

Senator Curtis S. Bramble 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

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 **63G-2-302**, as last amended by Laws of Utah 2015, Chapters 43 and 130

29 ENACTS:

30 **63J-4-701**, Utah Code Annotated 1953

31 **63J-4-702**, Utah Code Annotated 1953

32 **63J-4-703**, Utah Code Annotated 1953

33 **63J-4-704**, Utah Code Annotated 1953

34 **63J-4-705**, Utah Code Annotated 1953

35 **63J-4-706**, Utah Code Annotated 1953



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

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

39 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

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

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

42 and

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

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

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

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

48 (b) In accordance with Section **32B-2-304**, the State Tax Commission shall deposit
49 revenue remitted to the State Tax Commission from the markup imposed under Section
50 **32B-2-304** into the Markup Holding Fund.

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

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

53 (ii) to fund the deposits required by Subsection **32B-2-304**(4) and Subsection
54 **32B-2-305**(4).

55 (4) The department may draw from the Liquor Control Fund only to the extent
56 appropriated by the Legislature or provided for by statute, except that the department may draw

57 by warrant without an appropriation from the Liquor Control Fund for an expenditure that is
58 directly incurred by the department:

59 (a) to purchase an alcoholic product;

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

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

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

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

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

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

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

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

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

81 (8) For a fiscal year beginning on or after July 1, 2017, the department shall use the
82 first \$176,000 in net profits that exceed the amount transferred from the Liquor Control Fund
83 to the General Fund for the previous fiscal year to pay the costs of running the Operations
84 Investigation Program created in Section [63J-4-703](#).

85 Section 2. Section **63G-2-302** is amended to read:

86 **63G-2-302. Private records.**

87 (1) The following records are private:

88 (a) records concerning an individual's eligibility for unemployment insurance benefits,
89 social services, welfare benefits, or the determination of benefit levels;

90 (b) records containing data on individuals describing medical history, diagnosis,
91 condition, treatment, evaluation, or similar medical data;

92 (c) records of publicly funded libraries that when examined alone or with other records
93 identify a patron;

94 (d) records received by or generated by or for:

95 (i) the Independent Legislative Ethics Commission, except for:

96 (A) the commission's summary data report that is required under legislative rule; and

97 (B) any other document that is classified as public under legislative rule; or

98 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
99 unless the record is classified as public under legislative rule;

100 (e) records received by, or generated by or for, the Independent Executive Branch
101 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
102 of Executive Branch Ethics Complaints;

103 (f) records received or generated for a Senate confirmation committee concerning
104 character, professional competence, or physical or mental health of an individual:

105 (i) if, prior to the meeting, the chair of the committee determines release of the records:

106 (A) reasonably could be expected to interfere with the investigation undertaken by the
107 committee; or

108 (B) would create a danger of depriving a person of a right to a fair proceeding or
109 impartial hearing; and

110 (ii) after the meeting, if the meeting was closed to the public;

111 (g) employment records concerning a current or former employee of, or applicant for
112 employment with, a governmental entity that would disclose that individual's home address,
113 home telephone number, Social Security number, insurance coverage, marital status, or payroll
114 deductions;

115 (h) records or parts of records under Section [63G-2-303](#) that a current or former
116 employee identifies as private according to the requirements of that section;

117 (i) that part of a record indicating a person's Social Security number or federal
118 employer identification number if provided under Section [31A-23a-104](#), [31A-25-202](#),

119 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

120 (j) that part of a voter registration record identifying a voter's:

121 (i) driver license or identification card number;

122 (ii) Social Security number, or last four digits of the Social Security number;

123 (iii) email address; or

124 (iv) date of birth;

125 (k) a voter registration record that is classified as a private record by the lieutenant

126 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

127 (l) a record that:

128 (i) contains information about an individual;

129 (ii) is voluntarily provided by the individual; and

130 (iii) goes into an electronic database that:

131 (A) is designated by and administered under the authority of the Chief Information

132 Officer; and

133 (B) acts as a repository of information about the individual that can be electronically

134 retrieved and used to facilitate the individual's online interaction with a state agency;

135 (m) information provided to the Commissioner of Insurance under:

136 (i) Subsection 31A-23a-115(2)(a);

137 (ii) Subsection 31A-23a-302(3); or

138 (iii) Subsection 31A-26-210(3);

139 (n) information obtained through a criminal background check under Title 11, Chapter

140 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

141 (o) information provided by an offender that is:

142 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap

143 Offender Registry; and

144 (ii) not required to be made available to the public under Subsection 77-41-110(4);

145 (p) a statement and any supporting documentation filed with the attorney general in

146 accordance with Section 34-45-107, if the federal law or action supporting the filing involves

147 homeland security;

148 (q) electronic toll collection customer account information received or collected under

149 Section 72-6-118 and customer information described in Section 17B-2a-815 received or

150 collected by a public transit district, including contact and payment information and customer
151 travel data;

152 (r) an email address provided by a military or overseas voter under Section
153 20A-16-501;

154 (s) a completed military-overseas ballot that is electronically transmitted under Title
155 20A, Chapter 16, Uniform Military and Overseas Voters Act;

156 (t) records received by or generated by or for the Political Subdivisions Ethics Review
157 Commission established in Section 11-49-201, except for:

158 (i) the commission's summary data report that is required in Section 11-49-202; and

159 (ii) any other document that is classified as public in accordance with Title 11, Chapter
160 49, Political Subdivisions Ethics Review Commission;

161 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was
162 notified of an incident or threat; ~~and~~

163 (v) a criminal background check or credit history report conducted in accordance with
164 Section 63A-3-201[-]; and

165 (w) a record created under, or in relation to, Title 63J, Chapter 4, Part 7, Operations
166 Investigation Program, unless the record:

167 (i) relates to criminal conduct; or

168 (ii) is a record described in Subsection 63J-4-706(2)(c).

169 (2) The following records are private if properly classified by a governmental entity:

170 (a) records concerning a current or former employee of, or applicant for employment
171 with a governmental entity, including performance evaluations and personal status information
172 such as race, religion, or disabilities, but not including records that are public under Subsection
173 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

174 (b) records describing an individual's finances, except that the following are public:

175 (i) records described in Subsection 63G-2-301(2);

176 (ii) information provided to the governmental entity for the purpose of complying with
177 a financial assurance requirement; or

178 (iii) records that must be disclosed in accordance with another statute;

179 (c) records of independent state agencies if the disclosure of those records would
180 conflict with the fiduciary obligations of the agency;

181 (d) other records containing data on individuals the disclosure of which constitutes a
182 clearly unwarranted invasion of personal privacy;

183 (e) records provided by the United States or by a government entity outside the state
184 that are given with the requirement that the records be managed as private records, if the
185 providing entity states in writing that the record would not be subject to public disclosure if
186 retained by it; and

187 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
188 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
189 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

190 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
191 records, statements, history, diagnosis, condition, treatment, and evaluation.

192 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
193 doctors, or affiliated entities are not private records or controlled records under Section
194 63G-2-304 when the records are sought:

195 (i) in connection with any legal or administrative proceeding in which the patient's
196 physical, mental, or emotional condition is an element of any claim or defense; or

197 (ii) after a patient's death, in any legal or administrative proceeding in which any party
198 relies upon the condition as an element of the claim or defense.

199 (c) Medical records are subject to production in a legal or administrative proceeding
200 according to state or federal statutes or rules of procedure and evidence as if the medical
201 records were in the possession of a nongovernmental medical care provider.

202 Section 3. Section 63J-4-701 is enacted to read:

203 **Part 7. Operations Investigation Program**

204 **63J-4-701. Title.**

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

206 Section 4. Section 63J-4-702 is enacted to read:

207 **63J-4-702. Definitions.**

208 As used in this section:

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

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

214 (3) "Program" means the Operations Investigation Program created under Section
215 63J-4-703.

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

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

219 Section 5. Section **63J-4-703** is enacted to read:

220 **63J-4-703. Creation.**

221 (1) There is created within the office the Operations Investigation Program.

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

224 Section 6. Section **63J-4-704** is enacted to read:

225 **63J-4-704. Program duties and responsibilities -- Data collection.**

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

228 (a) quality of customer service;

229 (b) cleanliness;

230 (c) customer satisfaction;

231 (d) product availability; and

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

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

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

237 (b) establish performance measures for the categories identified under Subsection

238 (2)(a) that the program will measure, including a scoring system by which the program will
239 evaluate each subject store's performance in each category; and

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

242 (3) Before January 1 of each year, the executive director shall create a plan, based upon

243 the performance measures established under Subsection (2)(b), by which the program will
244 covertly observe and evaluate each subject store's performance.

245 (4) The program shall:

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

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

250 (5) (a) The executive director:

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

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

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

257 (c) The executive director may not authorize the program to purposely covertly observe
258 or record a direct interaction between a subject store and another person unless the person is
259 associated with the program or the office.

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

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

262 (b) is not otherwise associated with the program or the office.

263 Section 7. Section **63J-4-705** is enacted to read:

264 **63J-4-705. Reporting and tracking results -- Online database.**

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

266 (a) the performance measures and goals established under Subsection [63J-4-704](#)(2) for
267 all subject stores;

268 (b) for each subject store:

269 (i) a compilation, analysis, and interpretation of the data collected and scores recorded
270 under Subsection [63J-4-704](#)(4);

271 (ii) an assessment of how the subject store's performance relates to the performance
272 measures and goals established under Subsection [63J-4-704](#)(2); and

273 (iii) a description of each interaction, including:

274 (A) the name of each of the subject store's employees who were contacted during the
275 interaction; and

276 (B) the scores recorded under Subsection 63J-4-704(4)(b) for the interaction;

277 (c) an explanation of any observed patterns of a subject store's or the subject
278 department's practices that do not appear to be in compliance with state law, rule, or policy or
279 with generally accepted customer service practices; and

280 (d) any recommended changes needed to bring a subject store or the subject department
281 into compliance with state law, rule, or policy or with generally accepted customer service
282 practices.

283 (2) The executive director shall, within 30 days after the day on which the executive
284 director prepares a report described in Subsection (1), send the report to the director of the
285 subject department.

286 (3) The director of the subject department shall create a repository to store and track
287 the information that the director of the subject department receives under Subsection (2).

288 Section 8. Section 63J-4-706 is enacted to read:

289 **63J-4-706. Subject department responsibilities -- Incentives.**

290 (1) (a) Upon receipt of a report described in Subsection 63J-4-705(2), the director of
291 the subject department shall:

292 (i) identify each employee described in Subsection 63J-4-705(1)(b)(iii)(A); and

293 (ii) place a copy of the portions of the report that pertain to the employee in the
294 employee's personnel file.

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

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

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

302 (ii) whose performance, as measured under the program, meets or exceeds the goals
303 established under Subsection 63J-4-704(2)(c).

304 (b) If the director of the subject department establishes a pecuniary incentive under

305 Subsection (2)(a), the director of the subject department shall distribute, in writing, to each
306 employee eligible to receive the incentive:

307 (i) a description of the incentive; and

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

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

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

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

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

316 **Section 9. Effective date.**

317 This bill takes effect on July 1, 2017.