

**Representative Paul Ray** 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 for an offense committed on or after July 1, 2008 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;
- ▶ provides that 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



26 substitute of an original charge of driving under the influence only apply to an offense  
27 committed before July 1, 2008;

28       ▶ clarifies that certain license reinstatement provisions only apply to a certain 90 day  
29 suspension period imposed by the Driver License Division;

30       ▶ increases the administrative impound fee for a driving under the influence violation  
31 impound; and

32       ▶ makes technical changes.

**33 Monies Appropriated in this Bill:**

34       This bill appropriates:

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

38       ▶ as an ongoing appropriation subject to future budget constraints, \$660,000 from the  
39 General Fund for fiscal year 2008-09 to the Department of Public Safety, Liquor  
40 Law Enforcement Program.

**41 Other Special Clauses:**

42       This bill provides an effective date.

**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-512**, as enacted by Laws of Utah 2005, Chapter 2

48       **41-6a-518.2**, as enacted by Laws of Utah 2006, Chapter 341

49       **41-6a-529**, as last amended by Laws of Utah 2007, Chapter 261

50       **41-6a-1406**, as last amended by Laws of Utah 2005, Chapter 56 and renumbered and  
51 amended by Laws of Utah 2005, Chapter 2

52       **53-3-220**, as last amended by Laws of Utah 2007, Chapter 261

53       **53-3-223**, as last amended by Laws of Utah 2007, Chapter 261

54       **76-5-207**, as last amended by Laws of Utah 2006, Chapter 341

55       **76-10-528**, as last amended by Laws of Utah 2005, Chapter 2

56 ENACTS:

57 **41-6a-502.5**, Utah Code Annotated 1953

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

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

61 **41-6a-501. Definitions.**

62 (1) As used in this part:

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

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

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

67 (B) an educational series; or

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

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

71 (b) "Drug" or "drugs" means:

72 (i) a controlled substance as defined in Section 58-37-2;

73 (ii) a drug as defined in Section 58-17b-102; or

74 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the  
75 human body, can impair the ability of a person to safely operate a motor vehicle.

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

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

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

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

84 (A) an assessment; or

85 (B) an educational series; and

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

- 88           ~~[(e)]~~ (f) "Serious bodily injury" means bodily injury that creates or causes:
- 89           (i) serious permanent disfigurement;
- 90           (ii) protracted loss or impairment of the function of any bodily member or organ; or
- 91           (iii) a substantial risk of death.
- 92           ~~[(f)]~~ (g) "Substance abuse treatment" means treatment obtained at a substance abuse
- 93 program that is approved by the Board of Substance Abuse and Mental Health in accordance
- 94 with Section 62A-15-105.
- 95           ~~[(g)]~~ (h) "Substance abuse treatment program" means a state licensed substance abuse
- 96 program.
- 97           ~~[(h)]~~ (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
- 98 Section 41-6a-102; and
- 99           (ii) "Vehicle" or "motor vehicle" includes:
- 100           (A) an off-highway vehicle as defined under Section 41-22-2; and
- 101           (B) a motorboat as defined in Section 73-18-2.
- 102           (2) As used in Section 41-6a-503:
- 103           (a) "Conviction" means any conviction for a violation of:
- 104           (i) driving under the influence under Section 41-6a-502;
- 105           (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
- 106 combination of both-related reckless driving under ~~[Sections]~~:
- 107           (I) Section 41-6a-512; and
- 108           (II) Section 41-6a-528; or
- 109           (B) for an offense committed on or after July 1, 2008, impaired driving under Section
- 110 41-6a-502.5;
- 111           (iii) driving with any measurable controlled substance that is taken illegally in the body
- 112 under Section 41-6a-517;
- 113           (iv) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a
- 114 combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5
- 115 adopted in compliance with Section 41-6a-510;
- 116           (v) automobile homicide under Section 76-5-207;
- 117           (vi) Subsection 58-37-8(2)(g);
- 118           (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of

119 conviction is reduced under Section 76-3-402; or

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

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

130 (i) enhancement of penalties under:

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

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

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

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

135 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**

136 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of  
137 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of  
138 impaired driving under this section if:

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

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

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

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

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

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

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

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

152           (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor  
153 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one  
154 degree.

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

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

161           (b) The court shall render the same order regarding screening, assessment, an  
162 educational series, or substance abuse treatment in connection with a first, second, or  
163 subsequent conviction under this section as the court would render in connection with applying  
164 respectively, the first, second, or subsequent conviction requirements of Subsection  
165 41-6a-505(1), (2), or (3).

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

167           **41-6a-510. Local DUI and related ordinances and reckless driving and impaired**  
168 **driving ordinances -- Consistent with code.**

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

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

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

175           (i) a chemical test or chemical tests;

176           (ii) evidentiary presumptions;

177           (iii) penalties; or

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

179           (2) An ordinance adopted by a local authority that governs reckless driving, impaired  
180 driving, or operating a vehicle in willful or wanton disregard for the safety of persons or

181 property shall be consistent with the provisions of this code which govern those matters.

182 Section 4. Section **41-6a-512** is amended to read:

183 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

184 (1) (a) The prosecution shall state for the record a factual basis for a plea, including  
185 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the  
186 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no  
187 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an  
188 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,  
189 2008:

190 (i) reckless driving under Section 41-6a-528; or

191 (ii) an ordinance enacted under Section 41-6a-510.

192 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows  
193 whether there was consumption of alcohol, drugs, or a combination of both, by the defendant,  
194 in connection with the violation.

195 (2) The court shall advise the defendant before accepting the plea offered under this  
196 section of the consequences of a violation of Section 41-6a-528.

197 (3) The court shall notify the Driver License Division of each conviction of Section  
198 41-6a-528 entered under this section.

199 (4) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a  
200 sentencing court to order a convicted person to participate in a screening, an assessment, or an  
201 educational series or obtain substance abuse treatment or do a combination of those things,  
202 apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

203 (b) The court shall render the same order regarding screening, assessment, an  
204 educational series, or substance abuse treatment in connection with a first, second, or  
205 subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would  
206 render in connection with applying respectively, the first, second, or subsequent conviction  
207 requirements of Subsections 41-6a-505(1), (2), and (3).

208 Section 5. Section **41-6a-518.2** is amended to read:

209 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**  
210 **interlock system.**

211 (1) As used in this section:

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

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

215 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection  
216 41-6a-518(8); and

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

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

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

222 (II) the ~~[conviction]~~ offense described under Subsection (1)(b)(i)(B)(I) is committed  
223 within ten years ~~[of one or more prior convictions]~~ from the date that one or more prior  
224 offenses was committed if the prior offense resulted in a conviction as defined in Subsection  
225 41-6a-501(2);

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

227 (D) within the last three years has had the person's driving privilege revoked for refusal  
228 to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1,  
229 2006;

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

232 ~~[(E)]~~ (F) within the last six years has been convicted of a felony violation of Section  
233 41-6a-502 for an offense that occurred after May 1, 2006; or

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

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

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

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

241 (2) For purposes of this section, a plea of guilty or no contest to a violation of Section  
242 41-6a-502 which plea ~~[is]~~ was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,

243 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently  
244 reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

248 (i) an interlock restricted driver:

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

251 (B) had given written notice to the employer of the interlock restricted driver's  
252 interlock restricted status prior to the operation or actual physical control under Subsection  
253 (4)(a)(i); and

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

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

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

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

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

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

265 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

268 (a) within the last two years:

269 (i) has been convicted of:

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

271 (B) alcohol, any drug, or a combination of both-related reckless driving under Section  
272 41-6a-512;

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

274           ~~[(C)]~~ (D) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a  
275 combination of both-related reckless driving, or impaired driving adopted in compliance with  
276 Section 41-6a-510;

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

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

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

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

288           (c) within the last five years:

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

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

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

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

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

296           (d) within the last ten years:

297           (i) has been convicted of an offense described in Subsection (1)(a)(i) which  
298 ~~[conviction]~~ offense was committed within ten years of ~~[a prior conviction for an]~~ the  
299 commission of a prior offense described in Subsection (1)(a)(i) for which the person was  
300 convicted; or

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

303           (A) a prior refusal to submit to a chemical test under Section 41-6a-520; or

304           (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not

305 based on the same arrest as the refusal; [~~or~~]

306 (e) at any time has been convicted of:

307 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or  
308 after July 1, 2005; or

309 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July  
310 1, 2005[~~;~~]; or

311 (f) at the time of operation of a vehicle is under 21 years of age.

312 (2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to  
313 a violation described in Subsection (1)(a)(i) which plea [~~is~~] was held in abeyance under Title  
314 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even  
315 if the charge has been subsequently reduced or dismissed in accordance with the plea in  
316 abeyance agreement.

317 Section 7. Section **41-6a-1406** is amended to read:

318 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**  
319 **requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

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

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

327 (a) a state impound yard; or

328 (b) if none, a garage, docking area, or other place of safety.

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

331 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

332 (b) by the department under Subsection (10).

333 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report  
334 of the removal shall be sent to the Motor Vehicle Division by:

335 (i) the peace officer or agency by whom the peace officer is employed; and

336 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck  
337 operator is employed.

338 (b) The report shall be in a form specified by the Motor Vehicle Division and shall  
339 include:

340 (i) the operator's name, if known;

341 (ii) a description of the vehicle, vessel, or outboard motor;

342 (iii) the vehicle identification number or vessel or outboard motor identification  
343 number;

344 (iv) the license number or other identification number issued by a state agency;

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

346 (vi) the reason for removal or impoundment;

347 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or  
348 outboard motor; and

349 (viii) the place where the vehicle, vessel, or outboard motor is stored.

350 (c) Until the tow truck operator or tow truck motor carrier reports the removal as  
351 required under this Subsection (4), a tow truck motor carrier or impound yard may not:

352 (i) collect any fee associated with the removal; and

353 (ii) begin charging storage fees.

354 (5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the  
355 registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner  
356 prescribed by Section 41-1a-114.

357 (b) The notice shall:

358 (i) state the date, time, and place of removal, the name, if applicable, of the person  
359 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,  
360 and the place where the vehicle, vessel, or outboard motor is stored;

361 (ii) state that the registered owner is responsible for payment of towing, impound, and  
362 storage fees charged against the vehicle, vessel, or outboard motor;

363 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the  
364 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

365 (iv) inform the registered owner and lienholder of the division's intent to sell the  
366 vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or

367 impoundment under this section, the owner, lien holder, or the owner's agent fails to make a  
368 claim for release of the vehicle, vessel, or outboard motor.

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

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

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

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

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

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

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

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

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

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

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

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

395 (i) the Driver License Division determined that the arrested person's driver license  
396 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter  
397 or other report from the Driver License Division presented within 30 days of the final

398 notification from the Driver License Division; or

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

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

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

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

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

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

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

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

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

422 (A) be reasonable and fair; and

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

424 Section 8. Section **53-3-220** is amended to read:

425 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**  
426 **disqualification of license -- Offense requiring an extension of period -- Hearing --**  
427 **Limited driving privileges.**

428 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter

429 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division  
430 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's  
431 conviction for any of the following offenses:

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

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

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

441 (iv) perjury or the making of a false affidavit to the division under this chapter, Title  
442 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or  
443 regulating driving on highways;

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

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

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

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

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

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

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

459 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or

460 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

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

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

466 (xv) operating or being in actual physical control of a motor vehicle while having any  
467 measurable or detectable amount of alcohol in the person's body in violation of Section  
468 41-6a-530;

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

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

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

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

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

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

483 (i) any violation of:

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

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

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

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

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

489 (ii) any criminal offense that prohibits:

490 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance

491 that is prohibited under the acts described in Subsection (1)(c)(i); or

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

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

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

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

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

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

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

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

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

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

515 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
516 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
517 41-6a-517, a local ordinance which complies with the requirements of Subsection  
518 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person  
519 was charged with violating as a result of a plea bargain after having been originally charged  
520 with violating one or more of these sections or ordinances.

521 (b) This discretionary privilege is limited to when undue hardship would result from a

522 failure to grant the privilege and may be granted only once to any individual during any single  
523 period of denial, suspension, revocation, or disqualification, or extension of that denial,  
524 suspension, revocation, or disqualification.

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

528 Section 9. Section **53-3-223** is amended to read:

529 **53-3-223. Chemical test for driving under the influence -- Temporary license --**  
530 **Hearing and decision -- Suspension and fee -- Judicial review.**

531 (1) (a) If a peace officer has reasonable grounds to believe that a person may be  
532 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a  
533 certain blood or breath alcohol concentration and driving under the influence of any drug,  
534 alcohol, or combination of a drug and alcohol or while having any measurable controlled  
535 substance or metabolite of a controlled substance in the person's body in violation of Section  
536 41-6a-517, the peace officer may, in connection with arresting the person, request that the  
537 person submit to a chemical test or tests to be administered in compliance with the standards  
538 under Section 41-6a-520.

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

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

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

552 (4) (a) When a peace officer gives notice on behalf of the division, the peace officer

553 shall:

- 554 (i) take the Utah license certificate or permit, if any, of the driver;
- 555 (ii) issue a temporary license certificate effective for only 29 days from the date of
- 556 arrest; and
- 557 (iii) supply to the driver, in a manner specified by the division, basic information
- 558 regarding how to obtain a prompt hearing before the division.

559 (b) A citation issued by a peace officer may, if provided in a manner specified by the

560 division, also serve as the temporary license certificate.

561 (5) As a matter of procedure, a peace officer shall send to the division within ten

562 calendar days after the day on which notice is provided:

- 563 (a) the person's license certificate;
- 564 (b) a copy of the citation issued for the offense;
- 565 (c) a signed report in a manner specified by the division indicating the chemical test
- 566 results, if any; and
- 567 (d) any other basis for the peace officer's determination that the person has violated
- 568 Section 41-6a-502 or 41-6a-517.

569 (6) (a) Upon request in a manner specified by the division, the division shall grant to

570 the person an opportunity to be heard within 29 days after the date of arrest. The request to be

571 heard shall be made within ten calendar days of the day on which notice is provided under

572 Subsection (5).

573 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the

574 division in the county in which the arrest occurred.

575 (ii) The division may hold a hearing in some other county if the division and the person

576 both agree.

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

- 578 (i) whether a peace officer had reasonable grounds to believe the person was driving a
- 579 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;
- 580 (ii) whether the person refused to submit to the test; and
- 581 (iii) the test results, if any.

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

583 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and

584 the production of relevant books and papers; or

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

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

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

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

591 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable  
592 grounds to believe that the person was driving a motor vehicle in violation of Section  
593 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the  
594 notice, or if a hearing is not requested under this section, the division shall suspend the person's  
595 license or permit to operate a motor vehicle for a period of:

596 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or

597 (ii) one year beginning on the 30th day after the date of arrest for a second or  
598 subsequent suspension for an offense that occurred within the previous ten years.

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

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

606 ~~[(ii) The division shall immediately reinstate a person's license upon receiving written~~  
607 ~~verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or~~  
608 ~~41-6a-517.]~~

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

612 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon  
613 receiving written verification of the person's reduction of a charge for a violation of Section  
614 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the

615 suspension period.

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

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

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

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

628 Section 10. Section **76-5-207** is amended to read:

629 **76-5-207. Automobile homicide.**

630 (1) As used in this section[~~,"motor~~]:

631 (a) "Drug" or "drugs" means:

632 (i) a controlled substance as defined in Section 58-37-2;

633 (ii) a drug as defined in Section 58-17b-102; or

634 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the  
635 human body, can impair the ability of a person to safely operate a motor vehicle.

636 (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile,  
637 truck, van, motorcycle, train, engine, watercraft, or aircraft.

638 (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person  
639 operates a motor vehicle in a negligent manner causing the death of another and:

640 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the  
641 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the  
642 test;

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

645 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of

646 operation.

647 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is  
648 subsequent to a conviction as defined in Subsection 41-6a-501(2).

649 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to  
650 exercise that degree of care that reasonable and prudent persons exercise under like or similar  
651 circumstances.

652 (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the  
653 person operates a motor vehicle in a criminally negligent manner causing the death of another  
654 and:

655 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the  
656 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the  
657 test;

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

660 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of  
661 operation.

662 (b) As used in this Subsection (3), "criminally negligent" means criminal negligence as  
663 defined by Subsection 76-2-103(4).

664 (4) The standards for chemical breath analysis as provided by Section 41-6a-515 and  
665 the provisions for the admissibility of chemical test results as provided by Section 41-6a-516  
666 apply to determination and proof of blood alcohol content under this section.

667 (5) Calculations of blood or breath alcohol concentration under this section shall be  
668 made in accordance with Subsection 41-6a-502(1).

669 (6) The fact that a person charged with violating this section is or has been legally  
670 entitled to use alcohol or a drug is not a defense.

671 (7) Evidence of a defendant's blood or breath alcohol content or drug content is  
672 admissible except when prohibited by Rules of Evidence or the constitution.

673 Section 11. Section **76-10-528** is amended to read:

674 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**  
675 **drugs unlawful.**

676 (1) Any person who carries a dangerous weapon while under the influence of alcohol

677 or a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor.  
678 Under the influence means the same level of influence or blood or breath alcohol concentration  
679 as provided in Subsections 41-6a-502(1)(a)[(i)] through [(iii)](c).

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

- 681 (a) is licensed in the pursuit of wildlife of any kind; or
- 682 (b) has a valid permit to carry a concealed firearm.

683 **Section 12. Appropriation.**

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

688 (2) As an ongoing appropriation subject to future budget constraints, there is  
689 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the Department of  
690 Public Safety, Liquor Law Enforcement Program to be used for additional Liquor Law  
691 Enforcement Officers.

692 **Section 13. Effective date.**

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

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

**S.B. 15 4th Sub. (Pumpkin) - Driving Under the Influence Amendments**

**Fiscal Note**

2008 General Session

State of Utah

**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>

**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.