

Representative Peggy Wallace proposes the following substitute bill:

AUTOMOBILE HOMICIDE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

This act modifies the Criminal Code by providing that automobile homicide is a second degree felony if the conviction is subsequent to a conviction for DUI.

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

AMENDS:

76-5-207, as last amended by Chapter 106, Laws of Utah 2002

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

Section 1. Section **76-5-207** is amended to read:

76-5-207. Automobile homicide.

(1) As used in this section, "motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

~~[(1)]~~ (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6-44(1)(a).



26 ~~[(b) For the purpose of]~~

27 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to
28 exercise that degree of care that reasonable and prudent persons exercise under like or similar
29 circumstances.

30 ~~[(2)]~~ (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the
31 person operates a motor vehicle in a criminally negligent manner causing the death of another
32 and:

33 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
34 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
35 test;

36 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
37 and any drug to a degree that renders the person incapable of safely operating a vehicle; or

38 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
39 operation.

40 (b) ~~[For the purpose of]~~ As used in this [section] Subsection (3), "criminally negligent"
41 means criminal negligence as defined by Subsection 76-2-103(4).

42 ~~[(3)]~~ (4) The standards for chemical breath analysis as provided by Section 41-6-44.3
43 and the provisions for the admissibility of chemical test results as provided by Section
44 41-6-44.5 apply to determination and proof of blood alcohol content under this section.

45 ~~[(4)]~~ (5) Calculations of blood or breath alcohol concentration under this section shall
46 be made in accordance with Subsection 41-6-44(2).

47 ~~[(5)]~~ (6) The fact that a person charged with violating this section is or has been legally
48 entitled to use alcohol or a drug is not a defense ~~[to any charge of violating this section].~~

49 ~~[(6)]~~ (7) Evidence of a defendant's blood or breath alcohol content or drug content is
50 admissible except when prohibited by Rules of Evidence or the constitution.

51 ~~[(7) For purposes of this section, "motor vehicle" means any self-propelled vehicle and~~
52 ~~includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.]~~