

**Representative Steve Eliason** proposes the following substitute bill:

**ALCOHOL BEVERAGE CONTROL OPERATIONS AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ designates certain records as private records;
- ▶ defines terms;
- ▶ creates and provides funding for the Operations Investigation Program to ~~§~~→ [covertly

~~observe]~~ engage in undisclosed observation ←~~§~~ and evaluate customer contacts with the Department of Alcoholic Beverage Control;

- ▶ establishes program responsibilities;
- ▶ establishes reporting and tracking requirements;
- ▶ addresses subject department's responsibilities;
- ▶ addresses incentives; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **32B-2-301**, as last amended by Laws of Utah 2013, Chapter 349

30 **63G-2-302**, as last amended by Laws of Utah 2016, Chapter 410

31 ENACTS:

32 **63J-4-701**, Utah Code Annotated 1953

33 **63J-4-702**, Utah Code Annotated 1953

34 **63J-4-703**, Utah Code Annotated 1953

35 **63J-4-704**, Utah Code Annotated 1953

36 **63J-4-705**, Utah Code Annotated 1953

37 **63J-4-706**, Utah Code Annotated 1953



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

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

41 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

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

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

44 and

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

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

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

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

50 (b) In accordance with Section **32B-2-304**, the State Tax Commission shall deposit  
51 revenue remitted to the State Tax Commission from the markup imposed under Section  
52 **32B-2-304** into the Markup Holding Fund.

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

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

55 (ii) to fund the deposits required by Subsection **32B-2-304**(4) and Subsection  
56 **32B-2-305**(4).

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

61 (a) to purchase an alcoholic product;

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

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

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

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

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

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

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

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

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

83 (8) For a fiscal year beginning on or after July 1, 2017, the department shall retain in  
84 the Liquor Control Fund to pay the costs of running the Operations Investigation Program  
85 created in Section 63J-4-703:

86 (a) the first \$176,000 in net profits that exceed the amount transferred from the Liquor  
87 Control Fund to the General Fund for the previous fiscal year;

88           (b) if the total net profits that exceed the amount transferred from the Liquor Control  
89 Fund to the General Fund for the previous fiscal year is less than \$176,000, an amount equal to  
90 the net profits that exceed the amount transferred from the Liquor Control Fund to the General  
91 Fund for the previous fiscal year; or

92           (c) if the total net profits does not exceed the amount transferred from the Liquor  
93 Control Fund to the General Fund for the previous fiscal year, \$0.

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

95           **63G-2-302. Private records.**

96           (1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 119 (ii) after the meeting, if the meeting was closed to the public;
- 120 (g) employment records concerning a current or former employee of, or applicant for  
121 employment with, a governmental entity that would disclose that individual's home address,  
122 home telephone number, social security number, insurance coverage, marital status, or payroll  
123 deductions;
- 124 (h) records or parts of records under Section 63G-2-303 that a current or former  
125 employee identifies as private according to the requirements of that section;
- 126 (i) that part of a record indicating a person's social security number or federal employer  
127 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,  
128 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 129 (j) that part of a voter registration record identifying a voter's:
- 130 (i) driver license or identification card number;
- 131 (ii) social security number, or last four digits of the social security number;
- 132 (iii) email address; or
- 133 (iv) date of birth;
- 134 (k) a voter registration record that is classified as a private record by the lieutenant  
135 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 136 (l) a record that:
- 137 (i) contains information about an individual;
- 138 (ii) is voluntarily provided by the individual; and
- 139 (iii) goes into an electronic database that:
- 140 (A) is designated by and administered under the authority of the Chief Information  
141 Officer; and
- 142 (B) acts as a repository of information about the individual that can be electronically  
143 retrieved and used to facilitate the individual's online interaction with a state agency;
- 144 (m) information provided to the Commissioner of Insurance under:
- 145 (i) Subsection 31A-23a-115(2)(a);
- 146 (ii) Subsection 31A-23a-302(3); or
- 147 (iii) Subsection 31A-26-210(3);
- 148 (n) information obtained through a criminal background check under Title 11, Chapter  
149 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

- 150 (o) information provided by an offender that is:
- 151 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap  
152 Offender Registry; and
- 153 (ii) not required to be made available to the public under Subsection 77-41-110(4);
- 154 (p) a statement and any supporting documentation filed with the attorney general in  
155 accordance with Section 34-45-107, if the federal law or action supporting the filing involves  
156 homeland security;
- 157 (q) electronic toll collection customer account information received or collected under  
158 Section 72-6-118 and customer information described in Section 17B-2a-815 received or  
159 collected by a public transit district, including contact and payment information and customer  
160 travel data;
- 161 (r) an email address provided by a military or overseas voter under Section  
162 20A-16-501;
- 163 (s) a completed military-overseas ballot that is electronically transmitted under Title  
164 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- 165 (t) records received by or generated by or for the Political Subdivisions Ethics Review  
166 Commission established in Section 11-49-201, except for:
- 167 (i) the commission's summary data report that is required in Section 11-49-202; and  
168 (ii) any other document that is classified as public in accordance with Title 11, Chapter  
169 49, Political Subdivisions Ethics Review Commission;
- 170 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was  
171 notified of an incident or threat; ~~and~~
- 172 (v) a criminal background check or credit history report conducted in accordance with  
173 Section 63A-3-201~~[?]~~; and
- 174 (w) a record created under, or in relation to, Title 63J, Chapter 4, Part 7, Operations  
175 Investigation Program, unless the record:
- 176 (i) relates to criminal conduct; or  
177 (ii) is a record described in Subsection 63J-4-706(2)(b) or (c).
- 178 (2) The following records are private if properly classified by a governmental entity:
- 179 (a) records concerning a current or former employee of, or applicant for employment  
180 with a governmental entity, including performance evaluations and personal status information

181 such as race, religion, or disabilities, but not including records that are public under Subsection  
182 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

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

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

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

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

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

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

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

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

199 (g) audio and video recordings created by a body-worn camera, as defined in Section  
200 77-7a-103, that record sound or images inside a home or residence except for recordings that:

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

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

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

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

207 or

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

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

212 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
 213 doctors, or affiliated entities are not private records or controlled records under Section  
 214 [63G-2-304](#) when the records are sought:

215 (i) in connection with any legal or administrative proceeding in which the patient's  
 216 physical, mental, or emotional condition is an element of any claim or defense; or

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

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

222 Section 3. Section [63J-4-701](#) is enacted to read:

### 223 **Part 7. Operations Investigation Program**

224 **63J-4-701. Title.**

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

226 Section 4. Section [63J-4-702](#) is enacted to read:

227 **63J-4-702. Definitions.**

228 As used in this section:

229 ~~Ŝ→ [(1) "Covert observation" or "covertly observe" means an act taken by the program to~~  
 230 ~~directly observe and evaluate the service offered by a subject store without the knowledge of~~  
 231 ~~the subject store;~~

232 ~~——(2)] (1) ←Ŝ "Interaction" means an individual act under the program to~~ Ŝ→ [~~covertly~~  
 232a ~~observe] engage in the undisclosed observation of ←Ŝ a~~  
 233 ~~subject store in a manner authorized by this part.~~

234 ~~Ŝ→ [(3)] (2) ←Ŝ "Program" means the Operations Investigation Program created under~~  
 234a ~~Section~~  
 235 ~~[63J-4-703](#).~~

236 ~~Ŝ→ [(4)] (3) ←Ŝ "Subject department" means the Department of Alcoholic Beverage~~  
 236a ~~Control.~~

237 ~~Ŝ→ [(5)] (4) ←Ŝ "Subject store" means a store created under Title 32B, Chapter 2, Part 5,~~  
 237a ~~State~~  
 238 ~~Store, by the Alcoholic Beverage Control Commission.~~

238a ~~Ŝ→ (5) "Undisclosed observation" means an act taken by the program to directly observe and~~  
 238b ~~evaluate the service offered by a subject store without the knowledge of the subject store. ←Ŝ~~

239 Section 5. Section [63J-4-703](#) is enacted to read:



240            **63J-4-703. Creation.**

241            (1) Beginning on July 1, 2018, there is created within the office the Operations

242 Investigation Program.

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

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

246 **63J-4-704. Program responsibilities -- Data collection.**

247 (1) The executive director shall ensure that the program, through ~~Ŝ~~ **[eoverrt]** **undisclosed**  
 247a **←Ŝ** observation,

248 evaluates each subject store's:

249 (a) quality of customer service;

250 (b) cleanliness;

251 (c) customer satisfaction;

252 (d) product availability; and

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

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

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

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

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

263 (3) Before January 1 of each year, the executive director shall create a plan, based upon  
 264 the performance measures established under Subsection (2)(b), by which the program will  
 265 **Ŝ** ~~[eoverrtly observe]~~ **engage in undisclosed observation** ←Ŝ and evaluate each subject store's  
 265a performance.

266 (4) The program shall:

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

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

271 (5) (a) The executive director:

272 (i) shall ensure that the program ~~Ŝ~~ **[eoverrtly]** ←Ŝ observes ~~Ŝ~~ **by undisclosed**  
 272a **observation** ←Ŝ the customer service offered by each  
 273 subject store through an in-person interaction at least once per month; and

274 (ii) may also authorize the program to ~~covertly~~ observe by undisclosed  
 274a observation ~~the customer service offered by~~  
 275 a subject store through an interaction conducted by telephone or through electronic  
 276 communication.

277 (b) The executive director may authorize the program to ~~covertly~~ record an  
 277a interaction ~~without disclosing the recording~~.

278 (c) The executive director may not authorize the program to purposely ~~covertly~~  
 278a observe] engage in undisclosed observation ~~the~~  
 279 or record a direct interaction between a subject store and another person unless the person is  
 280 associated with the program or the office.

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

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

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

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

285 **63J-4-705. Reporting and tracking results.**

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

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

289 (b) for each subject store:

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

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

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

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

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

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

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

304 (2) The executive director shall, within 30 days after the day on which the executive

305 director prepares a report described in Subsection (1), send the report to the director of the  
306 subject department.

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

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

310 **63J-4-706. Subject department responsibilities -- Incentives.**

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

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

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

316 (b) An employee may challenge an agency action described in Subsection  
317 67-19a-202(1)(a) that is based on the content of a report placed in the employee's personnel file  
318 under Subsection (1)(a)(ii) in accordance with Title 67, Chapter 19a, Grievance Procedures.

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

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

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

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

327 (i) a description of the incentive; and

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

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

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

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

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