

**DRIVING UNDER THE INFLUENCE -  
CONDITIONAL LICENSING**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Nora B. Stephens**

AN ACT RELATING TO PUBLIC SAFETY; AMENDING IMPLIED CONSENT PROVISIONS; ESTABLISHING A NO ALCOHOL CONDITIONAL LICENSE FOR PERSONS WITH PRIOR DRIVING UNDER THE INFLUENCE CONVICTIONS; CREATING THE CONDITIONS AND RESTRICTIONS FOR CONDITIONAL LICENSES; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**41-6-44.10**, as last amended by Chapter 10, Laws of Utah 1997

**53-3-220**, as last amended by Chapter 51, Laws of Utah 1997

ENACTS:

**53-3-232**, Utah Code Annotated 1953

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

Section 1. Section **41-6-44.10** is amended to read:

**41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

(1) (a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 [or], 53-3-231, or 53-3-232, while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been

operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 [or], 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle.

(b) Following the warning under Subsection (a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered a peace officer shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle. When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

- (i) take the Utah license certificate or permit, if any, of the operator;
- (ii) issue a temporary license effective for only 29 days; and
- (iii) supply to the operator, on a form approved by the Driver License Division, basic

information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if approved as to form by the Driver License Division, serve also as the temporary license.

(d) The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 [or], 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e) (i) A person who has been notified of the Driver License Division's intention to revoke his license under this section is entitled to a hearing.

(ii) A request for the hearing shall be made in writing within ten days after the date of the arrest.

(iii) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(iv) If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest for a period of:

(A) one year unless Subsection (B) applies; or

(B) 18 months if the person has had a previous license sanction after July 1, 1993, under this section, Section 41-6-44.6, 53-3-223, [or] 53-3-231, 53-3-232, or a conviction after July 1, 1993, under Section 41-6-44.

(f) If a hearing is requested by the person and conducted by the Driver License Division, the hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6-44, 41-6-44.6, or 53-3-231; and

(ii) whether the person refused to submit to the test.

(g) (i) In connection with the hearing, the division or its authorized agent:

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

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

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 21-5-4.

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

(i) (A) one year unless Subsection (B) applies; or

(B) 18 months if the person has had a previous license sanction after July 1, 1993, under this section, Section [~~53-3-223~~], 41-6-44.6, [~~or~~] 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993, under Section 41-6-44.

(ii) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

(iii) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

(i) (i) Any person whose license has been revoked by the Driver License Division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been

arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to taking a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any drug, combination of alcohol and any drug, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body.

Section 2. Section **53-3-220** is amended to read:

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

(1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter 6, Traffic Rules and Regulations, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of his conviction for any of the following offenses:

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

(ii) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any drug, or combination of them to a degree that renders the person incapable of safely driving a motor vehicle as prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43(1);

(iii) driving or being in actual physical control of a motor vehicle while having a blood or breath alcohol content prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43(1);

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

(v) any offense punishable as a felony under the motor vehicle laws of this state;

(vi) any other felony in which a motor vehicle is used;

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

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

(ix) failure to bring a motor vehicle to a stop at the command of a peace officer as required

in Section 41-6-13.5;

(x) any offense specified in Part 4 of this chapter that requires disqualification;

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

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

(xiii) operating or being in actual physical control of a motor vehicle while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6[-]; and

(xiv) operating or being in actual physical control of a motor vehicle while having any alcohol in the person's body in violation of Section 53-3-232.

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

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

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

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

(i) any violation of:

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

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

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

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

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

(ii) any criminal offense that prohibits:

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

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

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

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

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

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

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

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

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

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

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

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

(iii) those offenses referred to in Subsection (2) when the original denial, suspension, revocation, or disqualification was imposed because of a violation of Section 41-6-44, Section 41-6-44.6, a local ordinance which complies with the requirements of Subsection 41-6-43(1), Section 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of these



sections or ordinances.

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

(c) A limited CDL may not be granted to an individual disqualified under Part 4 of this chapter or whose license has been revoked, suspended, cancelled, or denied under this chapter.

Section 3. Section **53-3-232** is enacted to read:

**53-3-232. Conditional license -- May not operate vehicle with alcohol in body penalty.**

(1) As used in this section, "qualifying conviction" means:

(a) a conviction of a violation of Section 41-6-44, Section 41-6-44.6, a local ordinance which complies with the requirements of Subsection 41-6-43(1), Section 76-5-207, or of alcohol-related reckless driving as described under Subsection 41-6-44(9);

(b) a refusal and suspension under Section 41-6-44.10; or

(c) a violation of Subsection (3).

(2) The division may only issue, reinstate, or renew a driver license in the form of a no alcohol conditional license to a person who has a qualifying conviction for a period of:

(a) two years after reinstatement of the driver license following a first qualifying conviction;  
and

(b) six years after reinstatement of the driver license following a second or subsequent qualifying conviction.

(3) A no alcohol conditional license shall be issued on the condition that the person may not operate or be in actual physical control of a vehicle in this state with any alcohol in the person's body.

(4) It is a class B misdemeanor for a person who has been issued a no alcohol conditional license to operate or be in actual physical control of a vehicle in this state in violation of Subsection (3).

Section 4. **Effective date.**

This act takes effect on July 1, 1998.