

SB0196S02 compared with SB0196S01

~~text~~ shows text that was in SB0196S01 but was deleted in SB0196S02.

text shows text that was not in SB0196S01 but was inserted into SB0196S02.

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Senator Jani Iwamoto proposes the following substitute bill:

RETAIL BAG IMPACT REDUCTION PROGRAM

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: _____

LONG TITLE

General Description:

This bill creates the Retail Bag Impact Reduction Program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Retail Bag Impact Reduction Program;
- ▶ imposes a fee on single-use retail bags;
- ▶ creates the Retail Bag Impact Reduction Fund;
- ▶ provides for allocation of the funds to achieve the purposes of the program;
- ▶ provides guidance for the administration of the fund;
- ▶ requires a report; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-306, as enacted by Laws of Utah 2011, Chapter 309

59-12-108, as last amended by Laws of Utah 2013, Chapter 50

ENACTS:

19-6-1301, Utah Code Annotated 1953

19-6-1302, Utah Code Annotated 1953

19-6-1303, Utah Code Annotated 1953

19-6-1304, Utah Code Annotated 1953

19-6-1305, Utah Code Annotated 1953

19-6-1306, Utah Code Annotated 1953

19-6-1307, Utah Code Annotated 1953

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

Section 1. Section **19-6-1301** is enacted to read:

Part 13. Retail Bag Impact Reduction Program

19-6-1301. Title.

This part is known as the "Retail Bag Impact Reduction Program."

Section 2. Section **19-6-1302** is enacted to read:

19-6-1302. Legislative findings.

(1) The Legislature finds that the disposal of single-use retail bags is a statewide concern and that reducing the use, while promoting the responsible disposal, of single-use retail bags will provide valuable health and environmental benefits.

(2) The Legislature further finds that a reduction in the use of single-use retail bags will reduce the impact on landfills while promoting the use of more sustainable, reusable bags.

(3) It is the intent of the Legislature in adopting this part to encourage the development of recycling programs and education regarding the impacts of, and alternatives to, single-use

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retail bags.

Section 3. Section **19-6-1303** is enacted to read:

19-6-1303. Definitions.

As used in this chapter:

- (1) "Commission" means the State Tax Commission.
- (2) "Retail bag" means a bag provided by a retail business to a customer, typically at the point of sale, for the purpose of transporting purchases or merchandise.
- (3) "Retail business" means any commercial enterprise that provides retail bags to its customers.
- (4) "Reusable bag" means a bag designed for or used multiple times that is constructed using cloth, fabric, or other durable materials, whether woven or non-woven.
- (5) (a) "Single-use retail bag" means a retail bag, whether paper or plastic, designed for one use before disposal.
 - (b) "Single-use retail bag" does not include:
 - (i) laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste bags;
 - (ii) bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
 - (iii) bags used by a consumer inside a retail business to:
 - (A) contain bulk items such as produce, nuts, grains, candy, or small hardware items;
 - (B) contain or wrap frozen foods, meat, or fish;
 - (C) contain or wrap flowers, potted plants, or other items to prevent moisture damage to other purchases; or
 - (D) contain unwrapped prepared foods or bakery goods;
 - (iv) small bags used in restaurants, not intended for carry out, to contain or deliver prepared foods;
 - (v) small bags used in retail businesses, not issued at the point of sale, used to contain small items;
 - (vi) bags used by a non-profit entity or other charitable organization to collect or distribute food, grocery products, clothing, or other household items; or
 - (vii) bags used to transport chemicals, including pesticides, drain-cleaning chemicals,

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or other caustic chemicals sold by a retail business.

Section 4. Section **19-6-1304** is enacted to read:

19-6-1304. Single-use retail bag fee.

(1) (a) A fee is imposed upon each single-use retail bag provided by a retail business to a customer or patron.

(b) The customer or patron shall pay the fee to the retail business at the time of purchase.

(2) The fee for each single-use retail bag is 10 cents.

(3) (a) Except as provided in Subsection (3)(b), a restaurant is not required to charge a fee for a paper single-use retail bag used to protect or transport prepared foods, beverages, or other loose items associated with the sale of prepared foods.

(b) A restaurant may irrevocably notify the commission of the restaurant's intent to charge a fee for a paper single-use retail bag used to protect or transport prepared foods, beverages, or other loose items associated with the sale of prepared foods.

(4) A unit of local government may not impose a similar or additional fee on single-use retail bags.

Section 5. Section **19-6-1305** is enacted to read:

19-6-1305. Special revenue fund -- Creation -- Deposits.

(1) There is created an expendable special revenue fund called the "Retail Bag Impact Reduction Fund."

(2) The fund shall consist of the proceeds of the fee imposed under Section 19-6-1304.

(3) (a) After a retail business located in an unincorporated area of a county retains four cents of the fee described in Subsection 19-6-1306(1)(b), the commission shall distribute the remaining six cents generated by the fee as follows:

(i) four cents to the county in which the retail business is located; and

(ii) two cents to the Department of Environmental Quality.

(b) After a retail business located in an incorporated municipality retains four cents of the fee described in Subsection 19-6-1306(1)(b), the commission shall distribute the remaining six cents generated by the fee as follows:

(i) ~~four~~two cents to the incorporated municipality in which the retail business is located;

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(ii) two cents to the county in which the retail business is located; and

(~~iii~~) two cents to the Department of Environmental Quality.

(c) (i) Local government units, including special service districts, may enter into interlocal agreements that provide for alternative distribution of the single-use retail bag fee between local government units in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

(ii) Regardless of an interlocal agreement described in Subsection (3)(c)(i), the commission shall distribute the proceeds of the single-use retail bag fee as provided in Subsections (3)(a) and (b), and the local government units may redistribute the proceeds of the single-use retail bag fee in accordance with the interlocal agreement.

(4) ~~{Counties}~~ Except as provided in Subsection (5), counties, municipalities, and the Department of Environmental Quality may only use proceeds of the single-use retail bag fee for:

(a) promoting the use of reusable bags or other sustainable alternatives to replace single-use retail bags;

(b) increasing awareness of environmental impacts of single-use retail bags;

(c) providing access to recycling bins and facilities in retail businesses and in areas of the community having limited access to recycling;

(d) developing and implementing strategies and practices to prevent and remediate litter;

(e) educating the public about materials that are difficult to recycle and hazardous to the environment;

(f) promoting and facilitating recycling; and

(g) encouraging environmental sustainability.

(5) The Department of Environmental Quality may use proceeds of the single-use retail bag fee to pay for the Department of Environmental Quality's administration costs related to the program.

Section 6. Section **19-6-1306** is enacted to read:

19-6-1306. Payment of the single-use retail bag fee -- Administrative charge.

(1) (a) Except as provided in Subsection (1)(b), a retail business shall remit to the commission the single-use retail bag fee collected from the customer:

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(i) monthly, on or before the last day of the month immediately following the last day of the previous month if:

(A) the retail business is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(B) the retail business is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) quarterly, on or before the last day of the month immediately following the last day of the previous quarter, if the retail business is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.

(b) A retail business may retain four cents of the single-use retail bag fee collected by the retail business under Section 19-6-1304.

(2) The payment shall be accompanied by a form prescribed by the commission.

(3) (a) The commission shall transfer proceeds of the fee to the fund for payment to each recipient described in Section 19-6-1305.

(b) (i) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a fee under Section 19-6-1304.

(ii) The commission shall retain and deposit the administrative charge described in Subsection (3)(b)(i) solely from the two cents portion of the fee allocated to the Department of Environmental Quality in Subsections 19-6-1305(3)(a)(ii) and 19-6-1305(3)(b)(iii).

(4) (a) The commission shall administer, collect, and enforce the fee authorized under this part in accordance with the same procedures used in the administration, collection, and enforcement of the state sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.

(b) A retail business may use the retail business's portion of the single-use retail bag fee collected and retained under this part for the cost incurred by the retail business in collecting the fee and administering the program.

(c) The exemptions described in Section 59-12-104 do not apply to this part.

Section 7. Section **19-6-1307** is enacted to read:

19-6-1307. Reporting.

Before December 1, 2017, the commission shall report to the Business and Labor

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Interim Committee data associated with the program, including the amount of money collected and the number of retail bags for which the fee was imposed.

Section 8. Section **59-1-306** is amended to read:

59-1-306. Definition -- State Tax Commission Administrative Charge Account -- Amount of administrative charge -- Deposit of revenues into the restricted account -- Interest deposited into General Fund -- Expenditure of money deposited into the restricted account.

(1) As used in this section, "qualifying tax, fee, or charge" means a tax, fee, or charge the commission administers under:

~~[(b)]~~ (a) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

~~[(c)]~~ (b) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

~~[(d)]~~ (c) Section 19-6-714;

~~[(e)]~~ (d) Section 19-6-805;

(e) Section 19-6-1304;

~~[(a)]~~ (f) Chapter 12, Sales and Use Tax Act, other than a tax under Chapter 12, Part 1, Tax Collection, or Chapter 12, Part 18, Additional State Sales and Use Tax Act;

~~[(f)]~~ (g) Section 59-27-105;

~~[(g)]~~ (h) Section 69-2-5;

~~[(h)]~~ (i) Section 69-2-5.5; or

~~[(i)]~~ (j) Section 69-2-5.6.

(2) There is created a restricted account within the General Fund known as the "State Tax Commission Administrative Charge Account."

(3) Subject to the other provisions of this section, the restricted account shall consist of administrative charges the commission retains and deposits in accordance with this section.

(4) For purposes of this section, the administrative charge is a percentage of revenues the commission collects from each qualifying tax, fee, or charge of not to exceed the lesser of:

(a) 1.5%; or

(b) an equal percentage of revenues the commission collects from each qualifying tax, fee, or charge sufficient to cover the cost to the commission of administering the qualifying taxes, fees, or charges.

(5) The commission shall deposit an administrative charge into the restricted account.

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(6) Interest earned on the restricted account shall be deposited into the General Fund.

(7) The commission shall expend money appropriated by the Legislature to the commission from the restricted account to administer qualifying taxes, fees, or charges.

Section 9. Section **59-12-108** is amended to read:

59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty -- Certain amounts allocated to local taxing jurisdictions.

(1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this chapter of \$50,000 or more for the previous calendar year shall:

(i) file a return with the commission:

(A) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and

(B) for the month for which the seller collects a tax under this chapter; and

(ii) except as provided in Subsection (1)(b), remit with the return required by Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c):

(A) if that seller's tax liability under this chapter for the previous calendar year is less than \$96,000, by any method permitted by the commission; or

(B) if that seller's tax liability under this chapter for the previous calendar year is \$96,000 or more, by electronic funds transfer.

(b) A seller shall remit electronically with the return required by Subsection (1)(a)(i) the amount the seller is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c) if that seller:

(i) is required by Section 59-12-107 to file the return electronically; or

(ii) (A) is required to collect and remit a tax under Section 59-12-107; and

(B) files a simplified electronic return.

(c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

(i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) a fee under Section 19-6-714;

(iii) a fee under Section 19-6-805;

(iv) a fee under Section 19-6-1304;

~~(iv)~~ (v) a charge under Section 69-2-5;

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~~[(v)]~~ (vi) a charge under Section 69-2-5.5;

~~[(vi)]~~ (vii) a charge under Section 69-2-5.6; or

~~[(vii)]~~ (viii) a tax under this chapter.

(d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for a method for making same-day payments other than by electronic funds transfer if making payments by electronic funds transfer fails.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall establish by rule procedures and requirements for determining the amount a seller is required to remit to the commission under this Subsection (1).

(2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month the amount allowed by this Subsection (2).

(b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1.31% of any amounts the seller is required to remit to the commission:

(i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax and a local tax imposed in accordance with the following, for the month for which the seller is filing a return in accordance with Subsection (1):

(A) Subsection 59-12-103(2)(a);

(B) Subsection 59-12-103(2)(b); and

(C) Subsection 59-12-103(2)(d); and

(ii) for an agreement sales and use tax.

(c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c).

(ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount equal to the sum of:

(A) 1.31% of any amounts the seller is required to remit to the commission for:

(I) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

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(II) the month for which the seller is filing a return in accordance with Subsection (1);
and

(III) an agreement sales and use tax; and

(B) 1.31% of the difference between:

(I) the amounts the seller would have been required to remit to the commission:

(Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

(Bb) for the month for which the seller is filing a return in accordance with Subsection (1); and

(Cc) for an agreement sales and use tax; and

(II) the amounts the seller is required to remit to the commission for:

(Aa) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

(Bb) the month for which the seller is filing a return in accordance with Subsection (1);
and

(Cc) an agreement sales and use tax.

(d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1% of any amounts the seller is required to remit to the commission:

(i) for the month for which the seller is filing a return in accordance with Subsection (1); and

(ii) under:

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

(B) Subsection 59-12-603(1)(a)(i)(A); or

(C) Subsection 59-12-603(1)(a)(i)(B).

(3) A state government entity that is required to remit taxes monthly in accordance with Subsection (1) may not retain any amount under Subsection (2).

(4) A seller that has a tax liability under this chapter for the previous calendar year of less than \$50,000 may:

(a) voluntarily meet the requirements of Subsection (1); and

(b) if the seller voluntarily meets the requirements of Subsection (1), retain the amounts allowed by Subsection (2).

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(5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to 18% of any amounts the seller would otherwise remit to the commission:

(i) if the seller obtains a license under Section 59-12-106 for the first time on or after January 1, 2014; and

(ii) for:

(A) an agreement sales and use tax; and

(B) the time period for which the seller files a return in accordance with this section.

(b) If a seller retains an amount under this Subsection (5), the seller may not retain any other amount under this section.

(c) If a seller retains an amount under this Subsection (5), the commission may require the seller to file a return by:

(i) electronic means; or

(ii) a means other than electronic means.

(d) A seller may not retain an amount under this Subsection (5) if the seller is required to collect or remit a tax under this section in accordance with Section 59-12-103.1.

(6) Penalties for late payment shall be as provided in Section 59-1-401.

(7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted to the commission under this part, the commission shall each month calculate an amount equal to the difference between:

(i) the total amount retained for that month by all sellers had the percentages listed under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

(ii) the total amount retained for that month by all sellers at the percentages listed under Subsections (2)(b) and (2)(c)(ii).

(b) The commission shall each month allocate the amount calculated under Subsection (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use tax that the commission distributes to each county, city, and town for that month compared to the total agreement sales and use tax that the commission distributes for that month to all counties, cities, and towns.

(c) The amount the commission calculates under Subsection (7)(a) may not include an amount collected from a tax that:

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(i) the state imposes within a county, city, or town, including the unincorporated area of a county; and

(ii) is not imposed within the entire state.

Section 10. **Effective date.**

This bill takes effect on January 1, 2017.