

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

- (1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle in this state if the person:
 - (a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .04 grams or greater at the time of the test after the alleged driving of the commercial motor vehicle;
 - (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to degree that renders the person incapable of safely driving a commercial motor vehicle; or
 - (c) has a blood or breath alcohol concentration of .04 grams or greater at the time of driving the commercial motor vehicle.
- (2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this state is considered to have given the person's consent to a test or tests of the person's blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in the person's physical system.
- (3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6a-515.
- (4) When a peace officer or port-of-entry agent requests a person to submit to a test under this section, the peace officer or port-of-entry agent shall advise the person that test results indicating .04 grams or greater alcohol concentration or refusal to submit to any test requested will result in the person's disqualification under Section 53-3-414 from driving a commercial motor vehicle.
- (5) If test results under this section indicate .04 grams or greater of alcohol concentration or the person refuses to submit to any test requested under this section, a peace officer or port-of-entry agent shall, on behalf of the division and within 24 hours of the arrest, give the person notice of the division's intention to disqualify the person's privilege to drive a commercial motor vehicle.
- (6) When a peace officer or port-of-entry agent gives notice under Subsection (5), the peace officer or port-of-entry agent shall:
 - (a) take any Utah license certificate or permit held by the driver;
 - (b) issue to the driver a temporary license certificate effective for 29 days from the date of arrest;
 - (c) provide the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division; and
 - (d) issue a 24-hour out-of-service order.
- (7) A notice of disqualification issued under Subsection (6) may serve also as the temporary license certificate under that subsection, if provided in a manner specified by the division.
- (8) As a matter of procedure, a peace officer or port-of-entry agent shall, within 10 calendar days after the day on which notice is provided, send to the division the person's license certificate, a copy of the notice, and a report signed by the peace officer or port-of-entry agent that indicates the results of any chemical test administered or that the person refused a test.
- (9)
 - (a) A person disqualified under this section has the right to a hearing regarding the disqualification.
 - (b) The request for the hearing shall be submitted to the division in a manner specified by the division and shall be made within 10 calendar days of the date the notice was issued. If requested, the hearing shall be conducted within 29 days after the date of arrest.
- (10)
 - (a)

- (i) Except as provided in Subsection (10)(a)(ii), a hearing held under this section shall be held before the division and in:
 - (A) the county where the notice was issued; or
 - (B) a county that is adjacent to the county where the notice was issued.
- (ii) The division may hold a hearing in some other county if the division and the person both agree.
- (b) The hearing shall be documented and shall determine:
 - (i) whether the peace officer or port-of-entry agent had reasonable grounds to believe the person had been driving a motor vehicle in violation of this section;
 - (ii) whether the person refused to submit to any requested test; and
 - (iii) any test results obtained.
- (c) 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 documents.
- (d) One or more members of the division may conduct the hearing.
- (e) A decision made after a hearing before any number of members of the division is as valid as if the hearing were held before the full membership of the division.
- (f) After a hearing under this section the division shall indicate by order if the person's CDL is disqualified.
- (g) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall indicate by order if the person's CDL is disqualified.
- (11)
 - (a) If the division disqualifies a person under this section following an administrative hearing, the person may petition for a hearing under Section 53-3-224.
 - (b) The petition shall be filed within 30 days after the division issues the disqualification.
- (12)
 - (a) A person who violates this section shall be punished in accordance with Section 53-3-414.
 - (b)
 - (i) In accordance with Section 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.
 - (ii) A disqualification under Section 53-3-414 begins on the 30th day after the date of arrest.
- (13)
 - (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.
 - (b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.

Amended by Chapter 40, 2009 General Session