

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 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 **63-63a-3**, as last amended by Chapter 141, Laws of Utah 1999

32 **63-63a-4**, as last amended by Chapter 12, Laws of Utah 2002, Fifth Special Session

33 **63-63a-5**, as last amended by Chapter 171, Laws of Utah 1998

34 **63-63a-6**, as last amended by Chapter 156, Laws of Utah 1993

35 **63-63a-7**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

36 **63-63a-8.5**, as enacted by Chapter 194, Laws of Utah 1997

37 **63-63a-9**, as last amended by Chapter 263, Laws of Utah 1998

38 ENACTS:

39 **62A-16-101**, Utah Code Annotated 1953

40 **62A-16-102**, Utah Code Annotated 1953

41 **62A-16-201**, Utah Code Annotated 1953

42 **62A-16-202**, Utah Code Annotated 1953

43 **63-63a-10**, Utah Code Annotated 1953



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

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

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

48 **Part 1. General Provisions**

49 **62A-16-101. Title.**

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

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

52 **62A-16-102. Definitions.**

53 As used in this chapter:

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

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

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

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

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

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

97 **62A-16-202. Traumatic Brain Injury Advisory Committee -- Membership -- Time**
98 **limit.**

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

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

104 (a) persons with a traumatic brain injury;

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

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

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

109 (e) department representatives.

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

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

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

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

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

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

119 (i) if the member is unable or unwilling to carry out their assigned responsibilities; or
120 (ii) for good cause.

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

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

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

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

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

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

130 (a) the executive director of the department;

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

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

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

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

136 **63-63a-1. Surcharge -- Application and exemptions.**

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

139 (b) The surcharge shall be:

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

141 (A) felony;

142 (B) class A misdemeanor;

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

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

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

149 (2) The surcharge may not be imposed:

150 (a) upon nonmoving traffic violations;

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

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

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

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

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

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

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

167 **63-63a-2. Division of collected monies retained by state treasurer and local**
168 **governmental collecting entity -- Purpose of surcharge -- Allocation of collections --**
169 **Financial information.**

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

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

174 (a) As monies are collected on criminal fines, penalties, and forfeitures subject to the
175 [~~85%~~ 90% surcharge, the monies shall be divided pro rata so that the local governmental
176 collecting entity retains 54% of the collected monies and the state retains 46% of the collected
177 monies.

178 (b) As monies are collected on criminal fines, penalties, and forfeitures subject to the
179 35% surcharge, the monies shall be divided pro rata so that the local governmental collecting
180 entity retains 74% of the collected monies and the state retains 26% of the collected monies.

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

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

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

186 (i) a final judgment has been rendered;

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

188 (iii) the judgment is fulfilled by an alternative method upon the court's order;

189 (b) the total dollar amounts of surcharges owed to the state and fines owed to the state
190 and county or municipality, including:

191 (i) waived surcharges;

192 (ii) uncollected surcharges; and

193 (iii) collected surcharges.

194 (4) The courts of record, courts not of record, and administrative traffic proceedings
195 shall report all collected financial information monthly to the Administrative Office of the
196 Courts. The collected information shall be categorized by cases subject to the [85%] 90% and
197 35% surcharge.

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

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

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

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

204 (7) The provisions of Sections 63-63a-1 and 63-63a-2 may not impact the distribution
205 and allocation of fines and forfeitures imposed in accordance with Sections 23-14-13,
206 78-3-14.5, and 78-5-116.

207 Section 7. Section ~~63-63a-3~~ is amended to read:

208 **63-63a-3. EMS share of surcharge -- Accounting.**

209 (1) The Division of Finance shall allocate 14% of the collected surcharge established in
210 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10,
211 but not to exceed the amount appropriated by the Legislature, to the Emergency Medical

212 Services (EMS) Grants Program Account under Section 26-8a-207.

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

214 Section 8. Section **63-63a-4** is amended to read:

215 **63-63a-4. Distribution of surcharge amounts.**

216 (1) In this section:

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

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

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

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

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

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

230 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
231 53, Chapter 6, Peace Officer Standards and Training Act; and

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

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

236 (a) 35% to the reparation fund;

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

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

241 (5) (a) In addition to the funding provided by other sections of this chapter, a
242 percentage of the income earned by inmates working for correctional industries in a federally

243 certified private sector/prison industries enhancement program shall be deposited in the
244 reparation fund.

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

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

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

253 Section 9. Section **63-63a-5** is amended to read:

254 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

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

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

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

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

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

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

268 (i) substance abuse prevention and education;

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

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

272 Section 10. Section **63-63a-6** is amended to read:

273 **63-63a-6. Victims of Domestic Violence Services Account established -- Funding**

274 -- Uses.

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

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

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

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

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

286 Section 11. Section **63-63a-7** is amended to read:

287 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

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

292 Section 12. Section **63-63a-8.5** is amended to read:

293 **63-63a-8.5. Guardian Ad Litem Services Account established -- Funding -- Uses.**

294 There is created in the General Fund a restricted account known as the Guardian Ad
295 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem
296 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The
297 Division of Finance shall allocate 1.75% of the collected surcharge established in Section
298 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-10, to the
299 Guardian Ad Litem Services Account. That amount may not, however, exceed the amount
300 appropriated by the Legislature.

301 Section 13. Section **63-63a-9** is amended to read:

302 **63-63a-9. Statewide Warrant Operations Account -- Share of surcharge -- Use.**

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

305 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established
306 under Section 63-63a-1, excluding the amount of the surcharge allocated under Section
307 63-63a-10, but not to exceed the amount appropriated by the Legislature, to this account.

308 (3) The Legislature may appropriate money from the restricted account to the
309 Department of Public Safety to pay for statewide warrant system costs incurred under Section
310 53-10-208.

311 Section 14. Section **63-63a-10** is enacted to read:

312 **63-63a-10. Traumatic Brain Injury Fund share of surcharge.**

313 The Division of Finance shall allocate 5% of the collected surcharge established in
314 Subsection 63-63a-1(1)(b)(i) not to exceed \$500,000 per fiscal year to the Traumatic Brain
315 Injury Fund established in Section 62A-16-201.

H.B. 84 3rd Sub. (Cherry) - Traumatic Brain Injury Fund

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will create the Traumatic Brain Injury Fund with annual revenues estimated at \$738,000 from DUI surcharges, however, the bill directs the Division of Finance to allocate 5% of the collected surcharge not to exceed \$500,000 per fiscal year to this fund. The other funds in section 63-63a of UCA will receive pro rata \$218,400 and the balance of \$19,600 will be allocated to the General Fund. The governing body is an Advisory Committee which may use these revenues for operating expenses for the committee members and staff. In addition, the Committee may reimburse the Administrative Offices of the Courts up to \$20,000 (one-time) for costs associated with the collections and distribution of the surcharge amounts.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$19,600	\$19,600
Restricted Funds	\$0	\$0	\$0	\$0	\$718,400	\$718,400
Total	\$0	\$0	\$0	\$0	\$738,000	\$738,000

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.