

1 **DRIVING UNDER THE INFLUENCE**

2 **AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Nora B. Stephens**

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

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

13 AMENDS:

14 **41-6-44**, as last amended by Chapters 33, 226 and 258, Laws of Utah 1999

15 **41-6-44.6**, as last amended by Chapter 226, Laws of Utah 1999

16 **41-6-44.7**, as enacted by Chapter 174, Laws of Utah 1994

17 **41-6-44.10**, as last amended by Chapter 226, Laws of Utah 1999

18 **41-6-44.30**, as last amended by Chapters 125 and 270, Laws of Utah 1998

19 **53-1-117**, as last amended by Chapter 247, Laws of Utah 1998

20 **53-3-106**, as last amended by Chapter 247, Laws of Utah 1998

21 **53-3-223**, as last amended by Chapter 226, Laws of Utah 1999

22 **53-3-231**, as last amended by Chapter 226, Laws of Utah 1999

23 **53-3-418**, as last amended by Chapter 226, Laws of Utah 1999

24 **62A-8-103.5**, as enacted by Chapter 276, Laws of Utah 1997

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

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

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

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

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

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

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

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

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

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

121 (ii) A prison sentence under this Subsection (6)(a) shall be imposed for not less than ten
122 days.

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

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

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

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

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

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

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

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

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

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

151 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to

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

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

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

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

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

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

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

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

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

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

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

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

195 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
196 (12).

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

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

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

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

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

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

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

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

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

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

219 (d) The court may:

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

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

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

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

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

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

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

235 **41-6-44.6. Definitions -- Driving with any measurable controlled substance in the**
236 **body -- Penalties -- Arrest without warrant.**

237 (1) As used in this section:

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

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

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

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

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

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

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

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

253 (6) The Driver License Division shall:

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

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

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

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

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

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

270 **41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost --**

271 **Impecuniosity -- Fee.**

272 (1) As used in this section:

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

274 (b) "Ignition interlock system" or "system" means a constant monitoring device or any
275 similar device certified by the commissioner that prevents a motor vehicle from being started

276 without first determining the driver's breath alcohol concentration.

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

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

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

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

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

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

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

298 (d) immediately notify the Driver License Division of the order; and

299 (e) require the probationer to provide proof of compliance with the court's order to the
300 probation officer within 30 days of the order.

301 (4) (a) If the probationer fails to provide timely proof of installation within 30 days of an
302 order imposing the use of a system or show cause why the order was not complied with, the court
303 shall order the Driver License Division to suspend the probationer's driving privileges for the
304 remaining period during which the compliance was imposed.

305 (b) Cause for failure to comply means any reason the court finds sufficiently justifiable to
306 excuse the probationer's failure to comply with the court's order.

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

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

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

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

321 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court.

322 (ii) If the system is required as a condition of probation, the report shall be issued within
323 14 days following each monitoring.

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

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

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

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

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

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

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

337 (b) The fee shall be deposited with the department as a dedicated credit for the support

338 costs incurred for indigent individuals under Subsection (7)(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

408 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests**
409 **-- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable**
410 **of refusal -- Results of test available -- Who may give test -- Evidence.**

411 (1) (a) A person operating a motor vehicle in this state is considered to have given his
412 consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining
413 whether he was operating or in actual physical control of a motor vehicle while having a blood or
414 breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, while
415 under the influence of alcohol, any drug, or combination of alcohol and any drug under Section
416 41-6-44, or while having any measurable controlled substance or metabolite of a controlled
417 substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are
418 administered at the direction of a peace officer having grounds to believe that person to have been
419 operating or in actual physical control of a motor vehicle while having a blood or breath alcohol
420 content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the
421 influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or
422 while having any measurable controlled substance or metabolite of a controlled substance in the
423 person's body in violation of Section 41-6-44.6.

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

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

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

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

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

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

445 (i) take the Utah license certificate or permit, if any, of the operator;
446 (ii) issue a temporary license effective for only 29 days; and
447 (iii) supply to the operator, on a form approved by the Driver License Division, basic
448 information regarding how to obtain a hearing before the Driver License Division.

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

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

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

461 (ii) A request for the hearing shall be made in writing within ten calendar days after the

462 date of the arrest.

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

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

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

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

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

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

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

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

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

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

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

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

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

490 (i) (A) one year unless Subsection (2)(i)(i)(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 (ii) The Driver License Division shall also assess against the person, in addition to any fee
495 imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before
496 the person's driving privilege is reinstated, to cover administrative costs.

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

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

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

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

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

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

512 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
513 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom
514 a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical
515 facility at which the sample is drawn, is immune from any civil or criminal liability arising from
516 drawing the sample, if the test is administered according to standard medical practice.

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

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

523 (c) The additional test shall be subsequent to the test or tests administered at the direction

524 of a peace officer.

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

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

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

535 **41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound**
536 **requirements -- Removal of vehicle by owner.**

537 (1) (a) If a peace officer arrests or cites the operator of a vehicle for violating Section
538 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with
539 Subsection 41-6-43(1), the officer shall seize and impound the vehicle, except as provided under
540 Subsection (2).

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

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

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

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

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

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

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

551 (d) would not, in the judgment of the officer, be in violation of Section 41-6-44 or
552 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection
553 41-6-43 (1), if permitted to operate the vehicle, and if the vehicle itself is legally operable.

554 (3) (a) The peace officer or agency by whom the officer is employed shall, within 24 hours

555 after the seizure, notify, in writing, the Motor Vehicle Division of the seizure and impoundment.

556 (b) The notice shall state:

557 (i) the operator's name;

558 (ii) a description of the vehicle;

559 (iii) its identification number, if any;

560 (iv) its license number;

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

562 (vi) the reason for impoundment; and

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

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

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

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

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

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

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

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

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

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

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

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

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

585 (6) An impounded vehicle not claimed by the registered owner or the owner's agent within

586 the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the
587 proceeds, if any, disposed of under Section 41-1a-1103. The date of impoundment is considered
588 the date of seizure for computing the time period provided in Section 41-1a-1103.

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

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

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

596 **53-1-117. Alcohol or drug enforcement funding -- Rulemaking -- Legislative**
597 **findings.**

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

601 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
602 commissioner shall make rules establishing criteria and procedures for granting monies and
603 providing equipment, including drug and alcohol testing equipment[,]
604 and for funding the overtime of peace officers to law enforcement agencies under this section [~~based on criteria established in~~
605 ~~the rules~~].

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

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

608 **53-3-106. Disposition of revenues under this chapter -- Restricted account created**
609 **-- Uses as provided by appropriation -- Nonlapsing.**

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

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

613 (a) all monies received under this chapter;

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

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

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

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

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

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

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

627 [~~6~~] (7) Appropriations to the department from the account are nonlapsing.

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

629 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
630 **Hearing and decision -- Suspension and fee -- Judicial review.**

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

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

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

644 (3) If the person submits to a chemical test and the test results indicate a blood or breath
645 alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if the officer makes a
646 determination, based on reasonable grounds, that the person is otherwise in violation of Section
647 41-6-44, the officer directing administration of the test or making the determination shall serve on

648 the person, on behalf of the division, immediate notice of the division's intention to suspend the
649 person's license to drive a motor vehicle.

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

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

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

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

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

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

659 (a) the person's license certificate;

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

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

663 (d) any other basis for the officer's determination that the person has violated Section
664 41-6-44 or 41-6-44.6.

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

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

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

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

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

675 (iii) the test results, if any.

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

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

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

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

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

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

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

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

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

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

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

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

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

703 **53-3-231. Person under 21 may not operate vehicle with detectable alcohol in body**
704 **-- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of**
705 **license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse**
706 **authority or program.**

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

708 (i) "Local substance abuse authority" has the same meaning as provided in Section
709 62A-8-101.

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

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

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

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

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

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

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

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

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

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

740 (c) If the person submits to a chemical test and the test results indicate a blood, breath, or

741 urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination,
742 based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the
743 officer directing administration of the test or making the determination shall serve on the person,
744 on behalf of the Driver License Division, immediate notice of the Driver License Division's
745 intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license
746 under Subsection (2).

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

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

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

752 (c) supply to the operator, on a form to be approved by the Driver License Division, basic
753 information regarding how to obtain a prompt hearing before the Driver License Division.

754 (5) A citation issued by the officer may, if approved as to form by the Driver License
755 Division, serve also as the temporary license certificate under Subsection (4)(b).

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

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

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

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

762 (d) any other basis for the officer's determination that the person has violated Subsection
763 (2).

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

766 (ii) The request shall be made within ten calendar days of the date of the arrest.

767 (b) A hearing, if held, shall be before the Driver License Division in the county in which
768 the arrest occurred, unless the Driver License Division and the person agree that the hearing may
769 be held in some other county.

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

771 (i) whether a peace officer had reasonable grounds to believe the person was operating a

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

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

774 (iii) the test results, if any.

775 (d) In connection with a hearing the Driver License Division or its authorized agent may
776 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
777 relevant books and papers.

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

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

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

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

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

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

790 (8) (a) Following denial or suspension the Driver License Division shall assess against a
791 person, in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section
792 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover
793 administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License
794 Division hearing or court decision that the suspension was not proper.

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

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

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

803 (2)(a) shall:

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

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

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

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

813 (A) a targeted education and prevention program;

814 (B) an early intervention program; or

815 (C) a substance abuse treatment program.

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

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

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

823 (i) conducting the assessments;

824 (ii) making appropriate recommendations for action; and

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

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

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

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

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

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

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

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

840 **53-3-233. Coded licenses.**

841 (1) As used in this section:

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

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

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

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

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

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

855 **53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.**

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

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

860 or

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

864 (2) A person who holds or is required to hold a CDL and who drives a commercial motor

865 vehicle in this state is considered to have given his consent to a test or tests of his blood, breath,
866 or urine to determine the concentration of alcohol or the presence of other drugs in his physical
867 system.

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

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

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

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

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

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

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

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

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

896 conducted within 29 days after the notice was issued.

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

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

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

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

904 (iii) any test results obtained.

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

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

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

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

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

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

918 (12) (a) A person who violates this section shall be punished in accordance with Section
919 53-3-414.

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

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

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

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

928 **62A-8-103.5. Alcohol training and education seminar.**

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

933 (a) complete an alcohol training and education seminar within [~~six months~~] one month of
934 beginning employment; and

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

936 (2) The division shall:

937 (a) provide alcohol training and education seminars;

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

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

940 (ii) recognizing the problem drinker;

941 (iii) an overview of state alcohol laws;

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

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

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

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

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

948 **62A-8-107. Authority and responsibilities of board.**

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

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

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

956 (3) to establish, by rule, procedures for developing its policies which ensure that local
957 substance abuse authorities are given opportunity to comment and provide input on any new policy

958 of the board or proposed changes in existing policy of the board;

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

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

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

Legislative Review Note

as of 1-7-00 7:36 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel