

HB0350S02 compared with HB0350S01

~~deleted text~~ shows text that was in HB0350S01 but was deleted in HB0350S02.

inserted text shows text that was not in HB0350S01 but was inserted into HB0350S02.

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Representative Steve Eliason proposes the following substitute bill:

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL -- OPERATIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill creates the Operations Investigation Program for the Department of Alcoholic Beverage Control.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates and provides funding for the Operations Investigation Program to covertly observe and evaluate customer contacts with the Department of Alcoholic Beverage Control;
- ▶ establishes program responsibilities;

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- ▶ establishes reporting requirements; and
- ▶ designates certain records as private records.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

32B-2-301, as last amended by Laws of Utah 2013, Chapter 349

ENACTS:

~~{63A-15-101}~~63J-4-701, Utah Code Annotated 1953

~~{63A-15-102}~~63J-4-702, Utah Code Annotated 1953

~~{63A-15-103}~~63J-4-703, Utah Code Annotated 1953

~~{63A-15-104}~~63J-4-704, Utah Code Annotated 1953

~~{63A-15-105}~~63J-4-705, Utah Code Annotated 1953

~~{63A-15-106}~~63J-4-706, Utah Code Annotated 1953

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

Section 1. Section **32B-2-301** is amended to read:

32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.

(1) The following are property of the state:

(a) the money received in the administration of this title, except as otherwise provided;

and

(b) property acquired, administered, possessed, or received by the department.

(2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

(b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.

(3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.

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(c) Money deposited into the Markup Holding Fund may be expended:

(i) to the extent appropriated by the Legislature; and

(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection 32B-2-305(4).

(4) The department may draw from the Liquor Control Fund only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund for an expenditure that is directly incurred by the department:

(a) to purchase an alcoholic product;

(b) to transport an alcoholic product from the supplier to a warehouse of the department; and

(c) for variances related to an alcoholic product.

(5) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).

(6) (a) By the end of each day, the department shall:

(i) make a deposit to a qualified depository, as defined in Section 51-7-3; and

(ii) report the deposit to the state treasurer.

(b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.

(c) Money deposited in a qualified depository is entitled to the same priority of payment as other public funds of the state.

(7) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant drawn against the Liquor Control Fund by the department, the cash resources of the General Fund may be used to the extent necessary. At no time may the fund equity of the Liquor Control Fund fall below zero.

(8) For the fiscal year beginning July 1, 2017, only, the department shall use the first

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\$176,000 in net profits that exceed the amount transferred from the Liquor Control Fund to the General Fund for the previous fiscal year to pay the costs of running the Operations Investigation Program created in Section ~~{63A-15-103}~~63J-4-703.

Section 2. Section ~~{63A-15-101}~~63J-4-701 is enacted to read:

Part ~~{1}~~7. Operations Investigation Program

~~{63A-15-101}~~63J-4-701. **Title.**

This part is known as the "Operations Investigation Program."

Section 3. Section ~~{63A-15-102}~~63J-4-702 is enacted to read:

~~{63A-15-102}~~63J-4-702. **Definitions.**

As used in this section:

(1) "Covert observation" or "covertly observe" means an act taken by the program to directly observe and evaluate the service offered by a subject store without the knowledge of the subject store.

(2) "Interaction" means an individual act under the program to covertly observe a subject store in a manner authorized by this part.

(3) "Program" means the Citizens' Customer Satisfaction Program created under Section ~~{63A-15-103}~~63J-4-703.

(4) "Subject department" means the Department of Alcoholic Beverage Control.

(5) "Subject store" means a store created under Title 32B, Chapter 2, Part 5, State Store, by the Alcoholic Beverage Control Commission.

Section 4. Section ~~{63A-15-103}~~63J-4-703 is enacted to read:

~~{63A-15-103}~~63J-4-703. **Creation.**

(1) There is created within the ~~{department}~~office the Operations Investigation Program.

(2) The executive director may procure the services of a nonpublic entity in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to administer the program.

Section 5. Section ~~{63A-15-104}~~63J-4-704 is enacted to read:

~~{63A-15-104}~~63J-4-704. **Program duties and responsibilities -- Data collection.**

(1) The executive director shall ensure that the program, through covert observation, evaluates each store's:

(a) quality of customer service;

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(b) cleanliness;

(c) customer satisfaction;

(d) product availability; and

(e) compliance with laws controlling the sale of alcoholic beverages.

(2) Before January 1 of each year, the executive director shall consult with the director of the subject department to:

(a) identify categories, including those described in Subsection (1), that are subject to the program's assessment;

(b) establish performance measures for the categories identified under Subsection (2)(a) that the program will measure, including a scoring system by which the program will evaluate each subject store's performance in each category; and

(c) establish goals for all subject stores' customer service, using the performance measures established under Subsection (2)(b).

(3) Before January 1 of each year, the executive director shall create a plan, based upon the performance measures established under Subsection (2)(b), by which the program will covertly observe and evaluate each subject store's performance.

(4) The program shall:

(a) collect detailed data on each interaction conducted under the program, including the name of each subject store employee who is contacted during the interaction; and

(b) score the subject store according to the scoring system for each performance measure established under Subsection (2)(b).

(5) (a) The executive director:

(i) shall ensure that the program covertly observes the customer service offered by each subject store through an in-person interaction at least once per month; and

(ii) may also authorize the program to covertly observe the customer service offered by a subject store through an interaction conducted by telephone or through electronic communication.

(b) The executive director may authorize the program to covertly record an interaction.

(c) The executive director may not authorize the program to purposely covertly observe or record a direct interaction between a subject store and another person unless the person is associated with the program or the department.

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(6) The executive director may pay a stipend to a person that:

(a) performs an interaction for the program; and

(b) is not otherwise associated with the program or the ~~{department}~~ office.

Section 6. Section ~~{63A-15-105}~~63J-4-705 is enacted to read:

~~{63A-15-105}~~63J-4-705. Reporting and tracking results -- Online database.

(1) The executive director shall prepare a detailed report each month that contains:

(a) the performance measures and goals established under Subsection

~~{63A-15-104}~~63J-4-704(2) for all subject stores;

(b) for each subject store:

(i) a compilation, analysis, and interpretation of the data collected and scores recorded under Subsection ~~{63A-15-104}~~63J-4-704(4);

(ii) an assessment of how the subject store's performance relates to the performance measures and goals established under Subsection ~~{63A-15-104}~~63J-4-704(2); and

(iii) a description of each interaction, including:

(A) the name of each of the subject store's employees who were contacted during the interaction; and

(B) the scores recorded under Subsection ~~{63A-15-104}~~63J-4-704(4)(b) for the interaction;

(c) an explanation of any observed patterns of a subject store's or the subject department's practices that do not appear to be in compliance with state law, rule, or policy or with generally accepted customer service practices; and

(d) any recommended changes needed to bring a subject store or the subject department into compliance with state law, rule, or policy or with generally accepted customer service practices.

(2) The executive director shall, within 30 days after the day on which the executive director prepares a report described in Subsection (1), send the report to the director of the subject department.

(3) (a) The director of the subject department shall create a repository to store and track the information that the director of the subject department receives under Subsection (2).

(b) Any record created under this part that identifies an employee of the subject department or a subject store is ~~{classified as}~~ a private record, for purposes of Title 63G,

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Chapter 2, Government Records Access and Management Act, unless the record:

- (i) relates to criminal conduct by the employee; or
- (ii) is a record described in Subsection ~~{63A-15-106}~~63J-4-706(2)(c).

Section 7. Section ~~{63A-15-106}~~63J-4-706 is enacted to read:

~~{63A-15-106}~~63J-4-706. **Subject department responsibilities -- Incentives.**

(1) (a) Upon receipt of a report described in Subsection ~~{63A-15-105}~~63J-4-705(2), the director of the subject department shall:

(i) identify each employee described in Subsection ~~{63A-15-105}~~63J-4-705(1)(b)(iii)(A); and

(ii) place a copy of the portions of the report that pertain to the employee in the employee's personnel file.

(b) An employee may challenge the content of a report placed in the employee's personnel file under Subsection (1)(a)(ii), or placement of the report in the employee's personnel file, by following the grievance procedures described in Title 67, Chapter 19a, Grievance Procedures.

(2) (a) The director of the subject department may establish a pecuniary incentive to award to a subject store employee:

(i) who takes part in an interaction under the program; and

(ii) whose performance, as measured under the program, meets or exceeds the goals established under Subsection ~~{63A-15-104}~~63J-4-704(2)(c) for the entity.

(b) If the director of the subject department establishes a pecuniary incentive under Subsection (2)(a), the director of the subject department shall distribute, in writing, to each employee eligible to receive the incentive:

(i) a description of the incentive; and

(ii) a description of requirements that an employee must meet to receive the incentive.

(c) When the director of the subject department awards a pecuniary incentive to a subject store's employee, the director of the subject department shall distribute, in writing, to each of the subject department's employees who is eligible for the incentive:

(i) the name of each employee who was awarded the incentive;

(ii) a description of how the employee described in Subsection (2)(c)(i) met the requirements established under Subsection (2)(b)(ii); and

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(iii) a description of the incentive the individual was awarded.

Section 8. **Effective date.**

This bill takes effect on July 1, 2017.