

HB0097S01 compared with HB0097

{deleted text} shows text that was in HB0097 but was deleted in HB0097S01.

Inserted text shows text that was not in HB0097 but was inserted into HB0097S01.

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Representative Steve Eliason proposes the following substitute bill:

ALCOHOL BEVERAGE CONTROL OPERATIONS{

}AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: { } Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ designates certain records as private records;
- ▶ 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;

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- ▶ establishes program responsibilities;
- ▶ establishes reporting and tracking requirements;
- ▶ addresses subject department's responsibilities;
- ▶ addresses incentives;{

— provides that reports placed in an employee's personnel file can be challenged under grievance procedures;}

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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

Utah Code Sections Affected:

AMENDS:

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

63G-2-302, as last amended by Laws of Utah 2016, Chapter 410

{ — ~~**67-19a-202**, as last amended by Laws of Utah 2015, Chapter 258~~

} ENACTS:

63J-4-701, Utah Code Annotated 1953

63J-4-702, Utah Code Annotated 1953

63J-4-703, Utah Code Annotated 1953

63J-4-704, Utah Code Annotated 1953

63J-4-705, Utah Code Annotated 1953

63J-4-706, Utah Code Annotated 1953

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 -- Markup Holding Fund.

(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.

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

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

(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).

(4) The department may draw 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 appropriation from the Liquor Control Fund for an expenditure that is directly incurred by the department:

(a) to purchase an alcoholic product;

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

(c) for variances related to an alcoholic product.

(5) The department 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 (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. 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).

(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.

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

(7) 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.

(8) For a fiscal year beginning on or after July 1, ~~2018~~2017, the department ~~and the Governor's Office of Management and Budget shall use~~shall retain in the Liquor Control Fund to pay the costs of running the Operations Investigation Program created in Section 63J-4-703:

(a) the first \$176,000 in net profits that exceed the amount transferred from the Liquor Control Fund to the General Fund for the previous fiscal year~~to pay~~;

(b) if the ~~costs of running the Operations Investigation Program created in Section 63J-4-703~~total net profits that exceed the amount transferred from the Liquor Control Fund to the General Fund for the previous fiscal year is less than \$176,000, an amount equal to the net profits that exceed the amount transferred from the Liquor Control Fund to the General Fund for the previous fiscal year; or

(c) if the total net profits does not exceed the amount transferred from the Liquor Control Fund to the General Fund for the previous fiscal year, \$0.

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

63G-2-302. Private records.

(1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

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

(i) driver license or identification card number;

(ii) social security number, or last four digits of the social security number;

(iii) email address; or

(iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

(l) a record that:

(i) contains information about an individual;

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(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

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

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

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

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

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

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

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

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

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

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

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

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

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

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

(ii) any other document that is classified as public in accordance with Title 11, Chapter

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49, Political Subdivisions Ethics Review Commission;

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

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

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

(i) relates to criminal conduct; or

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

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

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

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

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

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

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

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

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

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

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

(g) audio and video recordings created by a body-worn camera, as defined in Section

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77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);

or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

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

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

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

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

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

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

Part 7. Operations Investigation Program

63J-4-701. Title.

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

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

63J-4-702. Definitions.

As used in this section:

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

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the subject store.

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

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

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

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

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

63J-4-703. Creation.

(1) ~~{There}~~ Beginning on July 1, 2018, there is created within the office the Operations Investigation Program.

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

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

63J-4-704. Program responsibilities -- Data collection.

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

(a) quality of customer service;

(b) cleanliness;

(c) customer satisfaction;

(d) product availability; and

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

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

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

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

(c) establish goals for all subject stores' customer service, using the performance

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measures established under Subsection (2)(b).

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

(4) The program shall:

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

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

(5) (a) The executive director:

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

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

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

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

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

(a) performs an interaction for the program; and

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

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

63J-4-705. Reporting and tracking results.

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

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

(b) for each subject store:

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

(ii) an assessment of how the subject store's performance relates to the performance

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measures and goals established under Subsection 63J-4-704(2); and

(iii) a description of each interaction, including:

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

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

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

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

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

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

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

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

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

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

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

(b) An employee may challenge **an agency action described in Subsection 67-19a-202(1)(a) that is based on** the content of a report placed in the employee's personnel file under Subsection (1)(a)(ii) ~~}, or placement of the report in the employee's personnel file, by following the grievance procedures described in~~ **in accordance with** Title 67, Chapter 19a, Grievance Procedures.

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

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

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

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

(i) a description of the incentive; and

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

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

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

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

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

~~{ Section 9. Section 67-19a-202 is amended to read:~~

~~67-19a-202. Powers -- Scope of authority.~~

~~(1) (a) The office shall serve as the final administrative body to review a grievance from a career service employee and an agency of a decision regarding:~~

~~(i) a dismissal;~~

~~(ii) a demotion;~~

~~(iii) a suspension;~~

~~(iv) a reduction in force;~~

~~(v) a dispute concerning abandonment of position;~~

~~(vi) a wage grievance if an employee is not placed within the salary range of the employee's current position;~~

~~(vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management Act; [or]~~

~~(viii) except as provided by Subsection (1)(c)(iii), equitable administration of the following benefits:~~

~~(A) long-term disability insurance;~~

~~(B) medical insurance;~~

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- ~~—— (C) dental insurance;~~
- ~~—— (D) post-retirement health insurance;~~
- ~~—— (E) post-retirement life insurance;~~
- ~~—— (F) life insurance;~~
- ~~—— (G) defined contribution retirement;~~
- ~~—— (H) defined benefit retirement; and~~
- ~~—— (I) a leave benefit[.]; or~~
- ~~—— (ix) a report placed in an employee's personnel file under Section 63J-4-706.~~
- ~~—— (b) The office shall serve as the final administrative body to review a grievance by a reporting employee alleging retaliatory action:~~
 - ~~—— (c) The office may not review or take action on:~~
 - ~~—— (i) a personnel matter not listed in Subsection (1)(a) or (b);~~
 - ~~—— (ii) a grievance listed in Subsection (1)(a) or (b) that alleges discrimination or retaliation related to a claim of discrimination that is a violation of a state or federal law for which review and action by the office is preempted by state or federal law; or~~
 - ~~—— (iii) a grievance related to a claim for which an administrative review process is provided by statute and administered by:~~
 - ~~—— (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and Insurance Benefit Act;~~
 - ~~—— (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or~~
 - ~~—— (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.~~
- ~~—— (2) The time limits established in this chapter supersede the procedural time limits established in Title 63G, Chapter 4, Administrative Procedures Act.~~
- ~~—— Section 10. **Effective date.**~~
- ~~—— This bill takes effect on July 1, 2018.~~

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Legislative Review Note

Office of Legislative Research and General Counsel