

**Representative Nora B. Stephens** proposes to substitute the following bill:

**DRIVING UNDER THE INFLUENCE**

**AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Nora B. Stephens**

AN ACT RELATING TO MOTOR VEHICLES AND PUBLIC SAFETY; AMENDING DRIVING UNDER THE INFLUENCE PENALTIES; AMENDING ADMINISTRATIVE FEE PROVISIONS; AMENDING ALCOHOL OR DRUG ENFORCEMENT FUNDING PROVISIONS; AMENDING CERTAIN HEARING PROVISIONS; AMENDING ALCOHOL TRAINING AND EDUCATION SEMINAR REQUIREMENTS; PROVIDING CERTAIN RULEMAKING; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**41-6-44**, as last amended by Chapters 33, 226 and 258, Laws of Utah 1999

**41-6-44.6**, as last amended by Chapter 226, Laws of Utah 1999

**41-6-44.7**, as enacted by Chapter 174, Laws of Utah 1994

**41-6-44.10**, as last amended by Chapter 226, Laws of Utah 1999

**41-6-44.30**, as last amended by Chapters 125 and 270, Laws of Utah 1998

**53-1-117**, as last amended by Chapter 247, Laws of Utah 1998

**53-3-106**, as last amended by Chapter 247, Laws of Utah 1998

**53-3-223**, as last amended by Chapter 226, Laws of Utah 1999

**53-3-231**, as last amended by Chapter 226, Laws of Utah 1999

**53-3-418**, as last amended by Chapter 226, Laws of Utah 1999

**62A-8-103.5**, as enacted by Chapter 276, Laws of Utah 1997

**62A-8-107**, as last amended by Chapter 30, Laws of Utah 1992

26 ENACTS:

27 **53-3-233**, Utah Code Annotated 1953

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

29 Section 1. Section **41-6-44** is amended to read:

30 **41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe**  
31 **blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal**  
32 **punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.**

33 (1) As used in this section:

34 (a) "educational series" means an educational series obtained at a substance abuse program  
35 that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

36 [~~(a)~~] (b) "prior conviction" means any conviction for a violation of:

37 (i) this section;

38 (ii) alcohol-related reckless driving under Subsections (9) and (10);

39 (iii) local ordinances similar to this section or alcohol-related reckless driving adopted in  
40 compliance with Section 41-6-43;

41 (iv) automobile homicide under Section 76-5-207; or

42 (v) statutes or ordinances in effect in any other state, the United States, or any district,  
43 possession, or territory of the United States which would constitute a violation of this section or  
44 alcohol-related reckless driving if committed in this state, including punishments administered  
45 under 10 U.S.C. Sec. 815;

46 (c) "screening and assessment" means a substance abuse addiction and dependency  
47 screening and assessment obtained at a substance abuse program that is approved by the Board of  
48 Substance Abuse in accordance with Section 62A-8-107;

49 [~~(b)~~] (d) "serious bodily injury" means bodily injury that creates or causes serious  
50 permanent disfigurement, protracted loss or impairment of the function of any bodily member or  
51 organ, or creates a substantial risk of death;

52 (e) "substance abuse treatment" means treatment obtained at a substance abuse program  
53 that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

54 (f) "substance abuse treatment program" means a state licensed substance abuse program;

55 [~~(e)~~] (g) a violation of this section includes a violation under a local ordinance similar to  
56 this section adopted in compliance with Section 41-6-43; and

57            [~~(d)~~] (h) the standard of negligence is that of simple negligence, the failure to exercise that  
58 degree of care that an ordinarily reasonable and prudent person exercises under like or similar  
59 circumstances.

60            (2) (a) A person may not operate or be in actual physical control of a vehicle within this  
61 state if the person:

62            (i) has sufficient alcohol in his body that a chemical test given within two hours of the  
63 alleged operation or physical control shows that the person has a blood or breath alcohol  
64 concentration of .08 grams or greater; or

65            (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and  
66 any drug to a degree that renders the person incapable of safely operating a vehicle.

67            (b) The fact that a person charged with violating this section is or has been legally entitled  
68 to use alcohol or a drug is not a defense against any charge of violating this section.

69            (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100  
70 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol  
71 per 210 liters of breath.

72            (3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty  
73 of a:

74            (i) class B misdemeanor; or

75            (ii) class A misdemeanor if the person:

76            (A) has also inflicted bodily injury upon another as a proximate result of having operated  
77 the vehicle in a negligent manner; or

78            (B) had a passenger under 16 years of age in the vehicle at the time of the offense.

79            (b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony  
80 if the person has also inflicted serious bodily injury upon another as a proximate result of having  
81 operated the vehicle in a negligent manner.

82            (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a  
83 mandatory jail sentence of not less than 48 consecutive hours.

84            (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

85            (i) work in a compensatory-service work program for not less than 24 hours; or

86            (ii) participate in home confinement through the use of electronic monitoring in  
87 accordance with Subsection (13).

88 (c) In addition to the jail sentence, compensatory-service work program, or home  
89 confinement, the court shall:

90 (i) order the person to participate in [~~an assessment and educational series at a licensed~~  
91 ~~alcohol or drug dependency rehabilitation facility, as appropriate~~] a screening and assessment;  
92 [~~and~~]

93 (ii) order the person to participate in an educational series if the court does not order  
94 substance abuse treatment as described under Subsection (4)(d); and

95 [~~(ii)~~] (iii) impose a fine of not less than \$700.

96 (d) [~~For a violation committed after July 1, 1993, the~~] The court may order the person to  
97 obtain substance abuse treatment [~~at an alcohol or drug dependency rehabilitation facility~~] if the  
98 [~~licensed alcohol or drug dependency rehabilitation facility~~] substance abuse treatment program  
99 determines that [~~the person has a problem condition involving alcohol or drugs~~] substance abuse  
100 treatment is appropriate.

101 (e) The court shall order probation for the person in accordance with Subsection (14).

102 (5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction  
103 under this section, the court shall as part of any sentence impose a mandatory jail sentence of not  
104 less than 240 consecutive hours.

105 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

106 (i) work in a compensatory-service work program for not less than [~~80~~] 240 hours; or

107 (ii) participate in home confinement through the use of electronic monitoring in  
108 accordance with Subsection (13).

109 (c) In addition to the jail sentence, compensatory-service work program, or home  
110 confinement, the court shall:

111 (i) order the person to participate in [~~an assessment and educational series at a licensed~~  
112 ~~alcohol or drug dependency rehabilitation facility, as appropriate~~] a screening and assessment;  
113 [~~and~~]

114 (ii) order the person to participate in an educational series if the court does not order  
115 substance abuse treatment as described under Subsection (5)(d); and

116 [~~(ii)~~] (iii) impose a fine of not less than \$800.

117 (d) The court may order the person to obtain substance abuse treatment [~~at an alcohol or~~  
118 ~~drug dependency rehabilitation facility~~] if the substance abuse treatment program determines that

119 substance abuse treatment is appropriate.

120 (e) The court shall order probation for the person in accordance with Subsection (14).

121 (6) (a) (i) A third or subsequent conviction for a violation committed within six years of  
122 two or more prior convictions under this section is a third degree felony.

123 (ii) A prison sentence under this Subsection (6)(a) shall be imposed for not less than  $\hat{h}$  [ten]

123a 30  $\hat{h}$

124 days.

125 (b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison  
126 sentence and places the defendant on probation the court shall impose:

127 (i) a fine of not less than \$1,500; and

128 (ii) a mandatory jail sentence of not less than  $\hat{h}$  [1,000] 1500  $\hat{h}$  hours[;and].

129 ~~[(iii)]~~ (c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person  
130 to obtain a screening and assessment and substance abuse treatment at [~~an alcohol or drug~~  
131 ~~dependency rehabilitation~~] a substance abuse treatment program providing intensive care or  
132 inpatient treatment and long-term closely supervised follow-through after treatment for not less  
133 than 240 hours.

134 ~~[(e)]~~ (d) In addition to the penalties required under Subsection (6)(b), the court may require  
135 the person to participate in home confinement through the use of electronic monitoring in  
136 accordance with Subsection (13).

137 (7) ~~[(a)]~~ The mandatory portion of any sentence required under this section may not be  
138 suspended and the convicted person is not eligible for parole or probation until any sentence  
139 imposed under this section has been served. Probation or parole resulting from a conviction for  
140 a violation under this section may not be terminated.

141 ~~[(b) The department may not reinstate any license suspended or revoked as a result of the~~  
142 ~~conviction under this section, until the convicted person has furnished evidence satisfactory to the~~  
143 ~~department that:]~~

144 ~~[(i) all required alcohol or drug dependency assessment, education, treatment, and~~  
145 ~~rehabilitation ordered for a violation committed after July 1, 1993, have been completed;]~~

146 ~~[(ii) all fines and fees including fees for restitution and rehabilitation costs assessed against~~  
147 ~~the person have been paid, if the conviction is a second or subsequent conviction for a violation~~  
148 ~~committed within six years of a prior violation; and]~~

149 ~~[(iii) the person does not use drugs in any abusive or illegal manner as certified by a~~

150 ~~licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or~~  
151 ~~subsequent conviction for a violation committed within six years of two prior violations committed~~  
152 ~~after July 1, 1993.]~~

153 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to  
154 order a convicted person to: participate in ~~[an]~~ a screening and assessment; and an educational  
155 series ~~[at a licensed alcohol or drug dependency rehabilitation facility]~~; obtain, in the discretion  
156 of the court, substance abuse treatment ~~[at an alcohol or drug dependency rehabilitation facility]~~;  
157 obtain, mandatorily, substance abuse treatment ~~[at an alcohol or drug dependency rehabilitation~~  
158 ~~facility]~~; or do a combination of those things, apply to a conviction for a violation of Section  
159 41-6-44.6 or 41-6-45 under Subsection (9).

160 (ii) The court shall render the same order regarding ~~[education]~~ screening and assessment,  
161 an educational series, or substance abuse treatment ~~[at an alcohol or drug dependency rehabilitation~~  
162 ~~facility, or both,]~~ in connection with a first, second, or subsequent conviction under Section  
163 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying  
164 respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and  
165 (6).

166 ~~[(b) Any alcohol or drug dependency rehabilitation program and any community-based or~~  
167 ~~other education program provided for in this section shall be approved by the Department of~~  
168 ~~Human Services.]~~

169 (b) If a person fails to complete all court ordered screening and assessment, educational  
170 series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution  
171 and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon  
172 receiving the notification, the division shall suspend the person's driving privilege in accordance  
173 with Subsections 53-3-221(2) and (3).

174 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a  
175 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section  
176 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,  
177 the prosecution shall state for the record a factual basis for the plea, including whether or not there  
178 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection  
179 with the violation.

180 (ii) The statement is an offer of proof of the facts that shows whether there was

181 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the  
182 violation.

183 (b) The court shall advise the defendant before accepting the plea offered under this  
184 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

185 (c) The court shall notify the ~~[department]~~ Driver License Division of each conviction of  
186 Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

187 (10) A peace officer may, without a warrant, arrest a person for a violation of this section  
188 when the officer has probable cause to believe the violation has occurred, although not in his  
189 presence, and if the officer has probable cause to believe that the violation was committed by the  
190 person.

191 (11) (a) The ~~[Department of Public Safety]~~ Driver License Division shall:

192 (i) suspend for 90 days the operator's license of a person convicted for the first time under  
193 Subsection (2);

194 (ii) revoke for one year the license of a person convicted of any subsequent offense under  
195 Subsection (2) if the violation is committed within a period of six years from the date of the prior  
196 violation; and

197 (iii) suspend or revoke the license of a person as ordered by the court under Subsection  
198 (12).

199 (b) The ~~[department]~~ Driver License Division shall subtract from any suspension or  
200 revocation period the number of days for which a license was previously suspended under Section  
201 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which  
202 the record of conviction is based.

203 (12) (a) In addition to any other penalties provided in this section, a court may order the  
204 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended  
205 or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways  
206 those persons who have shown they are safety hazards.

207 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the  
208 court shall prepare and send to the Driver License Division ~~[of the Department of Public Safety]~~  
209 an order to suspend or revoke that person's driving privileges for a specified period of time.

210 (13) (a) If the court orders a person to participate in home confinement through the use of  
211 electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation

212 monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

213 (b) The electronic monitoring device shall be used under conditions which require:

214 (i) the person to wear an electronic monitoring device at all times;

215 (ii) that a device be placed in the home or other specified location of the person, so that

216 the person's compliance with the court's order may be monitored; and

217 (iii) the person to pay the costs of the electronic monitoring.

218 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place an

219 electronic monitoring device on the person and install electronic monitoring equipment in the

220 residence of the person or other specified location.

221 (d) The court may:

222 (i) require the person's electronic home monitoring device to include an alcohol detection  
223 breathalyzer;

224 (ii) restrict the amount of alcohol the person may consume during the time the person is  
225 subject to home confinement;

226 (iii) set specific time and location conditions that allow the person to attend school  
227 educational classes, or employment and to travel directly between those activities and the person's  
228 home; and

229 (iv) waive all or part of the costs associated with home confinement if the person is  
230 determined to be indigent by the court.

231 (e) The electronic monitoring described in this section may either be administered directly  
232 by the appropriate corrections agency, probation monitoring agency, or by contract with a private  
233 provider.

234 (f) The electronic monitoring provider shall cover the costs of waivers by the court under  
235 Subsection (13)(c)(iv).

236 (14) (a) If probation is ordered under Subsection (4)(e) or (5)(e):

237 (i) the period of the probation shall be not less than 12 months from the date of conviction;

238 (ii) the person shall pay all of the costs of the probation; and

239 (iii) the court may order any other conditions of the probation.

240 (b) The court shall provide the probation described in this section by contract with a  
241 probation monitoring agency or a private probation provider.

242 (c) The probation provider described in Subsection (b) shall monitor the person's



243 compliance with all conditions of the person's sentences, conditions of probation, and court orders  
244 received under this article and shall notify the court of any failure to comply with or complete that  
245 sentence or those conditions or orders.

246 (d) (i) The court may waive all or part of the costs associated with probation if the person  
247 is determined to be indigent by the court.

248 (ii) The probation provider described in Subsection (b) shall cover the costs of waivers by  
249 the court under Subsection (d)(i).

250 Section 2. Section **41-6-44.6** is amended to read:

251 **41-6-44.6. Definitions -- Driving with any measurable controlled substance in the**  
252 **body -- Penalties -- Arrest without warrant.**

253 (1) As used in this section:

254 (a) "Controlled substance" means any substance scheduled under Section 58-37-4.

255 (b) "Practitioner" has the same meaning as provided in Section 58-37-2.

256 (c) "Prescribe" has the same meaning as provided in Section 58-37-2.

257 (d) "Prescription" has the same meaning as provided in Section 58-37-2.

258 (2) In cases not amounting to a violation of Section 41-6-44, a person may not operate or  
259 be in actual physical control of a motor vehicle within this state if the person has any measurable  
260 controlled substance or metabolite of a controlled substance in the person's body.

261 (3) It is an affirmative defense to prosecution under this section that the controlled  
262 substance was involuntarily ingested by the accused or prescribed by a practitioner for use by the  
263 accused.

264 (4) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

265 (5) A peace officer may, without a warrant, arrest a person for a violation of this section  
266 when the officer has probable cause to believe the violation has occurred, although not in the  
267 officer's presence, and if the officer has probable cause to believe that the violation was committed  
268 by the person.

269 (6) The Driver License Division shall:

270 (a) suspend, for 90 days, the driver license of a person convicted under Subsection (2);

271 (b) revoke, for one year, the driver license of a person convicted of a second or subsequent  
272 offense under Subsection (2) if the violation is committed within a period of six years after the date  
273 of the prior violation; and

274 (c) subtract from any suspension or revocation period the number of days for which a  
275 license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension  
276 was based on the same occurrence upon which the record of conviction is based.

277 ~~[(7) The Driver License Division may not reinstate any license suspended or revoked as~~  
278 ~~a result of a conviction under this section, until the convicted person has complied with the~~  
279 ~~requirements of Subsection 41-6-44(7)(b).]~~

280 (7) If a person fails to complete all court ordered screening and assessment, educational  
281 series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution  
282 and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon  
283 receiving the notification, the division shall suspend the person's driving privilege in accordance  
284 with Subsections 53-3-221 (2) and (3).

285 Section 3. Section **41-6-44.7** is amended to read:

286 **41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost --**  
287 **Impecuniosity -- Fee.**

288 (1) As used in this section:

289 (a) "Commissioner" means the commissioner of the Department of Public Safety.

290 (b) "Ignition interlock system" or "system" means a constant monitoring device or any  
291 similar device certified by the commissioner that prevents a motor vehicle from being started  
292 without first determining the driver's breath alcohol concentration.

293 (2) (a) In addition to any other penalties imposed under Section 41-6-44, and in addition  
294 to any requirements imposed as a condition of probation, the court may require that any person  
295 who is convicted of violating Section 41-6-44 and who is granted probation may not operate a  
296 motor vehicle during the period of probation unless that motor vehicle is equipped with a  
297 functioning, certified ignition interlock system installed and calibrated so that the motor vehicle  
298 will not start if the operator's blood alcohol concentration exceeds a level ordered by the court.

299 (b) If a person convicted of violating Section 41-6-44 was under the age of 21 when the  
300 violation occurred, the court shall order the installation of the ignition interlock system as a  
301 condition of probation.

302 (c) (i) If a person is convicted of a violation of Section 41-6-44 within six years of a prior  
303 conviction of that section, the court shall order the installation of the ignition interlock system, at  
304 the person's expense, for all motor vehicles registered to that person and all motor vehicles

305 operated by that person for three years from the date of conviction.

306 (ii) The division shall post the ignition interlock restriction on the electronic record  
 307 available to law enforcement.

308 (3) [H] Except as provided in Subsection (2)(c), if the court imposes the use of an ignition  
 309 interlock system as a condition of probation, the court shall:

310 (a) stipulate on the record the requirement for and the period of the use of an ignition  
 311 interlock system;

312 (b) order that an ignition interlock system be installed on each motor vehicle owned or  
 313 operated by the probationer, at the probationer's expense;

314 (c) order the probationer to submit his driver license to the Driver License Division in  
 315 accordance with Subsection (5);

316 (d) immediately notify the Driver License Division and the person's probation provider of  
 317 the order; and

318 (e) require the probationer to provide proof of compliance with the court's order to the  
 319 probation ~~[officer]~~ provider within 30 days of the order.

320 (4) **h (a) THE COURT SHALL PROVIDE THE SUPERVISION AND MONITORING OF THE**  
 320a **IGNITION INTERLOCK SYSTEM REQUIRED AS A CONDITION OF PROBATION OR AS OTHERWISE**  
 320b **ORDERED BY THE COURT BY CONTRACT WITH A PROBATION PROVIDER IN ACCORDANCE WITH**  
 320c **SUBSECTIONS 41-6-44 (14)(b) AND (c).** **h**

320d **h [(a)] (b) h** If the probationer fails to provide timely proof of installation to the person's  
 321 probation provider within 30 days of an order imposing the use of a system or show cause why the  
 322 order was not complied with, the probation provider shall notify the court.

323 **h [(b)] (c) h** Upon receiving the notification under Subsection (4)(a), the court shall order the  
 323a Driver  
 324 License Division to suspend the probationer's driving privileges for the remaining period during  
 325 which the compliance was imposed.

326 **[(b)] h [(c)] (d) h** Cause for failure to comply means any reason the court finds sufficiently  
 327 justifiable to excuse the probationer's failure to comply with the court's order.

328 (5) (a) If use of an ignition interlock system is required under this section, the ~~[probationer~~  
 329 ~~shall submit his driver license to the Driver License Division to obtain a driver license indicating~~  
 330 ~~that the probationer may only operate a motor vehicle equipped with an ignition interlock system]~~  
 331 division may not issue, reinstate, or renew the driver license of that person unless that requirement  
 332 is coded on the person's driver license.

333 (b) (i) If the division receives a notice that a person with a valid driver license that does  
 334 not require a driver license withdrawal is required to use an ignition interlock system, the division  
 335 shall notify the person that he has ten calendar days to apply to the division for an ignition

336 interlock system requirement coded on the license.

337 (ii) The division shall suspend the driver license of the person after the ten-day period until  
338 the person applies to the division for an ignition interlock system requirement coded on the license.

339 (6) (a) Any probationer required to install an ignition interlock system shall have the  
340 system monitored by the manufacturer or dealer of the system for proper use and accuracy at least  
341 semiannually and more frequently as the court may order.

342 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the  
343 ~~court~~ person's probation provider.

344 (ii) ~~[If the system is required as a condition of probation, the]~~ The report shall be issued  
345 within 14 days following each monitoring.

346 (7) (a) If an ignition interlock system is ordered installed, the probationer shall pay the  
347 reasonable costs of leasing or buying and installing and maintaining the system.

348 (b) A probationer may not be excluded from this section for inability to pay the costs,  
349 unless:

350 (i) the probationer files an affidavit of impecuniosity; and

351 (ii) the court enters a finding that the probationer is impecunious.

352 (c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer  
353 to make partial or installment payments of costs when appropriate.

354 (d) Subject to appropriation, the department shall lease or purchase the ignition interlock  
355 system and reimburse each installer maintaining the system provided to probationers for whom  
356 payment of costs has been waived or deferred on the grounds of indigency.

357 (8) (a) An additional fee of \$100 shall be paid to the court by each probationer ordered to  
358 purchase, install, use, and maintain an ignition interlock system under this section.

359 (b) The fee shall be deposited with the department as a dedicated credit for the support  
360 costs incurred for indigent individuals under Subsection (7)(d).

361 (c) Failure to pay the fees required under this section shall, unless excused, constitute  
362 sufficient basis for a finding by the court at a hearing that the probationer has failed to comply with  
363 the terms of probation.

364 (9) (a) If a probationer is required in the course and scope of employment to operate a  
365 motor vehicle owned by the probationer's employer, the probationer may operate that motor  
366 vehicle in the course and scope of employment without installation of an ignition interlock system

367 only if the employer has been notified that the employee is restricted and the employee has proof  
368 of the notification in his possession while operating the employer's motor vehicle.

369 (b) (i) To the extent that an employer-owned motor vehicle is made available to a  
370 probationer subject to this section for personal use, no exemption under this section shall apply.

371 (ii) A probationer intending to operate an employer-owned motor vehicle for personal use  
372 and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system  
373 shall notify the employer and obtain consent in writing from the employer to install a system in the  
374 employer-owned motor vehicle.

375 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled by  
376 a probationer subject to this section is not a motor vehicle owned by the employer and does not  
377 qualify for an exemption under this Subsection (9).

378 (10) Upon conviction for violation of this section, the court shall notify the Driver License  
379 Division to immediately suspend the probationer's license to operate a motor vehicle for the  
380 remainder of the period of probation.

381 (11) (a) It is a class B misdemeanor for a person to:

382 (i) circumvent or tamper with the operation of an ignition interlock system;

383 (ii) knowingly furnish a motor vehicle without an ignition interlock system to someone  
384 who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an  
385 ignition interlock system that is in working order;

386 (iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a driving  
387 restriction is imposed under this section;

388 (iv) request another person to blow into an ignition interlock system, if the person is  
389 required to have a system and the person requests or solicits another to blow into the system to  
390 start the motor vehicle in order to circumvent the system;

391 (v) blow into an ignition interlock system or start a motor vehicle equipped with an  
392 ignition interlock system for the purpose of providing an operable motor vehicle to another person  
393 required to have a system; and

394 (vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless the  
395 system has been certified by the commissioner and the manufacturer of the system has affixed a  
396 warning label, as approved by the commissioner on the system, stating that the tampering,  
397 circumventing, or other misuse of the system is a class B misdemeanor.

398 (b) This Subsection (11) does not apply if the starting of a motor vehicle, or the request  
399 to start a motor vehicle, equipped with an ignition interlock system is done for the purpose of  
400 safety or mechanical repair of the system or the motor vehicle and the person subject to the court  
401 order does not drive the motor vehicle.

402 (12) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
403 the commissioner shall make rules setting standards for the certification of ignition interlock  
404 systems.

405 (b) The standards shall require that the system:

406 (i) not impede the safe operation of the motor vehicle;

407 (ii) have features that make circumventing difficult and that do not interfere with the  
408 normal use of the motor vehicle;

409 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

410 (iv) prevent the motor vehicle from being started if the driver's breath alcohol  
411 concentration exceeds an ordered level;

412 (v) work accurately and reliably in an unsupervised environment;

413 (vi) resist tampering and give evidence if tampering is attempted;

414 (vii) operate reliably over the range of motor vehicle environments; and

415 (viii) be manufactured by a party who will provide liability insurance.

416 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or  
417 independent laboratory tests relied upon in certification of ignition interlock systems by other  
418 states.

419 (d) A list of certified systems shall be published by the commissioner and the cost of  
420 certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking  
421 to sell, offer for sale, or lease the systems.

422 (e) In accordance with Section 63-38-3.2, the commissioner may establish an annual dollar  
423 assessment against the manufacturers of ignition interlock systems distributed in the state for the  
424 costs incurred in certifying. The assessment shall be apportioned among the manufacturers on a  
425 fair and reasonable basis.

426 (13) There shall be no liability on the part of, and no cause of action of any nature shall  
427 arise against, the state or its employees in connection with the installation, use, operation,  
428 maintenance, or supervision of an interlock ignition system as required under this section.

429 Section 4. Section **41-6-44.10** is amended to read:

430 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests**  
431 **-- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable**  
432 **of refusal -- Results of test available -- Who may give test -- Evidence.**

433 (1) (a) A person operating a motor vehicle in this state is considered to have given his  
434 consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining  
435 whether he was operating or in actual physical control of a motor vehicle while having a blood or  
436 breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, while  
437 under the influence of alcohol, any drug, or combination of alcohol and any drug under Section  
438 41-6-44, or while having any measurable controlled substance or metabolite of a controlled  
439 substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are  
440 administered at the direction of a peace officer having grounds to believe that person to have been  
441 operating or in actual physical control of a motor vehicle while having a blood or breath alcohol  
442 content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the  
443 influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or  
444 while having any measurable controlled substance or metabolite of a controlled substance in the  
445 person's body in violation of Section 41-6-44.6.

446 (b) (i) The peace officer determines which of the tests are administered and how many of  
447 them are administered.

448 (ii) If an officer requests more than one test, refusal by a person to take one or more  
449 requested tests, even though he does submit to any other requested test or tests, is a refusal under  
450 this section.

451 (c) (i) A person who has been requested under this section to submit to a chemical test or  
452 tests of his breath, blood, or urine, may not select the test or tests to be administered.

453 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is  
454 not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal,  
455 civil, or administrative proceeding resulting from a person's refusal to submit to the requested test  
456 or tests.

457 (2) (a) If the person has been placed under arrest, has then been requested by a peace  
458 officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to  
459 submit to any chemical test requested, the person shall be warned by the peace officer requesting

460 the test or tests that a refusal to submit to the test or tests can result in revocation of the person's  
461 license to operate a motor vehicle.

462 (b) Following the warning under Subsection (2)(a), if the person does not immediately  
463 request that the chemical test or tests as offered by a peace officer be administered a peace officer  
464 shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver  
465 License Division's intention to revoke the person's privilege or license to operate a motor vehicle.

466 When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

467 (i) take the Utah license certificate or permit, if any, of the operator;

468 (ii) issue a temporary license effective for only 29 days; and

469 (iii) supply to the operator, on a form approved by the Driver License Division, basic  
470 information regarding how to obtain a hearing before the Driver License Division.

471 (c) A citation issued by a peace officer may, if approved as to form by the Driver License  
472 Division, serve also as the temporary license.

473 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten  
474 calendar days after the date of the arrest, that he had grounds to believe the arrested person had  
475 been operating or was in actual physical control of a motor vehicle while having a blood or breath  
476 alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under  
477 the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44,  
478 or while having any measurable controlled substance or metabolite of a controlled substance in the  
479 person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a  
480 chemical test or tests under Subsection (1).

481 (e) (i) A person who has been notified of the Driver License Division's intention to revoke  
482 his license under this section is entitled to a hearing.

483 (ii) A request for the hearing shall be made in writing within ten calendar days after the  
484 date of the arrest.

485 (iii) Upon written request, the division shall grant to the person an opportunity to be heard  
486 within 29 days after the date of arrest.

487 (iv) If the person does not make a timely written request for a hearing before the division,  
488 his privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the  
489 date of arrest for a period of:

490 (A) one year unless Subsection (2)(e)(iv)(B) applies; or



491 (B) 18 months if the person has had a previous license sanction after July 1, 1993, under  
492 this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993,  
493 under Section 41-6-44.

494 (f) If a hearing is requested by the person, the hearing shall be conducted by the Driver  
495 License Division in the county in which the offense occurred, unless the division and the person  
496 both agree that the hearing may be held in some other county.

497 (g) The hearing shall be documented and shall cover the issues of:

498 (i) whether a peace officer had reasonable grounds to believe that a person was operating  
499 a motor vehicle in violation of Section 41-6-44, 41-6-44.6, or 53-3-231; and

500 (ii) whether the person refused to submit to the test.

501 (h) (i) In connection with the hearing, the division or its authorized agent:

502 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the  
503 production of relevant books and papers; and

504 (B) shall issue subpoenas for the attendance of necessary peace officers.

505 (ii) The division shall pay witness fees and mileage from the Transportation Fund in  
506 accordance with the rates established in Section 21-5-4.

507 (i) If after a hearing, the Driver License Division determines that the person was requested  
508 to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails  
509 to appear before the Driver License Division as required in the notice, the Driver License Division  
510 shall revoke his license or permit to operate a motor vehicle in Utah beginning on the date the  
511 hearing is held for a period of:

512 (i) (A) one year unless Subsection (2)(i)(i)(B) applies; or

513 (B) 18 months if the person has had a previous license sanction after July 1, 1993, under  
514 this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993,  
515 under Section 41-6-44.

516 (ii) The Driver License Division shall also assess against the person, in addition to any fee  
517 imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before  
518 the person's driving privilege is reinstated, to cover administrative costs.

519 (iii) The fee shall be cancelled if the person obtains an unappealed court decision  
520 following a proceeding allowed under this Subsection (2) that the revocation was improper.

521 (j) (i) Any person whose license has been revoked by the Driver License Division under

522 this section may seek judicial review.

523 (ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the  
524 district court in the county in which the offense occurred.

525 (3) Any person who is dead, unconscious, or in any other condition rendering him  
526 incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the  
527 consent provided for in Subsection (1), and the test or tests may be administered whether the  
528 person has been arrested or not.

529 (4) Upon the request of the person who was tested, the results of the test or tests shall be  
530 made available to him.

531 (5) (a) Only a physician, registered nurse, practical nurse, or person authorized under  
532 Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the  
533 alcoholic or drug content. This limitation does not apply to taking a urine or breath specimen.

534 (b) Any physician, registered nurse, practical nurse, or person authorized under Section  
535 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom  
536 a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical  
537 facility at which the sample is drawn, is immune from any civil or criminal liability arising from  
538 drawing the sample, if the test is administered according to standard medical practice.

539 (6) (a) The person to be tested may, at his own expense, have a physician of his own  
540 choice administer a chemical test in addition to the test or tests administered at the direction of a  
541 peace officer.

542 (b) The failure or inability to obtain the additional test does not affect admissibility of the  
543 results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or  
544 tests to be taken at the direction of a peace officer.

545 (c) The additional test shall be subsequent to the test or tests administered at the direction  
546 of a peace officer.

547 (7) For the purpose of determining whether to submit to a chemical test or tests, the person  
548 to be tested does not have the right to consult an attorney or have an attorney, physician, or other  
549 person present as a condition for the taking of any test.

550 (8) If a person under arrest refuses to submit to a chemical test or tests or any additional  
551 test under this section, evidence of any refusal is admissible in any civil or criminal action or  
552 proceeding arising out of acts alleged to have been committed while the person was operating or

553 in actual physical control of a motor vehicle while under the influence of alcohol, any drug,  
554 combination of alcohol and any drug, or while having any measurable controlled substance or  
555 metabolite of a controlled substance in the person's body.

556 Section 5. Section **41-6-44.30** is amended to read:

557 **41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound**  
558 **requirements -- Removal of vehicle by owner.**

559 (1) (a) If a peace officer arrests or cites the operator of a vehicle for violating Section  
560 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with  
561 Subsection 41-6-43(1), the officer shall seize and impound the vehicle, except as provided under  
562 Subsection (2).

563 (b) A vehicle seized and impounded under this section shall be moved by a peace officer  
564 or by a tow truck that meets the standards established:

565 (i) by the department under Subsection 41-6-102(4)(b); and

566 (ii) under Title 72, Chapter 9, Motor Carrier Safety Act.

567 (2) If a registered owner of the vehicle, other than the operator, is present at the time of  
568 arrest, the officer may release the vehicle to that registered owner, but only if the registered owner:

569 (a) requests to remove the vehicle from the scene;

570 (b) presents to the officer a valid operator's license and sufficient identification to prove  
571 ownership of the vehicle;

572 (c) complies with all restrictions of his operator's license; and

573 (d) would not, in the judgment of the officer, be in violation of Section 41-6-44 or  
574 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection  
575 41-6-43 (1), if permitted to operate the vehicle, and if the vehicle itself is legally operable.

576 (3) (a) The peace officer or agency by whom the officer is employed shall, within 24 hours  
577 after the seizure, notify, in writing, the Motor Vehicle Division of the seizure and impoundment.

578 (b) The notice shall state:

579 (i) the operator's name;

580 (ii) a description of the vehicle;

581 (iii) its identification number, if any;

582 (iv) its license number;

583 (v) the date, time, and place of impoundment;

584 (vi) the reason for impoundment; and

585 (vii) the name of the garage or place where the vehicle is stored.

586 (4) Upon receipt of notice, the Motor Vehicle Division shall give notice to the registered  
587 owner of the vehicle in the manner prescribed by Section 41-1a-114. The notice shall:

588 (a) state the date, time, and place of impoundment, the name of the person operating the  
589 vehicle at the time of seizure, if applicable, the reason for seizure and impoundment, and the name  
590 of the garage or place where the vehicle is stored;

591 (b) state that the registered owner is responsible for payment of towing, impound, and  
592 storage fees charged against the vehicle; and

593 (c) inform the registered owner of the vehicle of the conditions under Subsection (5) that  
594 must be satisfied before the vehicle is released.

595 (5) (a) The impounded vehicle shall be released after the registered owner or the owner's  
596 agent:

597 (i) makes a claim in person for release of the vehicle at any office of the State Tax  
598 Commission;

599 (ii) pays an administrative impound fee of [~~\$100~~] \$200;

600 (iii) presents identification sufficient to prove ownership of the impounded vehicle; and

601 (iv) pays all towing and storage fees to the impound lot where the vehicle is stored.

602 (b) (i) Twenty-five dollars of the impound fees assessed under this Subsection (5) are  
603 dedicated credits to the Motor Vehicle Division [~~and~~];

604 (ii) \$100 of the impound fees assessed under this Subsection (5) shall be deposited in the  
605 Department of Public Safety Restricted Account created in Section 53-3-106; and

606 (iii) the remainder shall be deposited in the General Fund.

607 (6) An impounded vehicle not claimed by the registered owner or the owner's agent within  
608 the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the  
609 proceeds, if any, disposed of under Section 41-1a-1103. The date of impoundment is considered  
610 the date of seizure for computing the time period provided in Section 41-1a-1103.

611 (7) The registered owner of the vehicle upon the payment of all fees and charges incurred  
612 in the seizure and impoundment of the owner's vehicle has a cause of action for all the fees and  
613 charges, together with damages, court costs, and attorney fees, against the operator of the vehicle  
614 whose actions caused the impoundment.

615 (8) Liability may not be imposed upon any peace officer, the state, or any of its political  
616 subdivisions on account of the enforcement of this section.

617 Section 6. Section **53-1-117** is amended to read:

618 **53-1-117. Alcohol or drug enforcement funding -- Rulemaking -- Legislative**  
619 **findings.**

620 (1) From monies appropriated by the Legislature and any other funds made available for  
621 the purposes described under this section, the department shall assist the law enforcement agencies  
622 of the state and its political subdivisions in the enforcement of alcohol or drug-related offenses.

623 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
624 commissioner shall make rules establishing criteria and procedures for granting monies ~~[and]~~  
625 under this section to law enforcement agencies for:

626 (a) providing equipment, including drug and alcohol testing equipment~~[-, to law~~  
627 ~~enforcement agencies under this section based on criteria established in the rules.];~~

628 (b) funding the **h TRAINING AND** h overtime of peace officers; and

629 (c) h ~~[-disposal of]~~ **MANAGING** h driving under the influence related abandoned vehicles.

630 (3) The Legislature finds that these monies are for a general and statewide public purpose.

631 Section 7. Section **53-3-106** is amended to read:

632 **53-3-106. Disposition of revenues under this chapter -- Restricted account created**  
633 **-- Uses as provided by appropriation -- Nonlapsing.**

634 (1) There is created within the Transportation Fund a restricted account known as the  
635 "Department of Public Safety Restricted Account."

636 (2) The account consists of monies generated from the following revenue sources:

637 (a) all monies received under this chapter;

638 (b) administrative fees received according to the fee schedule authorized under this chapter  
639 and Section 63-38-3.2; and

640 (c) any appropriations made to the account by the Legislature.

641 (3) (a) The account shall earn interest.

642 (b) All interest earned on account monies shall be deposited in the account.

643 (4) The expenses of the department in carrying out this chapter shall be provided for by  
644 legislative appropriation from this account.

645 (5) The amount in excess of \$35 of the fees collected under Subsection 53-3-105(29) shall

646 be appropriated by the Legislature from this account to the department to implement the provisions  
647 of Section 53-1-117, except that of the amount in excess of \$35, \$30 shall be deposited in the State  
648 Laboratory Drug Testing restricted account created in Section 26-1-34.

649 (6) All monies received under Section 41-6-44.30 shall be appropriated by the Legislature  
650 from this account to the department to implement the provisions of Section 53-3-117.

651 [~~6~~] (7) Appropriations to the department from the account are nonlapsing.

652 Section 8. Section **53-3-223** is amended to read:

653 **53-3-223. Chemical test for driving under the influence -- Temporary license --**  
654 **Hearing and decision -- Suspension and fee -- Judicial review.**

655 (1) (a) If a peace officer has reasonable grounds to believe that a person may be violating  
656 or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or  
657 breath alcohol concentration and driving under the influence of any drug, alcohol, or combination  
658 of a drug and alcohol or while having any measurable controlled substance or metabolite of a  
659 controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may,  
660 in connection with arresting the person, request that the person submit to a chemical test or tests  
661 to be administered in compliance with the standards under Section 41-6-44.10.

662 (b) In this section, a reference to Section 41-6-44 includes any similar local ordinance  
663 adopted in compliance with Subsection 41-6-43(1).

664 (2) The peace officer shall advise a person prior to the person's submission to a chemical  
665 test that a test result indicating a violation of Section 41-6-44 or 41-6-44.6 shall, and the existence  
666 of a blood alcohol content sufficient to render the person incapable of safely driving a motor  
667 vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

668 (3) If the person submits to a chemical test and the test results indicate a blood or breath  
669 alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if the officer makes a  
670 determination, based on reasonable grounds, that the person is otherwise in violation of Section  
671 41-6-44, the officer directing administration of the test or making the determination shall serve on  
672 the person, on behalf of the division, immediate notice of the division's intention to suspend the  
673 person's license to drive a motor vehicle.

674 (4) (a) When the officer serves immediate notice on behalf of the division he shall:

675 (i) take the Utah license certificate or permit, if any, of the driver;

676 (ii) issue a temporary license certificate effective for only 29 days; and

677 (iii) supply to the driver, on a form to be approved by the division, basic information  
678 regarding how to obtain a prompt hearing before the division.

679 (b) A citation issued by the officer may, if approved as to form by the division, serve also  
680 as the temporary license certificate.

681 (5) As a matter of procedure, the peace officer serving the notice shall send to the division  
682 within ten calendar days after the date of arrest and service of the notice:

683 (a) the person's license certificate;

684 (b) a copy of the citation issued for the offense;

685 (c) a signed report on a form approved by the division indicating the chemical test results,  
686 if any; and

687 (d) any other basis for the officer's determination that the person has violated Section  
688 41-6-44 or 41-6-44.6.

689 (6) (a) Upon written request, the division shall grant to the person an opportunity to be  
690 heard within 29 days after the date of arrest. The request to be heard shall be made within ten  
691 calendar days of the date of the arrest.

692 (b) A hearing, if held, shall be before the division in the county in which the arrest  
693 occurred, unless the division and the person agree that the hearing may be held in some other  
694 county.

695 (c) The hearing shall be documented and shall cover the issues of:

696 (i) whether a peace officer had reasonable grounds to believe the person was driving a  
697 motor vehicle in violation of Section 41-6-44 or 41-6-44.6;

698 (ii) whether the person refused to submit to the test; and

699 (iii) the test results, if any.

700 (d) (i) In connection with a hearing the division or its authorized agent:

701 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the  
702 production of relevant books and papers; or

703 (B) may issue subpoenas for the attendance of necessary peace officers.

704 (ii) The division shall pay witness fees and mileage from the Transportation Fund in  
705 accordance with the rates established in Section 21-5-4.

706 (e) The division may designate one or more employees to conduct the hearing.

707 (f) Any decision made after a hearing before any designated employee is as valid as if

708 made by the division.

709 (g) After the hearing, the division shall order whether the person's license to drive a motor  
710 vehicle is suspended or not.

711 (h) If the person for whom the hearing is held fails to appear before the division as  
712 required in the notice, the division shall order whether the person's license to drive a motor vehicle  
713 is suspended or not.

714 (7) (a) A first suspension, whether ordered or not challenged under this Subsection (7), is  
715 for a period of 90 days, beginning on the 30th day after the date of the arrest.

716 (b) A second or subsequent suspension under this subsection is for a period of one year,  
717 beginning on the 30th day after the date of arrest.

718 (8) (a) The division shall assess against a person, in addition to any fee imposed under  
719 Subsection 53-3-205(14) for driving under the influence, a fee under Section 53-3-105 to cover  
720 administrative costs, which shall be paid before the person's driving privilege is reinstated. This  
721 fee shall be cancelled if the person obtains an unappealed division hearing or court decision that  
722 the suspension was not proper.

723 (b) A person whose license has been suspended by the division under this subsection may  
724 file a petition within 30 days after the suspension for a hearing on the matter which, if held, is  
725 governed by Section 53-3-224.

726 Section 9. Section **53-3-231** is amended to read:

727 **53-3-231. Person under 21 may not operate vehicle with detectable alcohol in body**  
728 **-- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of**  
729 **license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse**  
730 **authority or program.**

731 (1) (a) As used in this section:

732 (i) "Local substance abuse authority" has the same meaning as provided in Section  
733 62A-8-101.

734 (ii) "Substance abuse program" means any substance abuse program licensed by the  
735 Department of Human Services or the Department of Health and approved by the local substance  
736 abuse authority.

737 (b) Calculations of blood, breath, or urine alcohol concentration under this section shall  
738 be made in accordance with the procedures in Subsection 41-6-44(2).



739 (2) (a) A person younger than 21 years of age may not operate or be in actual physical  
740 control of a vehicle with any measurable blood, breath, or urine alcohol concentration in his body  
741 as shown by a chemical test.

742 (b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition  
743 to any other applicable penalties arising out of the incident, shall have his operator license denied  
744 or suspended as provided in Subsection (2)(b)(ii).

745 (ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the  
746 Department of Public Safety shall deny the person's operator license if ordered or not challenged  
747 under this section for a period of 90 days beginning on the 30th day after the date of the arrest  
748 under Section 32A-12-209.

749 (B) For a second or subsequent offense under Subsection (2)(a), within three years of a  
750 prior denial or suspension, the Driver License Division shall suspend the person's operator license  
751 for a period of one year beginning on the 30th day after the date of arrest.

752 (c) (i) A person who has not been issued an operator license who violates Subsection  
753 (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided  
754 in Subsection (2)(c)(ii).

755 (ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle  
756 and the Driver License Division may not issue the person an operator license or learner's permit.

757 (3) (a) When a peace officer has reasonable grounds to believe that a person may be  
758 violating or has violated Subsection (2), the peace officer may, in connection with arresting the  
759 person for a violation of Section 32A-12-209, request that the person submit to a chemical test or  
760 tests to be administered in compliance with the standards under Section 41-6-44.10.

761 (b) The peace officer shall advise a person prior to the person's submission to a chemical  
762 test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension  
763 of the person's license to operate a motor vehicle or a refusal to issue a license.

764 (c) If the person submits to a chemical test and the test results indicate a blood, breath, or  
765 urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination,  
766 based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the  
767 officer directing administration of the test or making the determination shall serve on the person,  
768 on behalf of the Driver License Division, immediate notice of the Driver License Division's  
769 intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license

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771 (4) When the officer serves immediate notice on behalf of the Driver License Division,  
he shall:

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774 (b) issue a temporary license certificate effective for only 29 days if the driver had a valid  
operator's license; and

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777 information regarding how to obtain a prompt hearing before the Driver License Division.

(5) A citation issued by the officer may, if approved as to form by the Driver License

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780 (6) As a matter of procedure, the peace officer serving the notice shall send to the Driver  
License Division within ten calendar

782 (a) the person's driver license certificate, if any;

(b) a copy of the citation issued for the offense;

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785 chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection

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788 (7) (a) (i) Upon written request, the Driver License Division shall grant to the person an  
opportunity to be heard within 29 days after the date of arrest under Section 32A-12-209.

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calendar days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which

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793 be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

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796 motor vehicle in violation of Subsection (2)(a);

(ii) whether the person refused to submit to the test; and

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799 (d) In connection with a hearing the Driver License Division or its authorized agent may  
administer oaths and may issue subpoenas for the attendance of witnesses and the production of

801 relevant books and papers.

802 (e) One or more members of the Driver License Division may conduct the hearing.

803 (f) Any decision made after a hearing before any number of the members of the Driver  
804 License Division is as valid as if made after a hearing before the full membership of the Driver  
805 License Division.

806 (g) After the hearing, the Driver License Division shall order whether the person:

807 (i) with a valid license to operate a motor vehicle will have his license denied or not or  
808 suspended or not; or

809 (ii) without a valid operator license will be refused a license under Subsection (2)(c).

810 (h) If the person for whom the hearing is held fails to appear before the Driver License  
811 Division as required in the notice, the division shall order whether the person shall have his license  
812 denied, suspended, or not denied or suspended, or whether an operator license will be refused or  
813 not refused.

814 (8) (a) Following denial or suspension the Driver License Division shall assess against a  
815 person, in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section  
816 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover  
817 administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License  
818 Division hearing or court decision that the suspension was not proper.

819 (b) A person whose operator license has been denied, suspended, or postponed by the  
820 Driver License Division under this section may file a petition within 30 days after the suspension  
821 for a hearing on the matter which, if held, is governed by Section 53-3-224.

822 (9) After reinstatement of an operator license for a first offense under this section, a report  
823 authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the  
824 person's operator license under this section if he has not been convicted of any other offense for  
825 which the denial or suspension may be extended.

826 (10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection  
827 (2)(a) shall:

828 (i) obtain an assessment and recommendation for appropriate action from a substance  
829 abuse program, but any associated costs shall be the person's responsibility; or

830 (ii) be referred by the Driver License Division to the local substance abuse authority for  
831 an assessment and recommendation for appropriate action.

832 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator  
833 license is contingent upon successful completion of the action recommended by the local substance  
834 abuse authority or the substance abuse program.

835 (ii) The local substance abuse authority's or the substance abuse program's recommended  
836 action shall be determined by an assessment of the person's alcohol abuse and may include:

837 (A) a targeted education and prevention program;

838 (B) an early intervention program; or

839 (C) a substance abuse treatment program.

840 (iii) Successful completion of the recommended action shall be determined by standards  
841 established by the Division of Substance Abuse.

842 (c) At the conclusion of the penalty period imposed under Subsection (2), the local  
843 substance abuse authority or the substance abuse program shall notify the Driver License Division  
844 of the person's status regarding completion of the recommended action.

845 (d) The local substance abuse authorities and the substance abuse programs shall cooperate  
846 with the Driver License Division in:

847 (i) conducting the assessments;

848 (ii) making appropriate recommendations for action; and

849 (iii) notifying the Driver License Division about the person's status regarding completion  
850 of the recommended action.

851 (e) (i) The local substance abuse authority is responsible for the cost of the assessment of  
852 the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.

853 (ii) The local substance abuse authority or a substance abuse program selected by a person  
854 is responsible for:

855 (A) conducting an assessment of the person's alcohol abuse; and

856 (B) for making a referral to an appropriate program on the basis of the findings of the  
857 assessment.

858 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees  
859 associated with the recommended program to which the person selected or is referred.

860 (B) The costs and fees under Subsection (10)(e)(iii)(A) shall be based on a sliding scale  
861 consistent with the local substance abuse authority's policies and practices regarding fees for  
862 services or determined by the substance abuse program.

863 Section 10. Section **53-3-233** is enacted to read:

864 **53-3-233. Coded licenses.**

865 (1) As used in this section:

866 (a) "Qualifying conviction" has the same meaning provided in Section 53-3-232.

867 (b) "Qualifying conviction coded license" means a driver license with information coded  
868 on the driver license indicating the person has a qualifying conviction.

869 (2) (a) The division may not issue, reinstate, or renew the driver license of a person who  
870 has a qualifying conviction within the previous six years unless the person's driver license is a  
871 qualifying conviction coded license.

872 (b) (i) If the division receives a notice of a qualifying conviction for a person with a valid  
873 driver license, that does not require a driver license withdrawal, the division shall notify the person  
874 that he has ten calendar days to apply to the division for a qualifying conviction coded license.

875 (ii) If the person fails to apply within ten days, the division shall suspend the person's  
876 driver license. The suspension shall remain effective until the person applies to the division for  
877 a qualifying conviction coded license.

878 Section 11. Section **53-3-418** is amended to read:

879 **53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.**

880 (1) A person who holds or is required to hold a CDL may not drive a commercial motor  
881 vehicle in this state if the person:

882 (a) has a blood, breath, or urine alcohol concentration of .04 grams or greater as shown by  
883 a chemical test given within two hours after the alleged driving of the commercial motor vehicle;  
884 or

885 (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and  
886 any drug to any degree that renders the person incapable of safely driving a commercial motor  
887 vehicle.

888 (2) A person who holds or is required to hold a CDL and who drives a commercial motor  
889 vehicle in this state is considered to have given his consent to a test or tests of his blood, breath,  
890 or urine to determine the concentration of alcohol or the presence of other drugs in his physical  
891 system.

892 (3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person  
893 may be violating this section, the peace officer or port-of-entry agent may request the person to

894 submit to a chemical test to be administered in compliance with Section 41-6-44.3.

895 (4) When a peace officer or port-of-entry agent requests a person to submit to a test under  
896 this section, he shall advise the person that test results indicating .04 grams or greater alcohol  
897 concentration or refusal to submit to any test requested will result in the person's disqualification  
898 under Section 53-3-414 from driving a commercial motor vehicle.

899 (5) If test results under this section indicate .04 grams or greater of alcohol concentration  
900 or the person refuses to submit to any test requested under this section, the peace officer or  
901 port-of-entry agent shall on behalf of the division serve the person with immediate notice of the  
902 division's intention to disqualify the person's privilege to drive a commercial motor vehicle.

903 (6) When the peace officer or port-of-entry agent serves notice under Subsection (5) he  
904 shall:

- 905 (a) take any Utah license certificate or permit held by the driver;
- 906 (b) issue to the driver a temporary license certificate effective for 29 days;
- 907 (c) provide the driver, on a form approved by the division, basic information regarding  
908 how to obtain a prompt hearing before the division; and
- 909 (d) issue a 24-hour out-of-service order.

910 (7) A notice of disqualification issued under Subsection (6) may serve also as the  
911 temporary license certificate under that subsection, if the form is approved by the division.

912 (8) As a matter of procedure, the peace officer or port-of-entry agent serving the notice of  
913 disqualification shall, within ten calendar days after the date of service, send to the division the  
914 person's license certificate, a copy of the served notice, and a report signed by the peace officer or  
915 port-of-entry agent that indicates the results of any chemical test administered or that the person  
916 refused a test.

917 (9) (a) The person has the right to a hearing regarding the disqualification.

918 (b) The request for the hearing shall be submitted to the division in writing and shall be  
919 made within ten calendar days of the date the notice was issued. If requested, the hearing shall be  
920 conducted within 29 days after the notice was issued.

921 (10) (a) A hearing held under this section shall be held before the division and in the  
922 county where the notice was issued, unless the division agrees to hold the hearing in another  
923 county.

924 (b) The hearing shall be documented and shall determine:

925 (i) whether the peace officer or port-of-entry agent had reasonable grounds to believe the  
926 person had been driving a motor vehicle in violation of this section;

927 (ii) whether the person refused to submit to any requested test; and

928 (iii) any test results obtained.

929 (c) In connection with a hearing the division or its authorized agent may administer oaths  
930 and may issue subpoenas for the attendance of witnesses and the production of relevant books and  
931 documents.

932 (d) One or more members of the division may conduct the hearing.

933 (e) A decision made after a hearing before any number of members of the division is as  
934 valid as if the hearing were held before the full membership of the division.

935 (f) After a hearing under this section the division shall indicate by order if the person's  
936 CDL is disqualified.

937 (g) If the person for whom the hearing is held fails to appear before the division as required  
938 in the notice, the division shall indicate by order if the person's CDL is disqualified.

939 (11) If the division disqualifies a person under this section, the person may petition for a  
940 hearing under Section 53-3-224. The petition shall be filed within 30 days after the division issues  
941 the disqualification.

942 (12) (a) A person who violates this section shall be punished in accordance with Section  
943 53-3-414.

944 (b) In accordance with Section 53-3-414, the first disqualification under this section shall  
945 be for one year, and a second disqualification shall be for life.

946 (13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a  
947 CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving  
948 privilege is reinstated.

949 (b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed  
950 hearing at the division or court level determines the disqualification was not proper.

951 Section 12. Section **62A-8-103.5** is amended to read:

952 **62A-8-103.5. Alcohol training and education seminar.**

953 (1) Each new and renewing licensee under Title 32A who sells or furnishes alcoholic  
954 beverages to the public within the scope of his employment, and each employee of every other  
955 establishment who, within the scope of his employment, serves alcoholic beverages to the public

956 for consumption on the premises shall:

957 (a) complete an alcohol training and education seminar within [~~six months~~] <sup>h</sup> [~~one month~~]

957a **TWO MONTHS** <sup>h</sup> of

958 beginning employment; and

959 (b) pay a fee to the seminar provider.

960 (2) The division shall:

961 (a) provide alcohol training and education seminars;

962 (b) include the following subjects in the curriculum and instruction:

963 (i) alcohol as a drug and its effect on the body and behavior;

964 (ii) recognizing the problem drinker;

965 (iii) an overview of state alcohol laws;

966 (iv) dealing with the problem customer, including ways to terminate service; and

967 (v) alternative means of transportation to get the customer safely home; and

968 (c) establish a fee for each person attending the seminar in an amount sufficient to offset

969 the division's cost of administering the seminar.

970 (3) The seminar provider shall collect the fee and forward it to the division.

971 Section 13. Section **62A-8-107** is amended to read:

972 **62A-8-107. Authority and responsibilities of board.**

973 The board is the policymaking body for the division and for programs funded with state  
974 and federal moneys under Sections 17A-3-701 and 62A-8-110.5. The board has the following  
975 duties and responsibilities:

976 (1) in establishing policy, the board shall seek input from local substance abuse authorities,  
977 consumers, providers, advocates, division staff, and other interested parties as determined by the  
978 board;

979 (2) to establish, by rule, minimum standards for local substance abuse authorities;

980 (3) to establish, by rule, procedures for developing its policies which ensure that local

981 substance abuse authorities are given opportunity to comment and provide input on any new policy  
982 of the board or proposed changes in existing policy of the board;

983 (4) the board shall also provide a mechanism for review of its existing policy, and for  
984 consideration of policy changes that are proposed by local substance abuse authorities; [~~and~~]

985 (5) to develop program policies, standards, rules, and fee schedules for the division[~~;~~]; and

986 (6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make



987 rules approving the form and content of substance abuse treatment, educational series, and  
988 screening and assessment that are described in Section 41-6-44.