

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: _____

7

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 ▶ permits the Department of Alcoholic Beverage Control to retain as nonlapsing funds
19 a certain amount of money each year for:
- 20 • purchasing or leasing property for new state stores;
 - 21 • designing or constructing new state stores; or
 - 22 • remodeling existing state stores;
- 23 ▶ addresses reporting requirements; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **32B-2-301**, as last amended by Laws of Utah 2017, Chapter 159

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

33 **32B-3-205**, as last amended by Laws of Utah 2017, Chapter 455

34 **53A-13-114**, as enacted by Laws of Utah 2017, Chapter 455

35 **59-1-401**, as last amended by Laws of Utah 2017, Chapter 430

36 **59-1-402**, as last amended by Laws of Utah 2017, Chapter 430

37 **59-1-1402**, as last amended by Laws of Utah 2017, Chapter 430

38 **63J-1-602.2**, as last amended by Laws of Utah 2015, Chapters 86, 93, and 189

39

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

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

42 **32B-2-301. State property -- Liquor Control Fund -- Money to be retained by**
43 **department -- Department building process.**

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

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

46 and

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

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

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

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

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

54 [~~(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit~~
55 ~~revenue remitted to the State Tax Commission from the markup imposed under Section~~
56 ~~32B-2-304 into the Markup Holding Fund.]~~

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

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

59 [(ii) to fund the deposits required by Subsection ~~32B-2-304(4)~~ and Subsection
60 ~~32B-2-305(4)~~.]

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

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

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

65 [~~4~~] (3) (a) Notwithstanding Subsection (2)(c), the department may draw by
66 warrant from the Liquor Control Fund [only to the extent appropriated by the Legislature or
67 provided for by statute, except that the department may draw by warrant] without an
68 appropriation [from the Liquor Control Fund] for an expenditure that is directly incurred by the
69 department:

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

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

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

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

77 [~~5~~] (4) (a) As used in this Subsection [~~5~~] (4), "base budget" means the same as that
78 term is defined in legislative rule.

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

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

82 (ii) package agency compensation; and

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

84 [~~6~~] Before the transfer required by Subsection (7), the department may retain each
85 fiscal year from the Liquor Control Fund \$1,000,000 that the department may use for:]

86 [~~a~~] capital equipment purchases;

87 [~~b~~] salary increases for department employees;

88 [~~c~~] performance awards for department employees; or]

89 [~~d~~] information technology enhancements because of changes or trends in

90 technology.]

91 ~~[(7)]~~ (5) (a) The ~~[department]~~ Division of Finance shall transfer annually from the
92 Liquor Control Fund ~~[and the State Tax Commission shall transfer annually from the Markup~~
93 ~~Holding Fund]~~ to the General Fund a sum equal to the amount of net profit earned from the
94 sale of liquor since the preceding transfer of money under this Subsection ~~[(7). The transfers~~
95 ~~shall be calculated by no later than]~~ (5).

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

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

101 ~~[(8)]~~ (6) (a) By the end of each day, the department shall:

- 102 (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
103 (ii) report the deposit to the state treasurer.

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

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

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

112 (7) (a) Before the Division of Finance makes the transfer described in Subsection (5),
113 the department may retain each fiscal year from the Liquor Control Fund:

114 (i) \$1,000,000 that the department may use for:

115 (A) capital equipment purchases;

116 (B) salary increases for department employees;

117 (C) performance awards for department employees; or

118 (D) information technology enhancements because of changes or trends in technology;

119 and

120 (ii) beginning with fiscal year 2018-19, after the department retains the amount

121 described in Subsection (7)(a)(i), up to \$5,000,000 that, subject to Subsection (8), the
122 department may use for:

123 (A) purchasing or leasing property for new state stores;

124 (B) designing or constructing new state stores; or

125 (C) remodeling existing state stores.

126 (b) For fiscal year 2017-18, before the Division of Finance makes the transfer
127 described in Subsection (5), the department may retain up to \$10,000,000 from the Liquor
128 Control Fund that, subject to Subsection (8), the department may use for:

129 (i) purchasing or leasing property for new state stores;

130 (ii) designing or constructing new state stores; or

131 (iii) remodeling exiting state stores.

132 (8) (a) Before the department spends or commits the money described in Subsection
133 (7)(a)(ii) or (b), the department shall present to the Infrastructure and General Government
134 Appropriations Subcommittee a description of how the department will spend the money.

135 (b) Following a presentation described in Subsection (8)(a), the Infrastructure and
136 General Government Appropriations Subcommittee shall recommend whether the department
137 spend the money in accordance with the department's presentation.

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

142 (10) (a) In 2018 and every other year thereafter, the department shall complete a market
143 survey to inform the department's five-year building plan described in Subsection (9).

144 (b) The department shall:

145 (i) provide a copy of each market survey to the Infrastructure and General Government
146 Appropriations Subcommittee; and

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

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

150 **32B-2-304. Liquor price -- School lunch program -- Remittance of markup.**

151 (1) For purposes of this section:

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

153 (A) the cost of the product; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (4) The department shall deposit 10% of the total gross revenue from sales of liquor
192 with the state treasurer to be credited to the Uniform School Fund and used to support the
193 school lunch program administered by the State Board of Education under Section
194 [53A-19-201](#).

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

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

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

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

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

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

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

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

212 [~~(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter
213 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).]~~

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

215 **32B-3-205. Penalties.**

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

- 219 (a) suspend or revoke the person's license, permit, or certificate of approval;
- 220 (b) subject to Subsection (2), impose a fine against the person, including individual
221 staff of a licensee, permittee, or certificate holder;
- 222 (c) assess the administrative costs of a disciplinary proceeding to the person if the
223 person is a licensee, permittee, or certificate holder; or
- 224 (d) take a combination of actions described in this Subsection (1).

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

- 226 (i) a single notice of agency action; or
- 227 (ii) a single action against a package agency.

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

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

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

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

- 237 (i) during the suspension; and
- 238 (ii) at the entrance of the premises of the licensee or permittee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

271 (A) directly commits the violation; or

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

274 (9) If the commission makes a finding that the brewer holding a certificate of approval
275 violates this title or rules of the commission, the commission may take an action against the

276 brewer holding a certificate of approval that the commission could take against a licensee
277 including:

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

279 (b) imposition of a fine.

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

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

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

287 Section 4. Section 53A-13-114 is amended to read:

288 **53A-13-114. Underage Drinking Prevention Program Restricted Account.**

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

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

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

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

298 (ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the
299 amount that the [~~department~~] Department of Alcoholic Beverage Control deposited into the
300 account during the preceding fiscal year increased or decreased by a percentage equal to the
301 percentage difference between the Consumer Price Index for the second preceding calendar
302 year and the Consumer Price Index for the preceding calendar year [~~2017~~].

303 (b) For purposes of this Subsection (3), the [~~department~~] Department of Alcoholic
304 Beverage Control shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs.
305 1(f)(4) and 1(f)(5).

306 (4) The account shall be funded:

307 (a) in accordance with Subsection (3);
308 (b) by appropriations made to the account by the Legislature; and
309 (c) by interest earned on money in the account.
310 (5) The State Board of Education shall use money in the account for the Underage
311 Drinking Prevention Program described in Section [53A-13-113](#).

312 Section 5. Section **59-1-401** is amended to read:
313 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
314 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
315 **interest.**

316 (1) As used in this section:
317 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
318 commission:

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

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

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

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

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

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

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

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

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

- 338 (A) a tax, fee, or charge the commission administers under:
- 339 (I) this title;
- 340 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 341 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 342 (IV) Section 19-6-410.5;
- 343 (V) Section 19-6-714;
- 344 (VI) Section 19-6-805;
- 345 [~~(VII) Section 32B-2-304;~~]
- 346 [~~(VIII)~~] (VII) Section 34A-2-202;
- 347 [~~(IX)~~] (VIII) Section 40-6-14; or
- 348 [~~(X)~~] (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
- 349 (B) another amount that by statute is subject to a penalty imposed under this section.
- 350 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 351 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 352 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 353 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 354 (D) Chapter 3, Tax Equivalent Property Act; or
- 355 (E) Chapter 4, Privilege Tax.
- 356 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 357 tax, fee, or charge.
- 358 (2) (a) The due date for filing a return is:
- 359 (i) if the person filing the return is not allowed by law an extension of time for filing
- 360 the return, the day on which the return is due as provided by law; or
- 361 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 362 return, the earlier of:
- 363 (A) the date the person files the return; or
- 364 (B) the last day of that extension of time as allowed by law.
- 365 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
- 366 return after the due date described in Subsection (2)(a).
- 367 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 368 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated

369 tax, fee, or charge:

370 (A) \$20; or

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

372 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,

373 fee, or charge, beginning on the activation date for the tax, fee, or charge:

374 (A) \$20; or

375 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is

376 filed no later than five days after the due date described in Subsection (2)(a);

377 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed

378 more than five days after the due date but no later than 15 days after the due date described in

379 Subsection (2)(a); or

380 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is

381 filed more than 15 days after the due date described in Subsection (2)(a).

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

383 (i) an amended return; or

384 (ii) a return with no tax due.

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

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

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

388 date;

389 (ii) the person:

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

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

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

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

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

395 Subsection 59-1-1406(2);

396 (iv) the person:

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

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

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

- 400 (I) does not file a petition for redetermination or a request for agency action; and
- 401 (II) fails to pay the tax, fee, or charge due on a return;
- 402 (v) (A) the commission:
 - 403 (I) issues an order constituting final agency action resulting from a timely filed petition
 - 404 for redetermination or a timely filed request for agency action; or
 - 405 (II) is considered to have denied a request for reconsideration under Subsection
 - 406 **63G-4-302**(3)(b) resulting from a timely filed petition for redetermination or a timely filed
 - 407 request for agency action; and
 - 408 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
 - 409 after the date the commission:
 - 410 (I) issues the order constituting final agency action described in Subsection
 - 411 (3)(a)(v)(A)(I); or
 - 412 (II) is considered to have denied the request for reconsideration described in
 - 413 Subsection (3)(a)(v)(A)(II); or
 - 414 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
 - 415 of a final judicial decision resulting from a timely filed petition for judicial review.
 - 416 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
 - 417 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
 - 418 respect to an unactivated tax, fee, or charge:
 - 419 (A) \$20; or
 - 420 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
 - 421 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
 - 422 respect to an activated tax, fee, or charge, beginning on the activation date:
 - 423 (A) \$20; or
 - 424 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
 - 425 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
 - 426 return described in Subsection (2)(a);
 - 427 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
 - 428 fee, or charge due on the return is paid more than five days after the due date for filing a return
 - 429 described in Subsection (2)(a) but no later than 15 days after that due date; or
 - 430 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated

431 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
432 return described in Subsection (2)(a).

433 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
434 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
435 shall be added a penalty in an amount determined by applying the interest rate provided under
436 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
437 of the underpayment.

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

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

443 (A) the original due date of the tax return, without extensions, for the taxable year; or
444 (B) with respect to any portion of the underpayment, the date on which that portion is
445 paid.

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

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

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

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

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

462 (6) If a person does not file a return within an extension of time allowed by Section
463 59-7-505 or 59-10-516, the person:

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

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

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

467 (A) \$20; or

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

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

471 (A) \$20; or

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

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

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

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

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

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

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

489 (i) The notice of proposed penalty shall:

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

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

492 (ii) Upon receipt of the notice of proposed penalty, the person against whom the

493 penalty is proposed may:

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

495 or

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

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

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

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

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

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

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

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

511 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
512 or is a seller required to pay or collect and remit sales and use taxes under Subsection
513 59-12-107(2)(b); and

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

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

517 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
518 or is a seller required to pay or collect and remit sales and use taxes under Subsection
519 59-12-107(2)(b); and

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

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

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

526 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
527 or is a seller required to pay or collect and remit sales and use taxes under Subsection
528 59-12-107(2)(b); and

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

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

532 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
533 or is a seller required to pay or collect and remit sales and use taxes under Subsection
534 59-12-107(2)(b); and

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

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

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

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

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

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

- 555 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
556 Subsection 59-12-108(1)(a):
- 557 (i) is subject to a penalty described in Subsection (2); and
 - 558 (ii) may not retain the percentage of sales and use taxes that would otherwise be
559 allowable under Subsection 59-12-108(2).
- 560 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
561 required by Subsection 59-12-108(1)(a)(ii)(B):
- 562 (i) is subject to a penalty described in Subsection (2); and
 - 563 (ii) may not retain the percentage of sales and use taxes that would otherwise be
564 allowable under Subsection 59-12-108(2).
- 565 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:
- 566 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
567 following documents:
 - 568 (A) a return;
 - 569 (B) an affidavit;
 - 570 (C) a claim; or
 - 571 (D) a document similar to Subsections (11)(a)(i)(A) through (C);
 - 572 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
573 will be used in connection with any material matter administered by the commission; and
 - 574 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
575 with any material matter administered by the commission, would result in an understatement of
576 another person's liability for a tax, fee, or charge.
- 577 (b) The following acts apply to Subsection (11)(a)(i):
- 578 (i) preparing any portion of a document described in Subsection (11)(a)(i);
 - 579 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
 - 580 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
 - 581 (iv) advising in the preparation or presentation of any portion of a document described
582 in Subsection (11)(a)(i);
 - 583 (v) aiding in the preparation or presentation of any portion of a document described in
584 Subsection (11)(a)(i);
 - 585 (vi) assisting in the preparation or presentation of any portion of a document described

586 in Subsection (11)(a)(i); or

587 (vii) counseling in the preparation or presentation of any portion of a document

588 described in Subsection (11)(a)(i).

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

590 (i) shall be imposed by the commission;

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

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

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

596 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
597 commission may make rules prescribing the documents that are similar to Subsections

598 (11)(a)(i)(A) through (C).

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

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

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

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

608 (B) exceed \$1,000.

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

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

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

617 (B) exceed \$5,000.

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

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

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

624 (B) exceed \$25,000.

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

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

628 (I) a return;

629 (II) an affidavit;

630 (III) a claim; or

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

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

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

635 (II) could be used in connection with any material matter administered by the
636 commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

658 (B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

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

678 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the

679 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date
680 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in
681 Subsection 59-10-406(8);

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

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

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

687 (B) fails to file the form.

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

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

692 **59-1-402. Definitions -- Interest.**

693 (1) As used in this section:

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

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

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

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

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

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

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

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

704 (I) this title;

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

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

707 (IV) Section 19-6-410.5;

708 (V) Section 19-6-714;

709 (VI) Section 19-6-805;

710 [~~(VII)~~ Section ~~32B-2-304~~];
711 [~~(VIII)~~] (VII) Section 34A-2-202;
712 [~~(IX)~~] (VIII) Section 40-6-14; or
713 [~~(X)~~] (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
714 (B) another amount that by statute is subject to interest imposed under this section.
715 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
716 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
717 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
718 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
719 (D) Chapter 3, Tax Equivalent Property Act;
720 (E) Chapter 4, Privilege Tax; or
721 (F) Chapter 13, Part 5, Interstate Agreements.
722 (2) Except as otherwise provided for by law, the interest rate for a calendar year for a
723 tax, fee, or charge administered by the commission shall be calculated based on the federal
724 short-term rate determined by the Secretary of the Treasury under Section 6621, Internal
725 Revenue Code, in effect for the preceding fourth calendar quarter.
726 (3) The interest rate calculation shall be as follows:
727 (a) except as provided in Subsection (7), in the case of an overpayment or refund,
728 simple interest shall be calculated at the rate of two percentage points above the federal
729 short-term rate; or
730 (b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be
731 calculated at the rate of two percentage points above the federal short-term rate.
732 (4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain
733 installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes,
734 shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in
735 Section 59-7-112.
736 (5) (a) Except as provided in Subsection (5)(c), interest may not be allowed on an
737 overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded
738 within:
739 (i) 45 days after the last date prescribed for filing the return with respect to a tax under
740 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,

741 if the return is filed electronically; or
742 (ii) 90 days after the last date prescribed for filing the return:
743 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate
744 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or
745 (B) if the return is not filed electronically.
746 (b) Except as provided in Subsection (5)(c), if the return is filed after the last date
747 prescribed for filing the return, interest may not be allowed on the overpayment if the
748 overpayment is refunded within:
749 (i) 45 days after the date the return is filed:
750 (A) with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or
751 Chapter 10, Individual Income Tax Act; and
752 (B) if the return is filed electronically;
753 (ii) 90 days after the date the return is filed:
754 (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate
755 Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or
756 (B) if the return is not filed electronically.
757 (c) (i) In the case of an amended return, interest on an overpayment shall be allowed:
758 (A) for a time period:
759 (I) that begins on the later of:
760 (Aa) the date the original return was filed; or
761 (Bb) the due date for filing the original return not including any extensions for filing
762 the original return; and
763 (II) that ends on the date the commission receives the amended return; and
764 (B) if the commission does not make a refund of an overpayment under this Subsection
765 (5)(c):
766 (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise
767 and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,
768 within a 45-day period after the date the commission receives the amended return, for a time
769 period:
770 (Aa) that begins 46 days after the commission receives the amended return; and
771 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission

772 completes processing the refund of the overpayment; or

773 (II) if the amended return is with respect to a tax, fee, or charge except for a tax under
774 Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act,
775 or is not filed electronically, within a 90-day period after the date the commission receives the
776 amended return, for a time period:

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

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

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

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

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

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

792 **59-1-1402. Definitions.**

793 As used in this part:

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

795 (a) the cost of filing;

796 (b) the cost of administering a garnishment;

797 (c) the amount the commission pays to a depository institution in accordance with Part
798 17, Depository Institution Data Match System and Levy Act; or

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

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

- 803 (a) an account;
- 804 (b) a book;
- 805 (c) an invoice;
- 806 (d) a memorandum;
- 807 (e) a paper;
- 808 (f) a record; or
- 809 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission
- 810 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

811 (3) "Deficiency" means:

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

813 (i) the sum of:

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

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

816 and

817 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

818 to that tax, fee, or charge; or

819 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,

820 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

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

822 and

823 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

824 to that tax, fee, or charge.

825 (4) "Garnishment" means any legal or equitable procedure through which one or more

826 of the following are required to be withheld for payment of an amount a person owes:

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

828 (b) the earnings of the person.

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

830 commission:

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

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

833 (c) an administrative cost;

- 834 (d) interest that accrues in accordance with Section 59-1-402; or
- 835 (e) a penalty that accrues in accordance with Section 59-1-401.
- 836 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
- 837 6213(g)(2), Internal Revenue Code.
- 838 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
- 839 means:
- 840 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
- 841 year; or
- 842 (ii) a corresponding or comparable provision of the Internal Revenue Code as
- 843 amended, redesignated, or reenacted.
- 844 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:
- 845 (i) a tax, fee, or charge the commission administers under:
- 846 (A) this title;
- 847 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 848 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 849 (D) Section 19-6-410.5;
- 850 (E) Section 19-6-714;
- 851 (F) Section 19-6-805;
- 852 [~~(G)~~ Section 32B-2-304;]
- 853 [~~(H)~~] (G) Section 34A-2-202;
- 854 [~~(I)~~] (H) Section 40-6-14; or
- 855 [~~(J)~~] (I) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
- 856 (ii) another amount that by statute is administered by the commission.
- 857 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 858 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 859 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 860 (iii) Chapter 2, Property Tax Act;
- 861 (iv) Chapter 3, Tax Equivalent Property Act;
- 862 (v) Chapter 4, Privilege Tax; or
- 863 (vi) Chapter 13, Part 5, Interstate Agreements.
- 864 (8) "Transferee" means:

- 865 (a) a devisee;
866 (b) a distributee;
867 (c) a donee;
868 (d) an heir;
869 (e) a legatee; or
870 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
871 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

872 Section 8. Section **63J-1-602.2** is amended to read:

873 **63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.**

- 874 (1) Appropriations from the Technology Development Restricted Account created in
875 Section [31A-3-104](#).
- 876 (2) Appropriations from the Criminal Background Check Restricted Account created in
877 Section [31A-3-105](#).
- 878 (3) Appropriations from the Captive Insurance Restricted Account created in Section
879 [31A-3-304](#), except to the extent that Section [31A-3-304](#) makes the money received under that
880 section free revenue.
- 881 (4) Appropriations from the Title Licensee Enforcement Restricted Account created in
882 Section [31A-23a-415](#).
- 883 (5) Appropriations from the Health Insurance Actuarial Review Restricted Account
884 created in Section [31A-30-115](#).
- 885 (6) Appropriations from the Insurance Fraud Investigation Restricted Account created
886 in Section [31A-31-108](#).
- 887 (7) Funds that the Department of Alcoholic Beverage Control retains in accordance
888 with Subsection [32B-2-301\(7\)\(a\)\(ii\)](#) or (b).
- 889 [~~7~~] (8) Appropriations from the Underage Drinking Prevention Media and Education
890 Campaign Restricted Account created in Section [32B-2-306](#).
- 891 [~~8~~] (9) Funding for the General Assistance program administered by the Department
892 of Workforce Services, as provided in Section [35A-3-401](#).
- 893 [~~9~~] (10) The Youth Development Organization Restricted Account created in Section
894 [35A-8-1903](#).
- 895 [~~10~~] (11) The Youth Character Organization Restricted Account created in Section

896 35A-8-2003.

897 [~~(11)~~] (12) Funding for a new program or agency that is designated as nonlapsing under
898 Section 36-24-101.

899 [~~(12)~~] (13) Appropriations to the Utah National Guard, created in Title 39, Militia and
900 Armories.

901 [~~(13)~~] (14) Appropriations from the Oil and Gas Conservation Account created in
902 Section 40-6-14.5.

903 [~~(14)~~] (15) Appropriations from the Electronic Payment Fee Restricted Account
904 created by Section 41-1a-121 to the Motor Vehicle Division.

905 [~~(15)~~] (16) Funds available to the Tax Commission under Section 41-1a-1201 for the:

906 (a) purchase and distribution of license plates and decals; and

907 (b) administration and enforcement of motor vehicle registration requirements.

908 [~~(16)~~] (17) Appropriations from the Motor Vehicle Enforcement Division Temporary
909 Permit Restricted Account created by Section 41-3-110 to the Tax Commission.

Legislative Review Note
Office of Legislative Research and General Counsel