

DRIVER LICENSE RELATED AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Public Safety Code by amending provisions related to driver licensing and the Driver License Division.

Highlighted Provisions:

This bill:

- ▶ clarifies the suspension and revocation periods for denying, suspending, revoking, or disqualifying a driver's driving privileges in certain circumstances;
- ▶ amends notice and hearing requirements for Driver License Division denial, revocation, suspension, or disqualification hearings in certain circumstances;
- ▶ amends abstract requirements for courts to report violations to the Driver License Division;
- ▶ amends the definition of extension for a driver license renewal;
- ▶ provides that a driving record furnished by the Driver License Division may report on the driving record of a person for a period of ten years, instead of six;
- ▶ amends the definition of qualifying conviction for purposes of issuing no alcohol conditional licenses and qualifying conviction coded licenses;
- ▶ provides that the Driver License Division may issue, reinstate, or renew a driver license only in the form of a no alcohol conditional license to a person for a period of ten years, instead of six, following a second or subsequent qualifying driving under the influence conviction; and
- ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **41-6-44**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

35 **41-6-44.10**, as last amended by Chapter 185, Laws of Utah 2002

36 **41-6-173**, as last amended by Chapter 183, Laws of Utah 1983

37 **53-3-102**, as last amended by Chapter 200, Laws of Utah 2002

38 **53-3-109**, as last amended by Chapters 85 and 289, Laws of Utah 2001

39 **53-3-219**, as last amended by Chapter 13, Laws of Utah 1998

40 **53-3-220**, as last amended by Chapter 72, Laws of Utah 2003

41 **53-3-223**, as last amended by Chapter 185, Laws of Utah 2002

42 **53-3-231**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

43 **53-3-232**, as last amended by Chapter 200, Laws of Utah 2002

44 **53-3-233**, as enacted by Chapter 334, Laws of Utah 2000

45 **53-3-418**, as last amended by Chapter 106, Laws of Utah 2002



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

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

49 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both**
50 **or with specified or unsafe blood alcohol concentration -- Measurement of blood or**
51 **breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties --**
52 **Suspension or revocation of license.**

53 (1) As used in this section:

54 (a) "conviction" means any conviction for a violation of:

55 (i) this section;

56 (ii) alcohol, any drug, or a combination of both-related reckless driving under

57 Subsections (9) and (10);

58 (iii) Section 41-6-44.6, driving with any measurable controlled substance that is taken

59 illegally in the body;

60 (iv) local ordinances similar to this section or alcohol, any drug, or a combination of
61 both-related reckless driving adopted in compliance with Section 41-6-43;

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

63 (vi) a violation described in Subsections (1)(a)(i) through (v), which judgment of
64 conviction is reduced under Section 76-3-402; or

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

69 (b) "educational series" means an educational series obtained at a substance abuse
70 program that is approved by the Board of Substance Abuse and Mental Health in accordance
71 with Section 62A-15-105;

72 (c) "screening and assessment" means a substance abuse addiction and dependency
73 screening and assessment obtained at a substance abuse program that is approved by the Board
74 of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

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

78 (e) "substance abuse treatment" means treatment obtained at a substance abuse
79 program that is approved by the Board of Substance Abuse and Mental Health in accordance
80 with Section 62A-15-105;

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

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

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

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

90 (i) has sufficient alcohol in [his] the person's body that a subsequent chemical test
91 shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the
92 time of the test;

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

95 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
96 operation or actual physical control.

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

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

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

104 (i) class B misdemeanor; or

105 (ii) class A misdemeanor if the person:

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

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

109 (C) was 21 years of age or older and had a passenger under 18 years of age in the
110 vehicle at the time of the offense.

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

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

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

118 (i) work in a compensatory-service work program for not less than 48 hours; or

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

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

123 (i) order the person to participate in a screening and assessment;

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

126 (iii) impose a fine of not less than \$700.

127 (d) The court may order the person to obtain substance abuse treatment if the substance
128 abuse treatment program determines that substance abuse treatment is appropriate.

129 (e) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the
130 person in accordance with Subsection (14).

131 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or
132 higher, the court shall order probation for the person in accordance with Subsection (14).

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

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

138 (i) work in a compensatory-service work program for not less than 240 hours; or

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

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

143 (i) order the person to participate in a screening and assessment;

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

146 (iii) impose a fine of not less than \$800.

147 (d) The court may order the person to obtain substance abuse treatment if the substance
148 abuse treatment program determines that substance abuse treatment is appropriate.

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

150 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:

151 (i) a third or subsequent conviction under this section within ten years of two or more

152 prior convictions; or

153 (ii) at any time after a conviction of:

154 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

155 or

156 (B) a felony violation under this section that is committed after July 1, 2001.

157 (b) Any conviction described in this Subsection (6) which judgment of conviction is
158 reduced under Section 76-3-402 is a conviction for purposes of this section.

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

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

162 (ii) a mandatory jail sentence of not less than 1,500 hours.

163 (d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to
164 obtain a screening and assessment and substance abuse treatment at a substance abuse
165 treatment program providing intensive care or inpatient treatment and long-term closely
166 supervised follow-through after treatment for not less than 240 hours.

167 (e) In addition to the penalties required under Subsection (6)(c), if the court orders
168 probation, the probation shall be supervised probation which may include requiring the person
169 to participate in home confinement through the use of electronic monitoring in accordance with
170 Subsection (13).

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

175 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court
176 to order a convicted person to: participate in a screening and assessment; and an educational
177 series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily,
178 substance abuse treatment; or do a combination of those things, apply to a conviction for a
179 violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

180 (ii) The court shall render the same order regarding screening and assessment, an
181 educational series, or substance abuse treatment in connection with a first, second, or
182 subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court

183 would render in connection with applying respectively, the first, second, or subsequent
184 conviction requirements of Subsections (4), (5), and (6).

185 (b) (i) The court shall notify the Driver License Division if a person fails to:

186 [~~(i)~~] (A) complete all court ordered:

187 [~~(A)~~] (I) screening and assessment;

188 [~~(B)~~] (II) educational series;

189 [~~(C)~~] (III) substance abuse treatment; and

190 [~~(D)~~] (IV) hours of work in compensatory-service work program; or

191 [~~(i)~~] (B) pay all fines and fees, including fees for restitution and treatment costs.

192 (ii) Upon receiving the notification described in Subsection (8)(b)(i), the division shall
193 suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

194 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
195 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
196 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this
197 section, the prosecution shall state for the record a factual basis for the plea, including whether
198 or not there had been consumption of alcohol, drugs, or a combination of both, by the
199 defendant in connection with the violation.

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

203 (b) The court shall advise the defendant before accepting the plea offered under this
204 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section
205 41-6-45.

206 (c) The court shall notify the Driver License Division of each conviction of Section
207 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

212 (11) (a) The Driver License Division shall:

213 (i) suspend for 90 days the operator's license of a person convicted for the first time

214 under Subsection (2);

215 (ii) revoke for one year the license of a person convicted of any subsequent offense
216 under Subsection (2) or if the person has a prior conviction as defined under Subsection (1) if
217 the violation is committed within a period of ten years from the date of the prior violation; and

218 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
219 (12).

220 (b) The Driver License Division shall subtract from any suspension or revocation
221 period the number of days for which a license was previously suspended under Section
222 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
223 which the record of conviction is based.

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

228 (ii) The additional suspension or revocation period provided in this Subsection (12)
229 shall begin the date on which the individual would be eligible to reinstate the individual's
230 driving privilege for a violation of Subsection (2).

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

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

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

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

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

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

243 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place
244 an electronic monitoring device on the person and install electronic monitoring equipment in

245 the residence of the person or other specified location.

246 (d) The court may:

247 (i) require the person's electronic home monitoring device to include a substance abuse
248 testing instrument;

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

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

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

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

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

261 (14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e)
262 or (5)(e):

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

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

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

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

268 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
269 compliance with all conditions of the person's sentence, conditions of probation, and court
270 orders received under this article and shall notify the court of any failure to comply with or
271 complete that sentence or those conditions or orders.

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

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

276 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
277 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not
278 order:

279 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d), then the court shall
280 enter the reasons on the record; and

281 (b) the following penalties, the court shall enter the reasons on the record:

282 (i) the installation of an ignition interlock system as a condition of probation for the
283 person in accordance with Section 41-6-44.7; or

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

286 Section 2. Section **41-6-44.10** is amended to read:

287 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of**
288 **tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person**
289 **incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

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

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

306 (ii) If [~~an~~] a peace officer requests more than one test, refusal by a person to take one or

307 more requested tests, even though ~~[he]~~ the person does submit to any other requested test or
308 tests, is a refusal under this section.

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

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

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

321 (b) Following the warning under Subsection (2)(a), if the person does not immediately
322 request that the chemical test or tests as offered by a peace officer be administered, a peace
323 officer shall ~~[serve on the person]~~, on behalf of the Driver License Division~~[, immediate]~~ and
324 within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke
325 the person's privilege or license to operate a motor vehicle. When ~~[the]~~ a peace officer ~~[serves~~
326 ~~the immediate]~~ gives the notice on behalf of the Driver License Division, ~~[he]~~ the peace officer
327 shall:

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

329 (ii) issue a temporary license certificate effective for only 29 days from the date of
330 arrest; and

331 (iii) supply to the operator, ~~[on a form approved]~~ in a manner specified by the Driver
332 License Division, basic information regarding how to obtain a hearing before the Driver
333 License Division.

334 (c) A citation issued by a peace officer may, if ~~[approved as to form]~~ provided in a
335 manner specified by the Driver License Division, ~~[serve]~~ also serve as the temporary license
336 certificate.

337 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten

338 calendar days after the ~~[date of the arrest]~~ day on which notice is provided under Subsection
 339 (2)(b), that ~~he~~ the peace officer had grounds to believe the arrested person had been operating
 340 or was in actual physical control of a motor vehicle while having a blood or breath alcohol
 341 content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the
 342 influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44,
 343 or while having any measurable controlled substance or metabolite of a controlled substance in
 344 the person's body in violation of Section 41-6-44.6, and that the person had refused to submit to
 345 a chemical test or tests under Subsection (1).

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

348 (ii) A request for the hearing shall be made in writing within ten calendar days after the
 349 ~~[date of the arrest]~~ day on which notice is provided.

350 (iii) Upon ~~[written request, the division]~~ request in a manner specified by the Driver
 351 License Division, the Driver License Division shall grant to the person an opportunity to be
 352 heard within 29 days after the date of arrest.

353 (iv) If the person does not make a ~~[timely written]~~ request for a hearing before the
 354 ~~[division, his]~~ Driver License Division under this Subsection (2)(e), the person's privilege to
 355 operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest
 356 for a period of:

357 (A) 18 months unless Subsection (2)(e)(iv)(B) applies; or

358 (B) 24 months if the person has had a previous:

359 (I) license sanction [after July 1, 1993,] for an offense that occurred within the previous
 360 ten years from the date of arrest under this section, Section 41-6-44.6, 53-3-223, 53-3-231, or
 361 53-3-232[;]; or [a]

362 (II) conviction [after July 1, 1993,] for an offense that occurred within the previous ten
 363 years from the date of arrest under Section 41-6-44.

364 (f) (i) ~~[H]~~ Except as provided in Subsection (2)(f)(ii), if a hearing is requested by the
 365 person, the hearing shall be conducted by the Driver License Division in the county in which
 366 the offense occurred~~[, unless the division and the person both agree that the hearing may be~~
 367 ~~held in some other county]~~.

368 (ii) The Driver License Division may hold a hearing in some other county if § [:] §

369 § ~~[(A)]~~ § the Driver License Division and the person both agree § ~~[:or~~
 370 ~~——(B) the Driver License Division makes telephonic participation available to the person~~
 371 ~~requesting the hearing under Subsection (2)(c)(ii) as provided under Section 53-3-223.5]~~ § .

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

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

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

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

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

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

380 (ii) The ~~[division]~~ Driver License Division shall pay witness fees and mileage from the
 381 Transportation Fund in accordance with the rates established in Section 78-46-28.

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

387 (i) (A) 18 months unless Subsection (2)(i)(i)(B) applies; or

388 (B) 24 months if the person has had a previous;

389 (I) license sanction [after July 1, 1993;] for an offense that occurred within the previous
 390 ten years from the date of arrest under this section, Section 41-6-44.6, 53-3-223, 53-3-231, or
 391 53-3-232[;]; or [a]

392 (II) conviction [after July 1, 1993;] for an offense that occurred within the previous ten
 393 years from the date of arrest under Section 41-6-44.

394 (ii) The Driver License Division shall also assess against the person, in addition to any
 395 fee imposed under Subsection 53-3-205(13), a fee under Section 53-3-105, which shall be paid
 396 before the person's driving privilege is reinstated, to cover administrative costs.

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

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

400 under this section may seek judicial review.

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

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

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

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

412 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
413 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person
414 whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or
415 medical facility at which the sample is drawn, is immune from any civil or criminal liability
416 arising from drawing the sample, if the test is administered according to standard medical
417 practice.

418 (6) (a) The person to be tested may, at [~~his~~] the person's own expense, have a physician
419 of [~~his~~] the person's own choice administer a chemical test in addition to the test or tests
420 administered at the direction of a peace officer.

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

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

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

429 (8) If a person under arrest refuses to submit to a chemical test or tests or any
430 additional test under this section, evidence of any refusal is admissible in any civil or criminal

431 action or proceeding arising out of acts alleged to have been committed while the person was
 432 operating or in actual physical control of a motor vehicle while under the influence of alcohol,
 433 any drug, combination of alcohol and any drug, or while having any measurable controlled
 434 substance or metabolite of a controlled substance in the person's body.

435 Section 3. Section **41-6-173** is amended to read:

436 **41-6-173. Keeping of records -- Making and forwarding of abstract upon**
 437 **conviction or forfeiture of bail -- Form and contents -- Official misconduct.**

438 ~~[(a) Every]~~ (1) A magistrate or judge of a court not of record and every clerk of a court
 439 of record shall keep a full record of ~~[every]~~ each case in which a person is charged with ~~[any]~~:

440 (a) a violation of this ~~[act]~~ chapter; or ~~[of]~~

441 (b) any other law regulating the operation of ~~[vehicles on highways]~~ a motor vehicle on
 442 the highway.

443 ~~[(b)]~~ (2) (a) Within ~~[10]~~ ten days after the conviction or forfeiture of bail of a person
 444 upon a charge of violating any provision of this ~~[act]~~ chapter or other law regulating the
 445 operation of ~~[vehicles on highways every said]~~ a motor vehicle on the highway, the magistrate
 446 of the court or clerk of the court of record in which ~~[such]~~ the conviction was ~~[had]~~ made or
 447 bail was forfeited shall prepare and immediately forward to the department an abstract of the
 448 record of ~~[said]~~ the court covering the case in which ~~[said]~~ the person was ~~[so]~~ convicted or
 449 forfeited bail~~[, which]~~.

450 (b) The abstract ~~[must]~~ shall be certified by the person ~~[so]~~ required to prepare the
 451 ~~[same]~~ abstract to be true and correct. ~~[Report need not be made of any]~~

452 (c) A report under this Subsection (2) is not required for a conviction involving the
 453 illegal parking or standing of a vehicle.

454 ~~[(c) Said]~~ (3) The abstract must be made ~~[upon a form furnished by the department]~~ in
 455 a manner specified by the Driver License Division and shall include the:

456 (a) name and address of the party charged~~[, the]~~;

457 (b) number, if any, ~~[of his]~~ of the person's operator's license~~[, the]~~;

458 (c) registration number of the vehicle involved~~[, the]~~;

459 (d) nature of the offense~~[, the]~~;

460 (e) date of hearing~~[, the]~~;

461 (f) plea~~[, the]~~;

462 (g) judgment, or whether bail was forfeited; and [~~the~~]
463 (h) amount of the fine or forfeiture [~~as the case may be~~].

464 [~~(d) Every~~] (4) A court of record shall [also forward a like] provide a copy of the
465 report to the [~~department~~] Driver License Division upon the conviction of any person of
466 manslaughter or other felony in [~~the commission of~~] which a vehicle was used.

467 [~~(e)~~] (5) The failure, refusal, or neglect of [~~any such~~] a judicial officer to comply with
468 [~~any of~~] the requirements of this section [~~shall constitute~~] constitutes misconduct in office and
469 [~~shall be ground~~] is grounds for removal [~~therefrom~~].

470 [~~(f) The department shall keep all abstracts received hereunder at its main office and~~
471 ~~the same shall be open to public inspection during reasonable business hours.]~~

472 (6) The Driver License Division shall classify and disclose all abstracts received in
473 accordance with Section 53-3-109.

474 Section 4. Section **53-3-102** is amended to read:

475 **53-3-102. Definitions.**

476 As used in this chapter:

477 (1) "Cancellation" means the termination by the division of a license issued through
478 error or fraud or for which consent under Section 53-3-211 has been withdrawn.

479 (2) "Class D license" means the class of license issued to drive motor vehicles not
480 defined as commercial motor vehicles or motorcycles under this chapter.

481 (3) "Class M license" means the class of license issued to drive a motorcycle as defined
482 under this chapter.

483 (4) "Commercial driver license" or "CDL" means a license issued substantially in
484 accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle
485 Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act,
486 which authorizes the holder to drive a class of commercial motor vehicle.

487 (5) (a) "Commercial motor vehicle" means a motor vehicle designed or used to
488 transport passengers or property if the vehicle:

489 (i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as
490 determined by federal regulation;

491 (ii) is designed to transport more than 15 passengers, including the driver; or

492 (iii) is transporting hazardous materials and is required to be placarded in accordance

493 with 49 C.F.R. Part 172, Subpart F.

494 (b) The following vehicles are not considered a commercial motor vehicle for purposes
495 of Part 4, Uniform Commercial Driver License Act:

496 (i) equipment owned and operated by the United States Department of Defense when
497 driven by any active duty military personnel and members of the reserves and national guard on
498 active duty including personnel on full-time national guard duty, personnel on part-time
499 training, and national guard military technicians and civilians who are required to wear military
500 uniforms and are subject to the code of military justice;

501 (ii) vehicles controlled and driven by a farmer to transport agricultural products, farm
502 machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation
503 as a motor carrier for hire;

504 (iii) firefighting and emergency vehicles; and

505 (iv) recreational vehicles that are not used in commerce and are driven solely as family
506 or personal conveyances for recreational purposes.

507 (6) "Conviction" means any of the following:

508 (a) an unvacated adjudication of guilt or a determination that a person has violated or
509 failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

510 (b) an unvacated forfeiture of bail or collateral deposited to secure a person's
511 appearance in court;

512 (c) a plea of guilty or nolo contendere accepted by the court;

513 (d) the payment of a fine or court costs; or

514 (e) violation of a condition of release without bail, regardless of whether the penalty is
515 rebated, suspended, or probated.

516 (7) "Denial" or "denied" means the withdrawal of a driving privilege by the division to
517 which the provisions of Title 41, Chapter 12a, Part IV, Proof of Owner's or Operator's Security,
518 do not apply.

519 (8) "Director" means the division director appointed under Section 53-3-103.

520 (9) "Disqualification" means either:

521 (a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state
522 of a person's privileges to drive a commercial motor vehicle;

523 (b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386,

524 that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part
525 391; or

526 (c) the loss of qualification that automatically follows conviction of an offense listed in
527 49 C.F.R. Part 383.51.

528 (10) "Division" means the Driver License Division of the department created in
529 Section 53-3-103.

530 (11) "Drive" means:

531 (a) to operate or be in physical control of a motor vehicle upon a highway; and

532 (b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections
533 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within
534 the state.

535 (12) (a) "Driver" means any person who drives, or is in actual physical control of a
536 motor vehicle in any location open to the general public for purposes of vehicular traffic.

537 (b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person
538 who is required to hold a CDL under Part 4 or federal law.

539 (13) "Extension" means a renewal completed [~~exclusively by mail~~] in a manner
540 specified by the division.

541 (14) "Farm tractor" means every motor vehicle designed and used primarily as a farm
542 implement for drawing plows, mowing machines, and other implements of husbandry.

543 (15) "Highway" means the entire width between property lines of every way or place of
544 any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

545 (16) "License" means the privilege to drive a motor vehicle.

546 (17) "License certificate" means the evidence of the privilege issued under this chapter
547 to drive a motor vehicle.

548 (18) "Motorboat" has the same meaning as provided under Section 73-18-2.

549 (19) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or
550 saddle for the use of the rider and designed to travel with not more than three wheels in contact
551 with the ground.

552 (20) "Nonresident" means a person who:

553 (a) is not a resident of this state; and

554 (b) (i) has not engaged in any gainful occupation in this state for an aggregate period of

555 60 days in the preceding 12 months; or

556 (ii) is temporarily assigned by [his] the person's employer to work in Utah.

557 (21) (a) "Owner" means a person other than a lienholder having an interest in the
558 property or title to a vehicle.

559 (b) "Owner" includes a person entitled to the use and possession of a vehicle subject to
560 a security interest in another person but excludes a lessee under a lease not intended as security.

561 (22) "Renewal" means to validate a license certificate so that it expires at a later date.

562 (23) "Reportable violation" means an offense required to be reported to the division as
563 determined by the division and includes those offenses against which points are assessed under
564 Section 53-3-221.

565 (24) "Revocation" means the termination by action of the division of a licensee's
566 privilege to drive a motor vehicle.

567 (25) "School bus" means every publicly or privately owned motor vehicle designed for
568 transporting ten or more passengers and operated for the transportation of children to or from
569 school or school activities.

570 (26) "Suspension" means the temporary withdrawal by action of the division of a
571 licensee's privilege to drive a motor vehicle.

572 (27) "Taxicab" means any class D motor vehicle transporting any number of
573 passengers for hire and that is subject to state or federal regulation as a taxi.

574 Section 5. Section **53-3-109** is amended to read:

575 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

576 (1) (a) Except as provided in this section, all records of the division shall be classified
577 and disclosed in accordance with Title 63, Chapter 2, Government Records Access and
578 Management Act.

579 (b) The division may only disclose personal identifying information:

580 (i) when the division determines it is in the interest of the public safety to disclose the
581 information; and

582 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
583 Chapter 123.

584 (2) A person who receives personal identifying information shall be advised by the
585 division that the person may not:

586 (a) disclose the personal identifying information from that record to any other person;
587 or

588 (b) use the personal identifying information from that record for advertising or
589 solicitation purposes.

590 (3) The division may:

591 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its
592 files or furnishing a report on the driving record of a person; and

593 (b) prepare under the seal of the division and deliver upon request, a certified copy of
594 any record of the division, and charge a fee under Section 63-38-3.2 for each document
595 authenticated.

596 (4) Each certified copy of a driving record furnished in accordance with this section is
597 admissible in any court proceeding in the same manner as the original.

598 (5) (a) A driving record furnished under this section may only report on the driving
599 record of a person for a period of [~~six~~] ten years.

600 (b) Subsection (5)(a) does not apply to court or law enforcement reports and to reports
601 of commercial driver license violations.

602 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
603 division may make rules to designate:

604 (a) what information shall be included in a report on the driving record of a person;

605 (b) the form of a report or copy of the report which may include electronic format;

606 (c) the form of a certified copy, as required under Section 53-3-216, which may include
607 electronic format;

608 (d) the form of a signature required under this chapter which may include electronic
609 format; and

610 (e) the form of written request to the division required under this chapter which may
611 include electronic format.

612 Section 6. Section **53-3-219** is amended to read:

613 **53-3-219. Suspension of minor's driving privileges.**

614 (1) The division shall immediately suspend all driving privileges of any person upon
615 receipt of an order suspending driving privileges under Section 32A-12-209, Subsection
616 76-9-701(1), or Section 78-3a-506.

617 (a) Upon receipt of the first order suspending a person's driving privileges, the division
618 shall impose a suspension for 90 days or, if the person is under the age of eligibility for a driver
619 license, [~~deny application for a driver license~~] the suspension shall begin on the date of
620 conviction and continue for the first 90 days following the date of eligibility.

621 (b) Upon receipt of a second order suspending a person's driving privileges, the
622 division shall impose a suspension for six months or, if the person is under the age of eligibility
623 for a driver license, [~~deny application for a driver license~~] the suspension shall begin on the
624 date of conviction and continue for the first six months following the date of eligibility.

625 (c) Upon receipt of a third or subsequent order suspending a person's driving
626 privileges, the division shall impose a suspension for one year or, if the person is under the age
627 of eligibility for a driver license, [~~deny application for a driver license~~] the suspension shall
628 begin on the date of conviction and continue for one year beginning on the date of eligibility.

629 (2) After reinstatement of the license under Subsection (1)(a), a report authorized under
630 Section 53-3-104 may not contain evidence of the suspension of a minor's license under this
631 section if [~~he~~] the minor has not been convicted of any other offense for which the suspension
632 under Subsection (1)(a) may be extended.

633 Section 7. Section **53-3-220** is amended to read:

634 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
635 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
636 **Limited driving privileges.**

637 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
638 6, Traffic Rules and Regulations, specifically provides for denial, suspension, or
639 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
640 receiving a record of [~~his~~] the person's conviction for any of the following offenses:

641 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or
642 automobile homicide under Section 76-5-207;

643 (ii) driving or being in actual physical control of a motor vehicle while under the
644 influence of alcohol, any drug, or combination of them to a degree that renders the person
645 incapable of safely driving a motor vehicle as prohibited in Section 41-6-44 or as prohibited in
646 an ordinance that complies with the requirements of Subsection 41-6-43(1);

647 (iii) driving or being in actual physical control of a motor vehicle while having a blood

648 or breath alcohol content prohibited in Section 41-6-44 or as prohibited in an ordinance that
649 complies with the requirements of Subsection 41-6-43(1);

650 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
651 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
652 regulating driving on highways;

653 (v) any felony under the motor vehicle laws of this state;

654 (vi) any other felony in which a motor vehicle is used to facilitate the offense;

655 (vii) failure to stop and render aid as required under the laws of this state if a motor
656 vehicle accident results in the death or personal injury of another;

657 (viii) two charges of reckless driving committed within a period of 12 months; but if
658 upon a first conviction of reckless driving the judge or justice recommends suspension of the
659 convicted person's license, the division may after a hearing suspend the license for a period of
660 three months;

661 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
662 required in Section 41-6-13.5;

663 (x) any offense specified in Part 4 [~~of this chapter~~], Uniform Commercial Driver
664 License Act, that requires disqualification;

665 (xi) discharging or allowing the discharge of a firearm from a vehicle in violation of
666 Subsection 76-10-508(2);

667 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or
668 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

669 (xiii) operating or being in actual physical control of a motor vehicle while having any
670 measurable controlled substance or metabolite of a controlled substance in the person's body in
671 violation of Section 41-6-44.6; and

672 (xiv) operating or being in actual physical control of a motor vehicle while having any
673 alcohol in the person's body in violation of Section 53-3-232.

674 (b) The division shall immediately revoke the license of a person upon receiving a
675 record of an adjudication under Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996, for
676 any of the following offenses:

677 (i) discharging or allowing the discharge of a firearm from a vehicle in violation of
678 Subsection 76-10-508(2); and

679 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or
680 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

681 (c) Except when action is taken under Section 53-3-219 for the same offense, the
682 division shall immediately suspend for six months the license of a person upon receiving a
683 record of conviction for any of the following offenses:

684 (i) any violation of:

685 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

686 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

687 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

688 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

689 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

690 (ii) any criminal offense that prohibits:

691 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance
692 that is prohibited under the acts described in Subsection (1)(c)(i); or

693 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
694 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

695 (2) The division shall extend the period of the first denial, suspension, revocation, or
696 disqualification for an additional like period, to a maximum of one year for each subsequent
697 occurrence, upon receiving:

698 (a) a record of the conviction of any person on a charge of driving a motor vehicle
699 while the person's license is denied, suspended, revoked, or disqualified;

700 (b) a record of a conviction of the person for any violation of the motor vehicle law in
701 which the person was involved as a driver;

702 (c) a report of an arrest of the person for any violation of the motor vehicle law in
703 which the person was involved as a driver; or

704 (d) a report of an accident in which the person was involved as a driver.

705 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
706 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
707 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
708 or revocation originally imposed under Section 53-3-221.

709 (4) (a) The division may extend to a person the limited privilege of driving a motor

710 vehicle to and from the person's place of employment or within other specified limits on
711 recommendation of the trial judge in any case where a person is convicted of any of the
712 offenses referred to in Subsections (1) and (2) except:

713 (i) automobile homicide under Subsection (1)(a)(i);
714 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
715 (1)(b), and (1)(c); and

716 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
717 revocation, or disqualification was imposed because of a violation of Section 41-6-44, Section
718 41-6-44.6, a local ordinance which complies with the requirements of Subsection 41-6-43(1),
719 Section 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged
720 with violating as a result of a plea bargain after having been originally charged with violating
721 one or more of these sections or ordinances.

722 (b) This discretionary privilege is limited to when undue hardship would result from a
723 failure to grant the privilege and may be granted only once to any individual during any single
724 period of denial, suspension, revocation, or disqualification, or extension of that denial,
725 suspension, revocation, or disqualification.

726 (c) A limited CDL may not be granted to an individual disqualified under Part 4,
727 Uniform Commercial Driver License Act, or whose license has been revoked, suspended,
728 cancelled, or denied under this chapter.

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

730 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
731 **Hearing and decision -- Suspension and fee -- Judicial review.**

732 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
733 violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain
734 blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or
735 combination of a drug and alcohol or while having any measurable controlled substance or
736 metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, the
737 peace officer may, in connection with arresting the person, request that the person submit to a
738 chemical test or tests to be administered in compliance with the standards under Section
739 41-6-44.10.

740 (b) In this section, a reference to Section 41-6-44 includes any similar local ordinance

741 adopted in compliance with Subsection 41-6-43(1).

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

747 (3) If the person submits to a chemical test and the test results indicate a blood or
748 breath alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if ~~[the]~~ a peace officer
749 makes a determination, based on reasonable grounds, that the person is otherwise in violation
750 of Section 41-6-44, ~~[the]~~ a peace officer ~~[directing administration of the test or making the~~
751 ~~determination shall serve on the person]~~ shall, on behalf of the division~~[-immediate]~~ and
752 within 24 hours of arrest, give notice of the division's intention to suspend the person's license
753 to drive a motor vehicle.

754 (4) (a) When ~~[the]~~ a peace officer ~~[serves immediate]~~ gives notice on behalf of the
755 division ~~[he]~~, the peace officer shall:

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

757 (ii) issue a temporary license certificate effective for only 29 days from the date of
758 arrest; and

759 (iii) supply to the driver, ~~[on a form to be approved]~~ in a manner specified by the
760 division, basic information regarding how to obtain a prompt hearing before the division.

761 (b) A citation issued by ~~[the]~~ a peace officer may, if ~~[approved as to form]~~ provided in
762 a manner specified by the division, ~~[serve]~~ also serve as the temporary license certificate.

763 (5) As a matter of procedure, ~~[the]~~ a peace officer ~~[serving the notice]~~ shall send to the
764 division within ten calendar days after the ~~[date of arrest and service of the]~~ day on which
765 notice is provided:

766 (a) the person's license certificate;

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

768 (c) a signed report ~~[on a form approved]~~ in a manner specified by the division
769 indicating the chemical test results, if any; and

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

772 (6) (a) Upon request in a manner specified by the division, the division shall grant to
 773 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
 774 heard shall be made within ten calendar days of the ~~[date of the arrest]~~ day on which notice is
 775 provided under Subsection (5).

776 (b) (i) ~~[A] Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be~~
 777 ~~before the division in the county in which the arrest occurred[; unless the division and the~~
 778 ~~person agree that the hearing may be held in some other county].~~

779 (ii) The division may hold a hearing in some other county if § [;

780 ~~— [A] § the division and the person both agree § [; or~~

781 ~~— [B] the division makes telephonic participation available to the person requesting the~~
 782 ~~hearing under Subsection (6)(a) as provided under Section 53-3-223.5] § .~~

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

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

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

787 (iii) the test results, if any.

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

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

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

792 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
 793 accordance with the rates established in Section 78-46-28.

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

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

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

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

802 (7) (a) A first suspension, whether ordered or not challenged under this Subsection (7),

803 is for a period of 90 days, beginning on the 30th day after the date of the arrest.

804 (b) A second or subsequent suspension for an offense that occurred within the previous
805 ten years under this Subsection (7) is for a period of one year, beginning on the 30th day after
806 the date of arrest.

807 (8) (a) The division shall assess against a person, in addition to any fee imposed under
808 Subsection 53-3-205(13) for driving under the influence, a fee under Section 53-3-105 to cover
809 administrative costs, which shall be paid before the person's driving privilege is reinstated. This
810 fee shall be cancelled if the person obtains an unappealed division hearing or court decision
811 that the suspension was not proper.

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

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

816 **53-3-231. Person under 21 may not operate vehicle or motorboat with detectable**
817 **alcohol in body -- Chemical test procedures -- Temporary license -- Hearing and decision**
818 **-- Suspension of license or operating privilege -- Fees -- Judicial review -- Referral to local**
819 **substance abuse authority or program.**

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

821 (i) "Local substance abuse authority" has the same meaning as provided in Section
822 62A-15-102.

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

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

828 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
829 control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol
830 concentration in [~~his~~] the person's body as shown by a chemical test.

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

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

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

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

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

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

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

854 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
855 or urine alcohol content in violation of Subsection (2)(a), or if [~~the~~] a peace officer makes a
856 determination, based on reasonable grounds, that the person is otherwise in violation of
857 Subsection (2)(a), [~~the~~] a peace officer [~~directing administration of the test or making the~~
858 ~~determination shall serve on the person~~] shall, on behalf of the [~~Driver License Division,~~
859 ~~immediate~~] division and within 24 hours of the arrest, give notice of the [~~Driver License~~]
860 division's intention to deny or suspend the person's license to operate a vehicle or refusal to
861 issue a license under Subsection (2).

862 (4) When [~~the~~] a peace officer [~~serves immediate~~] gives notice on behalf of the [~~Driver~~
863 ~~License Division, he~~] division, the peace officer shall:

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

865 (b) issue a temporary license certificate effective for only 29 days from the date of
 866 arrest if the driver had a valid operator's license; and

867 (c) supply to the operator, in a manner specified by the division, basic information
 868 regarding how to obtain a prompt hearing before the [~~Driver License~~] division.

869 (5) A citation issued by [~~the~~] a peace officer may, if [~~approved as to form~~] provided in
 870 a manner specified by the [~~Driver License~~] division, also serve [~~also~~] as the temporary license
 871 certificate under Subsection (4)(b).

872 (6) As a matter of procedure, [~~the~~] a peace officer [~~serving the notice~~] shall send to the
 873 [~~Driver License~~] division within ten calendar days after the [~~date of arrest and service of the~~]
 874 day on which notice is provided:

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

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

877 (c) a signed report in a manner specified by the Driver License Division indicating the
 878 chemical test results, if any; and

879 (d) any other basis for [~~the~~] a peace officer's determination that the person has violated
 880 Subsection (2).

881 (7) (a) (i) Upon request in a manner specified by the division, the Driver License
 882 Division shall grant to the person an opportunity to be heard within 29 days after the date of
 883 arrest under Section 32A-12-209.

884 (ii) The request shall be made within ten calendar days of the [~~date of the arrest~~] day on
 885 which notice is provided.

886 (b) (i) [~~A~~] Except as provided in Subsection (7)(b)(ii), a hearing, if held, shall be
 887 before the [~~Driver License~~] division in the county in which the arrest occurred[~~, unless the~~
 888 ~~Driver License division and the person agree that the hearing may be held in some other~~
 889 ~~county~~].

890 (ii) The division may hold a hearing in some other county if § [:

891 ~~— (A) § the division and the person both agree § [; or~~

892 ~~— (B) the division makes telephonic participation available to the person requesting the~~
 893 hearing under Subsection (7)(a) as provided under Section 53-3-223.5] § .

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

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

- 896 a motor vehicle or motorboat in violation of Subsection (2)(a);
- 897 (ii) whether the person refused to submit to the test; and
- 898 (iii) the test results, if any.
- 899 (d) In connection with a hearing, the [~~Driver License~~] division or its authorized agent
- 900 may administer oaths and may issue subpoenas for the attendance of witnesses and the
- 901 production of relevant books and papers and records as defined in Section 46-4-102.
- 902 (e) One or more members of the [~~Driver License~~] division may conduct the hearing.
- 903 (f) Any decision made after a hearing before any number of the members of the [~~Driver~~
- 904 ~~License~~] division is as valid as if made after a hearing before the full membership of the
- 905 [~~Driver License~~] division.
- 906 (g) After the hearing, the [~~Driver License~~] division shall order whether the person:
- 907 (i) with a valid license to operate a motor vehicle will have [~~his~~] the person's license
- 908 denied or not or suspended or not; or
- 909 (ii) without a valid operator license will be refused a license under Subsection (2)(c).
- 910 (h) If the person for whom the hearing is held fails to appear before the [~~Driver~~
- 911 ~~License~~] division as required in the notice, the division shall order whether the person shall
- 912 have [~~his~~] the person's license denied, suspended, or not denied or suspended, or whether an
- 913 operator license will be refused or not refused.
- 914 (8) (a) Following denial or suspension the [~~Driver License~~] division shall assess
- 915 against a person, in addition to any fee imposed under Subsection 53-3-205(13), a fee under
- 916 Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to
- 917 cover administrative costs. This fee shall be canceled if the person obtains an unappealed
- 918 [~~Driver License~~] division hearing or court decision that the suspension was not proper.
- 919 (b) A person whose operator license has been denied, suspended, or postponed by the
- 920 [~~Driver License~~] division under this section may file a petition within 30 days after the
- 921 suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.
- 922 (9) After reinstatement of an operator license for a first offense under this section, a
- 923 report authorized under Section 53-3-104 may not contain evidence of the denial or suspension
- 924 of the person's operator license under this section if [~~he~~] the person has not been convicted of
- 925 any other offense for which the denial or suspension may be extended.
- 926 (10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection

927 (2)(a) shall:

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

930 (ii) be referred by the [~~Driver License~~] division to the local substance abuse authority
931 for an assessment and recommendation for appropriate action.

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

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

938 (A) a targeted education and prevention program;

939 (B) an early intervention program; or

940 (C) a substance abuse treatment program.

941 (iii) Successful completion of the recommended action shall be determined by
942 standards established by the Division of Substance Abuse and Mental Health.

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

946 (d) The local substance abuse authorities and the substance abuse programs shall
947 cooperate with the [~~Driver License~~] division in:

948 (i) conducting the assessments;

949 (ii) making appropriate recommendations for action; and

950 (iii) notifying the [~~Driver License~~] division about the person's status regarding
951 completion of the recommended action.

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

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

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

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

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

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

965 Section 10. Section **53-3-232** is amended to read:

966 **53-3-232. Conditional license -- May not operate vehicle or motorboat with**
967 **alcohol in body penalty.**

968 (1) As used in this section, "qualifying conviction" means:

969 (a) a conviction of a violation of Section 41-6-44, Section 41-6-44.6, a local ordinance
970 which complies with the requirements of Subsection 41-6-43(1), Section 76-5-207, or of
971 alcohol-related reckless driving as described under Subsection 41-6-44(9);

972 (b) a ~~[refusal and suspension]~~ revocation under Section 41-6-44.10 if the revocation is
973 not based on the same arrest as a conviction under Subsection (1)(a); or

974 (c) a violation of Subsection (3).

975 (2) The division may only issue, reinstate, or renew a driver license in the form of a no
976 alcohol conditional license to a person who has a qualifying conviction for a period of:

977 (a) two years after ~~[reinstatement of the]~~ issuance of a Utah driver license or permit
978 following a first qualifying conviction that occurred within the previous ten years from the date
979 of arrest; and

980 (b) ~~[six]~~ ten years after ~~[reinstatement of the]~~ issuance of a Utah driver license or
981 permit following a second or subsequent qualifying conviction that occurred within the
982 previous ten years from the date of arrest.

983 (3) A no alcohol conditional license shall be issued on the condition that the person
984 may not operate or be in actual physical control of a vehicle or motorboat in this state with any
985 alcohol in the person's body.

986 (4) It is a class B misdemeanor for a person who has been issued a no alcohol
987 conditional license to operate or be in actual physical control of a vehicle or motorboat in this
988 state in violation of Subsection (3).

989 Section 11. Section **53-3-233** is amended to read:

990 **53-3-233. Coded licenses.**

991 (1) As used in this section:

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

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

995 (2) (a) The division may not issue, reinstate, or renew the driver license of a person
996 who has a qualifying conviction for an offense that occurred within the previous [~~six~~] ten years
997 from the date of arrest unless the person's driver license is a qualifying conviction coded
998 license.

999 (b) (i) If the division receives a notice of a qualifying conviction for a person with a
1000 valid driver license, that does not require a driver license withdrawal, the division shall notify
1001 the person that [~~he~~] the person has ten calendar days to apply to the division for a qualifying
1002 conviction coded license.

1003 (ii) If the person fails to apply within ten days, the division shall suspend the person's
1004 driver license. The suspension shall remain effective until the person applies to the division for
1005 a qualifying conviction coded license.

1006 Section 12. Section **53-3-418** is amended to read:

1007 **53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.**

1008 (1) A person who holds or is required to hold a CDL may not drive a commercial
1009 motor vehicle in this state if the person:

1010 (a) has sufficient alcohol in [~~his~~] the person's body that a subsequent chemical test
1011 shows that the person has a blood or breath alcohol concentration of .04 grams or greater at the
1012 time of the test after the alleged driving of the commercial motor vehicle; or

1013 (b) is under the influence of alcohol, any drug, or the combined influence of alcohol
1014 and any drug to degree that renders the person incapable of safely driving a commercial motor
1015 vehicle; or

1016 (c) has a blood or breath alcohol concentration of .04 grams or greater at the time of
1017 driving the commercial motor vehicle.

1018 (2) A person who holds or is required to hold a CDL and who drives a commercial
1019 motor vehicle in this state is considered to have given [~~his~~] the person's consent to a test or

1020 tests of ~~[his]~~ the person's blood, breath, or urine to determine the concentration of alcohol or
1021 the presence of other drugs in ~~[his]~~ the person's physical system.

1022 (3) If a peace officer or port-of-entry agent has reasonable cause to believe that a
1023 person may be violating this section, the peace officer or port-of-entry agent may request the
1024 person to submit to a chemical test to be administered in compliance with Section 41-6-44.3.

1025 (4) When a peace officer or port-of-entry agent requests a person to submit to a test
1026 under this section, ~~[he]~~ the peace officer or port-of-entry agent shall advise the person that test
1027 results indicating .04 grams or greater alcohol concentration or refusal to submit to any test
1028 requested will result in the person's disqualification under Section 53-3-414 from driving a
1029 commercial motor vehicle.

1030 (5) If test results under this section indicate .04 grams or greater of alcohol
1031 concentration or the person refuses to submit to any test requested under this section, ~~[the]~~ a
1032 peace officer or port-of-entry agent shall, on behalf of the division ~~[serve]~~ and within 24 hours
1033 of the arrest, give the person ~~[with immediate]~~ notice of the division's intention to disqualify
1034 the person's privilege to drive a commercial motor vehicle.

1035 (6) When ~~[the]~~ a peace officer or port-of-entry agent ~~[serves]~~ gives notice under
1036 Subsection (5) ~~[he]~~, the peace officer or port-of-entry agent shall:

1037 (a) take any Utah license certificate or permit held by the driver;

1038 (b) issue to the driver a temporary license certificate effective for 29 days from the date
1039 of arrest;

1040 (c) provide the driver, in a manner specified by the division, basic information
1041 regarding how to obtain a prompt hearing before the division; and

1042 (d) issue a 24-hour out-of-service order.

1043 (7) A notice of disqualification issued under Subsection (6) may serve also as the
1044 temporary license certificate under that subsection, if ~~[the form is approved]~~ provided in a
1045 manner specified by the division.

1046 (8) As a matter of procedure, ~~[the]~~ a peace officer or port-of-entry agent ~~[serving the~~
1047 ~~notice of disqualification]~~ shall, within ten calendar days after the ~~[date of service]~~ day on
1048 which notice is provided, send to the division the person's license certificate, a copy of the
1049 ~~[served]~~ notice, and a report signed by the peace officer or port-of-entry agent that indicates the
1050 results of any chemical test administered or that the person refused a test.

1051 (9) (a) ~~[The]~~ A person disqualified under this section has the right to a hearing
 1052 regarding the disqualification.

1053 (b) The request for the hearing shall be submitted to the division in a manner specified
 1054 by the division and shall be made within ten calendar days of the date the notice was issued. If
 1055 requested, the hearing shall be conducted within 29 days after the ~~[notice was issued]~~ date of
 1056 arrest.

1057 (10) (a) (i) ~~[A]~~ Except as provided in Subsection (10)(a)(ii), a hearing held under this
 1058 section shall be held before the division and in the county where the notice was issued~~[, unless~~
 1059 ~~the division agrees to hold the hearing in another county]~~.

1060 (ii) The division may hold a hearing in some other county if § [:

1061 ~~—(A)]~~ § the division and the person both agree § [; ~~or~~

1062 ~~—(B) the division makes telephonic participation available to the person requesting the~~
 1063 ~~hearing under Subsection (9) as provided under Section 53-3-223.5]~~ § .

1064 (b) The hearing shall be documented and shall determine:

1065 (i) whether the peace officer or port-of-entry agent had reasonable grounds to believe
 1066 the person had been driving a motor vehicle in violation of this section;

1067 (ii) whether the person refused to submit to any requested test; and

1068 (iii) any test results obtained.

1069 (c) In connection with a hearing the division or its authorized agent may administer
 1070 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
 1071 books and documents.

1072 (d) One or more members of the division may conduct the hearing.

1073 (e) A decision made after a hearing before any number of members of the division is as
 1074 valid as if the hearing were held before the full membership of the division.

1075 (f) After a hearing under this section the division shall indicate by order if the person's
 1076 CDL is disqualified.

1077 (g) If the person for whom the hearing is held fails to appear before the division as
 1078 required in the notice, the division shall indicate by order if the person's CDL is disqualified.

1079 (11) If the division disqualifies a person under this section, the person may petition for
 1080 a hearing under Section 53-3-224. The petition shall be filed within 30 days after the division
 1081 issues the disqualification.

1082 (12) (a) A person who violates this section shall be punished in accordance with
1083 Section 53-3-414.

1084 (b) (i) In accordance with Section 53-3-414, the first disqualification under this section
1085 shall be for one year, and a second disqualification shall be for life.

1086 (ii) A disqualification under Section 53-3-414 begins on the 30th day after the date of
1087 arrest.

1088 (13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a
1089 CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the
1090 driving privilege is reinstated.

1091 (b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed
1092 hearing at the division or court level determines the disqualification was not proper.

Legislative Review Note
as of 2-3-04 2:11 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0168

Driver License Related Amendments

11-Feb-04

10:03 AM

State Impact

It is estimated that provisions of this bill can be handled within existing budgets.

Individual and Business Impact

There is no fiscal impact for individuals who adhere to provisions of this bill.

Office of the Legislative Fiscal Analyst