

**Senator Carlene M. Walker** proposes the following substitute bill:

**DRIVING UNDER THE INFLUENCE**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carlene M. Walker**

House Sponsor: Paul Ray

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to driving under the influence.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ enacts an impaired driving plea;
- ▶ provides that a plea to a driving under the influence violation may be entered as an impaired driving conviction in certain circumstances;
- ▶ provides that an impaired driving violation is a class B misdemeanor;
- ▶ provides requirements for a court entering a conviction of impaired driving in certain circumstances;
- ▶ requires the court to notify the Driver License Division of an impaired driving conviction;
- ▶ provides sentencing requirements for impaired driving convictions;
- ▶ repeals certain plea requirements when the prosecution agrees to a plea of guilty or no contest to an alcohol or drug-related reckless charge in satisfaction or substitute of an original charge of driving under the influence;



- 26 ▶ repeals certain alcohol or drug-related reckless driving plea restrictions;
- 27 ▶ clarifies that certain license reinstatement provisions only apply to a certain 90 day
- 28 suspension period imposed by the Driver License Division;
- 29 ▶ increases the administrative impound fee for a driving under the influence violation
- 30 impound; and
- 31 ▶ makes technical changes.

**32 Monies Appropriated in this Bill:**

33 This bill appropriates:

- 34 ▶ as an ongoing appropriation subject to future budget constraints, \$660,000 from the
- 35 General Fund for fiscal year 2008-09 to the Department of Public Safety, Utah
- 36 Highway Patrol; and
- 37 ▶ as an ongoing appropriation subject to future budget constraints, \$660,000 from the
- 38 General Fund for fiscal year 2008-09 to the Department of Public Safety, Liquor
- 39 Law Enforcement Program.

**40 Other Special Clauses:**

41 This bill provides an effective date.

42 This bill provides revisor instructions.

**43 Utah Code Sections Affected:**

44 AMENDS:

- 45 **41-6a-501**, as enacted by Laws of Utah 2005, Chapter 2
- 46 **41-6a-510**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 47 **41-6a-518.2**, as enacted by Laws of Utah 2006, Chapter 341
- 48 **41-6a-529**, as last amended by Laws of Utah 2007, Chapter 261
- 49 **41-6a-1406**, as last amended by Laws of Utah 2005, Chapter 56 and renumbered and
- 50 amended by Laws of Utah 2005, Chapter 2
- 51 **53-3-220**, as last amended by Laws of Utah 2007, Chapter 261
- 52 **53-3-223**, as last amended by Laws of Utah 2007, Chapter 261
- 53 **53-3-232**, as last amended by Laws of Utah 2005, Chapters 2, 91, and 220
- 54 **76-10-528**, as last amended by Laws of Utah 2005, Chapter 2

55 ENACTS:

- 56 **41-6a-502.5**, Utah Code Annotated 1953

57 REPEALS:

58 **41-6a-512**, as enacted by Laws of Utah 2005, Chapter 2



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

61 Section 1. Section **41-6a-501** is amended to read:

62 **41-6a-501. Definitions.**

63 (1) As used in this part:

64 (a) "Assessment" means an in-depth clinical interview with a licensed mental health  
65 therapist:

66 (i) used to determine if a person is in need of:

67 (A) substance abuse treatment that is obtained at a substance abuse program;

68 (B) an educational series; or

69 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

70 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance  
71 with Section 62A-15-105.

72 (b) "Drug" or "drugs" means any substance that, when taken into the human body, can  
73 impair the ability of a person to safely operate a motor vehicle.

74 [~~(b)~~] (c) "Educational series" means an educational series obtained at a substance abuse  
75 program that is approved by the Board of Substance Abuse and Mental Health in accordance  
76 with Section 62A-15-105.

77 [~~(c)~~] (d) "Negligence" means simple negligence, the failure to exercise that degree of  
78 care that an ordinarily reasonable and prudent person exercises under like or similar  
79 circumstances.

80 [~~(d)~~] (e) "Screening" means a preliminary appraisal of a person:

81 (i) used to determine if the person is in need of:

82 (A) an assessment; or

83 (B) an educational series; and

84 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance  
85 with Section 62A-15-105.

86 [~~(e)~~] (f) "Serious bodily injury" means bodily injury that creates or causes:

87 (i) serious permanent disfigurement;

88 (ii) protracted loss or impairment of the function of any bodily member or organ; or  
89 (iii) a substantial risk of death.

90 [~~(f)~~] (g) "Substance abuse treatment" means treatment obtained at a substance abuse  
91 program that is approved by the Board of Substance Abuse and Mental Health in accordance  
92 with Section 62A-15-105.

93 [~~(g)~~] (h) "Substance abuse treatment program" means a state licensed substance abuse  
94 program.

95 [~~(h)~~] (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in  
96 Section 41-6a-102; and

97 (ii) "Vehicle" or "motor vehicle" includes:

98 (A) an off-highway vehicle as defined under Section 41-22-2; and

99 (B) a motorboat as defined in Section 73-18-2.

100 (2) As used in Section 41-6a-503:

101 (a) "Conviction" means any conviction for a violation of:

102 (i) driving under the influence under Section 41-6a-502;

103 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

104 combination of both-related reckless driving under [~~Sections~~];

105 (I) Section 41-6a-512, repealed by this bill; and

106 (II) Section 41-6a-528; or

107 (B) for an offense committed on or after July 1, 2008, impaired driving under Section

108 41-6a-502.5;

109 (iii) driving with any measurable controlled substance that is taken illegally in the body  
110 under Section 41-6a-517;

111 (iv) local ordinances similar to Section 41-6a-502 [~~or~~], alcohol, any drug, or a  
112 combination of both-related reckless driving prior to July 1, 2008, or impaired driving under  
113 Section 41-6a-502.5 adopted in compliance with Section 41-6a-510;

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

115 (vi) Subsection 58-37-8(2)(g);

116 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of  
117 conviction is reduced under Section 76-3-402; or

118 (viii) statutes or ordinances previously in effect in this state or in effect in any other

119 state, the United States, or any district, possession, or territory of the United States which  
120 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of  
121 both-related reckless driving if committed in this state, including punishments administered  
122 under 10 U.S.C. Sec. 815.

123 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)  
124 through (viii) which plea [is] was held in abeyance under Title 77, Chapter 2a, Pleas in  
125 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been  
126 subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for  
127 purposes of:

128 (i) enhancement of penalties under:

129 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

130 (B) automobile homicide under Section 76-5-207; and

131 (ii) expungement under Section 77-18-12.

132 Section 2. Section **41-6a-502.5** is enacted to read:

133 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**

134 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of  
135 Section 41-6a-502 may be entered as a conviction of impaired driving under this section if:

136 (a) the defendant completes court ordered probation requirements; or

137 (b) (i) the prosecutor agrees as part of a negotiated plea; and

138 (ii) the court finds the plea to be in the interest of justice.

139 (2) A conviction entered under this section is a class B misdemeanor.

140 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of  
141 probation under Subsection (1)(a), the court shall enter the conviction at the time of plea.

142 (ii) If the defendant fails to appear before the court and establish successful completion  
143 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an  
144 amended conviction of Section 41-6a-502.

145 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of  
146 conviction.

147 (b) The court may enter a conviction of impaired driving immediately under  
148 Subsection (1)(b).

149 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor

150 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one  
151 degree.

152 (5) The court shall notify the Driver License Division of each conviction entered under  
153 this section.

154 (6) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a  
155 sentencing court to order a convicted person to participate in a screening, an assessment, or an  
156 educational series, or obtain substance abuse treatment or do a combination of those things,  
157 apply to a conviction entered under this section.

158 (b) The court shall render the same order regarding screening, assessment, an  
159 educational series, or substance abuse treatment in connection with a first, second, or  
160 subsequent conviction under this section as the court would render in connection with applying  
161 respectively, the first, second, or subsequent conviction requirements of Subsection  
162 41-6a-505(1), (2), or (3).

163 Section 3. Section **41-6a-510** is amended to read:

164 **41-6a-510. Local DUI and related ordinances and reckless driving and impaired**  
165 **driving ordinances -- Consistent with code.**

166 (1) An ordinance adopted by a local authority that governs the following matters shall  
167 be consistent with the provisions in this code which govern the following matters:

168 (a) a person's operating or being in actual physical control of a motor vehicle while  
169 having alcohol in the blood or while under the influence of alcohol or any drug or the  
170 combined influence of alcohol and any drug; or

171 (b) in relation to any of the matters described in Subsection (1)(a), the use of:

172 (i) a chemical test or chemical tests;

173 (ii) evidentiary presumptions;

174 (iii) penalties; or

175 (iv) any combination of the matters described in Subsection (1).

176 (2) An ordinance adopted by a local authority that governs reckless driving, impaired  
177 driving, or operating a vehicle in willful or wanton disregard for the safety of persons or  
178 property shall be consistent with the provisions of this code which govern those matters.

179 Section 4. Section **41-6a-518.2** is amended to read:

180 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**

181 **interlock system.**

182 (1) As used in this section:

183 (a) "ignition interlock system" means a constant monitoring device or any similar  
184 device that:

185 (i) is in working order at the time of operation or actual physical control; and

186 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection  
187 41-6a-518(8); and

188 (b) (i) "interlock restricted driver" means a person who:

189 (A) has been ordered by a court or the Board of Pardons and Parole as a condition of  
190 probation or parole not to operate a motor vehicle without an ignition interlock system;

191 (B) (I) within the last three years has been convicted of an offense that occurred after  
192 May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and

193 (II) the ~~[conviction]~~ offense described under Subsection (1)(b)(i)(B)(I) is committed  
194 within ten years [of one or more prior convictions] from the date that one or more prior  
195 offenses was committed if the prior offense resulted in a conviction as defined in Subsection  
196 41-6a-501(2);

197 (C) within the last three years has been convicted of a violation of this section;

198 (D) within the last three years has had the person's driving privilege revoked for refusal  
199 to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1,  
200 2006;

201 (E) within the last three years has been convicted of a violation of Section 41-6a-502  
202 and was under the age of 21 at the time the offense was committed;

203 ~~[(E)]~~ (F) within the last six years has been convicted of a felony violation of Section  
204 41-6a-502 for an offense that occurred after May 1, 2006; or

205 ~~[(F)]~~ (G) within the last ten years has been convicted of automobile homicide under  
206 Section 76-5-207 for an offense that occurred after May 1, 2006; and

207 (ii) "interlock restricted driver" does not include a person if:

208 (A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction under  
209 Section 41-6a-517; and

210 (B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are  
211 convictions under Section 41-6a-517.

212 (2) For purposes of this section, a plea of guilty or no contest to a violation of Section  
213 41-6a-502 which plea [is] was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,  
214 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently  
215 reduced or dismissed in accordance with the plea in abeyance agreement.

216 (3) An interlock restricted driver that operates or is in actual physical control of a  
217 vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

218 (4) (a) It is an affirmative defense to a charge of a violation of Subsection (3) if:

219 (i) an interlock restricted driver:

220 (A) operated or was in actual physical control of a vehicle owned by the interlock  
221 restricted driver's employer;

222 (B) had given written notice to the employer of the interlock restricted driver's  
223 interlock restricted status prior to the operation or actual physical control under Subsection

224 (4)(a)(i); and

225 (C) had on the interlock restricted driver's person or in the vehicle at the time of  
226 operation or physical control proof of having given notice to the interlock restricted driver's  
227 employer; and

228 (ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the  
229 scope of the interlock restricted driver's employment.

230 (b) The affirmative defense under Subsection (4)(a) does not apply to:

231 (i) an employer-owned motor vehicle that is made available to an interlock restricted  
232 driver for personal use; or

233 (ii) a motor vehicle owned by a business entity that is all or partly owned or controlled  
234 by the interlock restricted driver.

235 Section 5. Section **41-6a-529** is amended to read:

236 **41-6a-529. Definitions -- Alcohol restricted drivers.**

237 (1) As used in this section and Section 41-6a-530, "alcohol restricted driver" means a  
238 person who:

239 (a) within the last two years:

240 (i) has been convicted of:

241 (A) a misdemeanor violation of Section 41-6a-502;

242 (B) alcohol, any drug, or a combination of both-related reckless driving under Section

243 41-6a-512, repealed by this bill;

244 ~~(C)~~ (C) impaired driving under Section 41-6a-502.5;

245 ~~[(C)]~~ (D) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a  
246 combination of both-related reckless driving prior to July 1, 2008, or impaired driving adopted  
247 in compliance with Section 41-6a-510;

248 ~~[(D)]~~ (E) a violation described in Subsections (1)(a)(i)(A) through ~~[(C)]~~ (D), which  
249 judgment of conviction is reduced under Section 76-3-402; or

250 ~~[(E)]~~ (F) statutes or ordinances previously in effect in this state or in effect in any other  
251 state, the United States, or any district, possession, or territory of the United States which  
252 would constitute a violation of Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a combination of  
253 both-related reckless driving, or impaired driving if committed in this state, including  
254 punishments administered under 10 U.S.C. Sec. 815; or

255 (ii) has had the person's driving privilege suspended under Section 53-3-223 for an  
256 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

257 (b) within the last three years has been convicted of a violation of this section or  
258 Section 41-6a-518.2;

259 (c) within the last five years:

260 (i) has had the person's driving privilege revoked for refusal to submit to a chemical  
261 test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; or

262 (ii) ~~[(A)]~~ has been convicted of ~~[an offense described in Subsection (1)(a)(i); and]~~ a  
263 class A misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008;

264 ~~[(B) at the time of operation or actual physical control of a vehicle the person:]~~

265 ~~[(F) is 21 years of age or older; and]~~

266 ~~[(H) has a passenger under 16 years of age in the vehicle;]~~

267 (d) within the last ten years:

268 (i) has been convicted of an offense described in Subsection (1)(a)(i) which  
269 ~~[conviction]~~ offense was committed within ten years of ~~[a prior conviction for an]~~ the  
270 commission of a prior offense described in Subsection (1)(a)(i) for which the person was  
271 convicted; or

272 (ii) has had the person's driving privilege revoked for refusal to submit to a chemical  
273 test and the refusal is within ten years after:

- 274 (A) a prior refusal to submit to a chemical test under Section 41-6a-520; or  
275 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not  
276 based on the same arrest as the refusal; [~~or~~]  
277 (e) at any time has been convicted of:  
278 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or  
279 after July 1, 2005; or  
280 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July  
281 1, 2005[~~;~~]; or  
282 (f) at the time of operation of a vehicle is under 21 years of age.

283 (2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to  
284 a violation described in Subsection (1)(a)(i) which plea [~~is~~] was held in abeyance under Title  
285 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even  
286 if the charge has been subsequently reduced or dismissed in accordance with the plea in  
287 abeyance agreement.

288 Section 6. Section **41-6a-1406** is amended to read:

289 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**  
290 **requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

291 (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under  
292 Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace  
293 officer or by an order of a person acting on behalf of a law enforcement agency or highway  
294 authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the  
295 expense of the owner.

296 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or  
297 impounded to:

- 298 (a) a state impound yard; or  
299 (b) if none, a garage, docking area, or other place of safety.

300 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be  
301 removed by a tow truck motor carrier that meets standards established:

- 302 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and  
303 (b) by the department under Subsection (10).

304 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report

305 of the removal shall be sent to the Motor Vehicle Division by:

- 306 (i) the peace officer or agency by whom the peace officer is employed; and
- 307 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck
- 308 operator is employed.

309 (b) The report shall be in a form specified by the Motor Vehicle Division and shall

310 include:

- 311 (i) the operator's name, if known;
- 312 (ii) a description of the vehicle, vessel, or outboard motor;
- 313 (iii) the vehicle identification number or vessel or outboard motor identification
- 314 number;
- 315 (iv) the license number or other identification number issued by a state agency;
- 316 (v) the date, time, and place of impoundment;
- 317 (vi) the reason for removal or impoundment;
- 318 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or
- 319 outboard motor; and
- 320 (viii) the place where the vehicle, vessel, or outboard motor is stored.

321 (c) Until the tow truck operator or tow truck motor carrier reports the removal as

322 required under this Subsection (4), a tow truck motor carrier or impound yard may not:

- 323 (i) collect any fee associated with the removal; and
- 324 (ii) begin charging storage fees.

325 (5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the

326 registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner

327 prescribed by Section 41-1a-114.

328 (b) The notice shall:

- 329 (i) state the date, time, and place of removal, the name, if applicable, of the person
- 330 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,
- 331 and the place where the vehicle, vessel, or outboard motor is stored;
- 332 (ii) state that the registered owner is responsible for payment of towing, impound, and
- 333 storage fees charged against the vehicle, vessel, or outboard motor;
- 334 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the
- 335 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

336 (iv) inform the registered owner and lienholder of the division's intent to sell the  
337 vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or  
338 impoundment under this section, the owner, lien holder, or the owner's agent fails to make a  
339 claim for release of the vehicle, vessel, or outboard motor.

340 (c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor  
341 Vehicle Division shall make a reasonable effort to notify the registered owner and any lien  
342 holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

343 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where  
344 the vehicle, vessel, or outboard motor is stored.

345 (6) (a) The vehicle, vessel, or outboard motor shall be released after the registered  
346 owner, lien holder, or the owner's agent:

347 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of  
348 the State Tax Commission;

349 (ii) presents identification sufficient to prove ownership of the impounded vehicle,  
350 vessel, or outboard motor;

351 (iii) completes the registration, if needed, and pays the appropriate fees;

352 (iv) if the impoundment was made under Section 41-6a-527, pays an administrative  
353 impound fee of [~~\$230~~] \$330; and

354 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard  
355 motor is stored.

356 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under  
357 Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

358 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be  
359 deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;  
360 and

361 (iii) the remainder of the administrative impound fee assessed under Subsection  
362 (6)(a)(iv) shall be deposited in the General Fund.

363 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be  
364 waived or refunded by the State Tax Commission if the registered owner, lien holder, or  
365 owner's agent presents written evidence to the State Tax Commission that:

366 (i) the Driver License Division determined that the arrested person's driver license

367 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter  
368 or other report from the Driver License Division presented within 30 days of the final  
369 notification from the Driver License Division; or

370 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the  
371 stolen vehicle report presented within 30 days of the impoundment.

372 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered  
373 owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in  
374 accordance with that section and the proceeds, if any, shall be disposed of as provided under  
375 Section 41-1a-1104.

376 (b) The date of impoundment is considered the date of seizure for computing the time  
377 period provided under Section 41-1a-1103.

378 (8) The registered owner who pays all fees and charges incurred in the impoundment of  
379 the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and  
380 charges, together with damages, court costs, and attorney fees, against the operator of the  
381 vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

382 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,  
383 or outboard motor.

384 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
385 the department shall make rules setting the performance standards for towing companies to be  
386 used by the department.

387 (11) (a) The Motor Vehicle Division may specify that a report required under  
388 Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and  
389 retrieval of the information.

390 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the  
391 administrator of the database may adopt a schedule of fees assessed for utilizing the database.

392 (ii) The fees under this Subsection (11)(b) shall:

393 (A) be reasonable and fair; and

394 (B) reflect the cost of administering the database.

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

396 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**  
397 **disqualification of license -- Offense requiring an extension of period -- Hearing --**

398 **Limited driving privileges.**

399 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter  
400 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division  
401 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's  
402 conviction for any of the following offenses:

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

405 (ii) driving or being in actual physical control of a motor vehicle while under the  
406 influence of alcohol, any drug, or combination of them to a degree that renders the person  
407 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited  
408 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

409 (iii) driving or being in actual physical control of a motor vehicle while having a blood  
410 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an ordinance that  
411 complies with the requirements of Subsection 41-6a-510(1);

412 (iv) perjury or the making of a false affidavit to the division under this chapter, Title  
413 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or  
414 regulating driving on highways;

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

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

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

419 (viii) two charges of reckless driving, impaired driving, or any combination of reckless  
420 driving and impaired driving committed within a period of 12 months; but if upon a first  
421 conviction of reckless driving or impaired driving the judge or justice recommends suspension  
422 of the convicted person's license, the division may after a hearing suspend the license for a  
423 period of three months;

424 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as  
425 required in Section 41-6a-210;

426 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that  
427 requires disqualification;

428 (xi) discharging or allowing the discharge of a firearm from a vehicle in violation of

429 Subsection 76-10-508(2);

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

432 (xiii) operating or being in actual physical control of a motor vehicle while having any  
433 measurable controlled substance or metabolite of a controlled substance in the person's body in  
434 violation of Section 41-6a-517;

435 (xiv) until July 30, 2015, operating or being in actual physical control of a motor  
436 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;

437 (xv) operating or being in actual physical control of a motor vehicle while having any  
438 measurable or detectable amount of alcohol in the person's body in violation of Section  
439 41-6a-530;

440 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in  
441 violation of Section 41-6a-606; and

442 (xvii) operating or being in actual physical control of a motor vehicle in this state  
443 without an ignition interlock system in violation of Section 41-6a-518.2.

444 (b) The division shall immediately revoke the license of a person upon receiving a  
445 record of an adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996, for any of the  
446 following offenses:

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

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

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

454 (i) any violation of:

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

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

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

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

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

460 (ii) any criminal offense that prohibits:

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

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

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

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

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

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

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

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

479 (4) (a) The division may extend to a person the limited privilege of driving a motor  
480 vehicle to and from the person's place of employment or within other specified limits on  
481 recommendation of the trial judge in any case where a person is convicted of any of the  
482 offenses referred to in Subsections (1) and (2) except:

483 (i) automobile homicide under Subsection (1)(a)(i);

484 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),  
485 (1)(b), and (1)(c); and

486 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
487 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
488 41-6a-517, a local ordinance which complies with the requirements of Subsection  
489 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person  
490 was charged with violating as a result of a plea bargain after having been originally charged

491 with violating one or more of these sections or ordinances.

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

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

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

500 **53-3-223. Chemical test for driving under the influence -- Temporary license --**  
501 **Hearing and decision -- Suspension and fee -- Judicial review.**

502 (1) (a) If a peace officer has reasonable grounds to believe that a person may be  
503 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a  
504 certain blood or breath alcohol concentration and driving under the influence of any drug,  
505 alcohol, or combination of a drug and alcohol or while having any measurable controlled  
506 substance or metabolite of a controlled substance in the person's body in violation of Section  
507 41-6a-517, the peace officer may, in connection with arresting the person, request that the  
508 person submit to a chemical test or tests to be administered in compliance with the standards  
509 under Section 41-6a-520.

510 (b) In this section, a reference to Section 41-6a-502 includes any similar local  
511 ordinance adopted in compliance with Subsection 41-6a-510(1).

512 (2) The peace officer shall advise a person prior to the person's submission to a  
513 chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall,  
514 and the existence of a blood alcohol content sufficient to render the person incapable of safely  
515 driving a motor vehicle may, result in suspension or revocation of the person's license to drive  
516 a motor vehicle.

517 (3) If the person submits to a chemical test and the test results indicate a blood or  
518 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer  
519 makes a determination, based on reasonable grounds, that the person is otherwise in violation  
520 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of  
521 arrest, give notice of the division's intention to suspend the person's license to drive a motor

522 vehicle.

523 (4) (a) When a peace officer gives notice on behalf of the division, the peace officer  
524 shall:

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

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

528 (iii) supply to the driver, in a manner specified by the division, basic information  
529 regarding how to obtain a prompt hearing before the division.

530 (b) A citation issued by a peace officer may, if provided in a manner specified by the  
531 division, also serve as the temporary license certificate.

532 (5) As a matter of procedure, a peace officer shall send to the division within ten  
533 calendar days after the day on which notice is provided:

534 (a) the person's license certificate;

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

536 (c) a signed report in a manner specified by the division indicating the chemical test  
537 results, if any; and

538 (d) any other basis for the peace officer's determination that the person has violated  
539 Section 41-6a-502 or 41-6a-517.

540 (6) (a) Upon request in a manner specified by the division, the division shall grant to  
541 the person an opportunity to be heard within 29 days after the date of arrest. The request to be  
542 heard shall be made within ten calendar days of the day on which notice is provided under  
543 Subsection (5).

544 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the  
545 division in the county in which the arrest occurred.

546 (ii) The division may hold a hearing in some other county if the division and the person  
547 both agree.

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

549 (i) whether a peace officer had reasonable grounds to believe the person was driving a  
550 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

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

552 (iii) the test results, if any.

553 (d) (i) In connection with a hearing the division or its authorized agent:  
554 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and  
555 the production of relevant books and papers; or  
556 (B) may issue subpoenas for the attendance of necessary peace officers.

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

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

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

562 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable  
563 grounds to believe that the person was driving a motor vehicle in violation of Section  
564 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the  
565 notice, or if a hearing is not requested under this section, the division shall suspend the person's  
566 license or permit to operate a motor vehicle for a period of:

567 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or  
568 (ii) one year beginning on the 30th day after the date of arrest for a second or  
569 subsequent suspension for an offense that occurred within the previous ten years.

570 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall  
571 reinstate a person's license prior to completion of the 90 day suspension period imposed under  
572 Subsection (7)(a)(i) ~~[if the person's charge for a violation of Section 41-6a-502 or 41-6a-517 is~~  
573 ~~reduced or dismissed]:~~

574 (A) immediately upon receiving written verification of the person's dismissal of a  
575 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received  
576 prior to completion of the suspension period[-]; or

577 ~~[(ii) The division shall immediately reinstate a person's license upon receiving written~~  
578 ~~verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or~~  
579 ~~41-6a-517.]~~

580 ~~[(iii) The division shall reinstate a person's license no sooner than 60 days beginning~~  
581 ~~on the 30th day after the date of arrest upon receiving written verification of the person's~~  
582 ~~reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517.]~~

583 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon

584 receiving written verification of the person's reduction of a charge for a violation of Section  
585 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the  
586 suspension period.

587 ~~[(iv)]~~ (ii) If a person's license is reinstated under this Subsection (7)(b), the person is  
588 required to pay the license reinstatement fees under Subsections 53-3-105(29) and (30).

589 (iii) The driver license reinstatements authorized under this Subsection (7)(b) only  
590 apply to a 90 day suspension period imposed under Subsection (7)(a)(i).

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

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

599 Section 9. Section **53-3-232** is amended to read:

600 **53-3-232. Conditional license -- May not operate a vehicle or motorboat with**  
601 **alcohol in body -- Penalty.**

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

603 (a) a conviction of a violation of Section 41-6a-502, Section 41-6a-517, a local  
604 ordinance which complies with the requirements of Subsection 41-6a-510(1), Section  
605 76-5-207, or of alcohol-related reckless driving as described under Subsection 41-6a-512(1),  
606 repealed by this bill;

607 (b) a revocation under Section 41-6a-521 if the revocation is not based on the same  
608 arrest as a conviction under Subsection (1)(a); or

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

610 (2) (a) Until June 30, 2005, the division may only issue, reinstate, or renew a driver  
611 license in the form of a no alcohol conditional license to a person who has a qualifying  
612 conviction for a period of:

613 (i) two years after issuance of a Utah driver license or permit following a first  
614 qualifying conviction for an offense, the arrest for which occurred within the previous ten

615 years; and

616 (ii) ten years after issuance of a Utah driver license or permit following a second or  
617 subsequent qualifying conviction for an offense, the arrest for which occurred within the  
618 previous ten years.

619 (b) Beginning on July 1, 2005, the division may not issue, reinstate, or renew a driver  
620 license in the form of a no alcohol conditional license.

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

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

627 Section 10. Section **76-10-528** is amended to read:

628 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**  
629 **drugs unlawful.**

630 (1) Any person who carries a dangerous weapon while under the influence of alcohol  
631 or a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor.  
632 Under the influence means the same level of influence or blood or breath alcohol concentration  
633 as provided in Subsections 41-6a-502(1)(a)~~(i)~~ through ~~(iii)~~(c).

634 (2) It is not a defense to prosecution under this section that the person:

635 (a) is licensed in the pursuit of wildlife of any kind; or

636 (b) has a valid permit to carry a concealed firearm.

637 Section 11. **Repealer.**

638 This bill repeals:

639 Section **41-6a-512, Factual basis for alcohol or drug-related reckless driving plea.**

640 Section 12. **Appropriation.**

641 (1) As an ongoing appropriation subject to future budget constraints, there is  
642 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the Department of  
643 Public Safety, Utah Highway Patrol to be used for additional Driving Under the Influence Law  
644 Enforcement Officers.

645 (2) As an ongoing appropriation subject to future budget constraints, there is

646 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the Department of  
647 Public Safety, Liquor Law Enforcement Program to be used for additional Liquor Law  
648 Enforcement Officers.

649 Section 13. **Effective date.**

650 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2008.

651 (2) If approved by two-thirds of all members elected to each house, the amendments to  
652 Sections 53-3-223 and 76-10-528 take effect upon approval by the governor, or the day  
653 following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the  
654 governor's signature, or in the case of a veto, the date of veto override.

655 Section 14. **Revisor instructions.**

656 It is the intent of the Legislature that, in preparing the Utah Code database for  
657 publication, the Office of Legislative Research and General Counsel shall replace the  
658 references in Subsections 41-6a-501(2)(a)(ii)(A)(I), 41-6a-529(1)(a)(i)(B), and 53-3-232(1)(a)  
659 from "this bill" to the bill's designated chapter number in the Laws of Utah.

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**S.B. 15 1st Sub. (Green) - Driving Under the Influence Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

It is estimated that enactment of this bill will increase ongoing state revenues by \$1,788,000 beginning FY 2009. The bill appropriates ongoing General Funds beginning FY 2009 of \$1,320,000 to the Department of Public Safety (\$660,000 to the Utah Highway Patrol and \$660,000 to Liquor Law Enforcement). The Department of Public Safety Driver License Division will require one-time FY 2009 Restricted Funds of \$7,500 for system programming changes. The Courts will require ongoing General Funds beginning FY 2009 of \$210,000. The Department of Corrections will require FY 2009 General Funds of \$132,000 and ongoing General Funds beginning FY 2010 of \$264,000.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$1,794,000	\$1,794,000	\$0	\$1,712,400	\$1,712,400
General Fund, One-Time	\$0	(\$132,000)	\$0	\$0	\$0	\$0
Transportation Fund Restricted	\$0	\$7,500	\$0	\$0	\$58,200	\$58,200
Dedicated Credits	\$0	\$0	\$0	\$0	\$17,400	\$17,400
<b>Total</b>	<b>\$0</b>	<b>\$1,669,500</b>	<b>\$1,794,000</b>	<b>\$0</b>	<b>\$1,788,000</b>	<b>\$1,788,000</b>

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**Individual, Business and/or Local Impact**

Local governments may also benefit from the increased number and range of traffic citations issued from speeding to Driving Under the Influence offenses.

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