

Senator Darin G. Peterson proposes the following substitute bill:

TRAUMATIC BRAIN INJURY FUND

2007 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;
- ▶ allows the board to reimburse the courts for expenses related to implementation;
- ▶ 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



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **63-63a-1**, as last amended by Chapter 2, Laws of Utah 2005
- 29 **63-63a-3**, as last amended by Chapter 141, Laws of Utah 1999
- 30 **63-63a-4**, as last amended by Chapter 12, Laws of Utah 2002, Fifth Special Session
- 31 **63-63a-5**, as last amended by Chapter 171, Laws of Utah 1998
- 32 **63-63a-6**, as last amended by Chapter 156, Laws of Utah 1993
- 33 **63-63a-7**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 34 **63-63a-8.5**, as enacted by Chapter 194, Laws of Utah 1997
- 35 **63-63a-9**, as last amended by Chapter 263, Laws of Utah 1998

36 ENACTS:

- 37 **62A-16-101**, Utah Code Annotated 1953
- 38 **62A-16-102**, Utah Code Annotated 1953
- 39 **62A-16-201**, Utah Code Annotated 1953
- 40 **62A-16-202**, Utah Code Annotated 1953
- 41 **63-63a-10**, Utah Code Annotated 1953

42

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

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

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

46 **Part 1. General Provisions**

47 **62A-16-101. Title.**

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

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

50 **62A-16-102. Definitions.**

51 As used in this chapter:

- 52 (1) "Board" means the board created in Section 62A-16-202.
- 53 (2) "Department" means the Department of Human Services.
- 54 (3) "Executive director" means the executive director of the Department of Human
- 55 Services.
- 56 (4) "Fund" means the Traumatic Brain Injury Fund created in Section 62A-16-201.

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

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

59 **62A-16-201. Traumatic Brain Injury Fund.**

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

62 (2) The fund shall consist of:

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

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

66 (c) legislative appropriations.

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

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

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

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

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

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

77 (5) The board:

78 (a) may use up to 15% of the total fund revenues for the actual and necessary operating
79 expenses of the board from July 1, 2007 through June 30, 2009;

80 (b) beginning July 1, 2009:

81 (i) may use up to 7% of the total fund revenues for the actual and necessary operating
82 expenses of the board; and

83 (ii) shall use not less than 50% of the balance of the fund, calculated as of July 1 of
84 each year, to directly assist individuals who meet the qualifications in Subsection (6) with
85 rehabilitation services during each fiscal year;

86 (c) may seek outside donations from public and private entities to offset operating
87 expenses; and

88 (d) may contract with public and private organizations to provide the services in
89 Subsection (4).

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

92 (a) be a resident of Utah;

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

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

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

98 (8) The board may not provide short-term, long-term, or acute care, except as
99 authorized in Subsection (5)(b)(ii).

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

101 **62A-16-202. Traumatic Brain Injury Board.**

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

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

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

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

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

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

111 (e) a representative from the department; and

112 (f) four members at large appointed by the executive director after soliciting
113 recommendations from the board and members of the community with expertise in the area of
114 traumatic brain injury.

115 (3) (a) (i) Except as required by Subsection (3)(a)(ii), each member shall be appointed
116 for a term of four years.

117 (ii) Notwithstanding the requirements of Subsection (3)(a)(i), the executive director
118 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the

119 terms of board members are staggered so that approximately half of the board is appointed
120 every two years.

121 (iii) Board members shall continue in office until the expiration of their terms and until
122 their successors are appointed, which may not exceed 90 days after the formal expiration of a
123 term.

124 (iv) When a vacancy occurs in the membership for any reason, the replacement shall be
125 appointed for the unexpired term.

126 (b) The board shall bi-annually elect a chairperson from its membership.

127 (c) The board shall hold meetings at least once quarterly. A majority of the board
128 constitutes a quorum at any meeting, and, if a quorum exists, the action of the majority of
129 members present shall be the action of the board.

130 (d) The board shall adopt bylaws governing its activities.

131 (e) A board member may not serve more than two consecutive four-year terms.

132 (f) A board member may be removed by the executive director:

133 (i) if the board member is unable or unwilling to carry out their assigned
134 responsibilities; or

135 (ii) for good cause.

136 (4) The board shall:

137 (a) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
138 Rulemaking Act outlining the requirements and accounting procedures for awarding and
139 disbursing grants;

140 (b) comply with the procedures and requirements of:

141 (i) Title 52, Chapter 4, Open and Public Meetings Act;

142 (ii) Title 63, Chapter 2, Government Records Access and Management Act; and

143 (iii) Title 63, Chapter 56, Utah Procurement Code; and

144 (c) comply with all federal and state requirements regarding receipt, administration,
145 and disbursement of traumatic brain injury funds.

146 (5) The board shall:

147 (a) provide a centralized resource for:

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

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

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

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

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

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

158 (7) Not later than November 30 of each year, the board shall:

159 (a) provide a written report to:

160 (i) the executive director of the department;

161 (ii) the Health and Human Services Interim Committee; and

162 (iii) the Health and Human Services Appropriations Subcommittee; and

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

165 (6) The board shall reimburse the Administrative Office of the Courts from the fund a
166 one-time only amount not to exceed \$20,000 for costs associated with the collection and
167 distribution of the surcharge amounts. Reimbursement shall occur as soon as funds are
168 available.

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

170 **63-63a-1. Surcharge -- Application and exemptions.**

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

173 (b) The surcharge shall be:

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

175 (A) felony;

176 (B) class A misdemeanor;

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

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

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

183 (2) The surcharge may not be imposed:

184 (a) upon nonmoving traffic violations;

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

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

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

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

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

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

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

201 **63-63a-3. EMS share of surcharge -- Accounting.**

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

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

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

208 **63-63a-4. Distribution of surcharge amounts.**

209 (1) In this section:

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

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

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

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

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

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

223 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
224 53, Chapter 6, Peace Officer Standards and Training Act; and

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

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

229 (a) 35% to the reparation fund;

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

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

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

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

241 (6) (a) In addition to other monies collected from the surcharge, judges are encouraged
242 to, and may in their discretion, impose additional reparations to be paid into the reparation fund

243 by convicted criminals.

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

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

247 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

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

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

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

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

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

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

261 (i) substance abuse prevention and education;

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

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

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

266 **63-63a-6. Victims of Domestic Violence Services Account established -- Funding**
267 **-- Uses.**

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

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

273 (i) 4% for the Division for Domestic Violence Services, but not to exceed the amount

274 appropriated by the Legislature; and

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

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

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

280 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

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

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

286 **63-63a-8.5. Guardian Ad Litem Services Account established -- Funding -- Uses.**

287 There is created in the General Fund a restricted account known as the Guardian Ad
288 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem
289 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The
290 Division of Finance shall allocate 1.75% of the collected surcharge established in Section
291 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10, to the
292 Guardian Ad Litem Services Account. That amount may not, however, exceed the amount
293 appropriated by the Legislature.

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

295 **63-63a-9. Statewide Warrant Operations Account -- Share of surcharge -- Use.**

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

298 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established
299 under Section 63-63a-1, excluding the amount of the surcharge allocated under Section
300 63-63a-10, but not to exceed the amount appropriated by the Legislature, to this account.

301 (3) The Legislature may appropriate money from the restricted account to the
302 Department of Public Safety to pay for statewide warrant system costs incurred under Section
303 53-10-208.

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

305 **63-63a-10. Traumatic Brain Injury Fund share of surcharge.**

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