

Senator Darin G. Peterson proposes the following substitute bill:

TRAUMATIC BRAIN INJURY FUND

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James R. Gowans

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill creates the Traumatic Brain Injury Fund and a board to administer it.

Highlighted Provisions:

This bill:

- ▶ creates the Traumatic Brain Injury Board within the Department of Human Services;
- ▶ creates a Traumatic Brain Injury Fund;
- ▶ increases the surcharge on DUIs and other offenses to provide monies for the fund;
- ▶ directs the state treasurer to deposit monies from the surcharge into the fund;
- ▶ specifies duties and responsibilities for the Traumatic Brain Injury Board; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-63a-1, as last amended by Chapter 2, Laws of Utah 2005



- 26 **63-63a-3**, as last amended by Chapter 141, Laws of Utah 1999
- 27 **63-63a-4**, as last amended by Chapter 12, Laws of Utah 2002, Fifth Special Session
- 28 **63-63a-5**, as last amended by Chapter 171, Laws of Utah 1998
- 29 **63-63a-6**, as last amended by Chapter 156, Laws of Utah 1993
- 30 **63-63a-7**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 31 **63-63a-8.5**, as enacted by Chapter 194, Laws of Utah 1997
- 32 **63-63a-9**, as last amended by Chapter 263, Laws of Utah 1998

33 ENACTS:

- 34 **62A-16-101**, Utah Code Annotated 1953
- 35 **62A-16-102**, Utah Code Annotated 1953
- 36 **62A-16-201**, Utah Code Annotated 1953
- 37 **62A-16-202**, Utah Code Annotated 1953
- 38 **63-63a-10**, Utah Code Annotated 1953



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

41 Section 1. Section **62A-16-101** is enacted to read:

42 **CHAPTER 16. TRAUMATIC BRAIN INJURY FUND**

43 **Part 1. General Provisions**

44 **62A-16-101. Title.**

45 (1) This chapter is known as the "Traumatic Brain Injury Fund."

46 Section 2. Section **62A-16-102** is enacted to read:

47 **62A-16-102. Definitions.**

48 As used in this chapter:

- 49 (1) "Board" means the board created in Section 62A-16-202.
- 50 (2) "Department" means the Department of Human Services.
- 51 (3) "Executive director" means the executive director of the Department of Human
- 52 Services.

53 (4) "Fund" means the Traumatic Brain Injury Fund created in Section 62A-16-201.

54 Section 3. Section **62A-16-201** is enacted to read:

55 **Part 2. Traumatic Brain Injury Fund**

56 **62A-16-201. Traumatic Brain Injury Fund.**

57 (1) There is created a restricted special revenue fund entitled the Traumatic Brain
58 Injury Fund.

59 (2) The fund shall consist of:

60 (a) amounts collected in accordance with Section 63-63a-10;

61 (b) gifts, grants, donations, or any other monies that may be made to the fund from
62 private sources; and

63 (c) legislative appropriations.

64 (3) The Traumatic Brain Injury Board shall administer the fund.

65 (4) The board may use fund monies to:

66 (a) educate the general public and professionals regarding understanding, treatment,
67 and prevention of traumatic brain injury;

68 (b) coordinate short-term care to assist individuals in identifying services or support
69 needs, resources, and benefits for which they may be eligible;

70 (c) develop and support an information and referral system for persons with traumatic
71 brain injuries and their families; and

72 (d) provide grants to persons or organizations to provide the services in Subsections
73 (4)(a), (b), and (c).

74 (5) The board may:

75 (a) use up to 15% of the total fund revenues for the actual and necessary operating
76 expenses of the board from May 1, 2006 through April 30, 2008; and

77 (b) beginning May 1, 2008, use up to 7% of the total fund revenues for the actual and
78 necessary operating expenses of the board;

79 (c) seek outside donations from public and private entities to offset operating expenses;
80 and

81 (d) contract with public and private organizations to provide the services in Subsection
82 (4).

83 (6) An individual who receives services either directly from the board or through a
84 public or private organization under contract with the board shall:

85 (a) be a resident of Utah;

86 (b) have been diagnosed by a qualified professional with a traumatic brain injury that
87 results in impairment of cognitive or physical function; and

88 (c) have a need that can be met within the requirements of this chapter.

89 (7) The board may not duplicate any services or support mechanisms being provided to
90 an individual by any government or private agency.

91 (8) The board may not provide short-term, long-term, or acute care.

92 Section 4. Section **62A-16-202** is enacted to read:

93 **62A-16-202. Traumatic Brain Injury Board.**

94 (1) There is created within the Department of Human Services, the Traumatic Brain
95 Injury Board.

96 (2) The board shall consist of the following nine members appointed by the executive
97 director:

98 (a) one person with a traumatic brain injury;

99 (b) one family member of a person with a traumatic brain injury;

100 (c) a representative of an association that advocates for persons with traumatic brain
101 injury;

102 (d) a specialist in a profession that works with brain injury patients;

103 (e) a representative from the department; and

104 (f) four members at large appointed by the executive director from a list of
105 recommendations compiled by members in Subsections (2)(a) through (e).

106 (3) The board shall:

107 (a) provide a centralized resource for:

108 (i) persons with traumatic brain injury and their families; and

109 (ii) professionals that work with persons with traumatic brain injuries;

110 (b) recommend and approve expenditures from the Traumatic Brain Injury Fund
111 created in Section 62A-16-201; and

112 (c) make recommendations to state agencies, private organizations, and the Legislature
113 regarding services and assistance for persons with traumatic brain injuries.

114 (4) (a) Members shall receive no compensation or benefits for their services, but may
115 receive per diem and expenses incurred in the performance of the member's official duties at
116 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

117 (b) Members may decline to receive per diem and expenses for their service.

118 (5) Not later than November 30 of each year the board shall:

- 119 (a) provide a written report to:
120 (i) the executive director of the department; and
121 (ii) the Health and Human Services Interim Committee; and
122 (b) in the report, summarize the activities of the board and identify each disbursement
123 from the fund and its purposes.

124 Section 5. Section **63-63a-1** is amended to read:

125 **63-63a-1. Surcharge -- Application and exemptions.**

126 (1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures
127 imposed by the courts.

128 (b) The surcharge shall be:

129 (i) [~~85%~~] 90% upon conviction of a:

130 (A) felony;

131 (B) class A misdemeanor;

132 (C) violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless
133 Driving; or

134 (D) class B misdemeanor not classified within Title 41, Motor Vehicles, including
135 violation of comparable county or municipal ordinances; or

136 (ii) 35% upon conviction of any other offense, including violation of county or
137 municipal ordinances not subject to the [~~85%~~] 90% surcharge.

138 (2) The surcharge may not be imposed:

139 (a) upon nonmoving traffic violations;

140 (b) upon court orders when the offender is ordered to perform compensatory service
141 work in lieu of paying a fine; and

142 (c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment
143 of a case under Section 78-3a-502.

144 (3) (a) The surcharge and the exceptions under Subsections (1) and (2) also apply to
145 all fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if
146 committed by an adult.

147 (b) However, the surcharge does not include amounts assessed or collected separately
148 by juvenile courts for the Juvenile Restitution Account, which is independent of this chapter
149 and does not affect the imposition or collection of the surcharge.

150 (4) The surcharge under this section shall be imposed in addition to the fine charged
151 for a civil or criminal offense, and no reduction may be made in the fine charged due to the
152 surcharge imposition.

153 (5) Fees, assessments, and surcharges related to criminal or traffic offenses shall be
154 authorized and managed by this chapter rather than attached to particular offenses.

155 Section 6. Section **63-63a-3** is amended to read:

156 **63-63a-3. EMS share of surcharge -- Accounting.**

157 (1) The Division of Finance shall allocate 14% of the collected surcharge established in
158 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10,
159 but not to exceed the amount appropriated by the Legislature, to the Emergency Medical
160 Services (EMS) Grants Program Account under Section 26-8a-207.

161 (2) The amount shall be recorded by the Department of Health as a dedicated credit.

162 Section 7. Section **63-63a-4** is amended to read:

163 **63-63a-4. Distribution of surcharge amounts.**

164 (1) In this section:

165 (a) "Reparation fund" means the Crime Victim Reparation Fund.

166 (b) "Safety account" means the Public Safety Support Account.

167 (2) (a) There is created a restricted special revenue fund known as the "Crime Victim
168 Reparation Fund" to be administered and distributed as provided in this chapter by the
169 Reparations Office under Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act, in
170 cooperation with the Division of Finance.

171 (b) Monies deposited in this fund are for victim reparations, criminal justice and
172 substance abuse, other victim services, and, as appropriated, for administrative costs of the
173 Commission on Criminal and Juvenile Justice under Title 63, Chapter 25a.

174 (3) (a) There is created a restricted account in the General Fund known as the "Public
175 Safety Support Account" to be administered and distributed by the Department of Public Safety
176 in cooperation with the Division of Finance as provided in this chapter.

177 (b) Monies deposited in this account shall be appropriated to:

178 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
179 53, Chapter 6, Peace Officer Standards and Training Act; and

180 (ii) the Office of the Attorney General for the support of the Utah Prosecution Council

181 established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

182 (4) The Division of Finance shall allocate from the collected surcharge established in
183 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10:

184 (a) 35% to the reparation fund;

185 (b) 18.5% to the safety account for POST, but not to exceed the amount appropriated
186 by the Legislature; and

187 (c) 3% to the safety account for support of the Utah Prosecution Council, but not to
188 exceed the amount appropriated by the Legislature.

189 (5) (a) In addition to the funding provided by other sections of this chapter, a
190 percentage of the income earned by inmates working for correctional industries in a federally
191 certified private sector/prison industries enhancement program shall be deposited in the
192 reparation fund.

193 (b) The percentage of income deducted from inmate pay under Subsection (5)(a) shall
194 be determined by the executive director of the Department of Corrections in accordance with
195 the requirements of the private sector/prison industries enhancement program.

196 (6) (a) In addition to other monies collected from the surcharge, judges are encouraged
197 to, and may in their discretion, impose additional reparations to be paid into the reparation fund
198 by convicted criminals.

199 (b) The additional discretionary reparations may not exceed the statutory maximum
200 fine permitted by Title 76, Utah Criminal Code, for that offense.

201 Section 8. Section **63-63a-5** is amended to read:

202 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

203 (1) There is created a restricted account within the General Fund known as the
204 Substance Abuse Prevention Account.

205 (2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention
206 Account from the collected surcharge established in Section 63-63a-1, excluding the amount of
207 the surcharge allocated under Section 63-63a-10:

208 (i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the
209 Legislature; and

210 (ii) 2.5% for the State Office of Education, but not to exceed the amount appropriated
211 by the Legislature.

212 (b) The juvenile court shall use the allocation to pay for community service programs
213 required by Subsection 78-3a-118(2)(m).

214 (c) The State Office of Education shall use the allocation in public school programs
215 for:

216 (i) substance abuse prevention and education;

217 (ii) substance abuse prevention training for teachers and administrators; and

218 (iii) district and school programs to supplement, not supplant, existing local prevention
219 efforts in cooperation with local substance abuse authorities.

220 Section 9. Section **63-63a-6** is amended to read:

221 **63-63a-6. Victims of Domestic Violence Services Account established -- Funding**
222 **-- Uses.**

223 (1) There is created a restricted account in the General Fund known as the Victims of
224 Domestic Violence Services Account.

225 (2) (a) The Division of Finance shall allocate to the Victims of Domestic Violence
226 Services Account from the collected surcharge established in Section 63-63a-1, excluding the
227 amount of the surcharge allocated under Section 63-63a-10:

228 (i) 4% for the Division for Domestic Violence Services, but not to exceed the amount
229 appropriated by the Legislature; and

230 (ii) .5% for the Office of the Attorney General, but not to exceed the amount
231 appropriated by the Legislature.

232 (b) The attorney general shall use the allocation for training municipal and county
233 attorneys in the prosecution of domestic violence offenses.

234 Section 10. Section **63-63a-7** is amended to read:

235 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

236 The Division of Finance shall allocate 7.5% of the collected surcharge established in
237 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10,
238 but not to exceed the amount appropriated by the Legislature, to the Intoxicated Driver
239 Rehabilitation Account established by Section 62A-15-503.

240 Section 11. Section **63-63a-8.5** is amended to read:

241 **63-63a-8.5. Guardian Ad Litem Services Account established -- Funding -- Uses.**

242 There is created in the General Fund a restricted account known as the Guardian Ad

243 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem
244 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The
245 Division of Finance shall allocate 1.75% of the collected surcharge established in Section
246 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10, to the
247 Guardian Ad Litem Services Account. That amount may not, however, exceed the amount
248 appropriated by the Legislature.

249 Section 12. Section **63-63a-9** is amended to read:

250 **63-63a-9. Statewide Warrant Operations Account -- Share of surcharge -- Use.**

251 (1) There is created a restricted account within the General Fund known as the
252 Statewide Warrant Operations Account.

253 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established
254 under Section 63-63a-1, excluding the amount of the surcharge allocated under Section
255 63-63a-10, but not to exceed the amount appropriated by the Legislature, to this account.

256 (3) The Legislature may appropriate money from the restricted account to the
257 Department of Public Safety to pay for statewide warrant system costs incurred under Section
258 53-10-208.

259 Section 13. Section **63-63a-10** is enacted to read:

260 **63-63a-10. Traumatic Brain Injury Fund share of surcharge.**

261 The Division of Finance shall allocate monies from the collected surcharge established
262 in Subsection 63-63a-1(b)(i) in an amount equal to 5% of the criminal fines, penalties, and
263 forfeitures on which the surcharge is collected to the Traumatic Brain Injury Fund established
264 by Section 62A-16-201.

State Impact

Provisions of this bill would result in a revenue increase to the new Traumatic Brain Injury Fund of approximately \$720,000 per year. The Courts will need \$20,000 from the General Fund to reprogram their database to account for the collections change.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund, One-Time	\$20,000	\$0	\$0	\$0
Restricted Funds	\$0	\$0	\$720,000	\$720,000
TOTAL	\$20,000	\$0	\$720,000	\$720,000

Individual and Business Impact

Passage of this legislation will assist individuals and their families with traumatic brain injuries.

Office of the Legislative Fiscal Analyst