

1 **ALCOHOLIC BEVERAGE AMENDMENTS**

2 **RELATED TO MINORS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis Oda**

6 Senate Sponsor: Gene Davis

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Alcoholic Beverage Control Act provisions related to driving
11 privileges, and addresses penalties and liability related to violations involving a minor.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies penalties for violations related to proof of age;
- 15 ▶ modifies penalties related to suspension of driving privileges of a minor;
- 16 ▶ makes a minor, or in certain circumstances, a parent or guardian of a minor, liable
17 to a retail licensee for a portion of monetary penalties imposed on a retail licensee
18 for a violation related to a minor; and
- 19 ▶ makes technical and conforming amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **32A-1-301**, as last amended by Laws of Utah 2004, Chapter 70

27 **32A-1-305**, as renumbered and amended by Laws of Utah 1990, Chapter 23

28 **32A-12-209**, as last amended by Laws of Utah 2008, Chapter 3

29 **32A-12-209.5**, as last amended by Laws of Utah 2008, Chapter 3

30 **53-3-220**, as last amended by Laws of Utah 2008, Chapters 3, 226, and 296

31 **78A-6-606**, as renumbered and amended by Laws of Utah 2008, Chapter 3

32 ENACTS:

33 **32A-12-223**, Utah Code Annotated 1953

34 **32A-14b-101**, Utah Code Annotated 1953

35 **32A-14b-102**, Utah Code Annotated 1953

36 **32A-14b-201**, Utah Code Annotated 1953

37 **32A-14b-202**, Utah Code Annotated 1953

38 **32A-14b-203**, Utah Code Annotated 1953



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

41 Section 1. Section **32A-1-301** is amended to read:

42 **32A-1-301. Unlawful transfer or use of proof of age -- False information.**

43 (1) (a) It is unlawful for a person to transfer that person's proof of age to [~~any other~~]

44 another person to aid that person:

45 (i) in procuring an alcoholic [~~beverages or products~~] beverage or product;

46 (ii) to gain admittance to a place where [~~alcoholic beverages or products are~~] an

47 alcoholic beverage or product is sold or consumed; or

48 (iii) to obtain [~~any~~] employment that under this title may not be obtained by a minor.

49 (b) [~~Any~~] A person who permits that person's proof of age to be used by another for

50 [~~any~~] a purpose stated in Subsection (1)(a) is guilty of a class B misdemeanor.

51 (2) (a) It is unlawful for a person to use a proof of age containing false information

52 with the intent to:

53 (i) procure an alcoholic [~~beverages or products~~] beverage or product;

54 (ii) gain admittance to a place where an alcoholic [~~beverages or products are~~] beverage

55 or product is sold or consumed; or

56 (iii) obtain [~~any~~] employment that under this title may not be obtained by a minor.

57 (b) [~~A~~] Except as provided in Section 32A-12-223, a person who violates this

58 Subsection (2) is guilty of a class A misdemeanor.

59 Section 2. Section **32A-1-305** is amended to read:

60 **32A-1-305. Penalty.**

61 Unless otherwise provided in this title, [~~any~~] including Section 32A-12-223, a person
62 who violates this part is guilty of a class B misdemeanor.

63 Section 3. Section **32A-12-209** is amended to read:

64 **32A-12-209. Unlawful purchase, possession, consumption by minors --**

65 **Measurable amounts in body.**

66 (1) Unless specifically authorized by this title, it is unlawful for [~~any~~] a minor to:

- 67 (a) purchase [~~any~~] an alcoholic beverage or product;
- 68 (b) attempt to purchase [~~any~~] an alcoholic beverage or product;
- 69 (c) solicit another person to purchase [~~any~~] an alcoholic beverage or product;
- 70 (d) possess [~~any~~] an alcoholic beverage or product;
- 71 (e) consume [~~any~~] an alcoholic beverage or product; or
- 72 (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

73 (2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic
74 beverage or product for a minor for:

- 75 (a) [~~any~~] a minor to misrepresent the minor's age; or
- 76 (b) any other person to misrepresent the age of a minor.

77 (3) It is unlawful for a minor to possess or consume [~~any~~] an alcoholic beverage while
78 riding in a limousine or chartered bus.

79 (4) When a minor who is at least 18 years old, but younger than 21 years old, is found
80 by a court to have violated this section, except as provided in Section 32A-12-223:

81 (a) if the violation is the minor's first violation of this section, the court may suspend
82 the minor's driving privileges; or

83 (b) if the violation is the minor's second or subsequent violation of this section, the
84 court shall suspend the minor's driving privileges.

85 (5) When a minor who is at least 13 years old, but younger than 18 years old, is found

86 by the court to have violated this section, [~~the provisions regarding suspension of the driver's~~
87 ~~license under~~] Section 78A-6-606 [~~apply~~] applies to the violation.

88 (6) When [~~the~~] a court issues an order suspending a person's driving privileges for a
89 violation of this section, the Driver License Division shall suspend the person's license under
90 Section 53-3-219.

91 (7) When the Department of Public Safety receives the arrest or conviction record of a
92 person for a driving offense committed while the person's license is suspended pursuant to this
93 section, the [~~department~~] Department of Public Safety shall extend the suspension for an
94 additional like period of time.

95 (8) This section does not apply to a minor's consumption of an alcoholic beverage or
96 product in accordance with this title:

97 (a) for medicinal purposes if the alcoholic beverage or product is furnished by:

98 (i) the parent or guardian of the minor; or

99 (ii) the minor's physician or dentist; or

100 (b) as part of a church's or religious organization's religious services.

101 Section 4. Section **32A-12-209.5** is amended to read:

102 **32A-12-209.5. Unlawful admittance or attempt to gain admittance by minor.**

103 (1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the
104 premises of:

105 (a) a tavern; or

106 (b) a class D private club, except to the extent authorized by Subsection 32A-5-107(8).

107 (2) A minor who violates this section is guilty of a class C misdemeanor.

108 (3) When a minor who is at least 18 years old, but younger than 21 years old, is found
109 by a court to have violated this section, except as provided in Section 32A-12-223:

110 (a) if the violation is the minor's first violation of this section, the court may suspend
111 the minor's driving privileges; or

112 (b) if the violation is the minor's second or subsequent violation of this section, the
113 court shall suspend the minor's driving privileges.

114 (4) When a minor who is at least 13 years old, but younger than 18 years old, is found
115 by a court to have violated this section, [~~the provisions regarding suspension of the driver's~~
116 ~~license under~~] Section 78A-6-606 [~~apply~~] applies to the violation.

117 (5) When [~~the~~] a court issues an order suspending a person's driving privileges for a
118 violation of this section, the Driver License Division shall suspend the person's license under
119 Section 53-3-219.

120 (6) When the Department of Public Safety receives the arrest or conviction record of a
121 person for a driving offense committed while the person's license is suspended pursuant to this
122 section, the [~~department~~] Department of Public Safety shall extend the suspension for an
123 additional like period of time.

124 Section 5. Section **32A-12-223** is enacted to read:

125 **32A-12-223. Minor's unlawful use of proof of age.**

126 (1) As used in this section, "proof of age violation" means a violation by a minor of:

127 (a) Chapter 1, Part 3, Proof of Age; or

128 (b) if as part of the violation the minor uses a proof of age in violation of Chapter 1,
129 Part 3, Proof of Age;

130 (i) Section 32A-12-209; or

131 (ii) Section 32A-12-209.5.

132 (2) If a court finds a minor engaged in a proof of age violation, notwithstanding the
133 penalties provided for in the provisions listed in Subsection (1):

134 (a) (i) for a first violation, the minor is guilty of a class B misdemeanor;

135 (ii) for a second violation, the minor is guilty of a class A misdemeanor; and

136 (iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor,

137 except that the court may impose:

138 (A) a fine of up to \$5,000;

139 (B) screening, assessment, or substance abuse treatment, as defined in Section
140 41-6a-501;

141 (C) an educational series, as defined in Section 41-6a-501;

142 (D) alcoholic beverage related community service or compensatory-service work
143 program hours;

144 (E) fees for restitution and treatment costs;

145 (F) defensive driver education courses; or

146 (G) a combination of these penalties; and

147 (b) (i) for a minor who is at least 13 years old, but younger than 18 years old:

148 (A) the court shall forward to the Driver License Division a record of an adjudication
149 under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under this section; and

150 (B) the provisions regarding suspension of a driver's license under Section 78A-6-606
151 apply; and

152 (ii) for a minor who is at least 18 years old, but younger than 21 years old:

153 (A) the court shall forward to the Driver License Division a record of conviction for a
154 violation under this section; and

155 (B) the Driver License Division shall suspend the person's license under Section
156 53-3-220.

157 (3) When the Department of Public Safety receives the arrest or conviction record of
158 an individual for a driving offense committed while the individual's license is suspended
159 pursuant to this section, the Department of Public Safety shall extend the suspension for an
160 additional like period of time.

161 (4) A court may not fail to enter a judgment of conviction under this section under a
162 plea in abeyance agreement.

163 Section 6. Section **32A-14b-101** is enacted to read:

164 **CHAPTER 14b. MINOR LIABILITY ACT**

165 **Part 1. General Provisions**

166 **32A-14b-101. Title.**

167 This chapter is known as the "Minor Liability Act."

168 Section 7. Section **32A-14b-102** is enacted to read:

169 **32A-14b-102. Definitions.**

170 As used in this chapter:

171 (1) "Applicable fine" means the sum of the following imposed or assessed under this
172 title by the commission for a violation related to a minor:

173 (a) a fine; and

174 (b) administrative costs of a disciplinary proceeding.

175 (2) "Retail licensee" means a person licensed under this title to sell an alcoholic
176 beverage at retail.

177 (3) "Violation related to a minor" means a violation under this title:

178 (a) that is, in whole or in part, based on a retail licensee, or an employee or agent of
179 the retail licensee:

180 (i) selling, serving, or otherwise furnishing an alcoholic product to a minor;

181 (ii) purchasing or otherwise obtaining an alcoholic product for a minor;

182 (iii) permitting a minor to consume an alcoholic product;

183 (iv) permitting a minor to gain admittance to an area into which a minor is not
184 permitted under this title; or

185 (v) offering or providing employment to a minor that under this title may not be
186 obtained by a minor; and

187 (b) if as part of the violation the minor uses proof of age in violation of Chapter 1, Part
188 3, Proof of Age.

189 Section 8. Section **32A-14b-201** is enacted to read:

190 **Part 2. Liability to Retail Licensee**

191 **32A-14b-201. Liability related to applicable fine.**

192 (1) A minor is liable to a retail licensee in an amount described in Subsection (2) if:

193 (a) the commission imposes an applicable fine against the retail licensee on the basis
194 of a violation related to a minor; and

195 (b) the minor, as part of the minor's involvement in the violation described in
196 Subsection (1)(a), uses proof of age in violation of Chapter 1, Part 3, Proof of Age.

197 (2) If the conditions of Subsection (1) are met, a minor is liable to a retail licensee for

198 an amount equal to the sum of:

199 (a) one-half of the amount of the applicable fine imposed against the retail licensee;

200 and

201 (b) the costs and attorney fees incurred by the retail licensee under Section

202 32A-14b-202 to collect the amount owed under this section.

203 Section 9. Section **32A-14b-202** is enacted to read:

204 **32A-14b-202. Bringing an action.**

205 (1) Subject to the other provisions of this section, a retail licensee to whom a minor is
206 liable under Section 32A-14b-201 may bring an action in a court of competent jurisdiction to
207 collect the amount described in Section 32A-14b-201.

208 (2) The action allowed under this section may be brought against:

209 (a) the minor; or

210 (b) if the minor is less than 18 years of age, a parent or guardian of the minor.

211 (3) An action under this chapter may not be commenced more than two years after the
212 day on which the applicable fine is imposed by the commission.

213 (4) Nothing in this chapter precludes a cause of action or additional recovery against a
214 minor under law other than this chapter.

215 (5) Notwithstanding the other provisions of this part:

216 (a) the state or an agency of the state is not liable under this part when a state agency
217 has legal or protective custody of, or has guardianship of a minor at the time:

218 (i) the minor engages in conduct with regard to a violation related to a minor; or

219 (ii) an applicable fine is imposed on the retail licensee by the commission; and

220 (b) a retail liquor licensee may not bring an action against the state or an agency of the
221 state under the circumstances described in Subsection (5)(a).

222 Section 10. Section **32A-14b-203** is enacted to read:

223 **32A-14b-203. Action for contribution.**

224 (1) (a) Subject to Subsections (2) and (3), a minor liable under Section 32A-14b-201
225 against whom an award is made under this chapter, may bring a separate cause of action for

226 contribution against a person causing the liability under Section 32A-14b-201.

227 (b) The maximum amount for which a person described in Subsection (1)(a) may be
228 liable to a minor seeking contribution is that percentage or proportion of the amount described
229 in Section 32A-14b-201 equivalent to the percentage or proportion of fault attributed to that
230 person causing the liability under Section 32A-14b-201.

231 (2) An action for contribution under this section may not be brought against:

232 (a) the retail licensee to whom the minor is liable; or

233 (b) an employee or agent of the retail licensee.

234 (3) An action for contribution under this section may not diminish the amount
235 collected by a retail licensee under this chapter.

236 Section 11. Section **53-3-220** is amended to read:

237 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
238 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
239 **Limited driving privileges.**

240 (1) (a) The division shall immediately revoke or, when this chapter or Title 41,
241 Chapter 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the
242 division shall deny, suspend, or disqualify the license of a person upon receiving a record of
243 the person's conviction for:

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

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

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

253 (iv) perjury or the making of a false affidavit to the division under this chapter, Title

254 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles
255 or regulating driving on highways;

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

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

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

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

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

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

269 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or
270 allowing the discharge of a firearm from a vehicle;

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

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

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

278 (xv) operating or being in actual physical control of a motor vehicle while having any
279 measurable or detectable amount of alcohol in the person's body in violation of Section
280 41-6a-530;

281 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in

282 violation of Section 41-6a-606; or

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

285 (b) The division shall immediately revoke the license of a person upon receiving a
286 record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

287 (i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or
288 allowing the discharge of a firearm from a vehicle; or

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

291 (c) Except when action is taken under Section 53-3-219 for the same offense, the
292 division shall immediately suspend for six months the license of a person upon receiving a
293 record of conviction for:

294 (i) any violation of:

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

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

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

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

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

300 (ii) any criminal offense that prohibits:

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

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

305 (d) (i) The division shall immediately suspend for one year the license of a person
306 upon receiving a record of:

307 (A) conviction for a violation under Section 32A-12-223; or

308 (B) an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a
309 violation under Section 32A-12-223.

310 (ii) Upon receipt of a record under Subsection (1)(d)(i), the division shall:
311 (A) impose a suspension for one year beginning on the date of conviction; or
312 (B) if the person is under the age of eligibility for a driver license, impose a
313 suspension that begins on the date of conviction and continues for one year beginning on the
314 date of eligibility for a driver license.

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

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

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

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

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

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

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

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

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

336 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
337 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,

338 41-6a-517, a local ordinance which complies with the requirements of Subsection
339 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the
340 person was charged with violating as a result of a plea bargain after having been originally
341 charged with violating one or more of these sections or ordinances.

342 (b) This discretionary privilege is limited to when undue hardship would result from a
343 failure to grant the privilege and may be granted only once to any person during any single
344 period of denial, suspension, revocation, or disqualification, or extension of that denial,
345 suspension, revocation, or disqualification.

346 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform
347 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or
348 denied under this chapter.

349 Section 12. Section **78A-6-606** is amended to read:

350 **78A-6-606. Suspension of license for certain offenses.**

351 (1) This section applies to ~~[minors who are]~~ a minor who is at least 13 years of age
352 when found by the court to be within its jurisdiction by the commission of ~~[any]~~ an offense
353 under:

354 ~~[(a) Section 58-37-8;]~~

355 ~~[(b)]~~ (a) Section 32A-12-209;

356 ~~[(c)]~~ (b) Section 32A-12-209.5;

357 (c) Section 32A-12-223;

358 (d) Section 58-37-8;

359 ~~[(d)]~~ (e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

360 ~~[(e)]~~ (f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

361 ~~[(f)]~~ (g) Subsection 76-9-701(1).

362 (2) If the court hearing the case determines that the minor committed an offense under
363 Section 58-37-8 or Title 58, Chapter 37a or 37b, the court shall prepare and send to the Driver
364 License Division of the Department of Public Safety an order to suspend that minor's driving
365 privileges.

366 (3) ~~[H]~~ (a) Except as provided in Subsection (3)(b), if the court hearing the case
367 determines that the minor violated Section 32A-12-209~~[, Section]~~ or 32A-12-209.5, or
368 Subsection 76-9-701(1), and the violation is the minor's:

369 ~~[(a)]~~ (i) first violation, the court may suspend the minor's driving privileges; or
370 ~~[(b)]~~ (ii) second or subsequent violation, the court shall suspend the minor's driving
371 privileges.

372 (b) If a minor commits a proof of age violation, as defined in Section 32A-12-223:

373 (i) the court shall forward a record of adjudication to the Department of Public Safety
374 for a first or subsequent violation; and

375 (ii) the minor's driving privileges will be suspended for a period of at least one year
376 under Section 53-3-220.

377 (4) A minor's license shall be suspended under Section 53-3-219 when a court issues
378 an order suspending the minor's driving privileges for a violation of:

- 379 (a) Section 32A-12-209;
- 380 (b) Section 32A-12-209.5;
- 381 (c) Section 58-37-8;
- 382 (d) Title 58, Chapter 37a or 37b; or
- 383 (e) Subsection 76-9-701(1).

384 (5) When the Department of Public Safety receives the arrest or conviction record of a
385 person for a driving offense committed while ~~[his]~~ the person's license is suspended under this
386 section, the ~~[department]~~ Department of Public Safety shall extend the suspension for a like
387 period of time.