

**MOTORBOATING AND BOATING UNDER
THE INFLUENCE PROVISIONS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Loraine T. Pace

This act modifies the Motor Vehicle Code, the Public Safety Code, and the Water and Irrigation Code. This act combines driving under the influence provisions with boating under the influence provisions. This act establishes certain moving boating violations and a minimum age for motorboat operators. This act takes effect on July 1, 2002.

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

AMENDS:

- 41-6-43.5**, as enacted by Chapter 121, Laws of Utah 1996
- 41-6-44.20**, as last amended by Chapter 23, Laws of Utah 1990
- 41-6-44.30**, as last amended by Chapter 202, Laws of Utah 2001
- 41-6-102.5**, as enacted by Chapter 202, Laws of Utah 2001
- 53-3-102**, as last amended by Chapter 170, Laws of Utah 1996
- 53-3-218**, as last amended by Chapter 85, Laws of Utah 2001
- 53-3-221**, as last amended by Chapter 85, Laws of Utah 2001
- 53-3-231**, as last amended by Chapter 85, Laws of Utah 2001
- 53-3-232**, as enacted by Chapter 213, Laws of Utah 1998
- 73-18-12**, as repealed and reenacted by Chapter 118, Laws of Utah 1987
- 73-18-15.2**, as last amended by Chapter 205, Laws of Utah 1998
- 78-3a-104**, as last amended by Chapters 213 and 255, Laws of Utah 2001
- 78-18-1**, as last amended by Chapter 6, Laws of Utah 1991

ENACTS:

- 73-18-15.5**, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 73-18-15.1**, as enacted by Chapter 99, Laws of Utah 1987

REPEALS:

73-18-12.1, as enacted by Chapter 118, Laws of Utah 1987

73-18-12.2, as last amended by Chapter 94, Laws of Utah 1998

73-18-12.3, as enacted by Chapter 118, Laws of Utah 1987

73-18-12.4, as enacted by Chapter 118, Laws of Utah 1987

73-18-12.5, as enacted by Chapter 118, Laws of Utah 1987

73-18-12.6, as last amended by Chapter 79, Laws of Utah 1996

73-18-12.7, as last amended by Chapter 202, Laws of Utah 2001

73-18-12.8, as last amended by Chapter 202, Laws of Utah 2001

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

Section 1. Section **41-6-43.5** is amended to read:

41-6-43.5. Definitions.

As used in this article, "vehicle" or "motor vehicle," in addition to the definitions provided under Section 41-6-1, includes an off-highway [~~vehicles~~] vehicle as defined under Section 41-22-2 and a motorboat as defined in Section 73-18-2.

Section 2. Section **41-6-44.20** is amended to read:

41-6-44.20. Drinking alcoholic beverage and open containers in motor vehicle prohibited -- Definitions -- Exceptions.

(1) A person may not drink any alcoholic beverage while operating a motor vehicle or while a passenger in a motor vehicle, whether the vehicle is moving, stopped, or parked on any highway.

(2) A person may not keep, carry, possess, transport, or allow another to keep, carry, possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on any highway, any container which contains any alcoholic beverage if the container has been opened, its seal broken, or the contents of the container partially consumed.

(3) In this section:

(a) "Alcoholic beverage" has the meaning given in Section 32A-1-105.

(b) "Chartered bus" has the meaning given in Section 32A-1-105.

(c) "Limousine" has the meaning given in Section 32A-1-105.

(d) "Passenger compartment" means the area of the vehicle normally occupied by the

operator and passengers and includes areas accessible to them while traveling, such as a utility or glove compartment, but does not include a separate front or rear trunk compartment or other area of the vehicle not accessible to the operator or passengers while inside the vehicle.

(4) Subsections (1) and (2) do not apply to passengers in the living quarters of a motor home or camper.

(5) Subsection (2) does not apply to passengers traveling in any licensed taxicab or bus.

(6) Subsections (1) and (2) do not apply to passengers who have carried their own alcoholic beverage onto a limousine or chartered bus that is in compliance with Subsections 32A-12-213 (1) (b) and (c).

(7) Subsections (1) and (2) do not apply to a passenger in a motorboat on the waters of this state as these terms are defined in Section 73-18-2.

Section 3. Section **41-6-44.30** is amended to read:

41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound requirements -- Removal of vehicle by owner.

(1) If a peace officer arrests or cites the operator of a vehicle for violating Section 41-6-44, 41-6-44.6, or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection 41-6-43(1), the peace officer shall seize and impound the vehicle in accordance with Section 41-6-102.5, except as provided under Subsection (2).

(2) If a registered owner of the vehicle, other than the operator, is present at the time of arrest, the peace officer may release the vehicle to that registered owner, but only if:

(a) the registered owner:

~~[(a)]~~ (i) requests to remove the vehicle from the scene; and

~~[(b)]~~ (ii) presents to the peace officer ~~[a valid operator's license and]~~ sufficient identification to prove ownership of the vehicle or motorboat;

(b) the registered owner identifies a driver with a valid operator's license who:

~~[(c)]~~ (i) complies with all restrictions of his operator's license; and

~~[(d)]~~ (ii) would not, in the judgment of the officer, be in violation of Section 41-6-44, 41-6-44.6, or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with

Subsection 41-6-43(1), if permitted to operate the vehicle~~[-and if]; and~~

(c) the vehicle itself is legally operable.

(3) If necessary for transportation of a motorboat for impoundment under this section, the motorboat's trailer may be used to transport the motorboat.

Section 4. Section **41-6-102.5** is amended to read:

41-6-102.5. Removal and impoundment of vehicles -- Reporting and notification requirements.

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Sections 41-1a-1101, 41-6-44.30, 41-6-102, 41-6-116.10, ~~[73-18-12.7, 73-18-12.8;]~~ or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority as defined in Section 72-1-102, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner, to a state impound yard, or if none, to a garage, docking area, or other place of safety.

(2) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

(a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

(b) by the department under Subsection (9).

(3) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the removal shall be sent to the Motor Vehicle Division by:

(i) the peace officer or agency by whom the peace officer is employed; and

(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

(i) the operator's name, if known;

(ii) a description of the vehicle, vessel, or outboard motor;

(iii) the vehicle identification number or vessel or outboard motor identification number;

(iv) the license number or other identification number issued by a state agency;

(v) the date, time, and place of impoundment;

- (vi) the reason for removal or impoundment;
 - (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and
 - (viii) the place where the vehicle, vessel, or outboard motor is stored.
- (c) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (3), a tow truck motor carrier or impound yard may not:
- (i) collect any fee associated with the removal; and
 - (ii) begin charging storage fees.
- (4) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.
- (b) The notice shall:
- (i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;
 - (ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor; and
 - (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released.
- (c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner and any lien holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.
- (d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.
- (5) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:
- (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) if the impoundment was made under Section 41-6-44.30, pays an administrative impound fee of \$200~~[, if the vehicle was impounded under Section 41-6-44.30]~~;

~~[(v) pays an administrative impound fee of \$25, if the vessel or outboard motor was impounded under Section 73-18-12.7; and]~~

~~[(vi)]~~ (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-five dollars of the impound fees assessed under Subsection (5)(a)(iv) are dedicated credits to the Motor Vehicle Division;

(ii) \$84 of the impound fees assessed under Subsection (5)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and

(iii) the remainder of the impound fees assessed under Subsection (5)(a)(iv) shall be deposited in the General Fund.

~~[(c) The revenue from the administrative impound fee assessed under Subsection (5)(a)(v) are dedicated credits to the Motor Vehicle Division.]~~

(6) An impounded vehicle, vessel, or outboard motor not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided in Section 41-1a-1104. The date of impoundment is considered the date of seizure for computing the time period provided in Section 41-1a-1103.

(7) The registered owner who pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(8) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel, or outboard motor.

(9) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, setting the performance standards for towing companies to be used by the department.

(10) (a) The Motor Vehicle Division may specify that a report required under Subsection (3) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database. The fees shall be reasonable and fair and shall reflect the cost of administering the database.

Section 5. Section **53-3-102** is amended to read:

53-3-102. Definitions.

As used in this chapter:

(1) "Cancellation" means the termination by the division of a license issued through error or fraud or for which consent under Section 53-3-211 has been withdrawn.

(2) "Class D license" means the class of license issued to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this chapter.

(3) "Class M license" means the class of license issued to drive a motorcycle as defined under this chapter.

(4) "Commercial driver license" or "CDL" means a license issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle.

(5) (a) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property if the vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport more than 15 passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with

49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of Part 4:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a motor carrier for hire;

(iii) firefighting and emergency vehicles; and

(iv) recreational vehicles that are not used in commerce and are driven solely as family or personal conveyances for recreational purposes.

(6) "Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs;

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(7) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part IV, Proof of Owner's or Operator's Security, do not apply.

(8) "Director" means the division director appointed under Section 53-3-103.

(9) "Disqualification" means either:

(a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of a person's privileges to drive a commercial motor vehicle;

(b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391; or

(c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.

(10) "Division" means the Driver License Division of the department created in Section 53-3-103.

(11) "Drive" means:

(a) to operate or be in physical control of a motor vehicle upon a highway; and

(b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within the state.

(12) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

(13) "Extension" means a renewal completed exclusively by mail.

(14) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(15) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

(16) "License" means the privilege to drive a motor vehicle.

(17) "License certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle.

(18) "Motorboat" has the same meaning as provided under Section 73-18-2.

~~[(18)]~~ (19) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

~~[(19)]~~ (20) "Nonresident" means a person who:

(a) is not a resident of this state; and

(b) (i) has not engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months; or

(ii) is temporarily assigned by his employer to work in Utah.

~~[(20)]~~ (21) (a) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle.

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

~~[(21)]~~ (22) "Renewal" means to validate a license certificate so that it expires at a later date.

~~[(22)]~~ (23) "Reportable violation" means an offense required to be reported to the division as determined by the division and includes those offenses against which points are assessed under Section 53-3-221.

~~[(23)]~~ (24) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.

~~[(24)]~~ (25) "School bus" means every publicly or privately owned motor vehicle designed for transporting ten or more passengers and operated for the transportation of children to or from school or school activities.

~~[(25)]~~ (26) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.

~~[(26)]~~ (27) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

Section 6. Section **53-3-218** is amended to read:

53-3-218. Court to report convictions and may recommend suspension of license -- Severity of speeding violation defined.

(1) As used in this section:

(a) "conviction" means conviction by the court of first impression or final administrative determination in an administrative traffic proceeding; and

(b) "court" includes an administrative traffic proceeding in accordance with Section 10-3-703.5.

(2) (a) A court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within ten days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motorboating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(b) When the division receives a court record of a conviction or plea in abeyance for a motorboat violation, the division may only take action against a person's driver license if the motorboat violation is for a violation of Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving.

(3) The abstract shall be made in the form prescribed by the division and shall include:

- (a) the name and address of the party charged;
- (b) the number of his license certificate, if any;
- (c) the registration number of the motor vehicle or motorboat involved;
- (d) whether the motor vehicle was a commercial motor vehicle;
- (e) whether the motor vehicle carried hazardous materials;
- (f) the nature of the offense;
- (g) the date of the hearing;
- (h) the plea;
- (i) the judgment or whether bail was forfeited; and
- (j) the severity of the violation, which shall be graded by the court as "minimum,"

"intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

(4) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate his license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

Section 7. Section **53-3-221** is amended to read:

53-3-221. Offenses which may result in denial, suspension, disqualification, or revocation of license without hearing -- Additional grounds for suspension -- Point system for traffic violations -- Notice and hearing -- Reporting of traffic violation procedures.

(1) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately deny, suspend, disqualify, or revoke the license of any person without hearing and without receiving a record of the person's conviction of crime when the division has been notified or has reason to believe the person:

(a) has committed any offenses for which mandatory suspension or revocation of a license is required upon conviction under Section 53-3-220;

(b) has, by reckless or unlawful driving of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person, or serious property damage;

(c) is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the highways;

(d) has committed a serious violation of the motor vehicle laws of this state;

(e) has permitted an unlawful use of the license as defined in Section 53-3-229; or

(f) has been convicted of serious offenses against traffic laws governing the movement of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

(2) (a) The division may suspend the license of a person under Subsection (1) when the person has failed to comply with the terms stated on a traffic citation issued in this state, except this Subsection (2) does not apply to highway weight limit violations or violations of law governing the transportation of hazardous materials.

(b) This Subsection (2) applies to parking and standing violations only if a court has issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy the terms of the citation.

(c) (i) This Subsection (2) may not be exercised unless notice of the pending suspension of the driving privilege has been sent at least ten days previously to the person at the address provided to the division.

(ii) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of a suspension that occurred as a result of failure to comply with the terms stated on a traffic citation.

(3) (a) The division may suspend the license of a person under Subsection (1) when the division has been notified by a court that the person has an outstanding unpaid fine, an outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a court.

(b) The suspension remains in effect until the division is notified by the court that the order has been satisfied.

(c) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of the suspension.

(4) The division shall make rules establishing a point system as provided for in this Subsection (4).

(a) (i) The division shall assign a number of points to each type of moving traffic violation as a measure of its seriousness.

(ii) The points shall be based upon actual relationships between types of traffic violations and motor vehicle traffic accidents.

(b) Every person convicted of a traffic violation shall have assessed against his driving record the number of points that the division has assigned to the type of violation of which the person has been convicted, except that the number of points assessed shall be decreased by 10% if on the abstract of the court record of the conviction the court has graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the court has graded the severity of violation as maximum.

(c) (i) A separate procedure for assessing points for speeding offenses shall be established by the division based upon the severity of the offense.

(ii) The severity of a speeding violation shall be graded as:

(A) "minimum" for exceeding the posted speed limit by up to ten miles per hour;

(B) "intermediate" for exceeding the posted speed limit by from 11 to 20 miles per hour; and

(C) "maximum" for exceeding the posted speed limit by 21 or more miles per hour.

(iii) Consideration shall be made for assessment of no points on minimum speeding violations, except for speeding violations in school zones.

(d) (i) Points assessed against a person's driving record shall be deleted for violations occurring before a time limit set by the division.

(ii) The time limit may not exceed three years.

(iii) The division may also delete points to reward violation-free driving for periods of time set by the division.

(e) (i) By publication in two newspapers having general circulation throughout the state, the division shall give notice of the number of points it has assigned to each type of traffic violation, the time limit set by the division for the deletion of points, and the point level at which the division will generally take action to deny or suspend under this section.

(ii) The division may not change any of the information provided above regarding points without first giving new notice in the same manner.

(5) (a) (i) Upon denying or suspending the license of a person under this section, the division shall immediately notify the licensee in a manner specified by the division and afford him an opportunity for a hearing in the county where the licensee resides.

(ii) The hearing shall be documented, and the division or its authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee.

(iii) One or more members of the division may conduct the hearing, and 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.

(iv) After the hearing the division shall either rescind its order of denial or suspension, extend the denial or suspension of the license, or revoke the license.

(b) The denial or suspension of the license remains in effect pending qualifications determined by the division regarding a person:

(i) whose license has been denied or suspended following reexamination;

(ii) who is incompetent to drive a motor vehicle;

(iii) who is afflicted with mental or physical infirmities that might make him dangerous on the highways; or

(iv) who may not have the necessary knowledge or skill to drive a motor vehicle safely.

(6) (a) The division may suspend or revoke the license of any resident of this state upon receiving notice of the conviction of that person in another state of an offense committed there that, if committed in this state, would be grounds for the suspension or revocation of a license.

(b) The division may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle or motorboat of any offense under the motor vehicle laws of this state, forward a certified copy of the record to the motor vehicle administrator in the state where the person convicted is a resident.

(7) (a) The division may suspend or revoke the license of any nonresident to drive a motor vehicle in this state for any cause for which the license of a resident driver may be suspended or revoked.

(b) Any nonresident who drives a motor vehicle upon a highway when his license has been suspended or revoked by the division is guilty of a class C misdemeanor.

(8) (a) The division may not deny or suspend the license of any person for a period of more than one year except:

(i) for failure to comply with the terms of a traffic citation under Subsection (2);

(ii) upon receipt of a second or subsequent order suspending juvenile driving privileges under Section 53-3-219;

(iii) when extending a denial or suspension upon receiving certain records or reports under Subsection 53-3-220(2); and

(iv) for failure to give and maintain owner's or operator's security under Section 41-12a-411.

(b) The division may suspend the license of a person under Subsection (2) until he shows satisfactory evidence of compliance with the terms of the traffic citation.

(9) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately suspend the license of any person without hearing and without receiving a record of his conviction for a crime when the division has reason to believe that

the person's license was granted by the division through error or fraud or that the necessary consent for the license has been withdrawn or is terminated.

(b) The procedure upon suspension is the same as under Subsection (5), except that after the hearing the division shall either rescind its order of suspension or cancel the license.

(10) (a) The division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon notice in a manner specified by the division of at least five days to the licensee require him to submit to an examination.

(b) Upon the conclusion of the examination the division may suspend or revoke the person's license, permit him to retain the license, or grant a license subject to a restriction imposed in accordance with Section 53-3-208.

(c) Refusal or neglect of the licensee to submit to an examination is grounds for suspension or revocation of his license.

(11) A report authorized by Section 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in this state if the conviction was for a speed of ten miles per hour or less, above the posted speed limit and did not result in an accident, unless authorized in a manner specified by the division by the individual whose report is being requested.

(12) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately suspend the license of a person if it has reason to believe that the person is the owner of a motor vehicle for which security is required under Title 41, Chapter 12a, Motor Vehicle Financial Responsibility, and has driven the motor vehicle or permitted it to be driven within this state without the security being in effect.

(b) Section 41-12a-411 regarding the requirement of proof of owner's or operator's security applies to persons whose driving privileges are suspended under this Subsection (12).

(c) If the division exercises the right of immediate suspension granted under this Subsection (12), the notice and hearing provisions of Subsection (5) apply.

(d) A person whose license suspension has been sustained or whose license has been revoked by the division under this subsection may file a request for agency action requesting a hearing.

(13) Any suspension or revocation of a person's license under this section also disqualifies

any license issued to that person under Part 4 of this chapter.

Section 8. 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 or motorboat 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 (2)(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 (2)(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, in a manner specified by the 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) As a matter of procedure, the peace officer serving the notice shall send to the Driver License Division within ten calendar 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 in a manner specified 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 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 32A-12-209.
- (ii) The request shall be made within ten calendar 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 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 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 and records as defined in Section 46-4-102.
 - (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 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 (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.

Section 9. Section **53-3-232** is amended 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 or motorboat 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 or motorboat in this state in violation of Subsection (3).

Section 10. Section **73-18-12** is amended to read:

73-18-12. Operation in willful or wanton disregard for safety -- Penalty.

~~[No]~~ (1) A person may not operate any nonmotorized vessel, or manipulate any water skis[; ~~aquaplane, or similar~~] or any device towed by a motorboat in a willful or wanton disregard for the safety of persons or property.

(2) A violation of ~~[this section]~~ Subsection (1) is a class B misdemeanor.

Section 11. Section **73-18-15.1** is repealed and reenacted to read:

73-18-15.1. Vessel navigation and steering laws.

(1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all times to avoid the risk of collision.

(2) When the operators of two motorboats approach each other where there is risk of

collision, each operator shall alter course to the right and pass on the left side of the other.

(3) When the operators of two motorboats are crossing paths and are at risk of a collision, the operator of the vessel which has the other vessel on its right side shall keep out of the way and yield right-of-way if necessary.

(4) The operator of any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.

(5) The operator of a vessel underway shall keep out of the way of a:

(a) vessel not under command;

(b) vessel restricted in its ability to maneuver;

(c) vessel engaged in fishing; and

(d) sailing vessel.

(6) If the operator of one of two vessels is to keep out of the way, the other vessel operator shall maintain his course and speed unless it becomes apparent the other vessel is not taking the appropriate action.

(7) In narrow channels an operator of a vessel underway shall keep to the right of the middle of the channel.

(8) The operator of a vessel shall proceed at a safe speed at all times so that he can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances or conditions.

(9) (a) When the operators of two sailboats are approaching one another so as to involve risk of collision, one of the operators shall keep out of the way of the other as follows:

(i) when each has the wind on a different side, the operator of the vessel which has the wind on the left side shall keep out of the way of the other;

(ii) when both have the wind on the same side, the operator of the vessel which is to the windward shall keep out of the way of the vessel which is to leeward; and

(iii) if the operator of a vessel with the wind on the left side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the left or on the right side, the operator shall keep out of way of the other vessel.

(b) For purposes of this Subsection (9), the windward side shall be the side opposite that on which the mainsail is carried.

(10) The operator of any vessel may not exceed a wakeless speed when:

(a) within 150 feet of:

(i) another vessel;

(ii) a person in or floating on the water;

(iii) a water skier being towed by another boat;

(iv) a shore fisherman;

(v) a launching ramp;

(vi) a dock; or

(vii) a designated swimming area; or

(b) in an area designated as a wakeless speed area.

(11) The operator of a motorboat is responsible for any damage or injury caused by the wake produced by the operator's motorboat.

(12) (a) Except as provided in Subsection (12)(b), the operator of a motorboat that is less than 65 feet in length may not exceed a wakeless speed while any person is riding upon the bow decking, gunwales, transom, seatbacks, or motor cover.

(b) Subsection (12)(a) does not apply if the motorboat is:

(i) between 16 feet and 65 feet in length; and

(ii) the motorboat is equipped with adequate rails or other safeguards to prevent a person from falling overboard.

(13) If a person is riding upon the bow decking of a motorboat which does not have designed seating for passengers, the person shall straddle one of the upright supports of the bow rail and may not block the vision of the operator.

(14) The operator of a vessel may not tow a water skier or a person on another device:

(a) unless an onboard observer, who is at least eight years of age, is designated by the operator to watch the person being towed; or

(b) between sunset and sunrise.

(15) The operator of a vessel being operated between sunset and sunrise shall display lighted navigation lights approved by the division.

(16) A person who violates this section is guilty of a class C misdemeanor.

Section 12. Section **73-18-15.2** is amended to read:

73-18-15.2. Minimum age of operators -- Boating safety course for youth to operate personal watercraft.

(1) (a) ~~[Except as provided in Subsection (2), a]~~ A person under 16 years of age may not operate a motorboat on the waters of this state~~[, if he is accompanied by a person who is at least 18 years of age]~~ unless the person is under the on-board and direct supervision of a person who is at least 18 years of age.

(b) A person under 16 years of age may operate a sailboat, if ~~[he]~~ the person is under the direct supervision of a person who is at least 18 years of age.

(2) A person ~~[under 16 years of age and]~~ who is at least 12 years of age or older but under 16 years of age may operate a personal watercraft provided he:

(a) is under the direct supervision of a person who is at least 18 years of age;
(b) completes a boating safety course approved by the division; and
(c) has in his possession a boating safety certificate issued by the boating safety course provider.

(3) A person who is at least 16 years of age but under 18 years of age ~~[and 16 years of age or older]~~ may operate a personal watercraft, if ~~[he]~~ the person:

(a) completes a boating safety course approved by the division; and
(b) has in his possession a boating safety certificate issued by the boating safety course provider.

(4) A person required to attend a boating safety course under Subsection (3)(a) need not be accompanied by a parent or legal guardian while completing a boating safety course.

(5) ~~[No]~~ A person may not give permission to another person to operate a vessel in violation of this section.

(6) As used in this section, "direct supervision" means oversight at a distance within which

visual contact is maintained.

(7) (a) The division may collect a fee not to exceed \$12 from each person who takes the division's boating safety course to help defray the cost of the boating safety course.

(b) Money collected from the fee collected under Subsection (7)(a) shall be deposited in the Boating Account.

Section 13. Section **73-18-15.5** is enacted to read:

73-18-15.5. Authorizing or permitting driving a vessel in violation of law.

(1) A person may not authorize or knowingly permit a vessel owned by him or that is under his control to be driven by a person in violation of this chapter or Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving.

(2) A person who violates Subsection (1) is guilty of a class C misdemeanor.

Section 14. Section **78-3a-104** is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic and boating laws and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or

other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-8-501;

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive

jurisdiction over any traffic or boating offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic or boating offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following [~~traffic~~] offenses committed by a minor under 18 years of age:

- (a) Section 76-5-207, automobile homicide;
 - (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;
 - (c) Section 41-6-45, reckless driving or Section 73-18-12, reckless operation;
 - (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and
 - (e) Section 41-6-13.5 or 73-18-20, fleeing a peace officer.
- (3) The court also has jurisdiction over traffic and boating offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.
- (4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.
- (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:
- (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or
 - (b) has run away from home.
- (6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.
- (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

Section 15. Section **78-18-1** is amended to read:

78-18-1. Basis for punitive damages awards -- Section inapplicable to DUI cases -- Division of award with state.

(1) (a) Except as otherwise provided by statute, punitive damages may be awarded only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.

(b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6-44.

(c) The award of a penalty under Section 78-11-15 or 78-11-16 regarding shoplifting is not subject to the prior award of compensatory or general damages under Subsection (1)(a) whether or not restitution has been paid to the merchant prior to or as a part of a civil action under Section 78-11-15 or 78-11-16.

(2) Evidence of a party's wealth or financial condition shall be admissible only after a finding of liability for punitive damages has been made.

(3) In any judgment where punitive damages are awarded and paid, 50% of the amount of the punitive damages in excess of \$20,000 shall, after payment of attorneys' fees and costs, be remitted to the state treasurer for deposit into the General Fund.

Section 16. Repealer.

This act repeals:

Section **73-18-12.1, Operating under influence -- Local ordinances to be consistent with chapter.**

Section **73-18-12.2, Boating under the influence of alcohol or drugs or with high blood or breath alcohol content -- Criminal punishment -- Arrest without a warrant.**

Section **73-18-12.3, Operating under the influence -- Standards for administration and interpretation of chemical analysis.**

Section **73-18-12.4, Operating under the influence -- Admissibility of chemical test -- Other evidence.**

Section **73-18-12.5, Operating under the influence -- Prosecuting violations of local ordinances.**

Section **73-18-12.6, Operating under the influence -- Implied consent to chemical tests for alcohol or drugs -- Refusal to submit -- Revocation of registration -- Court action on revocation -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

Section **73-18-12.7, Operating under the influence -- Seizure and impoundment of vessel.**

Section **73-18-12.8, Operating under the influence -- Removal or impoundment of vehicle used to tow impounded vessel.**

Section 17. **Effective date.**

This act takes effect on July 1, 2002.