

**Representative Steve Eliason** proposes the following substitute bill:

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL --**  
**OPERATIONS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Karen Mayne

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**LONG TITLE**

**General Description:**

This bill creates the Operations Investigation Program for the Department of Alcoholic Beverage Control.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates and provides funding for the Operations Investigation Program to covertly observe and evaluate customer contacts with the Department of Alcoholic Beverage Control;
- ▶ establishes program responsibilities;
- ▶ establishes reporting requirements; and
- ▶ designates certain records as private records.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**



26 AMENDS:

27 **32B-2-301**, as last amended by Laws of Utah 2013, Chapter 349

28 ENACTS:

29 **63A-15-101**, Utah Code Annotated 1953

30 **63A-15-102**, Utah Code Annotated 1953

31 **63A-15-103**, Utah Code Annotated 1953

32 **63A-15-104**, Utah Code Annotated 1953

33 **63A-15-105**, Utah Code Annotated 1953

34 **63A-15-106**, Utah Code Annotated 1953

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

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

38 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

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

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

41 and

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

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

44 (b) Except as provided in Sections **32B-3-205** and **32B-2-304**, money received in the  
45 administration of this title shall be transferred to the Liquor Control Fund.

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

47 (b) In accordance with Section **32B-2-304**, the State Tax Commission shall deposit  
48 revenue remitted to the State Tax Commission from the markup imposed under Section  
49 **32B-2-304** into the Markup Holding Fund.

50 (c) Money deposited into the Markup Holding Fund may be expended:

51 (i) to the extent appropriated by the Legislature; and

52 (ii) to fund the deposits required by Subsection **32B-2-304**(4) and Subsection  
53 **32B-2-305**(4).

54 (4) The department may draw from the Liquor Control Fund only to the extent  
55 appropriated by the Legislature or provided for by statute, except that the department may draw  
56 by warrant without an appropriation from the Liquor Control Fund for an expenditure that is

57 directly incurred by the department:

58 (a) to purchase an alcoholic product;

59 (b) to transport an alcoholic product from the supplier to a warehouse of the  
60 department; and

61 (c) for variances related to an alcoholic product.

62 (5) The department shall transfer annually from the Liquor Control Fund and the State  
63 Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a  
64 sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer  
65 of money under this Subsection (5). The transfers shall be calculated by no later than  
66 September 1 and made by no later than September 30 after a fiscal year. The Division of  
67 Finance may make year-end closing entries in the Liquor Control Fund and the Markup  
68 Holding Fund in order to comply with Subsection 51-5-6(2).

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

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

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

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

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

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

80 (8) For the fiscal year beginning July 1, 2017, only, the department shall use the first  
81 \$176,000 in net profits that exceed the amount transferred from the Liquor Control Fund to the  
82 General Fund for the previous fiscal year to pay the costs of running the Operations  
83 Investigation Program created in Section 63A-15-103.

84 Section 2. Section 63A-15-101 is enacted to read:

85 **Part 1. Operations Investigation Program**

86 **63A-15-101. Title.**

87 This part is known as the "Operations Investigation Program."

88 Section 3. Section **63A-15-102** is enacted to read:

89 **63A-15-102. Definitions.**

90 As used in this section:

91 (1) "Covert observation" or "covertly observe" means an act taken by the program to  
92 directly observe and evaluate the service offered by a subject store without the knowledge of  
93 the subject store.

94 (2) "Interaction" means an individual act under the program to covertly observe a  
95 subject store in a manner authorized by this part.

96 (3) "Program" means the Citizens' Customer Satisfaction Program created under  
97 Section [63A-15-103](#).

98 (4) "Subject department" means the Department of Alcoholic Beverage Control.

99 (5) "Subject store" means a store created under Title 32B, Chapter 2, Part 5, State  
100 Store, by the Alcoholic Beverage Control Commission.

101 Section 4. Section **63A-15-103** is enacted to read:

102 **63A-15-103. Creation.**

103 (1) There is created within the department the Operations Investigation Program.

104 (2) The executive director may procure the services of a nonpublic entity in accordance  
105 with Title 63G, Chapter 6a, Utah Procurement Code, to administer the program.

106 Section 5. Section **63A-15-104** is enacted to read:

107 **63A-15-104. Program duties and responsibilities -- Data collection.**

108 (1) The executive director shall ensure that the program, through covert observation,  
109 evaluates each store's:

110 (a) quality of customer service;

111 (b) cleanliness;

112 (c) customer satisfaction;

113 (d) product availability; and

114 (e) compliance with laws controlling the sale of alcoholic beverages.

115 (2) Before January 1 of each year, the executive director shall consult with the director  
116 of the subject department to:

117 (a) identify categories, including those described in Subsection (1), that are subject to  
118 the program's assessment;

119 (b) establish performance measures for the categories identified under Subsection  
120 (2)(a) that the program will measure, including a scoring system by which the program will  
121 evaluate each subject store's performance in each category; and

122 (c) establish goals for all subject stores' customer service, using the performance  
123 measures established under Subsection (2)(b).

124 (3) Before January 1 of each year, the executive director shall create a plan, based upon  
125 the performance measures established under Subsection (2)(b), by which the program will  
126 covertly observe and evaluate each subject store's performance.

127 (4) The program shall:

128 (a) collect detailed data on each interaction conducted under the program, including the  
129 name of each subject store employee who is contacted during the interaction; and

130 (b) score the subject store according to the scoring system for each performance  
131 measure established under Subsection (2)(b).

132 (5) (a) The executive director:

133 (i) shall ensure that the program covertly observes the customer service offered by each  
134 subject store through an in-person interaction at least once per month; and

135 (ii) may also authorize the program to covertly observe the customer service offered by  
136 a subject store through an interaction conducted by telephone or through electronic  
137 communication.

138 (b) The executive director may authorize the program to covertly record an interaction.

139 (c) The executive director may not authorize the program to purposely covertly observe  
140 or record a direct interaction between a subject store and another person unless the person is  
141 associated with the program or the department.

142 (6) The executive director may pay a stipend to a person that:

143 (a) performs an interaction for the program; and

144 (b) is not otherwise associated with the program or the department.

145 Section 6. Section **63A-15-105** is enacted to read:

146 **63A-15-105. Reporting and tracking results -- Online database.**

147 (1) The executive director shall prepare a detailed report each month that contains:

148 (a) the performance measures and goals established under Subsection [63A-15-104\(2\)](#)  
149 for all subject stores;

- 150 (b) for each subject store:
- 151 (i) a compilation, analysis, and interpretation of the data collected and scores recorded
- 152 under Subsection 63A-15-104(4);
- 153 (ii) an assessment of how the subject store's performance relates to the performance
- 154 measures and goals established under Subsection 63A-15-104(2); and
- 155 (iii) a description of each interaction, including:
- 156 (A) the name of each of the subject store's employees who were contacted during the
- 157 interaction; and
- 158 (B) the scores recorded under Subsection 63A-15-104(4)(b) for the interaction;
- 159 (c) an explanation of any observed patterns of a subject store's or the subject
- 160 department's practices that do not appear to be in compliance with state law, rule, or policy or
- 161 with generally accepted customer service practices; and
- 162 (d) any recommended changes needed to bring a subject store or the subject department
- 163 into compliance with state law, rule, or policy or with generally accepted customer service
- 164 practices.
- 165 (2) The executive director shall, within 30 days after the day on which the executive
- 166 director prepares a report described in Subsection (1), send the report to the director of the
- 167 subject department.
- 168 (3) (a) The director of the subject department shall create a repository to store and track
- 169 the information that the director of the subject department receives under Subsection (2).
- 170 (b) Any record created under this part that identifies an employee of the subject
- 171 department or a subject store is classified as a private record, for purposes of Title 63G,
- 172 Chapter 2, Government Records Access and Management Act, unless the record:
- 173 (i) relates to criminal conduct by the employee; or
- 174 (ii) is a record described in Subsection 63A-15-106(2)(c).
- 175 Section 7. Section **63A-15-106** is enacted to read:
- 176 **63A-15-106. Subject department responsibilities -- Incentives.**
- 177 (1) (a) Upon receipt of a report described in Subsection 63A-15-105(2), the director of
- 178 the subject department shall:
- 179 (i) identify each employee described in Subsection 63A-15-105(1)(b)(iii)(A); and
- 180 (ii) place a copy of the portions of the report that pertain to the employee in the

181 employee's personnel file.

182 (b) An employee may challenge the content of a report placed in the employee's  
183 personnel file under Subsection (1)(a)(ii), or placement of the report in the employee's  
184 personnel file, by following the grievance procedures described in Title 67, Chapter 19a,  
185 Grievance Procedures.

186 (2) (a) The director of the subject department may establish a pecuniary incentive to  
187 award to a subject store employee:

188 (i) who takes part in an interaction under the program; and

189 (ii) whose performance, as measured under the program, meets or exceeds the goals  
190 established under Subsection 63A-15-104(2)(c) for the entity.

191 (b) If the director of the subject department establishes a pecuniary incentive under  
192 Subsection (2)(a), the director of the subject department shall distribute, in writing, to each  
193 employee eligible to receive the incentive:

194 (i) a description of the incentive; and

195 (ii) a description of requirements that an employee must meet to receive the incentive.

196 (c) When the director of the subject department awards a pecuniary incentive to a  
197 subject store's employee, the director of the subject department shall distribute, in writing, to  
198 each of the subject department's employees who is eligible for the incentive:

199 (i) the name of each employee who was awarded the incentive;

200 (ii) a description of how the employee described in Subsection (2)(c)(i) met the  
201 requirements established under Subsection (2)(b)(ii); and

202 (iii) a description of the incentive the individual was awarded.

203 **Section 8. Effective date.**

204 This bill takes effect on July 1, 2017.