

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;
- ▶ 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:



26 AMENDS:

27 **32B-2-301**, as last amended by Laws of Utah 2013, Chapter 349

28 ENACTS:

29 **63J-4-701**, Utah Code Annotated 1953

30 **63J-4-702**, Utah Code Annotated 1953

31 **63J-4-703**, Utah Code Annotated 1953

32 **63J-4-704**, Utah Code Annotated 1953

33 **63J-4-705**, Utah Code Annotated 1953

34 **63J-4-706**, Utah Code Annotated 1953

35

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

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

38 **32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.**

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

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

41 and

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

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

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

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

47 (b) In accordance with Section **32B-2-304**, the State Tax Commission shall deposit
48 revenue remitted to the State Tax Commission from the markup imposed under Section
49 **32B-2-304** into the Markup Holding Fund.

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

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

52 (ii) to fund the deposits required by Subsection **32B-2-304**(4) and Subsection
53 **32B-2-305**(4).

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

57 directly incurred by the department:

58 (a) to purchase an alcoholic product;

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

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

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

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

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

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

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

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

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

80 (8) For the fiscal year beginning July 1, 2017, only, the department shall use the first
81 \$176,000 in net profits that exceed the amount transferred from the Liquor Control Fund to the
82 General Fund for the previous fiscal year to pay the costs of running the Operations
83 Investigation Program created in Section 63J-4-703.

84 Section 2. Section 63J-4-701 is enacted to read:

85 **Part 7. Operations Investigation Program**

86 **63J-4-701. Title.**

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

88 Section 3. Section **63J-4-702** is enacted to read:

89 **63J-4-702. Definitions.**

90 As used in this section:

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

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

96 (3) "Program" means the Citizens' Customer Satisfaction Program created under
97 Section [63J-4-703](#).

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

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

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

102 **63J-4-703. Creation.**

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

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

106 Section 5. Section **63J-4-704** is enacted to read:

107 **63J-4-704. Program duties and responsibilities -- Data collection.**

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

110 (a) quality of customer service;

111 (b) cleanliness;

112 (c) customer satisfaction;

113 (d) product availability; and

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

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

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

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

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

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

127 (4) The program shall:

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

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

132 (5) (a) The executive director:

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

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

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

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

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

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

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

145 Section 6. Section **63J-4-705** is enacted to read:

146 **63J-4-705. Reporting and tracking results -- Online database.**

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

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

150 (b) for each subject store:
151 (i) a compilation, analysis, and interpretation of the data collected and scores recorded
152 under Subsection 63J-4-704(4);
153 (ii) an assessment of how the subject store's performance relates to the performance
154 measures and goals established under Subsection 63J-4-704(2); and
155 (iii) a description of each interaction, including:
156 (A) the name of each of the subject store's employees who were contacted during the
157 interaction; and
158 (B) the scores recorded under Subsection 63J-4-704(4)(b) for the interaction;
159 (c) an explanation of any observed patterns of a subject store's or the subject
160 department's practices that do not appear to be in compliance with state law, rule, or policy or
161 with generally accepted customer service practices; and
162 (d) any recommended changes needed to bring a subject store or the subject department
163 into compliance with state law, rule, or policy or with generally accepted customer service
164 practices.
165 (2) The executive director shall, within 30 days after the day on which the executive
166 director prepares a report described in Subsection (1), send the report to the director of the
167 subject department.
168 (3) (a) The director of the subject department shall create a repository to store and track
169 the information that the director of the subject department receives under Subsection (2).
170 (b) Any record created under this part that identifies an employee of the subject
171 department or a subject store is a private record, for purposes of Title 63G, Chapter 2,
172 Government Records Access and Management Act, unless the record:
173 (i) relates to criminal conduct by the employee; or
174 (ii) is a record described in Subsection 63J-4-706(2)(c).
175 Section 7. Section **63J-4-706** is enacted to read:
176 **63J-4-706. Subject department responsibilities -- Incentives.**
177 (1) (a) Upon receipt of a report described in Subsection 63J-4-705(2), the director of
178 the subject department shall:
179 (i) identify each employee described in Subsection 63J-4-705(1)(b)(iii)(A); and
180 (ii) place a copy of the portions of the report that pertain to the employee in the

181 employee's personnel file.

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

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

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

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

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

194 (i) a description of the incentive; and

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

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

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

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

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

203 **Section 8. Effective date.**

204 This bill takes effect on July 1, 2017.