

DRIVER LICENSE RELATED AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Public Safety Code by amending provisions related to driver licensing and the Driver License Division.

Highlighted Provisions:

This bill:

- ▶ clarifies the suspension and revocation periods for denying, suspending, revoking, or disqualifying a driver's driving privileges in certain circumstances;
- ▶ amends notice and hearing requirements for Driver License Division denial, revocation, suspension, or disqualification hearings in certain circumstances;
- ▶ amends abstract requirements for courts to report violations to the Driver License Division;
- ▶ amends the definition of extension for a driver license renewal;
- ▶ provides that a driving record furnished by the Driver License Division may report on the driving record of a person for a period of ten years, instead of six;
- ▶ amends the definition of qualifying conviction for purposes of issuing no alcohol conditional licenses and qualifying conviction coded licenses;
- ▶ provides that the Driver License Division may issue, reinstate, or renew a driver license only in the form of a no alcohol conditional license to a person for a period of ten years, instead of six, following a second or subsequent qualifying driving under the influence conviction; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6-44, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

41-6-44.10, as last amended by Chapter 185, Laws of Utah 2002

41-6-173, as last amended by Chapter 183, Laws of Utah 1983

53-3-102, as last amended by Chapter 200, Laws of Utah 2002

53-3-109, as last amended by Chapters 85 and 289, Laws of Utah 2001

53-3-219, as last amended by Chapter 13, Laws of Utah 1998

53-3-220, as last amended by Chapter 72, Laws of Utah 2003

53-3-223, as last amended by Chapter 185, Laws of Utah 2002

53-3-231, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

53-3-232, as last amended by Chapter 200, Laws of Utah 2002

53-3-233, as enacted by Chapter 334, Laws of Utah 2000

53-3-418, as last amended by Chapter 106, Laws of Utah 2002

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

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

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

(1) As used in this section:

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

(i) this section;

(ii) alcohol, any drug, or a combination of both-related reckless driving under Subsections

(9) and (10);

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

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

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

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

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

(b) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

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

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

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

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

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

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

circumstances.

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

(i) has sufficient alcohol in [~~his~~] the person's 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 or actual physical control.

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

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

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

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

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

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

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

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a

mandatory jail sentence of not less than 48 consecutive hours.

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

- (i) work in a compensatory-service work program for not less than 48 hours; or
- (ii) participate in home confinement through the use of electronic monitoring in

accordance with Subsection (13).

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

- (i) order the person to participate in a screening and assessment;
- (ii) order the person to participate in an educational series if the court does not order

substance abuse treatment as described under Subsection (4)(d); and

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

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

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

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

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

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

- (i) work in a compensatory-service work program for not less than 240 hours; or
- (ii) participate in home confinement through the use of electronic monitoring in

accordance with Subsection (13).

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

- (i) order the person to participate in a screening and assessment;
- (ii) order the person to participate in an educational series if the court does not order

substance abuse treatment as described under Subsection (5)(d); and

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

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

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

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

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

(ii) at any time after a conviction of:

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

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

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

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

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

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

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

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

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

violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

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

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

~~[(†)]~~ (A) complete all court ordered:

~~[(A)]~~ (I) screening and assessment;

~~[(B)]~~ (II) educational series;

~~[(C)]~~ (III) substance abuse treatment; and

~~[(D)]~~ (IV) hours of work in compensatory-service work program; or

~~[(†)]~~ (B) pay all fines and fees, including fees for restitution and treatment costs.

(ii) Upon receiving the notification described in Subsection (8)(b)(i), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

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

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

violation.

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

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

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the peace officer has probable cause to believe the violation has occurred, although not in ~~[his]~~ the peace officer's presence, and if the peace officer has probable cause to believe that the violation was committed by the person.

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

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

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

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

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

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

(ii) The additional suspension or revocation period provided in this Subsection (12) shall begin the date on which the individual would be eligible to reinstate the individual's driving privilege for a violation of Subsection (2).

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

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

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

- (i) the person to wear an electronic monitoring device at all times;
- (ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and
- (iii) the person to pay the costs of the electronic monitoring.

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

(d) The court may:

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

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

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

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

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

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

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

- (i) the court shall specify the period of the probation;
- (ii) the person shall pay all of the costs of the probation; and
- (iii) the court may order any other conditions of the probation.

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

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

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

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

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

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

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

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

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

Section 2. Section **41-6-44.10** is amended to read:

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

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

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

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

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

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

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

(b) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall ~~[serve on the person]~~, on behalf of the Driver License Division~~[, immediate]~~ and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle. When ~~[the]~~ a peace officer ~~[serves the immediate]~~ gives the notice on behalf of the Driver License Division, ~~[he]~~ the peace officer shall:

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

(ii) issue a temporary license certificate effective for only 29 days from the date of arrest;
and

(iii) supply to the operator, ~~[on a form approved]~~ in a manner specified by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if ~~[approved as to form]~~ provided in a manner specified by the Driver License Division, ~~[serve]~~ also serve as the temporary license certificate.

(d) As a matter of procedure, the peace officer shall submit a signed report, within ten calendar days after the ~~[date of the arrest]~~ day on which notice is provided under Subsection (2)(b), that ~~[he]~~ the peace officer had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a chemical

test or tests under Subsection (1).

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

(ii) A request for the hearing shall be made in writing within ten calendar days after the ~~[date of the arrest]~~ day on which notice is provided.

(iii) Upon ~~[written request, the division]~~ request in a manner specified by the Driver License Division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(iv) If the person does not make a ~~[timely written]~~ request for a hearing before the ~~[division, his]~~ Driver License Division under this Subsection (2)(e), the person's privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest for a period of:

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

(B) 24 months if the person has had a previous:

(I) license sanction [after July 1, 1993,] for an offense that occurred within the previous ten years from the date of arrest under this section, Section 41-6-44.6, 53-3-223, 53-3-231, or 53-3-232[;]; or [a]

(II) conviction [after July 1, 1993,] for an offense that occurred within the previous ten years from the date of arrest under Section 41-6-44.

(f) (i) ~~[H]~~ Except as provided in Subsection (2)(f)(ii), if a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in the county in which the offense occurred~~[, unless the division and the person both agree that the hearing may be held in some other county].~~

(ii) The Driver License Division may hold a hearing in some other county if the Driver License Division and the person both agree.

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

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

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

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

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

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

(ii) The ~~[division]~~ Driver License Division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78-46-28.

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

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

(B) 24 months if the person has had a previous:

(I) license sanction ~~[after July 1, 1993,]~~ for an offense that occurred within the previous ten years from the date of arrest under this section, Section 41-6-44.6, 53-3-223, 53-3-231, or 53-3-232~~;~~; or [a]

(II) conviction ~~[after July 1, 1993,]~~ for an offense that occurred within the previous ten years from the date of arrest under Section 41-6-44.

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

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

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

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

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

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

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

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

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

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

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

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

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or

in actual physical control of a motor vehicle while under the influence of alcohol, any drug, combination of alcohol and any drug, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body.

Section 3. Section **41-6-173** is amended to read:

41-6-173. Keeping of records -- Making and forwarding of abstract upon conviction or forfeiture of bail -- Form and contents -- Official misconduct.

~~[(a) Every]~~ (1) A magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of ~~[every]~~ each case in which a person is charged with ~~[any]~~:

(a) a violation of this ~~[act]~~ chapter; or ~~[of]~~

(b) any other law regulating the operation of ~~[vehicles on highways]~~ a motor vehicle on the highway.

~~[(b)]~~ (2) (a) Within ~~[10]~~ ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this ~~[act]~~ chapter or other law regulating the operation of ~~[vehicles on highways every said]~~ a motor vehicle on the highway, the magistrate of the court or clerk of the court of record in which ~~[such]~~ the conviction was ~~[had]~~ made or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of ~~[said]~~ the court covering the case in which ~~[said]~~ the person was ~~[so]~~ convicted or forfeited bail~~[, which]~~.

(b) The abstract ~~[must]~~ shall be certified by the person ~~[so]~~ required to prepare the ~~[same]~~ abstract to be true and correct. ~~[Report need not be made of any]~~

(c) A report under this Subsection (2) is not required for a conviction involving the illegal parking or standing of a vehicle.

~~[(c) Said]~~ (3) The abstract must be made ~~[upon a form furnished by the department]~~ in a manner specified by the Driver License Division and shall include the:

(a) name and address of the party charged~~[, the]~~;

(b) number, if any, ~~[of his]~~ of the person's operator's license~~[, the]~~;

(c) registration number of the vehicle involved~~[, the]~~;

(d) nature of the offense~~[, the]~~;

(e) date of hearing~~[, the]~~;

~~(f)~~ plea~~[, the]~~;

~~(g)~~ judgment, or whether bail was forfeited; and ~~[the]~~

~~(h)~~ amount of the fine or forfeiture ~~[as the case may be]~~.

~~[(d) Every]~~ (4) A court of record shall ~~[also forward a like]~~ provide a copy of the report to the ~~[department]~~ Driver License Division upon the conviction of any person of manslaughter or other felony in ~~[the commission of]~~ which a vehicle was used.

~~[(e)]~~ (5) The failure, refusal, or neglect of ~~[any such]~~ a judicial officer to comply with ~~[any of]~~ the requirements of this section ~~[shall constitute]~~ constitutes misconduct in office and ~~[shall be ground]~~ is grounds for removal ~~[therefrom]~~.

~~[(f) The department shall keep all abstracts received hereunder at its main office and the same shall be open to public inspection during reasonable business hours.]~~

(6) The Driver License Division shall classify and disclose all abstracts received in accordance with Section 53-3-109.

Section 4. 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, Uniform Commercial Driver License Act:

(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; or

(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~~] in a manner specified by the division.

(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.

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- (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.
- (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.
- (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~~] the person's employer to work in Utah.
- (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.
- (22) "Renewal" means to validate a license certificate so that it expires at a later date.
- (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.
- (24) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.
- (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.
- (26) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.
- (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 5. Section **53-3-109** is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(b) The division may only disclose personal identifying information:

(i) when the division determines it is in the interest of the public safety to disclose the information; and

(ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) A person who receives personal identifying information shall be advised by the division that the person may not:

(a) disclose the personal identifying information from that record to any other person; or

(b) use the personal identifying information from that record for advertising or solicitation purposes.

(3) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person; and

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63-38-3.2 for each document authenticated.

(4) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(5) (a) A driving record furnished under this section may only report on the driving record of a person for a period of [~~six~~] ten years.

(b) Subsection (5)(a) does not apply to court or law enforcement reports and to reports of commercial driver license violations.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

division may make rules to designate:

- (a) what information shall be included in a report on the driving record of a person;
- (b) the form of a report or copy of the report which may include electronic format;
- (c) the form of a certified copy, as required under Section 53-3-216, which may include electronic format;
- (d) the form of a signature required under this chapter which may include electronic format; and
- (e) the form of written request to the division required under this chapter which may include electronic format.

Section 6. Section **53-3-219** is amended to read:

53-3-219. Suspension of minor's driving privileges.

(1) The division shall immediately suspend all driving privileges of any person upon receipt of an order suspending driving privileges under Section 32A-12-209, Subsection 76-9-701(1), or Section 78-3a-506.

(a) Upon receipt of the first order suspending a person's driving privileges, the division shall impose a suspension for 90 days or, if the person is under the age of eligibility for a driver license, [~~deny application for a driver license~~] the suspension shall begin on the date of conviction and continue for the first 90 days following the date of eligibility.

(b) Upon receipt of a second order suspending a person's driving privileges, the division shall impose a suspension for six months or, if the person is under the age of eligibility for a driver license, [~~deny application for a driver license~~] the suspension shall begin on the date of conviction and continue for the first six months following the date of eligibility.

(c) Upon receipt of a third or subsequent order suspending a person's driving privileges, the division shall impose a suspension for one year or, if the person is under the age of eligibility for a driver license, [~~deny application for a driver license~~] the suspension shall begin on the date of conviction and continue for one year beginning on the date of eligibility.

(2) After reinstatement of the license under Subsection (1)(a), a report authorized under Section 53-3-104 may not contain evidence of the suspension of a minor's license under this

section if ~~he~~ the minor has not been convicted of any other offense for which the suspension under Subsection (1)(a) may be extended.

Section 7. Section **53-3-220** is amended to read:

53-3-220. Offenses requiring mandatory revocation, denial, suspension, or disqualification of license -- Offense requiring an extension of period -- Hearing -- Limited driving privileges.

(1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter 6, Traffic Rules and Regulations, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of ~~his~~ the person's conviction for any of the following offenses:

(i) manslaughter or negligent homicide resulting from driving a motor vehicle, or automobile homicide under Section 76-5-207;

(ii) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any drug, or combination of them to a degree that renders the person incapable of safely driving a motor vehicle as prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43(1);

(iii) driving or being in actual physical control of a motor vehicle while having a blood or breath alcohol content prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43(1);

(iv) perjury or the making of a false affidavit to the division under this chapter, Title 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or regulating driving on highways;

(v) any felony under the motor vehicle laws of this state;

(vi) any other felony in which a motor vehicle is used to facilitate the offense;

(vii) failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another;

(viii) two charges of reckless driving committed within a period of 12 months; but if upon a first conviction of reckless driving the judge or justice recommends suspension of the convicted

person's license, the division may after a hearing suspend the license for a period of three months;

(ix) failure to bring a motor vehicle to a stop at the command of a peace officer as required in Section 41-6-13.5;

(x) any offense specified in Part 4 [~~of this chapter~~], Uniform Commercial Driver License Act, that requires disqualification;

(xi) discharging or allowing the discharge of a firearm from a vehicle in violation of Subsection 76-10-508(2);

(xii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

(xiii) operating or being in actual physical control of a motor vehicle while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6; and

(xiv) operating or being in actual physical control of a motor vehicle while having any alcohol in the person's body in violation of Section 53-3-232.

(b) The division shall immediately revoke the license of a person upon receiving a record of an adjudication under Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996, for any of the following offenses:

(i) discharging or allowing the discharge of a firearm from a vehicle in violation of Subsection 76-10-508(2); and

(ii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

(c) Except when action is taken under Section 53-3-219 for the same offense, the division shall immediately suspend for six months the license of a person upon receiving a record of conviction for any of the following offenses:

(i) any violation of:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

(ii) any criminal offense that prohibits:

(A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance that is prohibited under the acts described in Subsection (1)(c)(i); or

(B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

(2) The division shall extend the period of the first denial, suspension, revocation, or disqualification for an additional like period, to a maximum of one year for each subsequent occurrence, upon receiving:

(a) a record of the conviction of any person on a charge of driving a motor vehicle while the person's license is denied, suspended, revoked, or disqualified;

(b) a record of a conviction of the person for any violation of the motor vehicle law in which the person was involved as a driver;

(c) a report of an arrest of the person for any violation of the motor vehicle law in which the person was involved as a driver; or

(d) a report of an accident in which the person was involved as a driver.

(3) When the division receives a report under Subsection (2)(c) or (d) that a person is driving while the person's license is denied, suspended, disqualified, or revoked, the person is entitled to a hearing regarding the extension of the time of denial, suspension, disqualification, or revocation originally imposed under Section 53-3-221.

(4) (a) The division may extend to a person the limited privilege of driving a motor vehicle to and from the person's place of employment or within other specified limits on recommendation of the trial judge in any case where a person is convicted of any of the offenses referred to in Subsections (1) and (2) except:

(i) automobile homicide under Subsection (1)(a)(i);

(ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii), (1)(b), and (1)(c); and

(iii) those offenses referred to in Subsection (2) when the original denial, suspension, revocation, or disqualification was imposed because 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 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of these sections or ordinances.

(b) This discretionary privilege is limited to when undue hardship would result from a failure to grant the privilege and may be granted only once to any individual during any single period of denial, suspension, revocation, or disqualification, or extension of that denial, suspension, revocation, or disqualification.

(c) A limited CDL may not be granted to an individual disqualified under Part 4, Uniform Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or denied under this chapter.

Section 8. Section **53-3-223** is amended to read:

**53-3-223. Chemical test for driving under the influence -- Temporary license --
Hearing and decision -- Suspension and fee -- Judicial review.**

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may, in connection with arresting the person, 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) In this section, a reference to Section 41-6-44 includes any similar local ordinance adopted in compliance with Subsection 41-6-43(1).

(2) 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 Section 41-6-44 or 41-6-44.6 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a

motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if ~~[the]~~ a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6-44, ~~[the]~~ a peace officer ~~[directing administration of the test or making the determination shall serve on the person]~~ shall, on behalf of the division~~[, immediate]~~ and within 24 hours of arrest, give notice of the division's intention to suspend the person's license to drive a motor vehicle.

(4) (a) When ~~[the]~~ a peace officer ~~[serves immediate]~~ gives notice on behalf of the division ~~[he]~~, the peace officer shall:

- (i) take the Utah license certificate or permit, if any, of the driver;
- (ii) issue a temporary license certificate effective for only 29 days from the date of arrest;

and

(iii) supply to the driver, ~~[on a form to be approved]~~ in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by ~~[the]~~ a peace officer may, if ~~[approved as to form]~~ provided in a manner specified by the division, ~~[serve]~~ also serve as the temporary license certificate.

(5) As a matter of procedure, ~~[the]~~ a peace officer ~~[serving the notice]~~ shall send to the division within ten calendar days after the ~~[date of arrest and service of the]~~ day on which notice is provided:

- (a) the person's license certificate;
- (b) a copy of the citation issued for the offense;
- (c) a signed report ~~[on a form approved]~~ in a manner specified by the division indicating the chemical test results, if any; and

(d) any other basis for the peace officer's determination that the person has violated Section 41-6-44 or 41-6-44.6.

(6) (a) Upon request in a manner specified by the division, the division shall grant to the

person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the ~~[date of the arrest]~~ day on which notice is provided under Subsection (5).

(b) (i) ~~[A] Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in the county in which the arrest occurred[, unless the division and the person agree that the hearing may be held in some other county].~~

(ii) The division may hold a hearing in some other county if the division and the person both agree.

(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 driving a motor vehicle in violation of Section 41-6-44 or 41-6-44.6;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) (i) In connection with a hearing the division or its authorized agent:

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

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

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

(e) The division may designate one or more employees to conduct the hearing.

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

(g) After the hearing, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(h) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(7) (a) A first suspension, whether ordered or not challenged under this Subsection (7), is

for a period of 90 days, beginning on the 30th day after the date of the arrest.

(b) A second or subsequent suspension for an offense that occurred within the previous ten years under this Subsection (7) is for a period of one year, beginning on the 30th day after the date of arrest.

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(13) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

(b) A person whose license has been suspended by the 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.

Section 9. Section **53-3-231** is amended to read:

53-3-231. Person under 21 may not operate a vehicle or motorboat 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-15-102.

(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~~ the person's 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]~~ the person's 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]~~ division 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]~~ the person 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]~~ a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), ~~[the] a peace officer [directing administration of the test or making the determination shall serve on the person]~~ shall, on behalf of the ~~[Driver License Division;~~

~~immediate~~ division and within 24 hours of the arrest, give 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~~] a peace officer [~~serves immediate~~] gives notice on behalf of the [~~Driver License Division, he~~] division, the peace officer 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 from the date of arrest 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~~] a peace officer may, if [~~approved as to form~~] provided in a manner specified by the [~~Driver License~~] division, also serve [~~also~~] as the temporary license certificate under Subsection (4)(b).

(6) As a matter of procedure, [~~the~~] a 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~~] day on which notice is provided:

- (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~~] a peace 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~~] day on which notice is provided.

(b) (i) [~~A~~] Except as provided in Subsection (7)(b)(ii), 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~~].

(ii) The division may hold a hearing in some other county if the division and the person both agree.

(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~~] the person's 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~~] the person's 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(13), 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]~~ the person 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 and Mental Health.

(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 10. Section **53-3-232** is amended to read:

53-3-232. Conditional license -- May not operate a vehicle or motorboat 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~~] revocation under Section 41-6-44.10 if the revocation is not based on the same arrest as a conviction under Subsection (1)(a); 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~~] issuance of a Utah driver license or permit following a first qualifying conviction that occurred within the previous ten years from the date of arrest; and

(b) [~~six~~] ten years after [~~reinstatement of the~~] issuance of a Utah driver license or permit following a second or subsequent qualifying conviction that occurred within the previous ten years from the date of arrest.

(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 11. Section **53-3-233** is amended to read:

53-3-233. Coded licenses.

(1) As used in this section:

(a) "Qualifying conviction" has the same meaning provided in Section 53-3-232.

(b) "Qualifying conviction coded license" means a driver license with information coded on the driver license indicating the person has a qualifying conviction.

(2) (a) The division may not issue, reinstate, or renew the driver license of a person who has a qualifying conviction for an offense that occurred within the previous [~~six~~] ten years from the date of arrest unless the person's driver license is a qualifying conviction coded license.

(b) (i) If the division receives a notice of a qualifying conviction for a person with a valid driver license, that does not require a driver license withdrawal, the division shall notify the person that [~~he~~] the person has ten calendar days to apply to the division for a qualifying conviction coded license.

(ii) If the person fails to apply within ten days, the division shall suspend the person's driver license. The suspension shall remain effective until the person applies to the division for a

qualifying conviction coded license.

Section 12. Section **53-3-418** is amended to read:

53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.

(1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle in this state if the person:

(a) has sufficient alcohol in [~~his~~] the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .04 grams or greater at the time of the test after the alleged driving of the commercial motor vehicle; or

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

(c) has a blood or breath alcohol concentration of .04 grams or greater at the time of driving the commercial motor vehicle.

(2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this state is considered to have given [~~his~~] the person's consent to a test or tests of [~~his~~] the person's blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in [~~his~~] the person's physical system.

(3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6-44.3.

(4) When a peace officer or port-of-entry agent requests a person to submit to a test under this section, [~~he~~] the peace officer or port-of-entry agent shall advise the person that test results indicating .04 grams or greater alcohol concentration or refusal to submit to any test requested will result in the person's disqualification under Section 53-3-414 from driving a commercial motor vehicle.

(5) If test results under this section indicate .04 grams or greater of alcohol concentration or the person refuses to submit to any test requested under this section, [~~the~~] a peace officer or port-of-entry agent shall, on behalf of the division [~~serve~~] and within 24 hours of the arrest, give

the person [~~with immediate~~] notice of the division's intention to disqualify the person's privilege to drive a commercial motor vehicle.

(6) When [~~the~~] a peace officer or port-of-entry agent [~~serves~~] gives notice under Subsection (5) [~~he~~], the peace officer or port-of-entry agent shall:

(a) take any Utah license certificate or permit held by the driver;

(b) issue to the driver a temporary license certificate effective for 29 days from the date of arrest;

(c) provide the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division; and

(d) issue a 24-hour out-of-service order.

(7) A notice of disqualification issued under Subsection (6) may serve also as the temporary license certificate under that subsection, if [~~the form is approved~~] provided in a manner specified by the division.

(8) As a matter of procedure, [~~the~~] a peace officer or port-of-entry agent [~~serving the notice of disqualification~~] shall, within ten calendar days after the [~~date of service~~] day on which notice is provided, send to the division the person's license certificate, a copy of the [~~served~~] notice, and a report signed by the peace officer or port-of-entry agent that indicates the results of any chemical test administered or that the person refused a test.

(9) (a) [~~The~~] A person disqualified under this section has the right to a hearing regarding the disqualification.

(b) The request for the hearing shall be submitted to the division in a manner specified by the division and shall be made within ten calendar days of the date the notice was issued. If requested, the hearing shall be conducted within 29 days after the [~~notice was issued~~] date of arrest.

(10) (a) (i) [~~A~~] Except as provided in Subsection (10)(a)(ii), a hearing held under this section shall be held before the division and in the county where the notice was issued[~~, unless the division agrees to hold the hearing in another county~~].

(ii) The division may hold a hearing in some other county if the division and the person

both agree.

(b) The hearing shall be documented and shall determine:

(i) whether the peace officer or port-of-entry agent had reasonable grounds to believe the person had been driving a motor vehicle in violation of this section;

(ii) whether the person refused to submit to any requested test; and

(iii) any test results obtained.

(c) In connection with a hearing the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and documents.

(d) One or more members of the division may conduct the hearing.

(e) A decision made after a hearing before any number of members of the division is as valid as if the hearing were held before the full membership of the division.

(f) After a hearing under this section the division shall indicate by order if the person's CDL is disqualified.

(g) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall indicate by order if the person's CDL is disqualified.

(11) If the division disqualifies a person under this section, the person may petition for a hearing under Section 53-3-224. The petition shall be filed within 30 days after the division issues the disqualification.

(12) (a) A person who violates this section shall be punished in accordance with Section 53-3-414.

(b) (i) In accordance with Section 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.

(ii) A disqualification under Section 53-3-414 begins on the 30th day after the date of arrest.

(13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.

(b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.