

DRIVER LICENSE HEARING AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Public Safety Code by amending provisions relating to Driver License Division hearings.

Highlighted Provisions:

This bill:

- ▶ provides that certain Driver License Division hearings may be held in a county that is adjacent to the county in which the arrest occurred rather than just being held in the county in which the arrest occurred; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-521, as last amended by Laws of Utah 2008, Chapters 3 and 304

53-3-223, as last amended by Laws of Utah 2008, Chapters 3, 226, and 304

53-3-231, as last amended by Laws of Utah 2008, Chapter 304

53-3-418, as last amended by Laws of Utah 2007, Chapter 261

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

Section 1. Section **41-6a-521** is amended to read:

30 **41-6a-521. Revocation hearing for refusal -- Appeal.**

31 (1) (a) A person who has been notified of the Driver License Division's intention to
32 revoke the person's license under Section 41-6a-520 is entitled to a hearing.

33 (b) A request for the hearing shall be made in writing within ten calendar days after
34 the day on which notice is provided.

35 (c) Upon request in a manner specified by the Driver License Division, the Driver
36 License Division shall grant to the person an opportunity to be heard within 29 days after the
37 date of arrest.

38 (d) If the person does not make a request for a hearing before the Driver License
39 Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state
40 is revoked beginning on the 30th day after the date of arrest for a period of:

41 (i) 18 months unless Subsection (1)(d)(ii) applies; or

42 (ii) 24 months if the person has had a previous:

43 (A) license sanction for an offense that occurred within the previous ten years from the
44 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
45 53-3-232; or

46 (B) conviction for an offense that occurred within the previous ten years from the date
47 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
48 constitute a violation of Section 41-6a-502.

49 (2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person,
50 the hearing shall be conducted by the Driver License Division in:

51 (i) the county in which the offense occurred[-]; or

52 (ii) a county which is adjacent to the county in which the offense occurred.

53 (b) The Driver License Division may hold a hearing in some other county if the Driver
54 License Division and the person both agree.

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

56 (a) whether a peace officer had reasonable grounds to believe that a person was
57 operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231,

58 or 53-3-232; and

59 (b) whether the person refused to submit to the test or tests under Section 41-6a-520.

60 (4) (a) In connection with the hearing, the division or its authorized agent:

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

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

64 (b) The Driver License Division shall pay witness fees and mileage from the
65 Transportation Fund in accordance with the rates established in Section 78B-1-119.

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

71 (i) 18 months unless Subsection (5)(a)(ii) applies; or

72 (ii) 24 months if the person has had a previous:

73 (A) license sanction for an offense that occurred within the previous ten years from the
74 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
75 53-3-232; or

76 (B) conviction for an offense that occurred within the previous ten years from the date
77 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
78 constitute a violation of Section 41-6a-502.

79 (b) The Driver License Division shall also assess against the person, in addition to any
80 fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be
81 paid before the person's driving privilege is reinstated, to cover administrative costs.

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

84 (6) (a) Any person whose license has been revoked by the Driver License Division
85 under this section following an administrative hearing may seek judicial review.

86 (b) Judicial review of an informal adjudicative proceeding is a trial.

87 (c) Venue is in the district court in the county in which the offense occurred.

88 Section 2. Section **53-3-223** is amended to read:

89 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
90 **Hearing and decision -- Suspension and fee -- Judicial review.**

91 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
92 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
93 certain blood or breath alcohol concentration and driving under the influence of any drug,
94 alcohol, or combination of a drug and alcohol or while having any measurable controlled
95 substance or metabolite of a controlled substance in the person's body in violation of Section
96 41-6a-517, the peace officer may, in connection with arresting the person, request that the
97 person submit to a chemical test or tests to be administered in compliance with the standards
98 under Section 41-6a-520.

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

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

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

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

- 114 (i) take the Utah license certificate or permit, if any, of the driver;
- 115 (ii) issue a temporary license certificate effective for only 29 days from the date of
- 116 arrest; and
- 117 (iii) supply to the driver, in a manner specified by the division, basic information
- 118 regarding how to obtain a prompt hearing before the division.
- 119 (b) A citation issued by a peace officer may, if provided in a manner specified by the
- 120 division, also serve as the temporary license certificate.
- 121 (5) As a matter of procedure, a peace officer shall send to the division within ten
- 122 calendar days after the day on which notice is provided:
- 123 (a) the person's license certificate;
- 124 (b) a copy of the citation issued for the offense;
- 125 (c) a signed report in a manner specified by the division indicating the chemical test
- 126 results, if any; and
- 127 (d) any other basis for the peace officer's determination that the person has violated
- 128 Section 41-6a-502 or 41-6a-517.
- 129 (6) (a) Upon request in a manner specified by the division, the division shall grant to
- 130 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
- 131 heard shall be made within ten calendar days of the day on which notice is provided under
- 132 Subsection (5).
- 133 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before
- 134 the division in:
- 135 (A) the county in which the arrest occurred[-]; or
- 136 (B) a county that is adjacent to the county in which the arrest occurred.
- 137 (ii) The division may hold a hearing in some other county if the division and the
- 138 person both agree.
- 139 (c) The hearing shall be documented and shall cover the issues of:
- 140 (i) whether a peace officer had reasonable grounds to believe the person was driving a
- 141 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

142 (ii) whether the person refused to submit to the test; and
143 (iii) the test results, if any.
144 (d) (i) In connection with a hearing the division or its authorized agent:
145 (A) may administer oaths and may issue subpoenas for the attendance of witnesses
146 and the production of relevant books and papers; or
147 (B) may issue subpoenas for the attendance of necessary peace officers.
148 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
149 accordance with the rates established in Section 78B-1-119.
150 (e) The division may designate one or more employees to conduct the hearing.
151 (f) Any decision made after a hearing before any designated employee is as valid as if
152 made by the division.
153 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
154 grounds to believe that the person was driving a motor vehicle in violation of Section
155 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
156 notice, or if a hearing is not requested under this section, the division shall suspend the
157 person's license or permit to operate a motor vehicle for a period of:
158 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or
159 (ii) one year beginning on the 30th day after the date of arrest for a second or
160 subsequent suspension for an offense that occurred within the previous ten years.
161 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall
162 reinstate a person's license prior to completion of the 90 day suspension period imposed under
163 Subsection (7)(a)(i):
164 (A) immediately upon receiving written verification of the person's dismissal of a
165 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received
166 prior to completion of the suspension period; or
167 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon
168 receiving written verification of the person's reduction of a charge for a violation of Section
169 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the

170 suspension period.

171 (ii) If a person's license is reinstated under this Subsection (7)(b), the person is
172 required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

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

175 (8) (a) The division shall assess against a person, in addition to any fee imposed under
176 Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to
177 cover administrative costs, which shall be paid before the person's driving privilege is
178 reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or
179 court decision that the suspension was not proper.

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

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

184 **53-3-231. Person under 21 may not operate a vehicle or motorboat with**
185 **detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing**
186 **and decision -- Suspension of license or operating privilege -- Fees -- Judicial review --**
187 **Referral to local substance abuse authority or program.**

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

189 (i) "Local substance abuse authority" has the same meaning as provided in Section
190 62A-15-102.

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

194 (b) Calculations of blood, breath, or urine alcohol concentration under this section
195 shall be made in accordance with the procedures in Subsection 41-6a-502(1).

196 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
197 control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol

198 concentration in the person's body as shown by a chemical test.

199 (b) A person who violates Subsection (2)(a), in addition to any other applicable
200 penalties arising out of the incident, shall have the person's operator license denied or
201 suspended as provided in Subsection (8).

202 (3) (a) When a peace officer has reasonable grounds to believe that a person may be
203 violating or has violated Subsection (2), the peace officer may, in connection with arresting
204 the person for a violation of Section 32A-12-209, request that the person submit to a chemical
205 test or tests to be administered in compliance with the standards under Section 41-6a-520.

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

209 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
210 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
211 determination, based on reasonable grounds, that the person is otherwise in violation of
212 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the
213 arrest, give notice of the division's intention to deny or suspend the person's license to operate
214 a vehicle or refusal to issue a license under this section.

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

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

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

219 (c) supply to the operator, in a manner specified by the division, basic information
220 regarding how to obtain a prompt hearing before the division.

221 (5) A citation issued by a peace officer may, if provided in a manner specified by the
222 division, also serve as the temporary license certificate under Subsection (4)(b).

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

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

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

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

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

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

234 (ii) The request shall be made within ten calendar days of the day on which notice is
235 provided.

236 (b) (i) Except as provided in Subsection (7)(b)(ii), a hearing, if held, shall be before
237 the division in:

238 (A) the county in which the arrest occurred[-]; or
239 (B) a county that is adjacent to the county in which the arrest occurred.

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

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

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

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

246 (iii) the test results, if any.

247 (d) In connection with a hearing, the division or its authorized agent may administer
248 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
249 books and papers and records as defined in Section 46-4-102.

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

251 (f) Any decision made after a hearing before any number of the members of the
252 division is as valid as if made after a hearing before the full membership of the division.

253 (8) If, after a hearing, the division determines that a peace officer had reasonable

254 grounds to believe that the person was driving a motor vehicle in violation of Subsection
255 (2)(a), if the person fails to appear before the division as required in the notice, or if the person
256 does not request a hearing under this section, the division shall:

257 (a) deny the person's license for a period of 90 days beginning on the 30th day after
258 the date of arrest for a first offense under Subsection (2)(a);

259 (b) suspend the person's license for a period of one year beginning on the 30th day
260 after the date of arrest for a second or subsequent offense under Subsection (2)(a) within three
261 years of a prior denial or suspension; or

262 (c) deny the person's application for a license or learner's permit until the person is 17
263 years of age or for a period of one year, whichever is longer, if the person has not been issued
264 an operator license.

265 (9) (a) (i) Following denial or suspension the division shall assess against a person, in
266 addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105,
267 which shall be paid before the person's driving privilege is reinstated, to cover administrative
268 costs.

269 (ii) This fee shall be canceled if the person obtains an unappealed division hearing or
270 court decision that the suspension was not proper.

271 (b) A person whose operator license has been denied, suspended, or postponed by the
272 division under this section following an administrative hearing may file a petition within 30
273 days after the suspension for a hearing on the matter which, if held, is governed by Section
274 53-3-224.

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

279 (11) (a) In addition to the penalties in Subsection (8), a person who violates
280 Subsection (2)(a) shall:

281 (i) obtain an assessment and recommendation for appropriate action from a substance

282 abuse program, but any associated costs shall be the person's responsibility; or

283 (ii) be referred by the division to the local substance abuse authority for an assessment
284 and recommendation for appropriate action.

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

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

291 (A) a targeted education and prevention program;

292 (B) an early intervention program; or

293 (C) a substance abuse treatment program.

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

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

299 (d) The local substance abuse authorities and the substance abuse programs shall
300 cooperate with the division in:

301 (i) conducting the assessments;

302 (ii) making appropriate recommendations for action; and

303 (iii) notifying the division about the person's status regarding completion of the
304 recommended action.

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

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

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

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

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

315 (B) The costs and fees under Subsection (11)(e)(iii)(A) shall be based on a sliding
316 scale consistent with the local substance abuse authority's policies and practices regarding fees
317 for services or determined by the substance abuse program.

318 Section 4. Section **53-3-418** is amended to read:

319 **53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.**

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

322 (a) has sufficient alcohol in the person's body that a subsequent chemical test shows
323 that the person has a blood or breath alcohol concentration of .04 grams or greater at the time
324 of the test after the alleged driving of the commercial motor vehicle;

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

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

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

334 (3) If a peace officer or port-of-entry agent has reasonable cause to believe that a
335 person may be violating this section, the peace officer or port-of-entry agent may request the
336 person to submit to a chemical test to be administered in compliance with Section 41-6a-515.

337 (4) When a peace officer or port-of-entry agent requests a person to submit to a test

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

342 (5) If test results under this section indicate .04 grams or greater of alcohol
343 concentration or the person refuses to submit to any test requested under this section, a peace
344 officer or port-of-entry agent shall, on behalf of the division and within 24 hours of the arrest,
345 give the person notice of the division's intention to disqualify the person's privilege to drive a
346 commercial motor vehicle.

347 (6) When a peace officer or port-of-entry agent gives notice under Subsection (5), the
348 peace officer or port-of-entry agent shall:

- 349 (a) take any Utah license certificate or permit held by the driver;
- 350 (b) issue to the driver a temporary license certificate effective for 29 days from the
351 date of arrest;
- 352 (c) provide the driver, in a manner specified by the division, basic information
353 regarding how to obtain a prompt hearing before the division; and
- 354 (d) issue a 24-hour out-of-service order.

355 (7) A notice of disqualification issued under Subsection (6) may serve also as the
356 temporary license certificate under that subsection, if provided in a manner specified by the
357 division.

358 (8) As a matter of procedure, a peace officer or port-of-entry agent shall, within ten
359 calendar days after the day on which notice is provided, send to the division the person's
360 license certificate, a copy of the notice, and a report signed by the peace officer or
361 port-of-entry agent that indicates the results of any chemical test administered or that the
362 person refused a test.

363 (9) (a) A person disqualified under this section has the right to a hearing regarding the
364 disqualification.

365 (b) The request for the hearing shall be submitted to the division in a manner specified

366 by the division and shall be made within ten calendar days of the date the notice was issued. If
367 requested, the hearing shall be conducted within 29 days after the date of arrest.

368 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), a hearing held under this
369 section shall be held before the division and in:

370 (A) the county where the notice was issued[-]; or

371 (B) a county that is adjacent to the county where the notice was issued.

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

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

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

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

378 (iii) any test results obtained.

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

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

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

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

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

389 (11) (a) If the division disqualifies a person under this section following an
390 administrative hearing, the person may petition for a hearing under Section 53-3-224.

391 (b) The petition shall be filed within 30 days after the division issues the
392 disqualification.

393 (12) (a) A person who violates this section shall be punished in accordance with

394 Section 53-3-414.

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

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

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

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