

**TRAUMATIC BRAIN INJURY FUND**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James R. Gowans**

Senate Sponsor: Darin G. Peterson

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**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;
- ▶ allows the board to reimburse the courts for expenses related to implementation;

**↩→ [and] ▶ requires the board to expend at least 50% of the fund each year to directly assist individuals with rehabilitation services beginning July 1, 2009; 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



- 28           **63-63a-3**, as last amended by Chapter 141, Laws of Utah 1999
- 29           **63-63a-4**, as last amended by Chapter 12, Laws of Utah 2002, Fifth Special Session
- 30           **63-63a-5**, as last amended by Chapter 171, Laws of Utah 1998
- 31           **63-63a-6**, as last amended by Chapter 156, Laws of Utah 1993
- 32           **63-63a-7**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 33           **63-63a-8.5**, as enacted by Chapter 194, Laws of Utah 1997
- 34           **63-63a-9**, as last amended by Chapter 263, Laws of Utah 1998

35 ENACTS:

- 36           **62A-16-101**, Utah Code Annotated 1953
- 37           **62A-16-102**, Utah Code Annotated 1953
- 38           **62A-16-201**, Utah Code Annotated 1953
- 39           **62A-16-202**, Utah Code Annotated 1953
- 40           **63-63a-10**, Utah Code Annotated 1953



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

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

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

45   **Part 1. General Provisions**

46           **62A-16-101. Title.**

47           This chapter is known as the "Traumatic Brain Injury Fund."

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

49           **62A-16-102. Definitions.**

50           As used in this chapter:

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

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

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

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

58           **62A-16-201. Traumatic Brain Injury Fund.**

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

61 (2) The fund shall consist of:

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

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

65 (c) legislative appropriations.

66 (3) The Traumatic Brain Injury Board shall administer the fund ~~H→~~ and make rules in  
66a accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, outlining the  
66b requirements and accounting procedures for awarding and disbursing grants under  
66c Subsection (4)(d) ~~←H~~ .

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

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

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

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

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

76 (5) The board ~~H→~~ [may] ~~←H~~ :

77 (a) ~~H→~~ may ~~←H~~ use up to 15% of the total fund revenues for the actual and necessary  
77a operating  
78 expenses of the board from July 1, 2007 through ~~H→~~ [April] June ~~←H~~ 30, 2009;

79 (b) beginning ~~H→~~ [May] July ~~←H~~ 1, 2009 ~~H→~~ [ ] :

79a (i) may ~~←H~~ use up to 7% of the total fund revenues for the actual and  
80 necessary operating expenses of the board; ~~H→~~ and

80a (ii) shall use not less than 50% of the balance of the fund, calculated as of July 1 of  
80b each year, to directly assist individuals who meet the qualifications in Subsection (6) with  
80c rehabilitation services during each fiscal year. ~~←H~~

81 (c) ~~H→~~ may ~~←H~~ seek outside donations from public and private entities to offset operating  
81a expenses;

82 and

83 (d) ~~H→~~ may ~~←H~~ contract with public and private organizations to provide the services in  
83a Subsection

84 (4).

85 (6) An individual who receives services either directly from the board or through a

86 public or private organization under contract with the board shall:

87 (a) be a resident of Utah;

88 (b) have been diagnosed by a qualified professional with a traumatic brain injury that

89 results in impairment of cognitive or physical function; and

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

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

93 (8) The board may not provide short-term, long-term, or acute care ~~H~~→ , except as  
 93a authorized in Subsection (5)(b)(ii) ←H .

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

95 **62A-16-202. Traumatic Brain Injury Board.**

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

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

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

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

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

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

105 (e) a representative from the department; and

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

108 (3) The board shall:

109 (a) provide a centralized resource for:

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

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

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

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

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

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

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

121 (a) provide a written report to:

122 (i) the executive director of the department; ~~H→~~ [and] ~~←H~~

123 (ii) the Health and Human Services Interim Committee; ~~H→~~ and

123a (iii) the Health and Human Services Appropriations Subcommittee; ~~←H~~ and

124 (b) summarize the activities of the board and identify each disbursement from the fund  
125 and its purposes in the report.

126 (6) The board shall reimburse the Administrative Office of the Courts from the fund  
126a ~~H→~~ [-an] a one-time only ~~←H~~

127 amount not to exceed \$20,000 for costs associated with the collection and distribution of the  
128 surcharge amounts. Reimbursement shall occur as soon as funds are available.

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

130 **63-63a-1. Surcharge -- Application and exemptions.**

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

133 (b) The surcharge shall be:

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

135 (A) felony;

136 (B) class A misdemeanor;

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

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

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

143 (2) The surcharge may not be imposed:

144 (a) upon nonmoving traffic violations;

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

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

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

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

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

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

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

161 **63-63a-3. EMS share of surcharge -- Accounting.**

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

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

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

168 **63-63a-4. Distribution of surcharge amounts.**

169 (1) In this section:

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

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

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

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

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

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

183 (i) the Division of Peace Officer Standards and Training (POST) as described in Title  
184 53, Chapter 6, Peace Officer Standards and Training Act; and

185 (ii) the Office of the Attorney General for the support of the Utah Prosecution Council  
186 established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

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

189 (a) 35% to the reparation fund;

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

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

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

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

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

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

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

207 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

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

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

213 (i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the



214 Legislature; and

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

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

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

221 (i) substance abuse prevention and education;

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

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

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

226 **63-63a-6. Victims of Domestic Violence Services Account established -- Funding**  
227 **-- Uses.**

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

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

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

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

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

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

240 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

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

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

246 **63-63a-8.5. Guardian Ad Litem Services Account established -- Funding -- Uses.**

247 There is created in the General Fund a restricted account known as the Guardian Ad  
248 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem  
249 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The  
250 Division of Finance shall allocate 1.75% of the collected surcharge established in Section  
251 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10, to the  
252 Guardian Ad Litem Services Account. That amount may not, however, exceed the amount  
253 appropriated by the Legislature.

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

255 **63-63a-9. Statewide Warrant Operations Account -- Share of surcharge -- Use.**

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

258 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established  
259 under Section 63-63a-1, excluding the amount of the surcharge allocated under Section  
260 63-63a-10, but not to exceed the amount appropriated by the Legislature, to this account.

261 (3) The Legislature may appropriate money from the restricted account to the  
262 Department of Public Safety to pay for statewide warrant system costs incurred under Section  
263 53-10-208.

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

265 **63-63a-10. Traumatic Brain Injury Fund share of surcharge.**

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

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**H.B. 84 - Traumatic Brain Injury Fund**

**Fiscal Note**

2007 General Session  
State of Utah

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**State Impact**

Enactment of this bill will create the Traumatic Brain Injury Fund with annual revenues estimated at \$738,000 from DUI surcharges. The governing board may use these revenues for operating expenses, board members per diem, meeting expenses, and staff support. In addition, the board may reimburse the Administrative Offices of the Courts up to \$20,000 for costs associated with the collection and distribution of the surcharge amounts.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
Restricted Funds	\$0	\$0	\$0	\$0	\$738,000	\$738,000
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$738,000</b>	<b>\$738,000</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.