

RETAIL BAG IMPACT REDUCTION PROGRAM

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: _____

LONG TITLE

General Description:

This bill creates the Retail Bag Impact Reduction Program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Retail Bag Impact Reduction Program;
- ▶ imposes a fee on single-use retail bags;
- ▶ creates the Retail Bag Impact Reduction Fund;
- ▶ provides for allocation of the funds to achieve the purposes of the program;
- ▶ provides guidance for the administration of the fund; and
- ▶ requires a report.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-306, as enacted by Laws of Utah 2011, Chapter 309

59-12-108, as last amended by Laws of Utah 2013, Chapter 50

ENACTS:



- 28 [19-6-1301](#), Utah Code Annotated 1953
- 29 [19-6-1302](#), Utah Code Annotated 1953
- 30 [19-6-1303](#), Utah Code Annotated 1953
- 31 [19-6-1304](#), Utah Code Annotated 1953
- 32 [19-6-1305](#), Utah Code Annotated 1953
- 33 [19-6-1306](#), Utah Code Annotated 1953
- 34 [19-6-1307](#), Utah Code Annotated 1953



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

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

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

39 **19-6-1301. Title.**

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

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

42 **19-6-1302. Legislative findings.**

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

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

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

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

52 **19-6-1303. Definitions.**

53 As used in this chapter:

54 (1) "Commission" means the State Tax Commission.

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

57 (3) "Retail business" means any commercial enterprise that provides retail bags to its
58 customers.

59 (4) "Reusable bag" means a bag designed for or used multiple times that is constructed
60 using cloth, fabric, or other durable materials, whether woven or non-woven.

61 (5) (a) "Single-use retail bag" means a retail bag, whether paper or plastic, designed for
62 one use before disposal.

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

64 (i) laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of
65 multiple bags intended for use as garbage, pet waste, or yard waste bags;

66 (ii) bags provided by pharmacists or veterinarians to contain prescription drugs or other
67 medical necessities;

68 (iii) bags used by a consumer inside a retail business to:

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

70 (B) contain or wrap frozen foods, meat, or fish;

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

73 (D) contain unwrapped prepared foods or bakery goods;

74 (iv) small bags used in restaurants, not intended for carry out, to contain or deliver
75 prepared foods;

76 (v) small bags used in retail businesses, not issued at the point of sale, used to contain
77 small items;

78 (vi) bags used by a non-profit entity or other charitable organization to collect or
79 distribute food, grocery products, clothing, or other household items; or

80 (vii) bags used to transport chemicals, including pesticides, drain-cleaning chemicals,
81 or other caustic chemicals sold by a retail business.

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

83 **19-6-1304. Single-use retail bag fee.**

84 (1) (a) A fee is imposed upon each single-use retail bag provided by a retail business to
85 a customer or patron.

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

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

89 (3) (a) Except as provided in Subsection (3)(b), a restaurant is not required to charge a

90 fee for a paper single-use retail bag used to protect or transport prepared foods, beverages, or
91 other loose items associated with the sale of prepared foods.

92 (b) A restaurant may irrevocably notify the commission of the restaurant's intent to
93 charge a fee for a paper single-use retail bag used to protect or transport prepared foods,
94 beverages, or other loose items associated with the sale of prepared foods.

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

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

98 **19-6-1305. Special revenue fund -- Creation -- Deposits.**

99 (1) There is created an expendable special revenue fund called the "Retail Bag Impact
100 Reduction Fund."

101 (2) The fund shall consist of the proceeds of the fee imposed under Section [19-6-1304](#).

102 (3) (a) After a retail business located in an unincorporated area of a county retains four
103 cents of the fee described in Subsection [19-6-1306\(1\)\(b\)](#), the commission shall distribute the
104 remaining six cents generated by the fee as follows:

105 (i) four cents to the county in which the retail business is located; and

106 (ii) two cents to the Department of Environmental Quality.

107 (b) After a retail business located in an incorporated municipality retains four cents of
108 the fee described in Subsection [19-6-1306\(1\)\(b\)](#), the commission shall distribute the remaining
109 six cents generated by the fee as follows:

110 (i) two cents to the county in which the retail business is located;

111 (ii) two cents to the incorporated municipality in which the retail business is located;

112 and

113 (iii) two cents to the Department of Environmental Quality.

114 (4) Counties, municipalities, and the Department of Environmental Quality may only
115 use proceeds of the single-use retail bag fee for:

116 (a) promoting the use of reusable bags or other sustainable alternatives to replace
117 single-use retail bags;

118 (b) increasing awareness of environmental impacts of single-use retail bags;

119 (c) providing access to recycling bins and facilities in retail businesses and in areas of
120 the community having limited access to recycling;

121 (d) preventing and remediating litter;

122 (e) educating the public about materials that are difficult to recycle and hazardous to
123 the environment;

124 (f) promoting and facilitating recycling; and

125 (g) encouraging environmental sustainability.

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

127 **19-6-1306. Payment of the single-use retail bag fee -- Administrative charge.**

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

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

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

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

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

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

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

142 (3) (a) The commission shall transfer proceeds of the fee to the fund for payment to
143 each recipient described in Section [19-6-1305](#).

144 (b) (i) The commission shall retain and deposit an administrative charge in accordance
145 with Section [59-1-306](#) from the revenues the commission collects from a fee under Section
146 [19-6-1304](#).

147 (ii) The commission shall retain and deposit the administrative charge described in
148 Subsection (3)(b)(i) solely from the two cents portion of the fee allocated to the Department of
149 Environmental Quality in Subsections [19-6-1305](#)(3)(a)(ii) and [19-6-1305](#)(3)(b)(iii).

150 (4) (a) The commission shall administer, collect, and enforce the fee authorized under
151 this part in accordance with the same procedures used in the administration, collection, and

152 enforcement of the state sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act,
153 and Title 59, Chapter 1, General Taxation Policies.

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

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

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

159 **19-6-1307. Reporting.**

160 Before December 1, 2017, the commission shall report to the Business and Labor
161 Interim Committee data associated with the program, including the amount of money collected
162 and the number of retail bags for which the fee was imposed.

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

164 **59-1-306. Definition -- State Tax Commission Administrative Charge Account --**
165 **Amount of administrative charge -- Deposit of revenues into the restricted account --**
166 **Interest deposited into General Fund -- Expenditure of money deposited into the**
167 **restricted account.**

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

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

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

172 ~~(d)~~ (c) Section 19-6-714;

173 ~~(e)~~ (d) Section 19-6-805;

174 (e) Section 19-6-1304;

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

177 ~~(f)~~ (g) Section 59-27-105;

178 ~~(g)~~ (h) Section 69-2-5;

179 ~~(h)~~ (i) Section 69-2-5.5; or

180 ~~(i)~~ (j) Section 69-2-5.6.

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

183 (3) Subject to the other provisions of this section, the restricted account shall consist of
184 administrative charges the commission retains and deposits in accordance with this section.

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

187 (a) 1.5%; or

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

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

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

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

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

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

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

200 (i) file a return with the commission:

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

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

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

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

209 (B) if that seller's tax liability under this chapter for the previous calendar year is
210 \$96,000 or more, by electronic funds transfer.

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

- 214 (i) is required by Section 59-12-107 to file the return electronically; or
- 215 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and
- 216 (B) files a simplified electronic return.
- 217 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
- 218 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 219 (ii) a fee under Section 19-6-714;
- 220 (iii) a fee under Section 19-6-805;
- 221 (iv) a fee under Section 19-6-1304;
- 222 [~~(iv)~~] (v) a charge under Section 69-2-5;
- 223 [~~(v)~~] (vi) a charge under Section 69-2-5.5;
- 224 [~~(vi)~~] (vii) a charge under Section 69-2-5.6; or
- 225 [~~(vii)~~] (viii) a tax under this chapter.
- 226 (d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3,
- 227 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
- 228 for making same-day payments other than by electronic funds transfer if making payments by
- 229 electronic funds transfer fails.
- 230 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 231 commission shall establish by rule procedures and requirements for determining the amount a
- 232 seller is required to remit to the commission under this Subsection (1).
- 233 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
- 234 seller described in Subsection (4) may retain each month the amount allowed by this
- 235 Subsection (2).
- 236 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
- 237 each month 1.31% of any amounts the seller is required to remit to the commission:
- 238 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
- 239 and a local tax imposed in accordance with the following, for the month for which the seller is
- 240 filing a return in accordance with Subsection (1):
- 241 (A) Subsection 59-12-103(2)(a);
- 242 (B) Subsection 59-12-103(2)(b); and
- 243 (C) Subsection 59-12-103(2)(d); and
- 244 (ii) for an agreement sales and use tax.

245 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
246 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
247 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
248 accordance with Subsection 59-12-103(2)(c).

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

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

252 (I) the state tax and the local tax imposed in accordance with Subsection

253 59-12-103(2)(c);

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

255 and

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

257 (B) 1.31% of the difference between:

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

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

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

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

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

265 (Aa) the state tax and the local tax imposed in accordance with Subsection

266 59-12-103(2)(c);

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

268 and

269 (Cc) an agreement sales and use tax.

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

272 (i) for the month for which the seller is filing a return in accordance with Subsection

273 (1); and

274 (ii) under:

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

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

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

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

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

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

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

285 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
286 remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to
287 18% of any amounts the seller would otherwise remit to the commission:

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

290 (ii) for:

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

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

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

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

297 (i) electronic means; or

298 (ii) a means other than electronic means.

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

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

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

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

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

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

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

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

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

319 Section 10. **Effective date.**

320 This bill takes effect on January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel