

TRAUMATIC BRAIN INJURY FUND

2008 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;
- ▶ allows for a reimbursement to the courts for expenses related to implementation of the provisions of this bill; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **63-63a-1**, as last amended by Laws of Utah 2005, Chapter 2
- 32 **63-63a-2**, as last amended by Laws of Utah 2007, Chapter 330
- 33 **63-63a-3**, as last amended by Laws of Utah 1999, Chapter 141
- 34 **63-63a-4**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 12
- 35 **63-63a-5**, as last amended by Laws of Utah 1998, Chapter 171
- 36 **63-63a-6**, as last amended by Laws of Utah 1993, Chapter 156
- 37 **63-63a-7**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
- 38 **63-63a-8.5**, as enacted by Laws of Utah 1997, Chapter 194
- 39 **63-63a-9**, as last amended by Laws of Utah 1998, Chapter 263

40 ENACTS:

- 41 **62A-16-101**, Utah Code Annotated 1953
- 42 **62A-16-102**, Utah Code Annotated 1953
- 43 **62A-16-201**, Utah Code Annotated 1953
- 44 **62A-16-202**, Utah Code Annotated 1953
- 45 **63-63a-9.5**, Utah Code Annotated 1953

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

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

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

50 **Part 1. General Provisions**

51 **62A-16-101. Title.**

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

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

54 **62A-16-102. Definitions.**

55 As used in this chapter:

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

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

59 (3) "Executive director" means the executive director of the Department of Human
60 Services.

61 (4) "Fund" means the Traumatic Brain Injury Fund created in Section 62A-16-201.
62 Section 3. Section **62A-16-201** is enacted to read:

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

64 **62A-16-201. Traumatic Brain Injury Fund.**

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

67 (2) The fund shall consist of:

68 (a) legislative appropriations in accordance with Section 63-63a-9.5;

69 (b) gifts, grants, donations, or any other conveyance of money that may be made to the
70 fund from private sources; and

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

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

73 (4) Fund monies may be used to:

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

76 (b) provide access to evaluations and coordinate short-term care to assist an individual
77 in identifying services or support needs, resources, and benefits for which the individual may
78 be eligible;

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

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

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

85 (6) An individual who receives services either paid for from the fund, or through an
86 organization under contract with the fund, shall:

87 (a) be a resident of Utah;

88 (b) have been diagnosed by a qualified professional as having a traumatic brain injury
89 which 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 fund may not duplicate any services or support mechanisms being provided to
92 an individual by any other government or private agency.

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

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

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

100 **62A-16-202. Traumatic Brain Injury Advisory Committee -- Membership -- Time**
101 **limit.**

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

104 (2) The committee shall be composed of members of the community who are familiar
105 with traumatic brain injury, its causes, diagnosis, treatment, rehabilitation, and support
106 services, including:

107 (a) persons with a traumatic brain injury;

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

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

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

112 (e) department representatives.

113 (3) The Division of Services for People with Disabilities shall provide staff support to
114 the committee.

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

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

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

120 (d) The committee may adopt bylaws governing the committee's activities.

- 121 (e) A committee member may be removed by the executive director:
- 122 (i) if the member is unable or unwilling to carry out the member's assigned
- 123 responsibilities; or
- 124 (ii) for good cause.
- 125 (5) The committee shall comply with the procedures and requirements of:
- 126 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 127 (b) Title 63, Chapter 2, Government Records Access and Management Act.
- 128 (6) (a) Members shall receive no compensation or benefits for their services, but may
- 129 receive per diem and expenses incurred in the performance of the members' official duties at
- 130 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 131 (b) Members may decline to receive per diem and expenses for their service.
- 132 (7) Not later than November 30 of each year the committee shall provide a written
- 133 report summarizing the activities of the committee to:
- 134 (a) the executive director of the department;
- 135 (b) the Health and Human Services Interim Committee; and
- 136 (c) the Health and Human Services Appropriations Subcommittee.
- 137 (8) The committee shall cease to exist on December 31 of each year, unless the
- 138 executive director determines it necessary to continue.

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

140 **63-63a-1. Surcharge -- Application and exemptions.**

- 141 (1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures
- 142 imposed by the courts.
- 143 (b) The surcharge shall be:
- 144 (i) ~~85%~~ 90% upon conviction of a:
- 145 (A) felony;
- 146 (B) class A misdemeanor;
- 147 (C) violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless
- 148 Driving; or
- 149 (D) class B misdemeanor not classified within Title 41, Motor Vehicles, including
- 150 violation of comparable county or municipal ordinances; or
- 151 (ii) 35% upon conviction of any other offense, including violation of county or

152 municipal ordinances not subject to the [~~85%~~] 90% surcharge.

153 (2) The surcharge may not be imposed:

154 (a) upon nonmoving traffic violations;

155 (b) upon court orders when the offender is ordered to perform compensatory service

156 work in lieu of paying a fine; and

157 (c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment

158 of a case under Section 78-3a-502.

159 (3) (a) The surcharge and the exceptions under Subsections (1) and (2) also apply to all

160 fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if

161 committed by an adult.

162 (b) However, the surcharge does not include amounts assessed or collected separately

163 by juvenile courts for the Juvenile Restitution Account, which is independent of this chapter

164 and does not affect the imposition or collection of the surcharge.

165 (4) The surcharge under this section shall be imposed in addition to the fine charged

166 for a civil or criminal offense, and no reduction may be made in the fine charged due to the

167 surcharge imposition.

168 (5) Fees, assessments, and surcharges related to criminal or traffic offenses shall be

169 authorized and managed by this chapter rather than attached to particular offenses.

170 Section 6. Section ~~63-63a-2~~ is amended to read:

171 **63-63a-2. Division of collected monies retained by state treasurer and local**

172 **governmental collecting entity -- Purpose of surcharge -- Allocation of collections --**

173 **Financial information.**

174 (1) The amount of the surcharge imposed under this chapter by courts of record shall

175 be collected before any fine and deposited with the state treasurer.

176 (2) The amount of the surcharge and the amount of criminal fines, penalties, and

177 forfeitures imposed under this chapter by courts not of record shall be collected concurrently.

178 (a) As monies are collected on criminal fines, penalties, and forfeitures subject to the

179 [~~85%~~] 90% surcharge, the monies shall be divided pro rata so that the local governmental

180 collecting entity retains 54% of the collected monies and the state retains 46% of the collected

181 monies.

182 (b) As monies are collected on criminal fines, penalties, and forfeitures subject to the

183 35% surcharge, the monies shall be divided pro rata so that the local governmental collecting
184 entity retains 74% of the collected monies and the state retains 26% of the collected monies.

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

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

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

190 (i) a final judgment has been rendered;

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

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

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

195 (i) waived surcharges;

196 (ii) uncollected surcharges; and

197 (iii) collected surcharges.

198 (4) The courts of record, courts not of record, and administrative traffic proceedings
199 shall report all collected financial information monthly to the Administrative Office of the
200 Courts. The collected information shall be categorized by cases subject to the [~~85%~~] 90% and
201 35% surcharge.

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

204 (6) (a) From the surcharge, the Division of Finance shall allocate in the manner and for
205 the purposes described in Sections 63-63a-3 through 63-63a-10.

206 (b) Allocations shall be made on a fiscal year basis.

207 (7) The provisions of [~~Sections~~] Section 63-63a-1 and [~~63-63a-2~~] this section may not
208 impact the distribution and allocation of fines and forfeitures imposed in accordance with
209 Sections 23-14-13, 78-3-14.5, and 78-5-116.

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

211 **63-63a-3. EMS share of surcharge -- Accounting.**

212 (1) The Division of Finance shall allocate 14% of the collected surcharge established in
213 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-9.5,

214 but not to exceed the amount appropriated by the Legislature, to the Emergency Medical
215 Services (EMS) Grants Program Account under Section 26-8a-207.

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

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

218 **63-63a-4. Distribution of surcharge amounts.**

219 (1) In this section:

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

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

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

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

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

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

234 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
235 53, Chapter 6, Peace Officer Standards and Training Act; and

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

238 (4) The Division of Finance shall allocate from the collected surcharge established in
239 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-9.5:

240 (a) 35% to the reparation fund;

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

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

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

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

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

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

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

258 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

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

261 (2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention
262 Account from the collected surcharge established in Section 63-63a-1, excluding the amount of
263 the surcharge allocated under Section 63-63a-9.5:

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

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

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

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

272 (i) substance abuse prevention and education;

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

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

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

277 **63-63a-6. Victims of Domestic Violence Services Account established -- Funding**
278 **-- Uses.**

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

281 (2) (a) The Division of Finance shall allocate to the Victims of Domestic Violence
282 Services Account from the collected surcharge established in Section 63-63a-1, excluding the
283 amount of the surcharge allocated under Section 63-63a-9.5:

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

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

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

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

291 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

292 The Division of Finance shall allocate 7.5% of the collected surcharge established in
293 Section 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-9.5,
294 but not to exceed the amount appropriated by the Legislature, to the Intoxicated Driver
295 Rehabilitation Account established by Section 62A-15-503.

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

297 **63-63a-8.5. Guardian Ad Litem Services Account established -- Funding -- Uses.**

298 There is created in the General Fund a restricted account known as the Guardian Ad
299 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem
300 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The
301 Division of Finance shall allocate 1.75% of the collected surcharge established in Section
302 63-63a-1, excluding the amount of the surcharge allocated under Section 63-63a-9.5, to the
303 Guardian Ad Litem Services Account. That amount may not, however, exceed the amount
304 appropriated by the Legislature.

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

306 **63-63a-9. Statewide Warrant Operations Account -- Share of surcharge -- Use.**

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

309 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established
310 under Section 63-63a-1, excluding the amount of the surcharge allocated under Section
311 63-63a-9.5, but not to exceed the amount appropriated by the Legislature, to this account.

312 (3) The Legislature may appropriate money from the restricted account to the
313 Department of Public Safety to pay for statewide warrant system costs incurred under Section
314 53-10-208.

315 Section 14. Section **63-63a-9.5** is enacted to read:

316 **63-63a-9.5. Traumatic Brain Injury Fund share of surcharge.**

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

Legislative Review Note
as of 1-17-08 12:50 PM

Office of Legislative Research and General Counsel