DRIVING UNDER THE INFLUENCE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Nora B. Stephens

DeMar Bud Bowman Duane E. Bourdeaux Perry L. Buckner
Susan J. Koehn Jack A. Seitz Trisha S. Beck
Carl R. Saunders

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

ENACTS:

53-3-233, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

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

(i) this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) order the person to participate in an educational series if the court does not order

substance abuse treatment as described under Subsection (5)(d); and

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

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

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

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

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

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

(ii) a mandatory jail sentence of not less than [~~1,000~~] 1,500 hours[~~; and~~].

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

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

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

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

[~~(i) all required alcohol or drug dependency assessment, education, treatment, and~~

~~rehabilitation ordered for a violation committed after July 1, 1993, have been completed;~~]

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

[~~(iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.~~]

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

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

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

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

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

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

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

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

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

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

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

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

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

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

(12) (a) In addition to any other penalties provided in this section, a court may order the

operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

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

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

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

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

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

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

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

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

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

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

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

(e) The electronic monitoring described in this section may either be administered directly

by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

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

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

(i) the court shall specify the period of the probation;

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

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

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

(c) The probation provider described in Subsection (b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

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

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

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

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

(1) As used in this section:

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

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

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

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

(2) In cases not amounting to a violation of Section 41-6-44, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable

controlled substance or metabolite of a controlled substance in the person's body.

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

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

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

(6) The Driver License Division shall:

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

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

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

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

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

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

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

(1) As used in this section:

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

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

(c) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation or as otherwise ordered by the court who contracts with the court in accordance with Subsections 41-6-44(14)(b) and (c).

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

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

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

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

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

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

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

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

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

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

(4) (a) [~~If the~~] The probationer [~~fails to~~] shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with[~~,~~] to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was imposed.

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

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

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

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

(6) (a) Any probationer required to install an ignition interlock system shall have the system monitored by the manufacturer or dealer of the system for proper use and accuracy at least

semiannually and more frequently as the court may order.

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

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

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

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

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

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

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

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

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

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

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

(9) (a) If a probationer is required in the course and scope of employment to operate a motor vehicle owned by the probationer's employer, the probationer may operate that motor vehicle in the course and scope of employment without installation of an ignition interlock system only if the employer has been notified that the employee is restricted and the employee has proof of the notification in his possession while operating the employer's motor vehicle.

(b) (i) To the extent that an employer-owned motor vehicle is made available to a probationer

subject to this section for personal use, no exemption under this section shall apply.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The standards shall require that the system:

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

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

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

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

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

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

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

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

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

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

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

(13) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance,

or supervision of an interlock ignition system as required under this section.

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

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

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

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

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

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

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

(2) (a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) (i) Any person whose license has been revoked by the Driver License Division under this section may seek judicial review.

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

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

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

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

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

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

officer.

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

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

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

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any drug, combination of alcohol and any drug, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The notice shall state:

(i) the operator's name;

(ii) a description of the vehicle;

(iii) its identification number, if any;

(iv) its license number;

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

(vi) the reason for impoundment; and

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

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

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

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

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

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

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

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

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

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

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

(ii) $84 of the impound fees assessed under this Subsection (5) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and

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

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

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

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

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

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

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

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

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

(b) funding the training and overtime of peace officers; and

(c) managing driving under the influence related abandoned vehicles.

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

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

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

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

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

(a) all monies received under this chapter;

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

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

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

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

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

(5) The amount in excess of $35 of the fees collected under Subsection 53-3-105(29) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117, except that of the amount in excess of $35, $30 shall be deposited in the State Laboratory Drug Testing restricted account created in Section 26-1-34.

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

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

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

53-3-223. Chemical test for driving under the influence -- Temporary license –

Hearing and decision -- Suspension and fee -- Judicial review.

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

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

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

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

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

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

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

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

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

(5) As a matter of procedure, the peace officer serving the notice shall send to the division

within ten calendar days after the date of arrest and service of the notice:

(a) the person's license certificate;

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

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

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

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

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

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

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

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

(iii) the test results, if any.

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

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

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

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

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

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the officer

directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection (2).

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

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

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

(c) supply to the operator, on a form to be approved by the Driver License Division, basic 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 Division, serve also as the temporary license certificate under Subsection (4)(b).

(6) As a matter of procedure, the peace officer serving the notice shall send to the Driver License Division within ten calendar days after the date of arrest and service of the notice:

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

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

(c) a signed report on a form approved by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection (2).

(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.

(ii) The request shall be made within ten 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 the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

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

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of Subsection (2)(a);

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

(iii) the test results, if any.

(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 relevant books and papers.

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

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

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

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

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

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

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

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

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

which the denial or suspension may be extended.

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

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

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

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

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

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

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

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

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

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

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

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

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

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

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

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

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

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

53-3-233. Coded licenses.

(1) As used in this section:

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

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

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

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

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

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

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

(1) A person who holds or is required to hold a CDL may not drive a commercial motor

vehicle in this state if the person:

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

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

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

(3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6-44.3.

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

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

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

(a) take any Utah license certificate or permit held by the driver;

(b) issue to the driver a temporary license certificate effective for 29 days;

(c) provide the driver, on a form approved by the division, basic information regarding how to obtain a prompt hearing before the division; and

(d) issue a 24-hour out-of-service order.

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

(8) As a matter of procedure, the peace officer or port-of-entry agent serving the notice of

disqualification shall, within ten calendar days after the date of service, send to the division the person's license certificate, a copy of the served notice, and a report signed by the peace officer or port-of-entry agent that indicates the results of any chemical test administered or that the person refused a test.

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

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

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

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

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

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

(iii) any test results obtained.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Each new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment, and each employee of every other establishment who, within the scope of his employment, serves alcoholic beverages to the public for consumption on the premises shall:

(a) complete an alcohol training and education seminar within [~~six months~~] 30 days of beginning employment; and

(b) pay a fee to the seminar provider.

(2) The division shall:

(a) provide alcohol training and education seminars;

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

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

(ii) recognizing the problem drinker;

(iii) an overview of state alcohol laws;

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

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

(c) establish a fee for each person attending the seminar in an amount sufficient to offset the division's cost of administering the seminar.

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

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

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

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

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

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

(3) to establish, by rule, procedures for developing its policies which ensure that local substance abuse authorities are given opportunity to comment and provide input on any new policy of the board or proposed changes in existing policy of the board;

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

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

(6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, and screening and assessment that are described in Section 41-6-44.