

1                    **DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

2                                    **FUNDING AMENDMENTS**

3                                                            2018 GENERAL SESSION

4                                                            STATE OF UTAH

5                                    **Chief Sponsor: Gage Froerer**

6                                    Senate Sponsor: Wayne A. Harper

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8                    **LONG TITLE**

9                    **General Description:**

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

12                    **Highlighted Provisions:**

13                    This bill:

- 14                    ▶ modifies how the Department of Alcoholic Beverage Control handles money it  
15 receives from the markup on alcoholic beverages;
- 16                    ▶ repeals certain responsibilities of the State Tax Commission related to money  
17 received from the markup on alcoholic beverages;
- 18                    ▶ creates the State Store Land Acquisition Fund;
- 19                    ▶ allows the Department of Alcoholic Beverage Control to use the money in the State  
20 Store Land Acquisition Fund to purchase or lease property for state stores;
- 21                    ▶ requires the Department of Alcoholic Beverage Control to use proceeds from any  
22 related revenue bond to repay the money used from the State Store Land  
23 Acquisition Fund;
- 24                    ▶ addresses reporting requirements;
- 25                    ▶ provides for establishing performance measures and goals to evaluate the operations  
26 of the Department of Alcoholic Beverage Control;
- 27                    ▶ requires the Department of Alcoholic Beverage Control to obtain approval from the  
28 Governor's Office of Management and Budget before submitting a request to the

29 State Building Board for a capital development project; and  
30       ▶ makes technical and conforming changes.

31 **Money Appropriated in this Bill:**

- 32       ▶ To the Department of Alcoholic Beverage Control -- State Store Land  
33 Acquisition Fund -- State Store Land Acquisition Fund -- as a one-time  
34 appropriation:  
35       • from the General Fund, One-time, \$5,000,000.

36 **Other Special Clauses:**

37       This bill provides a special effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40       **32B-2-301**, as last amended by Laws of Utah 2017, Chapter 159  
41       **32B-2-304**, as last amended by Laws of Utah 2017, Chapter 455  
42       **32B-3-205**, as last amended by Laws of Utah 2017, Chapter 455  
43       **53F-9-304**, as renumbered and amended by Laws of Utah 2018, Chapter 2  
44       **59-1-401**, as last amended by Laws of Utah 2017, Chapter 430  
45       **59-1-402**, as last amended by Laws of Utah 2017, Chapter 430  
46       **59-1-1402**, as last amended by Laws of Utah 2017, Chapter 430

47 ENACTS:

- 48       **32B-2-307**, Utah Code Annotated 1953  
49       **32B-2-505**, Utah Code Annotated 1953

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

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

53       **32B-2-301. State property -- Liquor Control Fund -- Money to be retained by**  
54 **department -- Department building process.**

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

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

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

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

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

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

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

65 [~~(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit~~  
66 ~~revenue remitted to the State Tax Commission from the markup imposed under Section~~  
67 ~~32B-2-304 into the Markup Holding Fund.]~~

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

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

70 [~~(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection~~  
71 ~~32B-2-305(4).]~~

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

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

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

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

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

82 [~~(b)~~] (ii) to transport an alcoholic product from the supplier to a warehouse of the

83 department; ~~and~~ or

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

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

88 ~~(5)~~ (4) (a) As used in this Subsection ~~(5)~~ (4), "base budget" means the same as that  
89 term is defined in legislative rule.

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

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

93 (ii) package agency compensation; and

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

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

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

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

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

100 ~~[(d) information technology enhancements because of changes or trends in~~  
101 ~~technology;]~~

102 ~~(7)~~ (5) (a) The ~~department~~ Division of Finance shall transfer annually from the  
103 Liquor Control Fund ~~[and the State Tax Commission shall transfer annually from the Markup~~  
104  ~~Holding Fund]~~ to the General Fund a sum equal to the amount of net profit earned from the  
105 sale of liquor since the preceding transfer of money under this Subsection ~~[(7). The transfers~~  
106 ~~shall be calculated by no later than]~~ (5).

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

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

112 [~~(8)~~] (6) (a) By the end of each day, the department shall:

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

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

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

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

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

123 (7) Before the Division of Finance makes the transfer described in Subsection (5), the  
124 department may retain each fiscal year from the Liquor Control Fund \$1,000,000 that the  
125 department may use for:

126 (a) capital equipment purchases;

127 (b) salary increases for department employees;

128 (c) performance awards for department employees; or

129 (d) information technology enhancements because of changes or trends in technology.

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

131 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

132 (1) For purposes of this section:

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

134 (A) the cost of the product; and

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

136 (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse

137 of the department to a state store.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 (4) The department shall deposit 10% of the total gross revenue from sales of liquor  
173 with the state treasurer to be credited to the Uniform School Fund and used to support the  
174 school lunch program administered by the State Board of Education under Section  
175 53A-19-201.

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

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

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

182 [~~(ii) using a form prescribed by the State Tax Commission:]~~

183 [~~(b) For liquor provided to a package agency on consignment, the department shall~~  
184 ~~remit the markup to the State Tax Commission for the month during which the liquor is~~  
185 ~~provided to the package agency regardless of when the package agency pays the department for~~  
186 ~~the liquor provided to the package agency.]~~

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

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

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

193 ~~[(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter~~  
194 ~~3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).]~~

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

196 **32B-2-307. State Store Land Acquisition Fund.**

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

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

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

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

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

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

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

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

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

217 **32B-2-505. Reporting requirements -- Building plan and market survey required**

218 -- **Department performance measures.**

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

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

225 (b) The department shall:

226 (i) provide a copy of each market survey to the Infrastructure and General Government  
227 Appropriations Subcommittee and the Business and Labor Interim Committee; and

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

230 (3) For fiscal year 2018-19 and each fiscal year thereafter, before the fiscal year begins,  
231 the Governor's Office of Management and Budget, in consultation with the department and the  
232 Office of the Legislative Fiscal Analyst, shall establish performance measures and goals to  
233 evaluate the department's operations during the fiscal year.

234 (4) (a) The department may not submit a request to the State Building Board for a  
235 capital development project unless the department first obtains approval from the Governor's  
236 Office of Management and Budget.

237 (b) In determining whether to grant approval for a request described in Subsection  
238 (4)(a), the Governor's Office of Management and Budget shall evaluate the extent to which the  
239 department met the performance measures and goals described in Subsection (3) during the  
240 previous fiscal year.

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

242 **32B-3-205. Penalties.**

243 (1) If the commission is satisfied that a person subject to administrative action violates  
244 this title or the commission's rules, in accordance with Title 63G, Chapter 4, Administrative

245 Procedures Act, the commission may:

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

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

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

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

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

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

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

255 (b) The commission shall by rule establish a schedule setting forth a range of fines for  
256 each violation.

257 (c) When a presiding officer imposes a fine, the presiding officer shall consider any  
258 aggravating circumstances or mitigating circumstances in deciding where within the applicable  
259 range to set the fine.

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

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

264 (i) during the suspension; and

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

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

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

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

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

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

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

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

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

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

290 (i) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's  
291 from the department's sales list; and

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

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

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

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

298 (A) directly commits the violation; or

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

301 (9) If the commission makes a finding that the brewer holding a certificate of approval  
302 violates this title or rules of the commission, the commission may take an action against the  
303 brewer holding a certificate of approval that the commission could take against a licensee  
304 including:

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

306 (b) imposition of a fine.

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

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

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

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

315 **53F-9-304. Underage Drinking Prevention Program Restricted Account.**

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

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

320 (3) (a) Before the Department of Alcoholic Beverage Control [~~remits~~] deposits any  
321 portion of the markup collected under Section 32B-2-304 [~~to the State Tax Commission, the~~  
322 ~~department~~] into the Liquor Control Fund in accordance with Section 32B-2-301, the  
323 Department of Alcoholic Beverage Control shall deposit into the account:

324 (i) for the fiscal year that begins July 1, 2017, \$1,750,000; or

325 (ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the

326 amount that the [~~department~~] Department of Alcoholic Beverage Control deposited into the  
327 account during the preceding fiscal year increased or decreased by a percentage equal to the  
328 percentage difference between the Consumer Price Index for the second preceding calendar  
329 year and the Consumer Price Index for the preceding calendar year [2017].

330 (b) For purposes of this Subsection (3), the [~~department~~] Department of Alcoholic  
331 Beverage Control shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs.  
332 1(f)(4) and 1(f)(5).

333 (4) The account shall be funded:

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

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

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

337 (5) The State Board of Education shall use money in the account for the Underage  
338 Drinking Prevention Program described in Section [53G-10-406](#).

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

340 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**  
341 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**  
342 **interest.**

343 (1) As used in this section:

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

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

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

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

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

353 tax, fee, or charge:

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

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

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

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

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

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

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

366 (I) this title;

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

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

369 (IV) Section 19-6-410.5;

370 (V) Section 19-6-714;

371 (VI) Section 19-6-805;

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

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

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

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

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

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

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

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

- 380 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 381 (D) Chapter 3, Tax Equivalent Property Act; or
- 382 (E) Chapter 4, Privilege Tax.
- 383 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 384 tax, fee, or charge.
- 385 (2) (a) The due date for filing a return is:
- 386 (i) if the person filing the return is not allowed by law an extension of time for filing
- 387 the return, the day on which the return is due as provided by law; or
- 388 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 389 return, the earlier of:
- 390 (A) the date the person files the return; or
- 391 (B) the last day of that extension of time as allowed by law.
- 392 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
- 393 return after the due date described in Subsection (2)(a).
- 394 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 395 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
- 396 tax, fee, or charge:
- 397 (A) \$20; or
- 398 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 399 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
- 400 fee, or charge, beginning on the activation date for the tax, fee, or charge:
- 401 (A) \$20; or
- 402 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
- 403 filed no later than five days after the due date described in Subsection (2)(a);
- 404 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
- 405 more than five days after the due date but no later than 15 days after the due date described in
- 406 Subsection (2)(a); or

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

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

410 (i) an amended return; or

411 (ii) a return with no tax due.

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

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

416 (ii) the person:

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

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

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

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

423 (iv) the person:

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

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

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

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

429 (v) (A) the commission:

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

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

433 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed

434 request for agency action; and  
435 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period  
436 after the date the commission:  
437 (I) issues the order constituting final agency action described in Subsection  
438 (3)(a)(v)(A)(I); or  
439 (II) is considered to have denied the request for reconsideration described in  
440 Subsection (3)(a)(v)(A)(II); or  
441 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date  
442 of a final judicial decision resulting from a timely filed petition for judicial review.  
443 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:  
444 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
445 respect to an unactivated tax, fee, or charge:  
446 (A) \$20; or  
447 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or  
448 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
449 respect to an activated tax, fee, or charge, beginning on the activation date:  
450 (A) \$20; or  
451 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated  
452 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a  
453 return described in Subsection (2)(a);  
454 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,  
455 fee, or charge due on the return is paid more than five days after the due date for filing a return  
456 described in Subsection (2)(a) but no later than 15 days after that due date; or  
457 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated  
458 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a  
459 return described in Subsection (2)(a).  
460 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or

461 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there  
462 shall be added a penalty in an amount determined by applying the interest rate provided under  
463 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period  
464 of the underpayment.

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

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

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

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

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

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

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

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

486 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the  
487 extension of time for filing the return is an amount equal to 2% of the tax due on the return,

488 unpaid as of the day on which the return is due as provided by law.

489 (6) If a person does not file a return within an extension of time allowed by Section  
490 59-7-505 or 59-10-516, the person:

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

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

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

494 (A) \$20; or

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

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

498 (A) \$20; or

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

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

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

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

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

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

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

515 penalty.

516 (i) The notice of proposed penalty shall:

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

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

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

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

522 or

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

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

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

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

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

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

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

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

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

539 or is a seller required to pay or collect and remit sales and use taxes under Subsection

540 59-12-107(2)(b); and

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

542 under Subsections 59-12-103(2)(a) through (d); or  
543 (ii) the commission issues a final unappealable administrative order determining that:  
544 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
545 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
546 59-12-107(2)(b); and  
547 (B) the commission or a county, city, or town may require the seller to collect a tax  
548 under Subsections 59-12-103(2)(a) through (d).  
549 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not  
550 subject to the penalty under Subsection (7)(a)(ii) if:  
551 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order  
552 determining that:  
553 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
554 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
555 59-12-107(2)(b); and  
556 (II) the commission or a county, city, or town may require the seller to collect a tax  
557 under Subsections 59-12-103(2)(a) through (d); or  
558 (B) the commission issues a final unappealable administrative order determining that:  
559 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
560 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
561 59-12-107(2)(b); and  
562 (II) the commission or a county, city, or town may require the seller to collect a tax  
563 under Subsections 59-12-103(2)(a) through (d); and  
564 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a  
565 nonfrivolous argument for the extension, modification, or reversal of existing law or the  
566 establishment of new law.  
567 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an  
568 information return, information report, or a complete supporting schedule is \$50 for each

569 information return, information report, or supporting schedule up to a maximum of \$1,000.

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

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

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

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

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

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

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

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

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

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

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

595 (A) a return;

596 (B) an affidavit;  
597 (C) a claim; or  
598 (D) a document similar to Subsections (11)(a)(i)(A) through (C);  
599 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)  
600 will be used in connection with any material matter administered by the commission; and  
601 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection  
602 with any material matter administered by the commission, would result in an understatement of  
603 another person's liability for a tax, fee, or charge.  
604 (b) The following acts apply to Subsection (11)(a)(i):  
605 (i) preparing any portion of a document described in Subsection (11)(a)(i);  
606 (ii) presenting any portion of a document described in Subsection (11)(a)(i);  
607 (iii) procuring any portion of a document described in Subsection (11)(a)(i);  
608 (iv) advising in the preparation or presentation of any portion of a document described  
609 in Subsection (11)(a)(i);  
610 (v) aiding in the preparation or presentation of any portion of a document described in  
611 Subsection (11)(a)(i);  
612 (vi) assisting in the preparation or presentation of any portion of a document described  
613 in Subsection (11)(a)(i); or  
614 (vii) counseling in the preparation or presentation of any portion of a document  
615 described in Subsection (11)(a)(i).  
616 (c) For purposes of Subsection (11)(a), the penalty:  
617 (i) shall be imposed by the commission;  
618 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which  
619 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and  
620 (iii) is in addition to any other penalty provided by law.  
621 (d) The commission may seek a court order to enjoin a person from engaging in  
622 conduct that is subject to a penalty under this Subsection (11).

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

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

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

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

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

635 (B) exceed \$1,000.

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

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

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

644 (B) exceed \$5,000.

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

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

- 650 (A) be less than \$1,500; or
- 651 (B) exceed \$25,000.
- 652 (e) (i) A person is guilty of a second degree felony if that person commits an act:
- 653 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
- 654 documents:
- 655 (I) a return;
- 656 (II) an affidavit;
- 657 (III) a claim; or
- 658 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- 659 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
- 660 Subsection (12)(e)(i)(A):
- 661 (I) is false or fraudulent as to any material matter; and
- 662 (II) could be used in connection with any material matter administered by the
- 663 commission.
- 664 (ii) The following acts apply to Subsection (12)(e)(i):
- 665 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- 666 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 667 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 668 (D) advising in the preparation or presentation of any portion of a document described
- 669 in Subsection (12)(e)(i)(A);
- 670 (E) aiding in the preparation or presentation of any portion of a document described in
- 671 Subsection (12)(e)(i)(A);
- 672 (F) assisting in the preparation or presentation of any portion of a document described
- 673 in Subsection (12)(e)(i)(A); or
- 674 (G) counseling in the preparation or presentation of any portion of a document
- 675 described in Subsection (12)(e)(i)(A).
- 676 (iii) This Subsection (12)(e) applies:

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

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

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

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

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

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

685 (B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

- 704 (b) For purposes of Subsection (13)(a), the penalty is:
- 705 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
- 706 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date
- 707 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in
- 708 Subsection 59-10-406(8);
- 709 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the
- 710 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date
- 711 provided in Subsection 59-10-406(8) but on or before June 1; or
- 712 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:
- 713 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or
- 714 (B) fails to file the form.
- 715 (14) Upon making a record of its actions, and upon reasonable cause shown, the
- 716 commission may waive, reduce, or compromise any of the penalties or interest imposed under
- 717 this part.

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

719 **59-1-402. Definitions -- Interest.**

720 (1) As used in this section:

721 (a) "Final judicial decision" means a final ruling by a court of this state or the United

722 States for which the time for any further review or proceeding has expired.

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

724 judicial decision that:

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

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

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

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

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

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

- 731 (I) this title;
- 732 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 733 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 734 (IV) Section 19-6-410.5;
- 735 (V) Section 19-6-714;
- 736 (VI) Section 19-6-805;
- 737 [~~(VII) Section 32B-2-304;~~]
- 738 [~~(VIII)~~] (VII) Section 34A-2-202;
- 739 [~~(IX)~~] (VIII) Section 40-6-14; or
- 740 [~~(X)~~] (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
- 741 (B) another amount that by statute is subject to interest imposed under this section.
- 742 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
  - 743 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
  - 744 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
  - 745 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
  - 746 (D) Chapter 3, Tax Equivalent Property Act;
  - 747 (E) Chapter 4, Privilege Tax; or
  - 748 (F) Chapter 13, Part 5, Interstate Agreements.
- 749 (2) Except as otherwise provided for by law, the interest rate for a calendar year for a
- 750 tax, fee, or charge administered by the commission shall be calculated based on the federal
- 751 short-term rate determined by the Secretary of the Treasury under Section 6621, Internal
- 752 Revenue Code, in effect for the preceding fourth calendar quarter.
- 753 (3) The interest rate calculation shall be as follows:
  - 754 (a) except as provided in Subsection (7), in the case of an overpayment or refund,
  - 755 simple interest shall be calculated at the rate of two percentage points above the federal
  - 756 short-term rate; or
  - 757 (b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be

758 calculated at the rate of two percentage points above the federal short-term rate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

785 (A) for a time period:  
786 (I) that begins on the later of:  
787 (Aa) the date the original return was filed; or  
788 (Bb) the due date for filing the original return not including any extensions for filing  
789 the original return; and  
790 (II) that ends on the date the commission receives the amended return; and  
791 (B) if the commission does not make a refund of an overpayment under this Subsection  
792 (5)(c):  
793 (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise  
794 and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,  
795 within a 45-day period after the date the commission receives the amended return, for a time  
796 period:  
797 (Aa) that begins 46 days after the commission receives the amended return; and  
798 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission  
799 completes processing the refund of the overpayment; or  
800 (II) if the amended return is with respect to a tax, fee, or charge except for a tax under  
801 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,  
802 or is not filed electronically, within a 90-day period after the date the commission receives the  
803 amended return, for a time period:  
804 (Aa) that begins 91 days after the commission receives the amended return; and  
805 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission  
806 completes processing the refund of the overpayment.  
807 (ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall  
808 be calculated forward from the preparation date of the refund document to allow for  
809 processing.  
810 (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge  
811 shall be computed from the time the original return is due, excluding any filing or payment

812 extensions, to the date the payment is received.

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

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

819 **59-1-1402. Definitions.**

820 As used in this part:

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

822 (a) the cost of filing;

823 (b) the cost of administering a garnishment;

824 (c) the amount the commission pays to a depository institution in accordance with Part  
825 17, Depository Institution Data Match System and Levy Act; or

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

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

830 (a) an account;

831 (b) a book;

832 (c) an invoice;

833 (d) a memorandum;

834 (e) a paper;

835 (f) a record; or

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

838 (3) "Deficiency" means:

- 839 (a) the amount by which a tax, fee, or charge exceeds the difference between:
- 840 (i) the sum of:
- 841 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and
- 842 (B) any amount previously assessed, or collected without assessment, as a deficiency;
- 843 and
- 844 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
- 845 to that tax, fee, or charge; or
- 846 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,
- 847 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:
- 848 (i) the amount previously assessed, or collected without assessment, as a deficiency;
- 849 and
- 850 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
- 851 to that tax, fee, or charge.
- 852 (4) "Garnishment" means any legal or equitable procedure through which one or more
- 853 of the following are required to be withheld for payment of an amount a person owes:
- 854 (a) an asset of the person held by another person; or
- 855 (b) the earnings of the person.
- 856 (5) "Liability" means the following that a person is required to remit to the
- 857 commission:
- 858 (a) a tax, fee, or charge;
- 859 (b) an addition to a tax, fee, or charge;
- 860 (c) an administrative cost;
- 861 (d) interest that accrues in accordance with Section 59-1-402; or
- 862 (e) a penalty that accrues in accordance with Section 59-1-401.
- 863 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
- 864 6213(g)(2), Internal Revenue Code.
- 865 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)

866 means:

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

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

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

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

873 (A) this title;

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

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

876 (D) Section 19-6-410.5;

877 (E) Section 19-6-714;

878 (F) Section 19-6-805;

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

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

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

882 [~~(J)~~] (I) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

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

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

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

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

887 (iii) Chapter 2, Property Tax Act;

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

889 (v) Chapter 4, Privilege Tax; or

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

891 (8) "Transferee" means:

892 (a) a devisee;

- 893 (b) a distributee;
- 894 (c) a donee;
- 895 (d) an heir;
- 896 (e) a legatee; or
- 897 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
- 898 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 10. **Appropriation.**

900 The following sums of money are appropriated for the fiscal year beginning July 1,  
 901 2018, and ending June 30, 2019. These are additions to amounts previously appropriated for  
 902 fiscal year 2019. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
 903 Act, the Legislature appropriates the following sums of money from the funds or accounts  
 904 indicated for the use and support of the government of the state of Utah.

ITEM 1

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

907 From General Fund, One-time

\$5,000,000

908 Schedule of Programs:

909 State Store Land Acquisition Fund

\$5,000,000

910 The Legislature intends that the appropriations provided under this section be used to  
 911 purchase or lease property for new state stores in accordance with Section [32B-2-307](#).

Section 11. **Effective date.**

913 This bill takes effect on July 1, 2018.