

**Representative Gage Froerer** proposes the following substitute bill:

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

**FUNDING AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the budget of the Department of Alcoholic Beverage Control.

**Highlighted Provisions:**

This bill:

- ▶ modifies how the Department of Alcoholic Beverage Control handles money it receives from the markup on alcoholic beverages;
- ▶ repeals certain responsibilities of the State Tax Commission related to money received from the markup on alcoholic beverages;
- ▶ creates the State Store Land Acquisition Fund;
- ▶ allows the Department of Alcoholic Beverage Control to use the money in the State Store Land Acquisition Fund to purchase or lease property for state stores;
- ▶ requires the Department of Alcoholic Beverage Control to use proceeds from any related revenue bond to repay the money used from the State Store Land Acquisition Fund;
- ▶ addresses reporting requirements; ~~and~~ **[and]**
- ▶ provides for establishing performance measures and goals to evaluate the operations of the Department of Alcoholic Beverage Control; and



- 24c           ▶ requires the Department of Alcoholic Beverage Control to obtain approval from the
- 24d Governor's Office of Management and Budget before ~~§~~→ [~~submitting~~] submitting ←~~§~~ a request
- 24d1 to the State Building
- 24e Board for a capital development project; and ←~~§~~
- 25           ▶ makes technical and conforming changes.

26 **Money Appropriated in this Bill:**

27           ▶ To the Department of Alcoholic Beverage Control -- State Store Land  
 28 Acquisition Fund -- State Store Land Acquisition Fund -- as a one-time  
 29 appropriation:

30           • from the General Fund, One-time, \$→ ~~[\$7,500,000]~~ \$5,000,000 ←\$ .

31 **Other Special Clauses:**

32           This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35           **32B-2-301**, as last amended by Laws of Utah 2017, Chapter 159

36           **32B-2-304**, as last amended by Laws of Utah 2017, Chapter 455

37           **32B-3-205**, as last amended by Laws of Utah 2017, Chapter 455

38           **53F-9-304**, as renumbered and amended by Laws of Utah 2018, Chapter 2

39           **59-1-401**, as last amended by Laws of Utah 2017, Chapter 430

40           **59-1-402**, as last amended by Laws of Utah 2017, Chapter 430

41           **59-1-1402**, as last amended by Laws of Utah 2017, Chapter 430

42 ENACTS:

43           **32B-2-307**, Utah Code Annotated 1953

44           **32B-2-505**, Utah Code Annotated 1953

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

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

48           **32B-2-301. State property -- Liquor Control Fund -- Money to be retained by**  
 49 **department -- Department building process.**

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

51           (a) the money received in the administration of this title, except as otherwise provided;  
 52 and

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

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

55           (b) Except as provided in [~~Sections 32B-3-205 and~~] Section 32B-2-304, the department  
 56 shall deposit the following into the Liquor Control Fund:

57 (i) money received in the administration of this title [shall be transferred to the Liquor  
58 Control Fund.]; and

59 ~~[(3) (a) There is created an enterprise fund known as the "Markup Holding Fund."]~~

60 ~~[(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit~~  
61 ~~revenue remitted to the State Tax Commission from the markup imposed under Section~~  
62 ~~32B-2-304 into the Markup Holding Fund.]~~

63 ~~[(c) Money deposited into the Markup Holding Fund may be expended:]~~

64 ~~[(i) to the extent appropriated by the Legislature; and]~~

65 ~~[(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection~~  
66 ~~32B-2-305(4).]~~

67 (ii) money received from the markup described in Section 32B-2-304.

68 (c) The department may draw from the Liquor Control Fund only to the extent  
69 appropriated by the Legislature or provided by statute.

70 (d) The net position of the Liquor Control Fund may not fall below zero.

71 ~~[(4) The] (3) (a) Notwithstanding Subsection (2)(c), the department may draw by~~  
72 ~~warrant from the Liquor Control Fund [only to the extent appropriated by the Legislature or~~  
73 ~~provided for by statute, except that the department may draw by warrant] without an~~  
74 ~~appropriation [from the Liquor Control Fund] for an expenditure that is directly incurred by the~~  
75 ~~department:~~

76 ~~[(a)] (i) to purchase an alcoholic product;~~

77 ~~[(b)] (ii) to transport an alcoholic product from the supplier to a warehouse of the~~  
78 ~~department; [and] or~~

79 ~~[(c)] (iii) for variances related to an alcoholic product, including breakage or theft.~~

80 (b) If the balance of the Liquor Control Fund is not adequate to cover a warrant that the  
81 department draws against the Liquor Control Fund, to the extent necessary to cover the  
82 warrant, the cash resources of the General Fund may be used.

83 ~~[(5)] (4) (a) As used in this Subsection [(5)] (4), "base budget" means the same as that~~  
84 ~~term is defined in legislative rule.~~

85 (b) The department's base budget shall include as an appropriation from the Liquor  
86 Control Fund:

87 (i) credit card related fees paid by the department;

88 (ii) package agency compensation; and

89 (iii) the department's costs of shipping and warehousing alcoholic products.

90 ~~[(6) Before the transfer required by Subsection (7), the department may retain each~~  
91 ~~fiscal year from the Liquor Control Fund \$1,000,000 that the department may use for:]~~

92 ~~[(a) capital equipment purchases;]~~

93 ~~[(b) salary increases for department employees;]~~

94 ~~[(c) performance awards for department employees; or]~~

95 ~~[(d) information technology enhancements because of changes or trends in~~  
96 ~~technology.]~~

97 ~~[(7) (a) The [department] Division of Finance shall transfer annually from the~~  
98 ~~Liquor Control Fund [and the State Tax Commission shall transfer annually from the Markup~~  
99  ~~Holding Fund] to the General Fund a sum equal to the amount of net profit earned from the~~  
100 ~~sale of liquor since the preceding transfer of money under this Subsection [(7). The transfers~~  
101 ~~shall be calculated by no later than] (5).~~

102 (b) After each fiscal year, the Division of Finance shall calculate the amount for the  
103 transfer on or before September 1 and [made by no later than] the Division of Finance shall  
104 make the transfer on or before September 30 [after a fiscal year].

105 (c) The Division of Finance may make year-end closing entries in the Liquor Control  
106 Fund [and the Markup Holding Fund in order] to comply with Subsection 51-5-6(2).

107 ~~[(8) (6) (a) By the end of each day, the department shall:~~

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

109 (ii) report the deposit to the state treasurer.

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

112 (c) Money deposited in a qualified depository is entitled to the same priority of  
113 payment as other public funds of the state.

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

118 (7) Before the Division of Finance makes the transfer described in Subsection (5), the

119 department may retain each fiscal year from the Liquor Control Fund \$1,000,000 that the  
120 department may use for:

- 121 (a) capital equipment purchases;
- 122 (b) salary increases for department employees;
- 123 (c) performance awards for department employees; or
- 124 (d) information technology enhancements because of changes or trends in technology.

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

126 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

127 (1) For purposes of this section:

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

129 (A) the cost of the product; and

130 (B) inbound shipping costs incurred by the department.

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

133 (b) "Proof gallon" means the same as that term is defined in 26 U.S.C. Sec. 5002.

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

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

138 (a) spirituous liquor sold by the department within the state shall be marked up in an  
139 amount not less than 88% above the landed case cost to the department;

140 (b) wine sold by the department within the state shall be marked up in an amount not  
141 less than 88% above the landed case cost to the department;

142 (c) heavy beer sold by the department within the state shall be marked up in an amount  
143 not less than 66.5% above the landed case cost to the department; and

144 (d) a flavored malt beverage sold by the department within the state shall be marked up  
145 in an amount not less than 88% above the landed case cost to the department.

146 (3) (a) Liquor sold by the department to a military installation in Utah shall be marked  
147 up in an amount not less than 17% above the landed case cost to the department.

148 (b) Except for spirituous liquor sold by the department to a military installation in  
149 Utah, spirituous liquor that is sold by the department within the state shall be marked up 49%

150 above the landed case cost to the department if:

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

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

154 (c) Except for wine sold by the department to a military installation in Utah, wine that  
155 is sold by the department within the state shall be marked up 49% above the landed case cost to  
156 the department if:

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

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

160 (d) Except for heavy beer sold by the department to a military installation in Utah,  
161 heavy beer that is sold by the department within the state shall be marked up 32% above the  
162 landed case cost to the department if:

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

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

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

167 (4) The department shall deposit 10% of the total gross revenue from sales of liquor  
168 with the state treasurer to be credited to the Uniform School Fund and used to support the  
169 school lunch program administered by the State Board of Education under Section  
170 [53A-19-201](#).

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

173 [~~(6) (a) Except as provided in Section [53A-13-114](#), the department shall collect the  
174 markup and remit the markup collected by the department under this section:]~~

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

177 [~~(ii) using a form prescribed by the State Tax Commission.]~~

178 [~~(b) For liquor provided to a package agency on consignment, the department shall  
179 remit the markup to the State Tax Commission for the month during which the liquor is  
180 provided to the package agency regardless of when the package agency pays the department for~~

181 the liquor provided to the package agency.]

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

184 ~~[(d) The assessment, collection, and refund of a markup under this section shall be in~~  
185 ~~accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.]~~

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

188 ~~[(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter~~  
189 ~~3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6):]~~

190 Section 3. Section 32B-2-307 is enacted to read:

191 **32B-2-307. State Store Land Acquisition Fund.**

192 (1) There is created an enterprise fund known as the State Store Land Acquisition  
193 Fund.

194 (2) The State Store Land Acquisition Fund is funded from the following sources:

195 (a) appropriations made to the State Store Land Acquisition Fund by the Legislature;  
196 and

197 (b) in accordance with Subsection (5), proceeds from revenue bonds authorized by  
198 Title 63B, Bonds.

199 (3) Subject to Subsection (4), the department may use the money deposited into the  
200 State Store Land Acquisition Fund to purchase or lease property for new state stores.

201 (4) (a) Before the department spends or commits money from the State Store Land  
202 Acquisition Fund, the department shall present to the Infrastructure and General Government  
203 Appropriations Subcommittee a description of how the department will spend the money.

204 (b) Following a presentation described in Subsection (4)(a), the Infrastructure and  
205 General Government Appropriations Subcommittee shall recommend whether the department  
206 spend the money in accordance with the department's presentation.

207 (5) When the department uses money in the State Store Land Acquisition Fund to  
208 purchase or lease property for a new state store and subsequently issues a revenue bond for the  
209 state store for which the department purchased or leased the property, the department shall  
210 repay the money used to purchase or lease the property with proceeds from the revenue bond.

211 Section 4. Section 32B-2-505 is enacted to read:



212 **32B-2-505. Reporting requirements -- Building plan and market survey required.**

213 (1) In 2018 and each year thereafter, the department shall present a five-year building  
 214 plan to the Infrastructure and General Government Appropriations Subcommittee that  
 215 describes the department's anticipated property acquisition, building, and remodeling for the  
 216 five years following the day on which the department presents the five-year building plan.

217 (2) (a) In 2018 and every other year thereafter, the department shall complete a market  
 218 survey to inform the department's five-year building plan described in Subsection (1).

219 (b) The department shall:

220 (i) provide a copy of each market survey to the Infrastructure and General Government  
 221 Appropriations Subcommittee ~~H~~→ **and the Business and Labor Interim Committee** ←~~H~~ ; and

222 (ii) upon request, appear before the Infrastructure and General Government  
 223 Appropriations Subcommittee to present the results of the market survey.

223a ~~S~~→ (3) **For fiscal year 2018-19 and each fiscal year thereafter, before the fiscal year begins,**  
 223b **the Governor's Office of Management and Budget, in consultation with the department and**  
 223c **the Office of the Legislative Fiscal Analyst, shall establish performance measures and goals to**  
 223d **evaluate the department's operations during the fiscal year.** ←~~S~~

223e ~~S~~→ (4) (a) **The department may not submit a request to the State Building Board for a**  
 223f **capital development project unless the department first obtains approval from the Governor's**  
 223g **Office of Management and Budget.** ←~~S~~

223h ~~S~~→ (b) **In determining whether to grant approval for a request described in Subsection**  
 223i **(4)(a), the Governor's Office of Management and Budget shall evaluate the extent to which the**  
 223j **department met the performance measures and goals described in Subsection (3) during the**  
 223k **previous fiscal year.** ←~~S~~

224 Section 5. Section **32B-3-205** is amended to read:

225 **32B-3-205. Penalties.**

226 (1) If the commission is satisfied that a person subject to administrative action violates  
 227 this title or the commission's rules, in accordance with Title 63G, Chapter 4, Administrative  
 228 Procedures Act, the commission may:

229 (a) suspend or revoke the person's license, permit, or certificate of approval;

230 (b) subject to Subsection (2), impose a fine against the person, including individual  
 231 staff of a licensee, permittee, or certificate holder;

232 (c) assess the administrative costs of a disciplinary proceeding to the person if the  
 233 person is a licensee, permittee, or certificate holder; or

234 (d) take a combination of actions described in this Subsection (1).

235 (2) (a) A fine imposed may not exceed \$25,000 in the aggregate for:

236 (i) a single notice of agency action; or

237 (ii) a single action against a package agency.

238 (b) The commission shall by rule establish a schedule setting forth a range of fines for

239 each violation.

240 (c) When a presiding officer imposes a fine, the presiding officer shall consider any

241 aggravating circumstances or mitigating circumstances in deciding where within the applicable

242 range to set the fine.

243 (3) The [~~commission~~] department shall transfer the costs assessed under this section  
244 into the General Fund in accordance with Section 32B-2-301.

245 (4) (a) If a license or permit is suspended under this section, the licensee or permittee  
246 shall prominently display a sign provided by the department:

247 (i) during the suspension; and

248 (ii) at the entrance of the premises of the licensee or permittee.

249 (b) The sign required by this Subsection (4) shall:

250 (i) read "The Utah Alcoholic Beverage Control Commission has suspended the  
251 alcoholic product license or permit of this establishment. An alcoholic product may not be  
252 sold, offered for sale, furnished, or consumed on these premises during the period of  
253 suspension."; and

254 (ii) include the dates of the suspension period.

255 (c) A licensee or permittee may not remove, alter, obscure, or destroy a sign required to  
256 be displayed under this Subsection (4) during the suspension period.

257 (5) (a) If a license or permit is revoked, the commission may order the revocation of a  
258 bond posted by the licensee or permittee under this title.

259 (b) Notwithstanding Subsection (5)(a), the department may make a claim against a  
260 bond posted by a licensee or permittee for money owed the department under this title without  
261 the commission first revoking the license or permit.

262 (6) A licensee or permittee whose license or permit is revoked may not reapply for a  
263 license or permit under this title for three years from the date on which the license or permit is  
264 revoked.

265 (7) If a staff member of a licensee, permittee, or certificate holder is found to have  
266 violated this title, in addition to imposing another penalty authorized by this title, the  
267 commission may prohibit the staff member from handling, selling, furnishing, distributing,  
268 manufacturing, wholesaling, or warehousing an alcoholic product in the course of acting as  
269 staff with a licensee, permittee, or certificate holder under this title for a period determined by  
270 the commission.

271 (8) (a) If the commission makes the finding described in Subsection (8)(b), in addition  
272 to other penalties prescribed by this title, the commission may order:

273 (i) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's

274 from the department's sales list; and

275 (ii) a suspension of the department's purchase of an alcoholic product described in  
276 Subsection (8)(a)(i) for a period determined by the commission.

277 (b) The commission may take the action described in Subsection (8)(a) if:

278 (i) a manufacturer, supplier, or importer of liquor or its staff or representative violates  
279 this title; and

280 (ii) the manufacturer, supplier, or importer:

281 (A) directly commits the violation; or

282 (B) solicits, requests, commands, encourages, or intentionally aids another to engage in  
283 the violation.

284 (9) If the commission makes a finding that the brewer holding a certificate of approval  
285 violates this title or rules of the commission, the commission may take an action against the  
286 brewer holding a certificate of approval that the commission could take against a licensee  
287 including:

288 (a) suspension or revocation of the certificate of approval; and

289 (b) imposition of a fine.

290 (10) Notwithstanding the other provisions of this title, the commission may not order a  
291 disciplinary action or fine in accordance with this section if the disciplinary action or fine is  
292 ordered on the basis of a violation:

293 (a) of a provision in this title related to intoxication or becoming intoxicated; and

294 (b) if the violation is first investigated by a law enforcement officer, as defined in  
295 Section 53-13-103, who has not received training regarding the requirements of this title  
296 related to responsible alcoholic product sale or service.

297 Section 6. Section 53F-9-304 is amended to read:

298 **53F-9-304. Underage Drinking Prevention Program Restricted Account.**

299 (1) As used in this section, "account" means the Underage Drinking Prevention  
300 Program Restricted Account created in this section.

301 (2) There is created within the Education Fund a restricted account known as the  
302 "Underage Drinking Prevention Program Restricted Account."

303 (3) (a) Before the Department of Alcoholic Beverage Control [~~remits~~] deposits any  
304 portion of the markup collected under Section 32B-2-304 [~~to the State Tax Commission, the~~

305 ~~department]~~ into the Liquor Control Fund in accordance with Section 32B-2-301, the  
 306 Department of Alcoholic Beverage Control shall deposit into the account:

307 (i) for the fiscal year that begins July 1, 2017, \$1,750,000; or  
 308 (ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the  
 309 amount that the [~~department]~~ Department of Alcoholic Beverage Control deposited into the  
 310 account during the preceding fiscal year increased or decreased by a percentage equal to the  
 311 percentage difference between the Consumer Price Index for the second preceding calendar  
 312 year and the Consumer Price Index for the preceding calendar year [~~2017~~].

313 (b) For purposes of this Subsection (3), the [~~department]~~ Department of Alcoholic  
 314 Beverage Control shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs.  
 315 1(f)(4) and 1(f)(5).

316 (4) The account shall be funded:

317 (a) in accordance with Subsection (3);

318 (b) by appropriations made to the account by the Legislature; and

319 (c) by interest earned on money in the account.

320 (5) The State Board of Education shall use money in the account for the Underage  
 321 Drinking Prevention Program described in Section 53G-10-406.

322 Section 7. Section 59-1-401 is amended to read:

323 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**  
 324 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**  
 325 **interest.**

326 (1) As used in this section:

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

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

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

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

335 (B) that, at the time the commission implements the GenTax system with respect to the

336 tax, fee, or charge:

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

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

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

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

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

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

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

349 (I) this title;

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

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

352 (IV) Section 19-6-410.5;

353 (V) Section 19-6-714;

354 (VI) Section 19-6-805;

355 [~~(VII) Section 32B-2-304;~~]

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

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

358 [~~(X)~~] (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

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

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

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

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

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

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

365 (E) Chapter 4, Privilege Tax.

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

367 tax, fee, or charge.

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

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

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

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

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

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

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

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

380 (A) \$20; or

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

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

384 (A) \$20; or

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

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

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

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

393 (i) an amended return; or

394 (ii) a return with no tax due.

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

396 (i) the person files a return on or before the due date for filing a return described in

397 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due

398 date;

399 (ii) the person:

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

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

402 due date for filing a return described in Subsection (2)(a);

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

404 (B) the commission estimates an amount of tax due for that person in accordance with

405 Subsection 59-1-1406(2);

406 (iv) the person:

407 (A) is mailed a notice of deficiency; and

408 (B) within a 30-day period after the day on which the notice of deficiency described in

409 Subsection (3)(a)(iv)(A) is mailed:

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

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

412 (v) (A) the commission:

413 (I) issues an order constituting final agency action resulting from a timely filed petition

414 for redetermination or a timely filed request for agency action; or

415 (II) is considered to have denied a request for reconsideration under Subsection

416 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed

417 request for agency action; and

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

419 after the date the commission:

420 (I) issues the order constituting final agency action described in Subsection

421 (3)(a)(v)(A)(I); or

422 (II) is considered to have denied the request for reconsideration described in

423 Subsection (3)(a)(v)(A)(II); or

424 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date

425 of a final judicial decision resulting from a timely filed petition for judicial review.

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

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

428 respect to an unactivated tax, fee, or charge:



- 429 (A) \$20; or
- 430 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 431 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
- 432 respect to an activated tax, fee, or charge, beginning on the activation date:
- 433 (A) \$20; or
- 434 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
- 435 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
- 436 return described in Subsection (2)(a);
- 437 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
- 438 fee, or charge due on the return is paid more than five days after the due date for filing a return
- 439 described in Subsection (2)(a) but no later than 15 days after that due date; or
- 440 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
- 441 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
- 442 return described in Subsection (2)(a).
- 443 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
- 444 quarterly installments required by Sections [59-5-107](#), [59-5-207](#), [59-7-504](#), and [59-9-104](#), there
- 445 shall be added a penalty in an amount determined by applying the interest rate provided under
- 446 Section [59-1-402](#) plus four percentage points to the amount of the underpayment for the period
- 447 of the underpayment.
- 448 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
- 449 excess of the required installment over the amount, if any, of the installment paid on or before
- 450 the due date for the installment.
- 451 (ii) The period of the underpayment shall run from the due date for the installment to
- 452 whichever of the following dates is the earlier:
- 453 (A) the original due date of the tax return, without extensions, for the taxable year; or
- 454 (B) with respect to any portion of the underpayment, the date on which that portion is
- 455 paid.
- 456 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
- 457 against unpaid required installments in the order in which the installments are required to be
- 458 paid.
- 459 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a

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

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

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

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

472 (6) If a person does not file a return within an extension of time allowed by Section  
473 59-7-505 or 59-10-516, the person:

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

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

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

477 (A) \$20; or

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

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

481 (A) \$20; or

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

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

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

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

491 underpayment.

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

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

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

499 (i) The notice of proposed penalty shall:

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

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

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

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

505 or

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

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

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

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

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

516 (II) in accordance with Section [59-1-1404](#).

517 (c) A seller that voluntarily collects a tax under Subsection [59-12-107\(2\)\(d\)](#) is not  
518 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

521 (A) the seller meets one or more of the criteria described in Subsection [59-12-107\(2\)\(a\)](#)

522 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
523 59-12-107(2)(b); and

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

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

527 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

528 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
529 59-12-107(2)(b); and

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

532 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not  
533 subject to the penalty under Subsection (7)(a)(ii) if:

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

536 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

537 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
538 59-12-107(2)(b); and

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

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

542 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

543 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
544 59-12-107(2)(b); and

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

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

550 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an  
551 information return, information report, or a complete supporting schedule is \$50 for each  
552 information return, information report, or supporting schedule up to a maximum of \$1,000.

553 (b) If an employer is subject to a penalty under Subsection (13), the employer may not  
554 be subject to a penalty under Subsection (8)(a).

555 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a  
556 return in accordance with Subsection 59-10-406(3) on or before the due date described in  
557 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this  
558 Subsection (8) unless the return is filed more than 14 days after the due date described in  
559 Subsection 59-10-406(3)(b)(ii).

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

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

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

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

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

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

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

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

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

578 (A) a return;

579 (B) an affidavit;

580 (C) a claim; or

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

582 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)

583 will be used in connection with any material matter administered by the commission; and

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

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

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

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

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

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

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

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

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

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

600 (i) shall be imposed by the commission;

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

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

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

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

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

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

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

- 617 (A) be less than \$500; or
- 618 (B) exceed \$1,000.

619 (c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally,  
620 and without a reasonable good faith basis, fails to make, render, sign, or verify a return within  
621 the time required by law or to supply information within the time required by law, or who  
622 makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false  
623 or fraudulent information, is guilty of a third degree felony.

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

- 626 (A) be less than \$1,000; or
- 627 (B) exceed \$5,000.

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

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

- 633 (A) be less than \$1,500; or
- 634 (B) exceed \$25,000.

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

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

- 638 (I) a return;
- 639 (II) an affidavit;
- 640 (III) a claim; or
- 641 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

642 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in  
643 Subsection (12)(e)(i)(A):

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

646 commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

668 (B) exceed \$25,000.

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

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

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

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



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

678 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with  
679 the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described  
680 in Subsection (13)(b) if the employer:

681 (i) fails to file the form with the commission in an electronic format approved by the  
682 commission as required by Subsection 59-10-406(8);

683 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

684 (iii) fails to provide accurate information on the form; or

685 (iv) fails to provide all of the information required by the Internal Revenue Service to  
686 be contained on the form.

687 (b) For purposes of Subsection (13)(a), the penalty is:

688 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the  
689 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date  
690 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in  
691 Subsection 59-10-406(8);

692 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the  
693 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date  
694 provided in Subsection 59-10-406(8) but on or before June 1; or

695 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

696 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

697 (B) fails to file the form.

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

701 Section 8. Section 59-1-402 is amended to read:

702 **59-1-402. Definitions -- Interest.**

703 (1) As used in this section:

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

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

- 708 (i) invalidates a state or federal taxation statute; and  
709 (ii) requires the state to provide a refund for an overpayment that was made:  
710 (A) prior to the final judicial decision; or  
711 (B) during the 180-day period after the final judicial decision.  
712 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:  
713 (A) a tax, fee, or charge the commission administers under:  
714 (I) this title;  
715 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
716 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;  
717 (IV) Section 19-6-410.5;  
718 (V) Section 19-6-714;  
719 (VI) Section 19-6-805;  
720 [~~(VII) Section 32B-2-304;~~]  
721 [~~(VIII)~~] (VII) Section 34A-2-202;  
722 [~~(IX)~~] (VIII) Section 40-6-14; or  
723 [~~(X)~~] (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or  
724 (B) another amount that by statute is subject to interest imposed under this section.  
725 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:  
726 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;  
727 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;  
728 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;  
729 (D) Chapter 3, Tax Equivalent Property Act;  
730 (E) Chapter 4, Privilege Tax; or  
731 (F) Chapter 13, Part 5, Interstate Agreements.  
732 (2) Except as otherwise provided for by law, the interest rate for a calendar year for a  
733 tax, fee, or charge administered by the commission shall be calculated based on the federal  
734 short-term rate determined by the Secretary of the Treasury under Section 6621, Internal  
735 Revenue Code, in effect for the preceding fourth calendar quarter.  
736 (3) The interest rate calculation shall be as follows:  
737 (a) except as provided in Subsection (7), in the case of an overpayment or refund,  
738 simple interest shall be calculated at the rate of two percentage points above the federal

739 short-term rate; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

768 (A) for a time period:

769 (I) that begins on the later of:

770 (Aa) the date the original return was filed; or  
771 (Bb) the due date for filing the original return not including any extensions for filing  
772 the original return; and  
773 (II) that ends on the date the commission receives the amended return; and  
774 (B) if the commission does not make a refund of an overpayment under this Subsection  
775 (5)(c):  
776 (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise  
777 and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,  
778 within a 45-day period after the date the commission receives the amended return, for a time  
779 period:  
780 (Aa) that begins 46 days after the commission receives the amended return; and  
781 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission  
782 completes processing the refund of the overpayment; or  
783 (II) if the amended return is with respect to a tax, fee, or charge except for a tax under  
784 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,  
785 or is not filed electronically, within a 90-day period after the date the commission receives the  
786 amended return, for a time period:  
787 (Aa) that begins 91 days after the commission receives the amended return; and  
788 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission  
789 completes processing the refund of the overpayment.  
790 (ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall  
791 be calculated forward from the preparation date of the refund document to allow for  
792 processing.  
793 (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge  
794 shall be computed from the time the original return is due, excluding any filing or payment  
795 extensions, to the date the payment is received.  
796 (7) Interest on a refund relating to a tax, fee, or charge may not be paid on any  
797 overpayment that arises from a statute that is determined to be invalid under state or federal  
798 law or declared unconstitutional under the constitution of the United States or Utah if the basis  
799 for the refund is the retroactive application of a judicial decision upholding the claim of  
800 unconstitutionality or the invalidation of a statute.

801 Section 9. Section **59-1-1402** is amended to read:

802 **59-1-1402. Definitions.**

803 As used in this part:

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

805 (a) the cost of filing;

806 (b) the cost of administering a garnishment;

807 (c) the amount the commission pays to a depository institution in accordance with Part  
808 17, Depository Institution Data Match System and Levy Act; or

809 (d) a cost similar to Subsections (1)(a) through (c) as determined by the commission by  
810 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

813 (a) an account;

814 (b) a book;

815 (c) an invoice;

816 (d) a memorandum;

817 (e) a paper;

818 (f) a record; or

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

821 (3) "Deficiency" means:

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

823 (i) the sum of:

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

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

826 and

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

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

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

832 and

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

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

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

838 (b) the earnings of the person.

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

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

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

843 (c) an administrative cost;

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

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

846 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section  
847 6213(g)(2), Internal Revenue Code.

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

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

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

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

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

856 (A) this title;

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

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

859 (D) Section 19-6-410.5;

860 (E) Section 19-6-714;

861 (F) Section 19-6-805;

862 [~~(G) Section 32B-2-304;~~]

- 863 [(H)] (G) Section 34A-2-202;
- 864 [(H)] (H) Section 40-6-14; or
- 865 [(H)] (I) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
- 866 (ii) another amount that by statute is administered by the commission.
- 867 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 868 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 869 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 870 (iii) Chapter 2, Property Tax Act;
- 871 (iv) Chapter 3, Tax Equivalent Property Act;
- 872 (v) Chapter 4, Privilege Tax; or
- 873 (vi) Chapter 13, Part 5, Interstate Agreements.
- 874 (8) "Transferee" means:
- 875 (a) a devisee;
- 876 (b) a distributee;
- 877 (c) a donee;
- 878 (d) an heir;
- 879 (e) a legatee; or
- 880 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission

881 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

882 Section 10. **Appropriation.**

883 The following sums of money are appropriated for the fiscal year beginning July 1,  
884 2018, and ending June 30, 2019. These are additions to amount previously appropriated for  
885 fiscal year 2019. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
886 Act, the Legislature appropriates the following sums of money from the funds or accounts  
887 indicated for the use and support of the government of the state of Utah.

888 ITEM 1

889 To the Department of Alcoholic Beverage Control -- State Store Land Acquisition Fund

890 From General Fund, One-time \$→ [ \$7,500,000 ] \$5,000,000 ←\$

891 Schedule of Programs:

892 State Store Land Acquisition Fund \$→ [ \$7,500,000 ] \$5,000,000 ←\$

893 The Legislature intends that the appropriations provided under this section be used to

894 purchase or lease property for new state stores in accordance with Section [32B-2-307](#).

895 Section 11. **Effective date.**

896 This bill takes effect on July 1, 2018.