compared with HB0354S01

(VII) Section 32B-2-304;

~~[(VII)]~~ (VIII) Section 34A-2-202;

~~[(VIII)]~~ (IX) Section 40-6-14;

~~[(IX)]~~ (X) Section 69-2-5;

~~[(X)]~~ (XI) Section 69-2-5.5; or

~~[(XI)]~~ (XII) Section 69-2-5.6; or

(B) another amount that by statute is subject to a penalty imposed under this section.

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

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

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

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act; or

(E) Chapter 4, Privilege Tax.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

(2) (a) The due date for filing a return is:

(i) if the person filing the return is not allowed by law an extension of time for filing the return, the day on which the return is due as provided by law; or

(ii) if the person filing the return is allowed by law an extension of time for filing the return, the earlier of:

(A) the date the person files the return; or

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

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

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

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

(A) \$20; or

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

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

HB0354S02 compared with HB0354S01

(A) \$20; or

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

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

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

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

(i) an amended return; or

(ii) a return with no tax due.

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

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

(ii) the person:

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

(B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a);

(iii) (A) the person is subject to a penalty under Subsection (2)(b); and

(B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);

(iv) the person:

(A) is mailed a notice of deficiency; and

(B) within a 30-day period after the day on which the notice of deficiency described in Subsection (3)(a)(iv)(A) is mailed:

(I) does not file a petition for redetermination or a request for agency action; and

(II) fails to pay the tax, fee, or charge due on a return;

(v) (A) the commission:

(I) issues an order constituting final agency action resulting from a timely filed petition for redetermination or a timely filed request for agency action; or

HB0354S02 compared with HB0354S01

(II) is considered to have denied a request for reconsideration under Subsection 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed request for agency action; and

(B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period after the date the commission:

(I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or

(II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or

(vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an unactivated tax, fee, or charge:

(A) \$20; or

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

(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an activated tax, fee, or charge, beginning on the activation date:

(A) \$20; or

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

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

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

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under

HB0354S02 compared with HB0354S01

Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

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

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

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

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

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

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

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

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

HB0354S02 compared with HB0354S01

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

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

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

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

(i) The notice of proposed penalty shall:

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

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

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

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

or

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

(iii) A person against whom a penalty is proposed in accordance with this Subsection

HB0354S02 compared with HB0354S01

(7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

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

(B) The commission shall mail the notice and demand for payment described in Subsection (7)(b)(iv)(A):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0354S02 compared with HB0354S01

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) a return;

(B) an affidavit;

(C) a claim; or

HB0354S02 compared with HB0354S01

(D) a document similar to Subsections (11)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection (11)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection (11)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge.

(b) The following acts apply to Subsection (11)(a)(i):

(i) preparing any portion of a document described in Subsection (11)(a)(i);

(ii) presenting any portion of a document described in Subsection (11)(a)(i);

(iii) procuring any portion of a document described in Subsection (11)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i).

(c) For purposes of Subsection (11)(a), the penalty:

(i) shall be imposed by the commission;

(ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

(iii) is in addition to any other penalty provided by law.

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

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

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

(b) (i) A person who is required by this title or any laws the commission administers or

HB0354S02 compared with HB0354S01

regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

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

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

(B) exceed \$5,000.

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

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

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

(B) exceed \$25,000.

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

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

(I) a return;

(II) an affidavit;

(III) a claim; or

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

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

HB0354S02 compared with HB0354S01

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

- (I) is false or fraudulent as to any material matter; and
- (II) could be used in connection with any material matter administered by the

commission.

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

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

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

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

(D) advising in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A).

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

(A) regardless of whether the person for which the document described in Subsection (12)(e)(i)(A) is prepared or presented:

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

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

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

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

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

(B) exceed \$25,000.

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

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

HB0354S02 compared with HB0354S01

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

- (i) from the date the tax should have been remitted; or
- (ii) after the day on which the person commits the criminal offense.

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

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

59-1-402. Definitions -- Interest.

(1) As used in this section:

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

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

- (i) invalidates a state or federal taxation statute; and
- (ii) requires the state to provide a refund for an overpayment that was made:
 - (A) prior to the final judicial decision; or
 - (B) during the 180-day period after the final judicial decision.
- (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
 - (A) a tax, fee, or charge the commission administers under:
 - (I) this title;
 - (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (IV) Section 19-6-410.5;
 - (V) Section 19-6-714;
 - (VI) Section 19-6-805;
 - (VII) Section 32B-2-304;
 - ~~(VIII)~~ (VIII) Section 34A-2-202;
 - ~~(VIII)~~ (IX) Section 40-6-14;
 - ~~(IX)~~ (X) Section 69-2-5;
 - ~~(X)~~ (XI) Section 69-2-5.5; or

HB0354S02 compared with HB0354S01

~~[(XI)]~~ (XII) Section 69-2-5.6; or

(B) another amount that by statute is subject to interest imposed under this section.

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

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

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

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act;

(E) Chapter 4, Privilege Tax; or

(F) Chapter 13, Part 5, Interstate Agreements.

(2) Except as otherwise provided for by law, the interest rate for a calendar year for a tax, fee, or charge administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, in effect for the preceding fourth calendar quarter.

(3) The interest rate calculation shall be as follows:

(a) except as provided in Subsection (7), in the case of an overpayment or refund, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate; or

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

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

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

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

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

(A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate

HB0354S02 compared with HB0354S01

Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

(B) if the return is not filed electronically.

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

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

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

(B) if the return is filed electronically; or

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

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

(B) if the return is not filed electronically.

(c) (i) In the case of an amended return, interest on an overpayment shall be allowed:

(A) for a time period:

(I) that begins on the later of:

(Aa) the date the original return was filed; or

(Bb) the due date for filing the original return not including any extensions for filing the original return; and

(II) that ends on the date the commission receives the amended return; and

(B) if the commission does not make a refund of an overpayment under this Subsection (5)(c):

(I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically, within a 45-day period after the date the commission receives the amended return, for a time period:

(Aa) that begins 46 days after the commission receives the amended return; and

(Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment; or

(II) if the amended return is with respect to a tax, fee, or charge except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,

HB0354S02 compared with HB0354S01

or is not filed electronically, within a 90-day period after the date the commission receives the amended return, for a time period:

(Aa) that begins 91 days after the commission receives the amended return; and

(Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment.

(ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall be calculated forward from the preparation date of the refund document to allow for processing.

(6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

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

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

59-1-1402. Definitions.

As used in this part:

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

(a) the cost of filing;

(b) the cost of administering a garnishment; or

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

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

(a) an account;

(b) a book;

(c) an invoice;

(d) a memorandum;

(e) a paper;

HB0354S02 compared with HB0354S01

(f) a record; or

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

(3) "Deficiency" means:

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

(i) the sum of:

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

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

and

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

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

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

and

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

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

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

(b) the earnings of the person.

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

(a) a tax, fee, or charge;

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

(c) an administrative cost;

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

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

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

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

HB0354S02 compared with HB0354S01

means:

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

(ii) a corresponding or comparable provision of the Internal Revenue Code as amended, redesignated, or reenacted.

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

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

(A) this title;

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

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

(D) Section 19-6-410.5;

(E) Section 19-6-714;

(F) Section 19-6-805;

(G) Section 32B-2-304;

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

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

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

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

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

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

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

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

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

(iii) Chapter 2, Property Tax Act;

(iv) Chapter 3, Tax Equivalent Property Act;

(v) Chapter 4, Privilege Tax; or

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

(8) "Transferee" means:

(a) a devisee;

(b) a distributee;

(c) a donee;

HB0354S02 compared with HB0354S01

(d) an heir;

(e) a legatee; or

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

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

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

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

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

Section 9. Appropriation.

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

To Department of Alcoholic Beverage Control - Alcoholic Beverage Control

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

Schedule of Programs:

Warehouse and Distribution \$3,700,500

Stores and Agencies \$2,677,300

Section ~~9~~10. **Effective date.**

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