

1 **ALCOHOL BEVERAGE CONTROL OPERATIONS**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ designates certain records as private records;
- 15 ▶ defines terms;
- 16 ▶ creates and provides funding for the Operations Investigation Program to covertly
17 observe and evaluate customer contacts with the Department of Alcoholic Beverage
18 Control;
- 19 ▶ establishes program responsibilities;
- 20 ▶ establishes reporting and tracking requirements;
- 21 ▶ addresses subject department's responsibilities;
- 22 ▶ addresses incentives;
- 23 ▶ provides that reports placed in an employee's personnel file can be challenged under
24 grievance procedures; and
- 25 ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

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

33 **63G-2-302**, as last amended by Laws of Utah 2016, Chapter 410

34 **67-19a-202**, as last amended by Laws of Utah 2015, Chapter 258

35 ENACTS:

36 **63J-4-701**, Utah Code Annotated 1953

37 **63J-4-702**, Utah Code Annotated 1953

38 **63J-4-703**, Utah Code Annotated 1953

39 **63J-4-704**, Utah Code Annotated 1953

40 **63J-4-705**, Utah Code Annotated 1953

41 **63J-4-706**, Utah Code Annotated 1953



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

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

45 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

46 (1) The following are property of the state:

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

48 and

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

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

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

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

54 (b) In accordance with Section **32B-2-304**, the State Tax Commission shall deposit
55 revenue remitted to the State Tax Commission from the markup imposed under Section
56 **32B-2-304** into the Markup Holding Fund.

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

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

59 (ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection
60 32B-2-305(4).

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

65 (a) to purchase an alcoholic product;

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

68 (c) for variances related to an alcoholic product.

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

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

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

78 (ii) report the deposit to the state treasurer.

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

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

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

87 (8) For a fiscal year beginning on or after July 1, 2018, the department and the
88 Governor's Office of Management and Budget shall use the first \$176,000 in net profits that
89 exceed the amount transferred from the Liquor Control Fund to the General Fund for the

90 previous fiscal year to pay the costs of running the Operations Investigation Program created in
91 Section 63J-4-703.

92 Section 2. Section **63G-2-302** is amended to read:

93 **63G-2-302. Private records.**

94 (1) The following records are private:

95 (a) records concerning an individual's eligibility for unemployment insurance benefits,
96 social services, welfare benefits, or the determination of benefit levels;

97 (b) records containing data on individuals describing medical history, diagnosis,
98 condition, treatment, evaluation, or similar medical data;

99 (c) records of publicly funded libraries that when examined alone or with other records
100 identify a patron;

101 (d) records received by or generated by or for:

102 (i) the Independent Legislative Ethics Commission, except for:

103 (A) the commission's summary data report that is required under legislative rule; and

104 (B) any other document that is classified as public under legislative rule; or

105 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
106 unless the record is classified as public under legislative rule;

107 (e) records received by, or generated by or for, the Independent Executive Branch
108 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
109 of Executive Branch Ethics Complaints;

110 (f) records received or generated for a Senate confirmation committee concerning
111 character, professional competence, or physical or mental health of an individual:

112 (i) if, prior to the meeting, the chair of the committee determines release of the records:

113 (A) reasonably could be expected to interfere with the investigation undertaken by the
114 committee; or

115 (B) would create a danger of depriving a person of a right to a fair proceeding or
116 impartial hearing; and

117 (ii) after the meeting, if the meeting was closed to the public;

118 (g) employment records concerning a current or former employee of, or applicant for
119 employment with, a governmental entity that would disclose that individual's home address,

120 home telephone number, social security number, insurance coverage, marital status, or payroll

- 121 deductions;
- 122 (h) records or parts of records under Section 63G-2-303 that a current or former
123 employee identifies as private according to the requirements of that section;
- 124 (i) that part of a record indicating a person's social security number or federal employer
125 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,
126 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 127 (j) that part of a voter registration record identifying a voter's:
- 128 (i) driver license or identification card number;
- 129 (ii) social security number, or last four digits of the social security number;
- 130 (iii) email address; or
- 131 (iv) date of birth;
- 132 (k) a voter registration record that is classified as a private record by the lieutenant
133 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 134 (l) a record that:
- 135 (i) contains information about an individual;
- 136 (ii) is voluntarily provided by the individual; and
- 137 (iii) goes into an electronic database that:
- 138 (A) is designated by and administered under the authority of the Chief Information
139 Officer; and
- 140 (B) acts as a repository of information about the individual that can be electronically
141 retrieved and used to facilitate the individual's online interaction with a state agency;
- 142 (m) information provided to the Commissioner of Insurance under:
- 143 (i) Subsection 31A-23a-115(2)(a);
- 144 (ii) Subsection 31A-23a-302(3); or
- 145 (iii) Subsection 31A-26-210(3);
- 146 (n) information obtained through a criminal background check under Title 11, Chapter
147 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 148 (o) information provided by an offender that is:
- 149 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
150 Offender Registry; and
- 151 (ii) not required to be made available to the public under Subsection 77-41-110(4);

152 (p) a statement and any supporting documentation filed with the attorney general in
153 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
154 homeland security;

155 (q) electronic toll collection customer account information received or collected under
156 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
157 collected by a public transit district, including contact and payment information and customer
158 travel data;

159 (r) an email address provided by a military or overseas voter under Section
160 20A-16-501;

161 (s) a completed military-overseas ballot that is electronically transmitted under Title
162 20A, Chapter 16, Uniform Military and Overseas Voters Act;

163 (t) records received by or generated by or for the Political Subdivisions Ethics Review
164 Commission established in Section 11-49-201, except for:

165 (i) the commission's summary data report that is required in Section 11-49-202; and

166 (ii) any other document that is classified as public in accordance with Title 11, Chapter
167 49, Political Subdivisions Ethics Review Commission;

168 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was
169 notified of an incident or threat; ~~and~~

170 (v) a criminal background check or credit history report conducted in accordance with
171 Section 63A-3-201[-]; and

172 (w) a record created under, or in relation to, Title 63J, Chapter 4, Part 7, Operations
173 Investigation Program, unless the record:

174 (i) relates to criminal conduct; or

175 (ii) is a record described in Subsection 63J-4-706(2)(b) or (c).

176 (2) The following records are private if properly classified by a governmental entity:

177 (a) records concerning a current or former employee of, or applicant for employment
178 with a governmental entity, including performance evaluations and personal status information
179 such as race, religion, or disabilities, but not including records that are public under Subsection
180 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

181 (b) records describing an individual's finances, except that the following are public:

182 (i) records described in Subsection 63G-2-301(2);

183 (ii) information provided to the governmental entity for the purpose of complying with
184 a financial assurance requirement; or

185 (iii) records that must be disclosed in accordance with another statute;

186 (c) records of independent state agencies if the disclosure of those records would
187 conflict with the fiduciary obligations of the agency;

188 (d) other records containing data on individuals the disclosure of which constitutes a
189 clearly unwarranted invasion of personal privacy;

190 (e) records provided by the United States or by a government entity outside the state
191 that are given with the requirement that the records be managed as private records, if the
192 providing entity states in writing that the record would not be subject to public disclosure if
193 retained by it;

194 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
195 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
196 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

197 (g) audio and video recordings created by a body-worn camera, as defined in Section
198 77-7a-103, that record sound or images inside a home or residence except for recordings that:

199 (i) depict the commission of an alleged crime;

200 (ii) record any encounter between a law enforcement officer and a person that results in
201 death or bodily injury, or includes an instance when an officer fires a weapon;

202 (iii) record any encounter that is the subject of a complaint or a legal proceeding
203 against a law enforcement officer or law enforcement agency;

204 (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);

205 or

206 (v) have been requested for reclassification as a public record by a subject or
207 authorized agent of a subject featured in the recording.

208 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
209 records, statements, history, diagnosis, condition, treatment, and evaluation.

210 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
211 doctors, or affiliated entities are not private records or controlled records under Section
212 63G-2-304 when the records are sought:

213 (i) in connection with any legal or administrative proceeding in which the patient's

214 physical, mental, or emotional condition is an element of any claim or defense; or

215 (ii) after a patient's death, in any legal or administrative proceeding in which any party
216 relies upon the condition as an element of the claim or defense.

217 (c) Medical records are subject to production in a legal or administrative proceeding
218 according to state or federal statutes or rules of procedure and evidence as if the medical
219 records were in the possession of a nongovernmental medical care provider.

220 Section 3. Section **63J-4-701** is enacted to read:

221 **Part 7. Operations Investigation Program**

222 **63J-4-701. Title.**

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

224 Section 4. Section **63J-4-702** is enacted to read:

225 **63J-4-702. Definitions.**

226 As used in this section:

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

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

232 (3) "Program" means the Operations Investigation Program created under Section
233 63J-4-703.

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

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

237 Section 5. Section **63J-4-703** is enacted to read:

238 **63J-4-703. Creation.**

239 (1) There is created within the office the Operations Investigation Program.

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

242 Section 6. Section **63J-4-704** is enacted to read:

243 **63J-4-704. Program responsibilities -- Data collection.**

244 (1) The executive director shall ensure that the program, through covert observation,

245 evaluates each subject store's:

246 (a) quality of customer service;

247 (b) cleanliness;

248 (c) customer satisfaction;

249 (d) product availability; and

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

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

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

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

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

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

263 (4) The program shall:

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

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

268 (5) (a) The executive director:

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

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

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

275 (c) The executive director may not authorize the program to purposely covertly observe

276 or record a direct interaction between a subject store and another person unless the person is
277 associated with the program or the office.

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

279 (a) performs an interaction for the program; and

280 (b) is not otherwise associated with the program or the office.

281 Section 7. Section **63J-4-705** is enacted to read:

282 **63J-4-705. Reporting and tracking results.**

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

284 (a) the performance measures and goals established under Subsection [63J-4-704](#)(2) for
285 all subject stores;

286 (b) for each subject store:

287 (i) a compilation, analysis, and interpretation of the data collected and scores recorded
288 under Subsection [63J-4-704](#)(4);

289 (ii) an assessment of how the subject store's performance relates to the performance
290 measures and goals established under Subsection [63J-4-704](#)(2); and

291 (iii) a description of each interaction, including:

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

294 (B) the scores recorded under Subsection [63J-4-704](#)(4)(b) for the interaction;

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

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

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

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

306 Section 8. Section **63J-4-706** is enacted to read:

307 **63J-4-706. Subject department responsibilities -- Incentives.**

308 (1) (a) Upon receipt of a report described in Subsection 63J-4-705(2), the director of
309 the subject department shall:

310 (i) identify each employee described in Subsection 63J-4-705(1)(b)(iii)(A); and

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

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

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

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

320 (ii) whose performance, as measured under the program, meets or exceeds the goals
321 established under Subsection 63J-4-704(2)(c).

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

325 (i) a description of the incentive; and

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

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

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

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

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

334 Section 9. Section **67-19a-202** is amended to read:

335 **67-19a-202. Powers -- Scope of authority.**

336 (1) (a) The office shall serve as the final administrative body to review a grievance
337 from a career service employee and an agency of a decision regarding:

- 338 (i) a dismissal;
- 339 (ii) a demotion;
- 340 (iii) a suspension;
- 341 (iv) a reduction in force;
- 342 (v) a dispute concerning abandonment of position;
- 343 (vi) a wage grievance if an employee is not placed within the salary range of the
- 344 employee's current position;
- 345 (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management
- 346 Act; ~~or~~
- 347 (viii) except as provided by Subsection (1)(c)(iii), equitable administration of the
- 348 following benefits:
 - 349 (A) long-term disability insurance;
 - 350 (B) medical insurance;
 - 351 (C) dental insurance;
 - 352 (D) post-retirement health insurance;
 - 353 (E) post-retirement life insurance;
 - 354 (F) life insurance;
 - 355 (G) defined contribution retirement;
 - 356 (H) defined benefit retirement; and
 - 357 (I) a leave benefit~~[-]~~; ~~or~~
 - 358 (ix) a report placed in an employee's personnel file under Section [63J-4-706](#).
- 359 (b) The office shall serve as the final administrative body to review a grievance by a
- 360 reporting employee alleging retaliatory action.
- 361 (c) The office may not review or take action on:
 - 362 (i) a personnel matter not listed in Subsection (1)(a) or (b);
 - 363 (ii) a grievance listed in Subsection (1)(a) or (b) that alleges discrimination or
 - 364 retaliation related to a claim of discrimination that is a violation of a state or federal law for
 - 365 which review and action by the office is preempted by state or federal law; or
 - 366 (iii) a grievance related to a claim for which an administrative review process is
 - 367 provided by statute and administered by:
 - 368 (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and

369 Insurance Benefit Act;

370 (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20,
371 Public Employees' Benefit and Insurance Program Act; or

372 (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,
373 Public Employees' Long-Term Disability Act.

374 (2) The time limits established in this chapter supersede the procedural time limits
375 established in Title 63G, Chapter 4, Administrative Procedures Act.

376 Section 10. **Effective date.**

377 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel