

1 **AMENDMENTS TO OPERATING UNDER THE**
2 **INFLUENCE**

3 2004 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Dana C. Love**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Motor Vehicles Code and the Transportation Code to amend
10 provisions relating to operating a vehicle or aircraft while under the influence.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides that if a person is 21 years of age or older and has a passenger under 18
- 14 years of age in the vehicle, the illegal per se limit of blood or breath alcohol
- 15 concentration is .04 for a driving under the influence conviction;
- 16 ▶ provides that chemical analysis of a person's oral fluids is an authorized chemical
- 17 test under the implied consent provisions;
- 18 ▶ requires the commissioner of the Department of Public Safety to establish standards
- 19 for the administration, interpretation, and training of chemical analysis of oral
- 20 fluids; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **41-6-44**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 29 **41-6-44.3**, as last amended by Chapter 138, Laws of Utah 1987
- 30 **41-6-44.10**, as last amended by Chapter 185, Laws of Utah 2002
- 31 **41-6-44.12**, as last amended by Chapter 106, Laws of Utah 2002
- 32 **72-10-502**, as renumbered and amended by Chapter 270, Laws of Utah 1998
- 33 **72-10-503**, as renumbered and amended by Chapter 270, Laws of Utah 1998
- 34 **76-10-528**, as enacted by Chapter 23, Laws of Utah 1995



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

37 Section 1. Section **41-6-44** is amended to read:

38 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both**
 39 **or with specified or unsafe blood alcohol concentration -- Measurement of blood or**
 40 **breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties --**
 41 **Suspension or revocation of license.**

42 (1) As used in this section:

43 (a) "conviction" means any conviction for a violation of:

44 (i) this section;

45 (ii) alcohol, any drug, or a combination of both-related reckless driving under
46 Subsections (9) and (10);

47 (iii) Section 41-6-44.6, driving with any measurable controlled substance that is taken
48 illegally in the body;

49 (iv) local ordinances similar to this section or alcohol, any drug, or a combination of
50 both-related reckless driving adopted in compliance with Section 41-6-43;

51 (v) automobile homicide under Section 76-5-207; or

52 (vi) a violation described in Subsections (1)(a)(i) through (v), which judgment of
53 conviction is reduced under Section 76-3-402; or

54 (vii) statutes or ordinances in effect in any other state, the United States, or any district,
55 possession, or territory of the United States which would constitute a violation of this section
56 or alcohol, any drug, or a combination of both-related reckless driving if committed in this
57 state, including punishments administered under 10 U.S.C. Sec. 815;

58 (b) "educational series" means an educational series obtained at a substance abuse

59 program that is approved by the Board of Substance Abuse and Mental Health in accordance
60 with Section 62A-15-105;

61 (c) "screening and assessment" means a substance abuse addiction and dependency
62 screening and assessment obtained at a substance abuse program that is approved by the Board
63 of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

64 (d) "serious bodily injury" means bodily injury that creates or causes serious permanent
65 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
66 creates a substantial risk of death;

67 (e) "substance abuse treatment" means treatment obtained at a substance abuse
68 program that is approved by the Board of Substance Abuse and Mental Health in accordance
69 with Section 62A-15-105;

70 (f) "substance abuse treatment program" means a state licensed substance abuse
71 program;

72 (g) a violation of this section includes a violation under a local ordinance similar to this
73 section adopted in compliance with Section 41-6-43; and

74 (h) the standard of negligence is that of simple negligence, the failure to exercise that
75 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
76 circumstances.

77 (2) (a) A person may not operate or be in actual physical control of a vehicle within
78 this state if the person:

79 (i) has sufficient alcohol in ~~[his]~~ the person's body that a subsequent chemical test
80 shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the
81 time of the test;

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

84 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
85 operation or actual physical control~~[-];~~;

86 (iv) (A) is 21 years of age or older;

87 (B) has sufficient alcohol in the person's body that a subsequent chemical test shows
88 that the person has a blood or breath alcohol concentration of .04 grams or greater at the time
89 of the test; and

90 (C) has a passenger under 18 years of age in the vehicle at the time of operation or
91 actual physical control; or

92 (v) (A) is 21 years of age or older;

93 (B) has a blood or breath alcohol concentration of .04 grams or greater at the time of
94 operation or actual physical control; and

95 (C) has a passenger under 18 years of age in the vehicle at the time of operation or
96 actual physical control.

97 (b) The fact that a person charged with violating this section is or has been legally
98 entitled to use alcohol or a drug is not a defense against any charge of violating this section.

99 (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of
101 alcohol per 210 liters of breath.

102 (3) (a) A person convicted the first or second time of a violation of [~~Subsection (2)~~]
103 Subsections (2)(a)(i) through (2)(a)(iii) is guilty of a:

104 (i) class B misdemeanor; or

105 (ii) class A misdemeanor if the person:

106 (A) has also inflicted bodily injury upon another as a proximate result of having
107 operated the vehicle in a negligent manner;

108 (B) had a passenger under 16 years of age in the vehicle at the time of the offense; or

109 (C) was 21 years of age or older and had a passenger under 18 years of age in the
110 vehicle at the time of the offense.

111 (b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony
112 if the person has also inflicted serious bodily injury upon another as a proximate result of
113 having operated the vehicle in a negligent manner.

114 (c) A person convicted the first or second time of a violation of Subsection (2)(a)(iv) or
115 (2)(a)(v) is guilty of:

116 (i) a class B misdemeanor; or

117 (ii) a class A misdemeanor if the person has also inflicted bodily injury upon another as
118 a proximate result of having operated the vehicle in a negligent manner.

119 (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose
120 a mandatory jail sentence of not less than 48 consecutive hours.

121 (b) The court may, as an alternative to all or part of a jail sentence, require the person
122 to:

123 (i) work in a compensatory-service work program for not less than 48 hours; or

124 (ii) participate in home confinement through the use of electronic monitoring in
125 accordance with Subsection (13).

126 (c) In addition to the jail sentence, compensatory-service work program, or home
127 confinement, the court shall:

128 (i) order the person to participate in a screening and assessment;

129 (ii) order the person to participate in an educational series if the court does not order
130 substance abuse treatment as described under Subsection (4)(d); and

131 (iii) impose a fine of not less than \$700.

132 (d) The court may order the person to obtain substance abuse treatment if the substance
133 abuse treatment program determines that substance abuse treatment is appropriate.

134 (e) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the
135 person in accordance with Subsection (14).

136 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or
137 higher, the court shall order probation for the person in accordance with Subsection (14).

138 (5) (a) If a person is convicted under Subsection (2) within ten years of a prior
139 conviction under this section, the court shall as part of any sentence impose a mandatory jail
140 sentence of not less than 240 consecutive hours.

141 (b) The court may, as an alternative to all or part of a jail sentence, require the person
142 to:

143 (i) work in a compensatory-service work program for not less than 240 hours; or

144 (ii) participate in home confinement through the use of electronic monitoring in
145 accordance with Subsection (13).

146 (c) In addition to the jail sentence, compensatory-service work program, or home
147 confinement, the court shall:

148 (i) order the person to participate in a screening and assessment;

149 (ii) order the person to participate in an educational series if the court does not order
150 substance abuse treatment as described under Subsection (5)(d); and

151 (iii) impose a fine of not less than \$800.

152 (d) The court may order the person to obtain substance abuse treatment if the substance
153 abuse treatment program determines that substance abuse treatment is appropriate.

154 (e) The court shall order probation for the person in accordance with Subsection (14).

155 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:

156 (i) a third or subsequent conviction under this section within ten years of two or more
157 prior convictions; or

158 (ii) at any time after a conviction of:

159 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

160 or

161 (B) a felony violation under this section that is committed after July 1, 2001.

162 (b) Any conviction described in this Subsection (6) which judgment of conviction is
163 reduced under Section 76-3-402 is a conviction for purposes of this section.

164 (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
165 sentence and places the defendant on probation the court shall impose:

166 (i) a fine of not less than \$1,500; and

167 (ii) a mandatory jail sentence of not less than 1,500 hours.

168 (d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to
169 obtain a screening and assessment and substance abuse treatment at a substance abuse
170 treatment program providing intensive care or inpatient treatment and long-term closely
171 supervised follow-through after treatment for not less than 240 hours.

172 (e) In addition to the penalties required under Subsection (6)(c), if the court orders
173 probation, the probation shall be supervised probation which may include requiring the person
174 to participate in home confinement through the use of electronic monitoring in accordance with
175 Subsection (13).

176 (7) The mandatory portion of any sentence required under this section may not be
177 suspended and the convicted person is not eligible for parole or probation until any sentence
178 imposed under this section has been served. Probation or parole resulting from a conviction for
179 a violation under this section may not be terminated.

180 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court
181 to order a convicted person to: participate in a screening and assessment; and an educational
182 series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily,

183 substance abuse treatment; or do a combination of those things, apply to a conviction for a
184 violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

185 (ii) The court shall render the same order regarding screening and assessment, an
186 educational series, or substance abuse treatment in connection with a first, second, or
187 subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court
188 would render in connection with applying respectively, the first, second, or subsequent
189 conviction requirements of Subsections (4), (5), and (6).

190 (b) The court shall notify the Driver License Division if a person fails to:

191 (i) complete all court ordered:

192 (A) screening and assessment;

193 (B) educational series;

194 (C) substance abuse treatment; and

195 (D) hours of work in compensatory-service work program; or

196 (ii) pay all fines and fees, including fees for restitution and treatment costs.

197 (c) Upon receiving the notification, the division shall suspend the person's driving
198 privilege in accordance with Subsections 53-3-221(2) and (3).

199 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
200 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
201 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this
202 section, the prosecution shall state for the record a factual basis for the plea, including whether
203 or not there had been consumption of alcohol, drugs, or a combination of both, by the
204 defendant in connection with the violation.

205 (ii) The statement is an offer of proof of the facts that shows whether there was
206 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with
207 the violation.

208 (b) The court shall advise the defendant before accepting the plea offered under this
209 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section
210 41-6-45.

211 (c) The court shall notify the Driver License Division of each conviction of Section
212 41-6-44.6 or 41-6-45 entered under this Subsection (9).

213 (10) A peace officer may, without a warrant, arrest a person for a violation of this

214 section when the officer has probable cause to believe the violation has occurred, although not
215 in ~~his~~ the officer's presence, and if the officer has probable cause to believe that the violation
216 was committed by the person.

217 (11) (a) The Driver License Division shall:

218 (i) suspend for 90 days the operator's license of a person convicted for the first time
219 under Subsection (2);

220 (ii) revoke for one year the license of a person convicted of any subsequent offense
221 under Subsection (2) or if the person has a prior conviction as defined under Subsection (1) if
222 the violation is committed within a period of ten years from the date of the prior violation; and

223 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
224 (12).

225 (b) The Driver License Division shall subtract from any suspension or revocation
226 period the number of days for which a license was previously suspended under Section
227 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
228 which the record of conviction is based.

229 (12) (a) In addition to any other penalties provided in this section, a court may order
230 the operator's license of a person who is convicted of a violation of Subsection (2) to be
231 suspended or revoked for an additional period of 90 days, 180 days, one year, or two years to
232 remove from the highways those persons who have shown they are safety hazards.

233 (b) If the court suspends or revokes the person's license under this Subsection (12)(b),
234 the court shall prepare and send to the Driver License Division an order to suspend or revoke
235 that person's driving privileges for a specified period of time.

236 (13) (a) If the court orders a person to participate in home confinement through the use
237 of electronic monitoring, the electronic monitoring shall alert the appropriate corrections,
238 probation monitoring agency, law enforcement units, or contract provider of the defendant's
239 whereabouts.

240 (b) The electronic monitoring device shall be used under conditions which require:

241 (i) the person to wear an electronic monitoring device at all times;

242 (ii) that a device be placed in the home or other specified location of the person, so that
243 the person's compliance with the court's order may be monitored; and

244 (iii) the person to pay the costs of the electronic monitoring.

245 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place
246 an electronic monitoring device on the person and install electronic monitoring equipment in
247 the residence of the person or other specified location.

248 (d) The court may:

249 (i) require the person's electronic home monitoring device to include a substance abuse
250 testing instrument;

251 (ii) restrict the amount of alcohol the person may consume during the time the person
252 is subject to home confinement;

253 (iii) set specific time and location conditions that allow the person to attend school
254 educational classes, or employment and to travel directly between those activities and the
255 person's home; and

256 (iv) waive all or part of the costs associated with home confinement if the person is
257 determined to be indigent by the court.

258 (e) The electronic monitoring described in this section may either be administered
259 directly by the appropriate corrections agency, probation monitoring agency, or by contract
260 with a private provider.

261 (f) The electronic monitoring provider shall cover the costs of waivers by the court
262 under Subsection (13)~~(e)~~(d)(iv).

263 (14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e)
264 or (5)(e):

265 (i) the court shall specify the period of the probation;

266 (ii) the person shall pay all of the costs of the probation; and

267 (iii) the court may order any other conditions of the probation.

268 (b) The court shall provide the probation described in this section by contract with a
269 probation monitoring agency or a private probation provider.

270 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
271 compliance with all conditions of the person's sentence, conditions of probation, and court
272 orders received under this article and shall notify the court of any failure to comply with or
273 complete that sentence or those conditions or orders.

274 (d) (i) The court may waive all or part of the costs associated with probation if the
275 person is determined to be indigent by the court.

276 (ii) The probation provider described in Subsection (14)(b) shall cover the costs of
277 waivers by the court under Subsection (14)(d)(i).

278 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
279 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not
280 order:

281 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d), then the court shall
282 enter the reasons on the record; and

283 (b) the following penalties, the court shall enter the reasons on the record:

284 (i) the installation of an ignition interlock system as a condition of probation for the
285 person in accordance with Section 41-6-44.7; or

286 (ii) the imposition of home confinement through the use of electronic monitoring in
287 accordance with Subsection (13).

288 Section 2. Section **41-6-44.3** is amended to read:

289 **41-6-44.3. Standards for chemical breath analysis -- Evidence.**

290 (1) The commissioner of the Department of Public Safety shall establish standards for
291 the administration and interpretation of chemical analysis of a person's breath or oral fluids,
292 including standards of training.

293 (2) In any action or proceeding in which it is material to prove that a person was
294 operating or in actual physical control of a vehicle while under the influence of alcohol or any
295 drug or operating with a blood or breath alcohol content statutorily prohibited, documents
296 offered as memoranda or records of acts, conditions, or events to prove that the analysis was
297 made and the instrument used was accurate, according to standards established in Subsection
298 (1), are admissible if:

299 (a) the judge finds that they were made in the regular course of the investigation at or
300 about the time of the act, condition, or event; and

301 (b) the source of information from which made and the method and circumstances of
302 their preparation indicate their trustworthiness.

303 (3) If the judge finds that the standards established under Subsection (1) and the
304 conditions of Subsection (2) have been met, there is a presumption that the test results are valid
305 and further foundation for introduction of the evidence is unnecessary.

306 Section 3. Section **41-6-44.10** is amended to read:

307 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of**
308 **tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person**
309 **incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

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

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

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

329 (c) (i) A person who has been requested under this section to submit to a chemical test
330 or tests of [~~his~~] that person's breath, blood, [~~or~~] urine, or oral fluids may not select the test or
331 tests to be administered.

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

336 (2) (a) If the person has been placed under arrest, has then been requested by a peace
337 officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to

338 submit to any chemical test requested, the person shall be warned by the peace officer
339 requesting the test or tests that a refusal to submit to the test or tests can result in revocation of
340 the person's license to operate a motor vehicle.

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

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

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

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

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

353 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten
354 calendar days after the date of the arrest, that ~~he~~ the peace officer had grounds to believe the
355 arrested person had been operating or was in actual physical control of a motor vehicle while
356 having a blood or breath alcohol content statutorily prohibited under Section 41-6-44,
357 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of
358 alcohol and any drug under Section 41-6-44, or while having any measurable controlled
359 substance or metabolite of a controlled substance in the person's body in violation of Section
360 41-6-44.6, and that the person had refused to submit to a chemical test or tests under
361 Subsection (1).

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

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

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

368 (iv) If the person does not make a timely written request for a hearing before the

369 division, [his] the person's privilege to operate a motor vehicle in the state is revoked beginning
370 on the 30th day after the date of arrest for a period of:

371 (A) 18 months unless Subsection (2)(e)(iv)(B) applies; or

372 (B) 24 months if the person has had a previous license sanction after July 1, 1993,
373 under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July
374 1, 1993, under Section 41-6-44.

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

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

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

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

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

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

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

386 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
387 accordance with the rates established in Section 78-46-28.

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

393 (i) (A) 18 months unless Subsection (2)(i)(i)(B) applies; or

394 (B) 24 months if the person has had a previous license sanction after July 1, 1993,
395 under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July
396 1, 1993, under Section 41-6-44.

397 (ii) The Driver License Division shall also assess against the person, in addition to any
398 fee imposed under Subsection 53-3-205(13), a fee under Section 53-3-105, which shall be paid
399 before the person's driving privilege is reinstated, to cover administrative costs.

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

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

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

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

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

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

416 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
417 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person
418 whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or
419 medical facility at which the sample is drawn, is immune from any civil or criminal liability
420 arising from drawing the sample, if the test is administered according to standard medical
421 practice.

422 (6) (a) The person to be tested may, at [~~his~~] the person's own expense, have a physician
423 of [~~his~~] that person's own choice administer a chemical test in addition to the test or tests
424 administered at the direction of a peace officer.

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

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

430 (7) For the purpose of determining whether to submit to a chemical test or tests, the

431 person to be tested does not have the right to consult an attorney or have an attorney, physician,
432 or other person present as a condition for the taking of any test.

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

439 Section 4. Section **41-6-44.12** is amended to read:

440 **41-6-44.12. Reporting test results -- Immunity from liability.**

441 (1) As used in this section, "health care provider" means a person licensed under Title
442 58, Chapter 31b, Nurse Practice Act, Title 58, Chapter 67, Utah Medical Practice Act, or Title
443 58, Chapter 68, Utah Osteopathic Medical Practice Act.

444 (2) A health care provider who is providing medical care to any person involved in a
445 motor vehicle crash may notify, as soon as reasonably possible, the nearest peace officer or law
446 enforcement agency if the health care provider has reason to believe, as a result of any test
447 performed in the course of medical treatment, that the:

448 (a) person's blood alcohol concentration meets or exceeds the [~~limit~~] limits under
449 Subsection 41-6-44(2)(a)[~~(i)~~ or ~~(iii)~~];

450 (b) person is younger than 21 years of age and has any measurable blood, breath, or
451 urine alcohol concentration in the person's body; or

452 (c) person has any measurable controlled substance or metabolite of a controlled
453 substance in the person's body which could be a violation of Subsection 41-6-44(2)(a)(ii) or
454 Section 41-6-44.6.

455 (3) The report under Subsection (2) shall consist of the:

456 (a) name of the person being treated;

457 (b) date and time of the administration of the test; and

458 (c) results disclosed by the test.

459 (4) A health care provider participating in good faith in making a report or assisting an
460 investigator from a law enforcement agency pursuant to this section is immune from any
461 liability, civil or criminal, that otherwise might result by reason of those actions.

462 (5) A report under Subsection (2) may not be used to support a finding of probable
463 cause that a person who is not a driver of a vehicle has committed an offense.

464 Section 5. Section **72-10-502** is amended to read:

465 **72-10-502. Implied consent to chemical tests for alcohol or drugs -- Number of**
466 **tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give**
467 **test -- Evidence.**

468 (1) (a) A person operating an aircraft in this state consents to a chemical test or tests of
469 [his] the person's breath, blood, [or] urine, or oral fluids:

470 (i) for the purpose of determining whether the person was operating or in actual
471 physical control of an aircraft while having a blood or breath alcohol content statutorily
472 prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or
473 combination of alcohol and any drug under Section 72-10-501, if the test is or tests are
474 administered at the direction of a peace officer having grounds to believe that person to have
475 been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or

476 (ii) if the person operating the aircraft is involved in an accident that results in death,
477 serious injury, or substantial aircraft damage.

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

480 (ii) The peace officer may order any or all tests of the person's breath, blood, [or] urine,
481 or oral fluids.

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

485 (c) (i) A person who has been requested under this section to submit to a chemical test
486 or tests of the person's breath, blood, [or] urine, or oral fluids may not select the test or tests to
487 be administered.

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

492 (2) (a) If the person has been placed under arrest and has then been requested by a

493 peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and
494 refuses to submit to any chemical test, the person shall be warned by the peace officer
495 requesting the test that a refusal to submit to the test is admissible in civil or criminal
496 proceedings as provided under Subsection (8).

497 (b) Following this warning, unless the person immediately requests that the chemical
498 test offered by a peace officer be administered, a test may not be given.

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

503 (4) Upon the request of the person who was tested, the results of the test or tests shall
504 be made available to ~~[him]~~ that person.

505 (5) (a) Only a physician, registered nurse, practical nurse, or person authorized under
506 Section 26-1-30 to draw blood under Section 41-6-44.10, acting at the request of a peace
507 officer, may withdraw blood to determine the alcohol or drug content. This limitation does not
508 apply to the taking of a urine ~~[or]~~, breath, or oral fluid specimen.

509 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
510 26-1-30 to draw blood under Section 41-6-44.10 who, at the direction of a peace officer, draws
511 a sample of blood from any person whom a peace officer has reason to believe is flying in
512 violation of this chapter, or hospital or medical facility at which the sample is drawn, is
513 immune from any civil or criminal liability arising from drawing the sample, if the test is
514 administered according to standard medical practice.

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

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

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

523 (7) For the purpose of determining whether to submit to a chemical test or tests, the

524 person to be tested does not have the right to consult an attorney or have an attorney, physician,
525 or other person present as a condition for the taking of any test.

526 (8) If a person under arrest refuses to submit to a chemical test or tests or any
527 additional test under this section, evidence of any refusal is admissible in any civil or criminal
528 action or proceeding arising out of acts alleged to have been committed while the person was
529 operating or in actual physical control of an aircraft while under the influence of alcohol, any
530 drug, or combination of alcohol and any drug.

531 (9) The results of any test taken under this section or the refusal to be tested shall be
532 reported to the Federal Aviation Administration by the peace officer requesting the test.

533 Section 6. Section **72-10-503** is amended to read:

534 **72-10-503. Standards for chemical breath analysis or oral fluids -- Evidence.**

535 (1) The commissioner of the Department of Public Safety shall establish standards for
536 the administration and interpretation of chemical analysis of a person's breath or oral fluids,
537 including standards of training.

538 (2) In any action or proceeding in which it is material to prove that a person was
539 operating or in actual physical control of an aircraft while under the influence of alcohol or any
540 drug or operating with a blood or breath alcohol content statutorily prohibited, documents
541 offered as memoranda or records of acts, conditions, or events to prove that the analysis was
542 made and the instrument used was accurate, according to standards established in Subsection
543 (1), are admissible if:

544 (a) the judge finds that they were made in the regular course of the investigation at or
545 about the time of the act, condition, or event; and

546 (b) the source of information from which made and the method and circumstances of
547 their preparation indicate their trustworthiness.

548 (3) If the judge finds that the standards established under Subsection (1) and the
549 conditions of Subsection (2) have been met, there is a presumption that the test results are valid
550 and further foundation for introduction of the evidence is unnecessary.

551 Section 7. Section **76-10-528** is amended to read:

552 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**
553 **drugs unlawful.**

554 (1) Any person who carries a dangerous weapon while under the influence of alcohol

555 or a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor.
556 Under the influence means the same level of influence or blood or breath alcohol concentration
557 as provided in [~~Section~~] Subsections 41-6-44(2)(a)(i) through (2)(a)(iii).
558 (2) It is not a defense to prosecution under this section that the person:
559 (a) is licensed in the pursuit of wildlife of any kind; or
560 (b) has a valid permit to carry a concealed firearm.

Legislative Review Note
as of 1-29-04 11:35 AM

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

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill will increase workload for some law enforcement agencies, but those increases can be handled within existing budgets.

Individual and Business Impact

There is a probability that more fines and penalties will be assessed because the bill lowers the BAC from 0.08 to 0.04 when minors are in the vehicle.

Office of the Legislative Fiscal Analyst