

Effective 2/19/2014

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

- (1)
 - (a) As used in this section:
 - (i) "Local substance abuse authority" has the same meaning as provided in Section 62A-15-102.
 - (ii) "Substance abuse program" means any substance abuse program licensed by the Department of Human Services or the Department of Health and approved by the local substance abuse authority.
 - (b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6a-502(1).
- (2)
 - (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol concentration in the person's body as shown by a chemical test.
 - (b) A person who violates Subsection (2)(a), in addition to any other applicable penalties arising out of the incident, shall have the person's operator license denied or suspended as provided in Subsection (8).
- (3)
 - (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32B-4-409, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.
 - (b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.
 - (c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the arrest, give notice of the division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under this section.
- (4) When a peace officer gives notice on behalf of the division, the peace officer shall:
 - (a) take the Utah license certificate or permit, if any, of the operator;
 - (b) issue a temporary license certificate effective for only 29 days from the date of arrest if the driver had a valid operator's license; and
 - (c) supply to the operator, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.
- (5) A citation issued by a peace officer may, if provided in a manner specified by the division, also serve as the temporary license certificate under Subsection (4)(b).
- (6) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:
 - (a) the person's driver license certificate, if any;
 - (b) a copy of the citation issued for the offense;

- (c) a signed report in a manner specified by the Driver License Division indicating the chemical test results, if any; and
 - (d) any other basis for a peace officer's determination that the person has violated Subsection (2).
- (7)
- (a)
 - (i) Upon request in a manner specified by the division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32B-4-409.
 - (ii) The request shall be made within 10 calendar days of the day on which notice is provided.
 - (b)
 - (i) Except as provided in Subsection (7)(b)(ii), a hearing, if held, shall be before the division in:
 - (A) the county in which the arrest occurred; or
 - (B) a county that is adjacent to the county in which the arrest occurred.
 - (ii) The division may hold a hearing in some other county if the division and the person both agree.
 - (c) The hearing shall be documented and shall cover the issues of:
 - (i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle or motorboat in violation of Subsection (2)(a);
 - (ii) whether the person refused to submit to the test; and
 - (iii) the test results, if any.
 - (d) In connection with a hearing, the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and records as defined in Section 46-4-102.
 - (e) One or more members of the division may conduct the hearing.
 - (f) Any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.
- (8) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Subsection (2)(a), if the person fails to appear before the division as required in the notice, or if the person does not request a hearing under this section, the division shall for a person under 21 years of age on the date of arrest:
- (a) deny the person's license until the person complies with Subsection (12)(b)(i) but for a period of not less than six months beginning on the 30th day after the date of arrest for a first offense under Subsection (2)(a) committed on or after May 14, 2013;
 - (b) suspend the person's license until the person complies with Subsection (12)(b)(i) and until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent offense under Subsection (2)(a) committed on or after July 1, 2009, and within 10 years of a prior denial or suspension;
 - (c) deny the person's application for a license or learner's permit until the person complies with Subsection (12)(b)(i) but for a period of not less than six months if:
 - (i) the person has not been issued an operator license; and
 - (ii) the suspension is for a first offense under Subsection (2)(a) committed on or after July 1, 2009;
 - (d) deny the person's application for a license or learner's permit until the person complies with Subsection (12)(b)(i) and until the person is 21 years of age or for a period of two years, whichever is longer, if:
 - (i) the person has not been issued an operator license; and

- (ii) the suspension is for a second or subsequent offense under Subsection (2)(a) committed on or after July 1, 2009, and within 10 years of a prior denial or suspension; or
- (e) deny or suspend a person's license for the denial and suspension periods in effect:
 - (i) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed prior to July 1, 2009;
 - (ii) from July 1, 2009, through June 30, 2011, if the person was 20 years 6 months of age or older but under 21 years of age at the time of arrest and the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or
 - (iii) prior to May 14, 2013, for a violation under Subsection (2)(a) that was committed prior to May 14, 2013.
- (9)
 - (a) Notwithstanding the provisions in Subsection (8)(e)(iii), the division shall shorten a person's one-year license suspension or denial period that is currently in effect to a six-month suspension or denial period if:
 - (i) the driver was under the age of 19 at the time of arrest;
 - (ii) the offense was a first offense that was committed prior to May 14, 2013; and
 - (iii) the suspension or denial under Subsection (8)(e)(iii) was based on the same occurrence upon which the following written verifications are based:
 - (A) a court order shortening the driver license suspension for a violation of Section 41-6a-502 pursuant to Subsection 41-6a-509(8);
 - (B) a court order shortening the driver license suspension for a violation of Section 41-6a-517 pursuant to Subsection 41-6a-517(11);
 - (C) a court order shortening the driver license suspension for a violation of Section 32B-4-409;
 - (D) a dismissal for a violation of Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409;
 - (E) a notice of declination to prosecute for a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409;
 - (F) a reduction of a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409; or
 - (G) other written documentation acceptable to the division.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing requirements for acceptable documentation to shorten a person's driver license suspension or denial period under this Subsection (9).
 - (c) If a person's license sanction is shortened under this Subsection (9), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).
- (10)
 - (a)
 - (i) Following denial or suspension the division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.
 - (ii) This fee shall be canceled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.
 - (b) A person whose operator license has been denied, suspended, or postponed by the division under this section following an administrative hearing may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.
- (11) After reinstatement of an operator license for a first offense under this section, a report authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the

person's operator license under this section if the person has not been convicted of any other offense for which the denial or suspension may be extended.

(12)

- (a) In addition to the penalties in Subsection (8), a person who violates Subsection (2)(a) shall:
 - (i) obtain an assessment and recommendation for appropriate action from a substance abuse program, but any associated costs shall be the person's responsibility; or
 - (ii) be referred by the division to the local substance abuse authority for an assessment and recommendation for appropriate action.
- (b)
 - (i) Reinstatement of the person's operator license or the right to obtain an operator license within five years of the effective date of the license sanction under Subsection (8) is contingent upon successful completion of the action recommended by the local substance abuse authority or the substance abuse program.
 - (ii) The local substance abuse authority's or the substance abuse program's recommended action shall be determined by an assessment of the person's alcohol abuse and may include:
 - (A) a targeted education and prevention program;
 - (B) an early intervention program; or
 - (C) a substance abuse treatment program.
 - (iii) Successful completion of the recommended action shall be determined by standards established by the Division of Substance Abuse and Mental Health.
- (c) At the conclusion of the penalty period imposed under Subsection (2), the local substance abuse authority or the substance abuse program shall notify the division of the person's status regarding completion of the recommended action.
- (d) The local substance abuse authorities and the substance abuse programs shall cooperate with the division in:
 - (i) conducting the assessments;
 - (ii) making appropriate recommendations for action; and
 - (iii) notifying the division about the person's status regarding completion of the recommended action.
- (e)
 - (i) The local substance abuse authority is responsible for the cost of the assessment of the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.
 - (ii) The local substance abuse authority or a substance abuse program selected by a person is responsible for:
 - (A) conducting an assessment of the person's alcohol abuse; and
 - (B) for making a referral to an appropriate program on the basis of the findings of the assessment.
 - (iii)
 - (A) The person who violated Subsection (2)(a) is responsible for all costs and fees associated with the recommended program to which the person selected or is referred.
 - (B) The costs and fees under Subsection (12)(e)(iii)(A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services or determined by the substance abuse program.

Amended by Chapter 7, 2014 General Session