

1 **RETAIL BAG IMPACT REDUCTION PROGRAM**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jani Iwamoto**

5 House Sponsor: Lee B. Perry

6

7 **LONG TITLE**

8 **General Description:**

9 This bill creates the Retail Bag Impact Reduction Program.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ creates the Retail Bag Impact Reduction Program;
- 14 ▶ imposes a fee on a single-use retail bag;
- 15 ▶ creates the Retail Bag Impact Reduction Fund;
- 16 ▶ provides for allocation of the funds to achieve the purposes of the program;
- 17 ▶ provides guidance for the administration of the fund;
- 18 ▶ provides limited rulemaking authority;
- 19 ▶ requires a report; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-1-306**, as last amended by Laws of Utah 2017, Chapter 430



28 **59-12-108**, as last amended by Laws of Utah 2017, Chapter 430

29 ENACTS:

30 **19-6-1301**, Utah Code Annotated 1953

31 **19-6-1302**, Utah Code Annotated 1953

32 **19-6-1303**, Utah Code Annotated 1953

33 **19-6-1304**, Utah Code Annotated 1953

34 **19-6-1305**, Utah Code Annotated 1953

35 **19-6-1306**, Utah Code Annotated 1953

36 **19-6-1307**, Utah Code Annotated 1953



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

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

40 **Part 13. Retail Bag Impact Reduction Program**

41 **19-6-1301. Title.**

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

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

44 **19-6-1302. Legislative findings.**

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

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

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

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

54 **19-6-1303. Definitions.**

55 As used in this part:

56 (1) "Board" means the Waste Management and Radiation Control Board.

57 (2) "Commission" means the State Tax Commission.

58 (3) "Division" means the Division of Waste Management and Radiation Control.

59 (4) "Retail bag" means a bag provided by a retail business to a customer, typically at
60 the point of sale, for the purpose of transporting purchases or merchandise.

61 (5) "Retail business" means any commercial enterprise that provides a retail bag to a
62 customer of the commercial enterprise.

63 (6) "Reusable bag" means a bag designed for multiple uses, or to be used multiple
64 times, that is constructed using cloth, fabric, or other durable materials, whether woven or
65 nonwoven.

66 (7) (a) "Single-use retail bag" means a retail bag, whether paper or plastic, designed for
67 one use before disposal.

68 (b) "Single-use retail bag" does not include a:

69 (i) laundry dry cleaning bag, door-hanger bag, newspaper bag, or package of multiple
70 bags intended for use as garbage, pet waste, or yard waste bags;

71 (ii) bag provided by a pharmacist or veterinarian to contain prescription drugs or other
72 medical necessities;

73 (iii) bag used by a consumer inside a retail business to:

74 (A) contain bulk items such as produce, nuts, grains, candy, or small hardware items;

75 (B) contain or wrap frozen food, meat, or fish;

76 (C) contain or wrap flowers, potted plants, or other items to prevent moisture damage
77 to other purchases; or

78 (D) contain unwrapped prepared food or bakery goods;

79 (iv) small bag used in a restaurant, not intended for carryout, to contain or deliver
80 prepared foods;

81 (v) small bag used in retail business, not issued at the point of sale, used to contain
82 small items;

83 (vi) bag used by a nonprofit entity or other charitable organization to collect or
84 distribute food, grocery product, clothing, or other household items; or

85 (vii) bag used to transport chemicals, including pesticides, drain-cleaning chemicals, or
86 other caustic chemicals sold by a retail business.

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

88 **19-6-1304. Single-use retail bag fee.**

89 (1) (a) A fee is imposed upon each single-use retail bag provided by a retail business to

90 a customer or patron.

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

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

94 (3) A restaurant is not required to, but may, charge a fee for a paper single-use retail
95 bag used to protect or transport prepared foods, beverages, or other loose items associated with
96 the sale of prepared foods.

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

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

100 **19-6-1305. Special revenue fund -- Creation -- Deposits.**

101 (1) There is created an expendable special revenue fund known as the "Retail Bag
102 Impact Reduction Fund."

103 (2) The fund shall consist of:

104 (a) the proceeds of the fee imposed under Section [19-6-1304](#); and

105 (b) any interest accrued by the fund.

106 (3) (a) After a retail business retains 5 cents of the fee as described in Subsection
107 [19-6-1306](#)(1)(b), and beginning on January 1, 2020, the division may distribute money in the
108 fund to reimburse entities for up to 50% of certain expenses approved by the division,
109 including:

110 (i) education efforts promoting recycling and proper waste management;

111 (ii) infrastructure, equipment, or other expenses related to litter mitigation; or

112 (iii) other costs related to the litter control, management, or mitigation of other impacts
113 related to single-use retail bags.

114 (b) The division may deny an application for reimbursement from the fund if:

115 (i) the division determines that the reimbursement would deplete the fund to a degree
116 that would not allow payment of other eligible reimbursements; or

117 (ii) the proposed reimbursement does not meet the criteria described in this section and
118 in the rules made in accordance with Subsection (3)(c).

119 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
120 board shall make rules:

- 121 (i) to establish criteria for evaluating requests for reimbursement from the fund;
 122 (ii) provide guidance regarding acceptable expenditures for which an entity may seek
 123 reimbursement; and
 124 (iii) as otherwise necessary to administer this part.

124a **Ŝ→ (4) The Legislature shall appropriate money from the fund to pay for the costs of the**
 124b **division in administering this part. ←Ŝ**

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

126 **19-6-1306. Payment of the single-use retail bag fee -- Administrative charge.**

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

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

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

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

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

138 (b) (i) A retail business may retain 5 cents of the single-use retail bag fee collected by
 139 the retail business under Section [19-6-1304](#).

140 (ii) A retail business collecting a single-use retail bag fee is encouraged to use a portion
 141 of the retail business's proceeds from the fee to:

142 (A) promote the use of reusable bags;

143 (B) educate customers regarding the impacts of single-use retail bags; and

144 (C) promote proper recycling and disposal of single-use retail bags.

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

146 (3) (a) The commission shall transfer proceeds of the fee to the Retail Bag Impact
 147 Reduction Fund created in Section [19-6-1305](#).

148 (b) The commission may retain and deposit an administrative charge in accordance
 149 with Section [59-1-306](#) from the revenues the commission collects from a fee under Section
 150 [19-6-1304](#).

151 (4) (a) The commission shall administer and collect the fee authorized under this part

152 in accordance with the same procedures used in the administration and collection of the state
 153 sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1,
 154 General Taxation Policies.

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

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

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

160 **19-6-1307. Reporting.**

161 Before December 1, 2019, the commission shall report to the Business and Labor
 162 Interim Committee data associated with the program, including the amount of money collected
 163 and the number of retail bags for which the fee was imposed.

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

165 **59-1-306. Definition -- State Tax Commission Administrative Charge Account --**
 166 **Amount of administrative charge -- Deposit of revenues into the restricted account --**
 167 **Interest deposited into General Fund -- Expenditure of money deposited into the**
 168 **restricted account.**

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

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

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

173 (c) Section [19-6-714](#);

174 (d) Section [19-6-805](#);

175 (e) Section [19-6-1304](#);

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

178 ~~(g)~~ (g) Section [59-27-105](#); or

179 ~~(h)~~ (h) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges.

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

182 (3) Subject to the other provisions of this section, the restricted account shall consist of

183 administrative charges the commission retains and deposits in accordance with this section.

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

186 (a) 1.5%; or

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

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

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

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

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

195 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
196 **Certain amounts allocated to local taxing jurisdictions.**

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

199 (i) file a return with the commission:

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

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

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

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

208 (B) if that seller's tax liability under this chapter for the previous calendar year is
209 \$96,000 or more, by electronic funds transfer.

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

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

- 214 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and
- 215 (B) files a simplified electronic return.
- 216 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
- 217 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 218 (ii) a fee under Section 19-6-714;
- 219 (iii) a fee under Section 19-6-805;
- 220 (iv) a fee under Section 19-6-1304;
- 221 [~~(iv)~~] (v) a charge under Title 69, Chapter 2, Part 4, 911 Emergency Service Charges;

222 or

- 223 [~~(v)~~] (vi) a tax under this chapter.

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

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

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

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

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

- 239 (A) Subsection 59-12-103(2)(a);
- 240 (B) Subsection 59-12-103(2)(b); and
- 241 (C) Subsection 59-12-103(2)(d); and
- 242 (ii) for an agreement sales and use tax.

243 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
244 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described

245 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
246 accordance with Subsection 59-12-103(2)(c).

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

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

250 (I) the state tax and the local tax imposed in accordance with Subsection
251 59-12-103(2)(c);

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

253 and

254 (III) an agreement sales and use tax; and

255 (B) 1.31% of the difference between:

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

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

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

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

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

263 (Aa) the state tax and the local tax imposed in accordance with Subsection
264 59-12-103(2)(c);

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

267 (Cc) an agreement sales and use tax.

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

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

272 (ii) under:

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

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

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

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

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

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

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

283 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
284 remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to
285 18% of any amounts the seller would otherwise remit to the commission:

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

288 (ii) for:

289 (A) an agreement sales and use tax; and

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

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

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

295 (i) electronic means; or

296 (ii) a means other than electronic means.

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

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

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

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

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

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

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

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

316 (ii) is not imposed within the entire state.

317 Section 10. **Effective date.**

318 This bill takes effect on January 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel