

1 **DRIVING UNDER THE INFLUENCE**

2 **REVISIONS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Gerry A. Adair**

6 AN ACT RELATING TO MOTOR VEHICLES; AMENDING THE DRIVER LICENSE  
7 REVOCATION PERIOD FOR A PERSON WHO REFUSES TO SUBMIT TO A CHEMICAL  
8 TEST FOR DRIVING UNDER THE INFLUENCE.

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

10 AMENDS:

11 **41-6-44.10**, as last amended by Chapter 226, Laws of Utah 1999

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

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

14 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests**  
15 **-- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable**  
16 **of refusal -- Results of test available -- Who may give test -- Evidence.**

17 (1) (a) A person operating a motor vehicle in this state is considered to have given his  
18 consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining  
19 whether he was operating or in actual physical control of a motor vehicle while having a blood or  
20 breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, while  
21 under the influence of alcohol, any drug, or combination of alcohol and any drug under Section  
22 41-6-44, or while having any measurable controlled substance or metabolite of a controlled  
23 substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are  
24 administered at the direction of a peace officer having grounds to believe that person to have been  
25 operating or in actual physical control of a motor vehicle while having a blood or breath alcohol  
26 content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the  
27 influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or

28 while having any measurable controlled substance or metabolite of a controlled substance in the  
29 person's body in violation of Section 41-6-44.6.

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

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

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

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

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

46 (b) Following the warning under Subsection (2)(a), if the person does not immediately  
47 request that the chemical test or tests as offered by a peace officer be administered a peace officer  
48 shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver  
49 License Division's intention to revoke the person's privilege or license to operate a motor vehicle.  
50 When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

51 (i) take the Utah license certificate or permit, if any, of the operator;

52 (ii) issue a temporary license effective for only 29 days; and

53 (iii) supply to the operator, on a form approved by the Driver License Division, basic  
54 information regarding how to obtain a hearing before the Driver License Division.

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

57 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten days  
58 after the date of the arrest, that he had grounds to believe the arrested person had been operating

59 or was in actual physical control of a motor vehicle while having a blood or breath alcohol content  
60 statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the influence  
61 of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while  
62 having any measurable controlled substance or metabolite of a controlled substance in the person's  
63 body in violation of Section 41-6-44.6, and that the person had refused to submit to a chemical test  
64 or tests under Subsection (1).

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

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

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

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

74 (A) [~~one year~~] 18 months unless Subsection (2)(e)(iv)(B) applies; or

75 (B) [~~18~~] 24 months if the person has had a previous license sanction after July 1, 1993,  
76 under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1,  
77 1993, under Section 41-6-44.

78 (f) If a hearing is requested by the person, the hearing shall be conducted by the Driver  
79 License Division in the county in which the offense occurred, unless the division and the person  
80 both agree that the hearing may be held in some other county.

81 (g) The hearing shall be documented and shall cover the issues of:

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

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

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

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

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

89 (ii) The division shall pay witness fees and mileage from the Transportation Fund in

90 accordance with the rates established in Section 21-5-4.

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

96 (i) (A) [~~one year~~] 18 months unless Subsection (2)(i)(i)(B) applies; or

97 (B) [~~18~~] 24 months if the person has had a previous license sanction after July 1, 1993,  
98 under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1,  
99 1993, under Section 41-6-44.

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

103 (iii) The fee shall be cancelled if the person obtains an unappealed court decision  
104 following a proceeding allowed under this Subsection (2) that the revocation was improper.

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

107 (ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the  
108 district court in the county in which the offense occurred.

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

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

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

118 (b) Any physician, registered nurse, practical nurse, or person authorized under Section  
119 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom  
120 a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical

121 facility at which the sample is drawn, is immune from any civil or criminal liability arising from  
122 drawing the sample, if the test is administered according to standard medical practice.

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

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

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

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

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

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**Legislative Review Note**  
**as of 2-3-00 3:07 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**