

**NOT A DROP AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Don E. Bush**

AN ACT RELATING TO PUBLIC SAFETY; AMENDING CERTAIN DRIVER LICENSE PENALTIES TO ALLOW LICENSED AND APPROVED SUBSTANCE ABUSE PROGRAMS TO CONDUCT ASSESSMENTS AND MAKE TREATMENT RECOMMENDATIONS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

**53-3-231**, as last amended by Chapter 51, Laws of Utah 1997

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

Section 1. Section **53-3-231** is amended to read:

**53-3-231. Person under 21 may not operate vehicle 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-8-101.

(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 41-6-44(2).

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle with any measurable blood, breath, or urine alcohol concentration in his body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (a), in addition to

any other applicable penalties arising out of the incident, shall have his operator license denied or suspended as provided in Subsection (2)(b)(ii).

(ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection (2)(a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a period of one year beginning on the 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (2)(c)(ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the Driver License Division may not issue the person an operator license or learner's permit.

(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 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(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 the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection (2).

(4) When the officer serves immediate notice on behalf of the Driver License Division, he

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 if the driver had a valid operator's license; and
  - (c) supply to the operator, on a form to be approved by the Driver License Division, basic information regarding how to obtain a prompt hearing before the Driver License Division.
- (5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection (4)(b).
- (6) The peace officer serving the notice shall send to the Driver License Division within five days after the date of arrest and service of the notice:
- (a) the person's driver license certificate, if any;
  - (b) a copy of the citation issued for the offense;
  - (c) a signed report on a form approved by the Driver License Division indicating the chemical test results, if any; and
  - (d) any other basis for the officer's determination that the person has violated Subsection (2).
- (7) (a) (i) Upon written request, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32A-12-209.
- (ii) The request shall be made within ten days of the date of the arrest.
  - (b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.
  - (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 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 Driver License 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.

(e) One or more members of the Driver License Division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the Driver License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

(g) After the hearing, the Driver License Division shall order whether the person:

(i) with a valid license to operate a motor vehicle will have his license denied or not or suspended or not; or

(ii) without a valid operator license will be refused a license under Subsection (2)(c).

(h) If the person for whom the hearing is held fails to appear before the Driver License Division as required in the notice, the division shall order whether the person shall have his license denied, suspended, or not denied or suspended, or whether an operator license will be refused or not refused.

(8) (a) Following denial or suspension the Driver License Division shall assess against a 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. This fee shall be canceled if the person obtains an unappealed Driver License 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 Driver License Division under this section 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.

(9) 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 he has not been convicted of any other offense for which the denial or suspension may be extended.

(10) (a) In addition to the penalties in Subsection (2), 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 Driver License 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 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.

(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 Driver License 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 Driver License Division in:

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

(iii) notifying the Driver License Division about the person's status regarding completion of the recommended action.

(e) (i) The local substance abuse authority is responsible for~~[-(A)]~~ the cost of the assessment of the person's alcohol abuse~~[-and]~~, 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.

[(ii)] (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 (10)(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.