

## HB0149S01 compared with HB0149

~~{deleted text}~~ shows text that was in HB0149 but was deleted in HB0149S01.

Inserted text shows text that was not in HB0149 but was inserted into HB0149S01.

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Representative Gage Froerer proposes the following substitute bill:

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

#### FUNDING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ modifies how the Department of Alcoholic Beverage Control handles money it receives from the markup on alcoholic beverages;
- ▶ repeals certain responsibilities of the State Tax Commission related to money received from the markup on alcoholic beverages;
- ▶ ~~{permits}~~ creates the State Store Land Acquisition Fund;

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▶ allows the Department of Alcoholic Beverage Control to ~~{retain as nonlapsing funds a certain amount of money each year for:~~

- ~~• purchasing or leasing property for new}~~ use the money in the State Store Land Acquisition Fund to purchase or lease property for state stores;
  - ~~{• designing or constructing new state stores; or~~
  - ~~• remodeling existing state stores}~~ ▶ requires the Department of Alcoholic Beverage Control to use proceeds from any related revenue bond to repay the money used from the State Store Land Acquisition Fund;
- ▶ addresses reporting requirements; and
  - ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

~~{None}~~ ▶ To the Department of Alcoholic Beverage Control -- State Store Land Acquisition Fund -- State Store Land Acquisition Fund -- as a one-time appropriation:

- from the General Fund, One-time, \$7,500,000.

### Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

~~{53A-13-114}~~ 53F-9-304, as ~~{enacted}~~ renumbered and amended by Laws of Utah ~~{2017}~~ 2018, Chapter ~~{455}~~ 2

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

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

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

### ENACTS:

~~{63J-1-602.2, as last amended by Laws of Utah 2015, Chapters 86, 93, and~~

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~~189~~32B-2-307, Utah Code Annotated 1953

32B-2-505, Utah Code Annotated 1953

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

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

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

(1) The following are property of the state:

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

and

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

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

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

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

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

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

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

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

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

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

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

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

~~[(4) The] (3) (a) Notwithstanding Subsection (2)(c), the department may draw by warrant from the Liquor Control Fund [only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant] without an~~

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appropriation [~~from the Liquor Control Fund~~] for an expenditure that is directly incurred by the department:

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

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

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

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

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

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

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

(ii) package agency compensation; and

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

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

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

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

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

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

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

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

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

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

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

(ii) report the deposit to the state treasurer.

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

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

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

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

~~{(i)}~~ \$1,000,000 that the department may use for:

~~{(A)}~~ a capital equipment purchases;

~~{(B)}~~ b salary increases for department employees;

~~{(C)}~~ c performance awards for department employees; or

~~{(D)}~~ d information technology enhancements because of changes or trends in technology ~~{, and~~

~~{(ii) beginning with fiscal year 2018-19, after}~~

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

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

(1) For purposes of this section:

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

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(e) The department shall verify an amount described in Subsection (7)(a)(i), up to \$5,000,000 that, subject to Subsection (8)3(b), (c), or (d) pursuant to a federal or other verifiable production report.

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

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

[(6) (a) Except as provided in Section 53A-13-114, the department {may use for:

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

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

— (C) remodeling existing state stores.

(b) For fiscal year 2017-18, before the Division of Finance makes the transfer described in Subsection (5); shall collect the markup and remit the markup collected by the department under this section:]

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

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

[(b) For liquor provided to a package agency on consignment, the department {may retain up to \$10,000,000 from the Liquor Control Fund that, subject to Subsection (8),} shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department {may use for:

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

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

— (iii) remodeling exiting} for the liquor provided to the package agency.]

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

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

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

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

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

### 32B-2-307. State Store Land Acquisition Fund.

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

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

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

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

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

~~{8}4~~ (a) Before the department spends or commits ~~{the }~~money ~~{described in Subsection (7)(a)(ii) or (b)}~~ from the State Store Land Acquisition Fund, the department shall present to the Infrastructure and General Government Appropriations Subcommittee a description of how the department will spend the money.

(b) Following a presentation described in Subsection ~~{8}4~~(a), the Infrastructure and General Government Appropriations Subcommittee shall recommend whether the department spend the money in accordance with the department's presentation.

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

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

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

~~{9}1~~ In 2018 and each year thereafter, the department shall present a five-year building plan to the Infrastructure and General Government Appropriations Subcommittee that describes the department's anticipated property acquisition, building, and remodeling for the



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five years following the day on which the department presents the five-year building plan.

~~(110)2~~ (a) In 2018 and every other year thereafter, the department shall complete a market survey to inform the department's five-year building plan described in Subsection (19)1.

(b) The department shall:

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

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

Section ~~(2)5~~. Section ~~(32B-2-304)~~32B-3-205 is amended to read:

~~{~~ ~~32B-2-304. Liquor price -- School lunch program -- Remittance of markup.~~

~~—— (1) For purposes of this section:~~

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

~~—— (A) the cost of the product; and~~

~~—— (B) inbound shipping costs incurred by the department.~~

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

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

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

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

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

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

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

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

~~—— (3) (a) Liquor sold by the department to a military installation in Utah shall be marked~~

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~~up in an amount not less than 17% above the landed case cost to the department.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

‡ **32B-3-205. Penalties.**

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

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

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

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

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

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

(i) a single notice of agency action; or

(ii) a single action against a package agency.

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

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

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

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

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

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

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

(ii) include the dates of the suspension period.

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

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

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

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

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

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

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

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from the department's sales list; and

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

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

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

(ii) the manufacturer, supplier, or importer:

(A) directly commits the violation; or

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

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

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

(b) imposition of a fine.

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

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

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

Section ~~{4}6~~. Section ~~{53A-13-114}~~53F-9-304 is amended to read:

~~{53A-13-114}~~53F-9-304. **Underage Drinking Prevention Program Restricted Account.**

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

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

(3) (a) Before the Department of Alcoholic Beverage Control [~~remits~~] deposits any

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portion of the markup collected under Section 32B-2-304 [~~to the State Tax Commission, the department~~] into the Liquor Control Fund in accordance with Section 32B-2-301, the Department of Alcoholic Beverage Control shall deposit into the account:

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

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

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

(4) The account shall be funded:

(a) in accordance with Subsection (3);

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

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

~~{ (5) The State Board of Education shall use money in the account for the Underage Drinking Prevention Program described in Section 53A-13-113.~~

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

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

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

~~(3) (a) Before the Department of Alcoholic Beverage Control remits any portion of the markup collected under Section 32B-2-304 to the State Tax Commission, the department shall deposit into the account:~~

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

~~(ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the amount that the department deposited into the account during the preceding fiscal year increased or decreased by a percentage equal to the percentage difference between the Consumer Price Index for the preceding calendar year and the Consumer Price Index for~~

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~~calendar year 2017.~~

~~—— (b) For purposes of this Subsection (3), the department shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs. 1(f)(4) and 1(f)(5).~~

~~—— (4) The account shall be funded:~~

~~—— (a) in accordance with Subsection (3);~~

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

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

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

Section ~~{5}~~7. Section **59-1-401** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

(i) the date on which the commission implements the commission's GenTax system

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with respect to the tax, fee, or charge; or

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

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

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

(I) this title;

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

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

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

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

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

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

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

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

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

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

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

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

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

(E) Chapter 4, Privilege Tax.

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

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

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

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

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

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



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

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

(i) an amended return; or

(ii) a return with no tax due.

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

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

(ii) the person:

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

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

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

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

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(iv) the person:

(A) is mailed a notice of deficiency; and

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

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

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

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

(v) (A) the commission:

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

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

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

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

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

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

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

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

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

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

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

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

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

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

(ii) for a person filing an individual income tax return under Chapter 10, Individual

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Income Tax Act, the payment required by Subsection 59-10-516(2).

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

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

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

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

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

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

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

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(i) The notice of proposed penalty shall:

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay

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or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is \$500.

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

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

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

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

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

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

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

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

(A) a return;

(B) an affidavit;

(C) a claim; or

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

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

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

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

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

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

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

(iv) advising in the preparation or presentation of any portion of a document described

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

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

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

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

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

(i) shall be imposed by the commission;

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

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

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

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

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

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

(c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify a return within the time required by law or to supply information within the time required by law, or who makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false



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or fraudulent information, is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

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

commission.

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

- (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- (D) advising in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);
- (E) aiding in the preparation or presentation of any portion of a document described in

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Subsection (12)(e)(i)(A);

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

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

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

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

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

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

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

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

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

(B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) fails to file the form.

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

Section ~~6~~8. Section **59-1-402** is amended to read:

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

(1) As used in this section:

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

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

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

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

(A) prior to the final judicial decision; or

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

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

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

(I) this title;

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

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

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

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

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

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

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

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

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

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

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

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

(D) Chapter 3, Tax Equivalent Property Act;

(E) Chapter 4, Privilege Tax; or

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

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

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

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

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

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

(5) (a) Except as provided in Subsection (5)(c), interest may not be allowed on an

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overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded within:

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

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

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

(B) if the return is not filed electronically.

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

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

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

(B) if the return is filed electronically; or

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

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

(B) if the return is not filed electronically.

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

(A) for a time period:

(I) that begins on the later of:

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

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

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

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

(5)(c):

(I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically,

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within a 45-day period after the date the commission receives the amended return, for a time period:

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

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

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

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

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

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

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

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

Section ~~7~~9. Section **59-1-1402** is amended to read:

### **59-1-1402. Definitions.**

As used in this part:

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

(a) the cost of filing;

(b) the cost of administering a garnishment;

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

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

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

- (a) an account;
- (b) a book;
- (c) an invoice;
- (d) a memorandum;
- (e) a paper;
- (f) a record; or

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

(3) "Deficiency" means:

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

(i) the sum of:

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

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

and

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

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

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

and

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

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

- (a) an asset of the person held by another person; or
- (b) the earnings of the person.

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

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commission:

- (a) a tax, fee, or charge;
  - (b) an addition to a tax, fee, or charge;
  - (c) an administrative cost;
  - (d) interest that accrues in accordance with Section 59-1-402; or
  - (e) a penalty that accrues in accordance with Section 59-1-401.
- (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section

6213(g)(2), Internal Revenue Code.

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

means:

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

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

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

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

- (A) this title;
- (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- (D) Section 19-6-410.5;
- (E) Section 19-6-714;
- (F) Section 19-6-805;

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

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

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

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

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

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

- (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- (iii) Chapter 2, Property Tax Act;



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- (iv) Chapter 3, Tax Equivalent Property Act;
- (v) Chapter 4, Privilege Tax; or
- (vi) Chapter 13, Part 5, Interstate Agreements.

(8) "Transferee" means:

- (a) a devisee;
- (b) a distributee;
- (c) a donee;
- (d) an heir;
- (e) a legatee; or

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

Section ~~{8. Section 63J-1-602.2~~ is amended to read:

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

~~(1) Appropriations from the Technology Development Restricted Account created in Section 31A-3-104.~~

~~(2) Appropriations from the Criminal Background Check Restricted Account created in Section 31A-3-105.~~

~~(3) Appropriations from the Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.~~

~~(4) Appropriations from the Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.~~

~~(5) Appropriations from the Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.~~

~~(6) Appropriations from the Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.~~

~~(7) Funds that}~~ **10. Appropriation.**

**The following sums of money are appropriated for the fiscal year beginning July 1, 2018, and ending June 30, 2019. These are additions to amount previously appropriated for fiscal year 2019. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts**

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indicated for the use and support of the government of the state of Utah.

### ITEM 1

To the Department of Alcoholic Beverage Control ~~{retains}~~-- State Store Land

#### Acquisition Fund

From General Fund, One-time \$7,500,000

#### Schedule of Programs:

State Store Land Acquisition Fund \$7,500,000

The Legislature intends that the appropriations provided under this section be used to purchase or lease property for new state stores in accordance with ~~{Subsection 32B-2-301(7)(a)(ii) or (b):~~

~~—— [(7)] (8) Appropriations from the Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.~~

~~—— [(8)] (9) Funding for the General Assistance program administered by the Department of Workforce Services, as provided in Section 35A-3-401.~~

~~—— [(9)] (10) The Youth Development Organization Restricted Account created in Section 35A-8-1903.~~

~~—— [(10)] (11) The Youth Character Organization Restricted Account created in Section 35A-8-2003.~~

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

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

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

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

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

~~—— (a) purchase and distribution of license plates and decals; and~~

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

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

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### Legislative Review Note

Office of Legislative Research and General Counsel; Section 32B-2-307.

#### Section 11. Effective date.

This bill takes effect on July 1, 2018.