

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: _____

LONG TITLE

General Description:

This bill creates the Traumatic Brain Injury Fund within the Department of Human Services.

Highlighted Provisions:

This bill:

- ▶ creates the Traumatic Brain Injury Fund within the Department of Human Services to be administered by the executive director;
- ▶ directs the executive director to create an advisory committee to make recommendations for expenditures from the fund;
- ▶ increases the surcharge on DUIs and other offenses to provide monies for the fund;
- ▶ requires at least 50% of the fund to be expended each year to directly assist individuals with traumatic brain injury;
- ▶ specifies duties and responsibilities for the Traumatic Brain Injury Advisory Committee; and
- ▶ allows for a reimbursement to the courts for expenses related to implementation.

Monies Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63-63a-1**, as last amended by Chapter 2, Laws of Utah 2005

30 **63-63a-2**, as last amended by Chapter 156, Laws of Utah 2003

31 ENACTS:

32 **62A-16-101**, Utah Code Annotated 1953

33 **62A-16-102**, Utah Code Annotated 1953

34 **62A-16-201**, Utah Code Annotated 1953

35 **62A-16-202**, Utah Code Annotated 1953

36 **63-63a-10**, Utah Code Annotated 1953



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

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

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

41 **Part 1. General Provisions**

42 **62A-16-101. Title.**

43 This chapter is known as the Traumatic Brain Injury Fund.

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

45 **62A-16-102. Definitions.**

46 As used in this chapter:

47 (1) "Committee" means the advisory committee created by the executive director
48 pursuant to Section 62A-16-202.

49 (2) "Department" means the Department of Human Services.

50 (3) "Executive Director" means the executive director of the Department of Human
51 Services.

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

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

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

55 **62A-16-201. Traumatic Brain Injury Fund.**

56 (1) There is created a restricted special revenue fund entitled the Traumatic Brain

57 Injury Fund.

58 (2) The fund shall consist of:

59 (a) legislative appropriations in accordance with Section 63-63a-10;

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

62 (c) additional amounts as appropriated by the Legislature.

63 (3) The fund shall be administered by the executive director.

64 (4) Fund monies may be used to:

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

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

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

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

73 (5) Not less than 50% of the fund shall be used each fiscal year to directly assist
74 individuals who meet the qualifications in Subsection (6).

75 (6) An individual who receives services either paid for by the fund or through an
76 organization under contract with the fund shall:

77 (a) be a resident of Utah;

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

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

81 (7) The fund may not duplicate any services or support mechanisms being provided to
82 an individual by any other government or private agency.

83 (8) All actual and necessary operating expenses for the committee and staff shall be
84 paid by the fund.

85 (9) The department shall reimburse the Administrative Office of the Courts from the
86 fund a one-time only amount not to exceed \$20,000 for costs associated with the collection and
87 distribution of the surcharge amounts. Reimbursement shall occur as soon as funds are

88 available.

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

90 **62A-16-202. Traumatic Brain Injury Advisory Committee -- Membership -- Time**
91 **limit.**

92 (1) On or after July 1 of each year, the executive director may create a Traumatic Brain
93 Injury Advisory Committee of not more than nine members.

94 (2) The committee shall be composed of members of the community who are familiar
95 with traumatic brain injury; its causes, diagnosis, treatment, rehabilitation, and support services
96 such as:

97 (a) persons with a traumatic brain injury;

98 (b) family members of a person with a traumatic brain injury;

99 (c) representatives of an association which advocates for persons with traumatic brain
100 injuries;

101 (d) specialists in a profession that works with brain injury patients; and

102 (e) department representatives.

103 (3) The Division of Services for People with Disabilities shall provide staff to the
104 committee.

105 (4) (a) If a vacancy occurs in the membership for any reason, a replacement may be
106 appointed for the unexpired term.

107 (b) The committee shall elect a chairperson from the membership.

108 (c) A majority of the committee constitutes a quorum at any meeting, and, if a quorum
109 exists, the action of the majority of members present shall be the action of the committee.

110 (d) The committee may adopt bylaws governing its activities.

111 (e) A committee member may be removed by the executive director:

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

113 (ii) for good cause.

114 (5) The committee shall comply with the procedures and requirements of:

115 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

116 (b) Title 63, Chapter 2, Government Records Access and Management Act.

117 (6) (a) Members shall receive no compensation or benefits for their services, but may
118 receive per diem and expenses incurred in the performance of the member's official duties at

119 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

121 (7) Not later than November 30 of each year the committee shall provide a written
122 report summarizing the activities of the committee to:

123 (a) the executive director of the department;

124 (b) the Health and Human Services Interim Committee; and

125 (c) the Health and Human Services Appropriations Subcommittee.

126 (8) The committee shall cease to exist on December 31 of each year, unless the
127 executive director determines it necessary to continue.

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

129 **63-63a-1. Surcharge -- Application and exemptions.**

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

132 (b) The surcharge shall be:

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

134 (A) felony;

135 (B) class A misdemeanor;

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

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

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

142 (2) The surcharge may not be imposed:

143 (a) upon nonmoving traffic violations;

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

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

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

150 committed by an adult.

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

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

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

159 Section 6. Section **63-63a-2** is amended to read:

160 **63-63a-2. Division of collected monies retained by state treasurer and local**
161 **governmental collecting entity -- Purpose of surcharge -- Allocation of collections --**
162 **Financial information.**

163 (1) The amount of the surcharge imposed under this chapter by courts of record shall
164 be collected before any fine and deposited with the state treasurer.

165 (2) The amount of the surcharge and the amount of criminal fines, penalties, and
166 forfeitures imposed under this chapter by courts not of record shall be collected concurrently.

167 (a) As monies are collected on criminal fines, penalties, and forfeitures subject to the
168 [~~85%~~] 90% surcharge, the monies shall be divided pro rata so that the local governmental
169 collecting entity retains 54% of the collected monies and the state retains 46% of the collected
170 monies.

171 (b) As monies are collected on criminal fines, penalties, and forfeitures subject to the
172 35% surcharge, the monies shall be divided pro rata so that the local governmental collecting
173 entity retains 74% of the collected monies and the state retains 26% of the collected monies.

174 (c) The court shall deposit with the state treasurer the surcharge portion of all monies
175 as they are collected.

176 (3) Courts of record, courts not of record, and administrative traffic proceedings shall
177 collect financial information to determine:

178 (a) the total number of cases in which:

179 (i) a final judgment has been rendered;

180 (ii) surcharges and fines are paid by partial or installment payment; and

181 (iii) the judgment is fulfilled by an alternative method upon the court's order;
182 (b) the total dollar amounts of surcharges owed to the state and fines owed to the state
183 and county or municipality, including:

- 184 (i) waived surcharges;
- 185 (ii) uncollected surcharges; and
- 186 (iii) collected surcharges.

187 (4) The courts of record, courts not of record, and administrative traffic proceedings
188 shall report all collected financial information monthly to the Administrative Office of the
189 Courts. The collected information shall be categorized by cases subject to the ~~[85%]~~ 90% and
190 35% surcharge.

191 (5) The purpose of the surcharge is to finance the trust funds and support accounts as
192 provided in this chapter.

193 (6) (a) From the surcharge, the Division of Finance shall allocate in the manner and for
194 the purposes described in Sections 63-63a-3 through ~~[63-63a-9]~~ 63-63a-10.

195 (b) The balance of the collected surcharge shall be deposited in the General Fund.

196 (c) Allocations shall be made on a fiscal year basis.

197 (7) The provisions of Sections 63-63a-1 and 63-63a-2 may not impact the distribution
198 and allocation of fines and forfeitures imposed in accordance with Sections 23-14-13,
199 78-3-14.5, and 78-5-116.

200 Section 7. Section **63-63a-10** is enacted to read:

201 **63-63a-10. Traumatic Brain Injury Fund share of surcharge.**

202 The Division of Finance shall allocate 5% of the collected surcharge established in
203 Subsection 63-63a-1 not to exceed \$500,000 per fiscal year to the Traumatic Brain Injury Fund
204 established in Section 62A-16-201.