

1 **DRIVING WITH ANY MEASURABLE**
2 **CONTROLLED SUBSTANCE IN THE BODY**
3 **REVISIONS**

4 2005 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Michael E. Noel**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Motor Vehicles Code and the Public Safety Code by amending
11 provisions relating to operating a vehicle with any measurable controlled substance in
12 the body.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides that an ordinance adopted by a local authority that governs driving with
16 any measurable controlled substance in the body shall be consistent with the
17 provisions of this code which govern those matters; and
18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **41-6a-501**, as enacted by Chapter 2, Laws of Utah 2005

26 **41-6a-510**, as renumbered and amended by Chapter 2, Laws of Utah 2005

27 **41-6a-527**, as renumbered and amended by Chapter 2, Laws of Utah 2005



28 **53-3-220**, as last amended by Chapters 161 and 205, Laws of Utah 2004
 29 **53-3-223**, as last amended by Chapter 161, Laws of Utah 2004
 30 **53-3-232**, as last amended by Chapter 161, Laws of Utah 2004
 31 **62A-15-502**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth
 32 Special Session

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

35 Section 1. Section **41-6a-501** is amended to read:

36 **41-6a-501. Definitions.**

37 (1) As used in this part:

38 (a) "Assessment" means an in-depth clinical interview with a licensed mental health
 39 therapist:

40 (i) used to determine if a person is in need of:

41 (A) substance abuse treatment that is obtained at a substance abuse program;

42 (B) an educational series; or

43 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

44 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance
 45 with Section 62A-15-105.

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

49 (c) "Negligence" means simple negligence, the failure to exercise that degree of care
 50 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

51 (d) "Screening" means a preliminary appraisal of a person:

52 (i) used to determine if the person is in need of:

53 (A) an assessment; or

54 (B) an educational series; and

55 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance
 56 with Section 62A-15-105.

57 (e) "Serious bodily injury" means bodily injury that creates or causes:

58 (i) serious permanent disfigurement;

59 (ii) protracted loss or impairment of the function of any bodily member or organ; or
60 (iii) a substantial risk of death.

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

64 (g) "Substance abuse treatment program" means a state licensed substance abuse
65 program.

66 (h) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
67 Section 41-6a-102; and

68 (ii) "Vehicle" or "motor vehicle" includes:

69 (A) an off-highway vehicle as defined under Section 41-22-2; and

70 (B) a motorboat as defined in Section 73-18-2.

71 (2) As used in Section 41-6a-503:

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

73 (i) driving under the influence under Section 41-6a-502;

74 (ii) alcohol, any drug, or a combination of both-related reckless driving under Sections
75 41-6a-512 and 41-6a-528;

76 (iii) driving with any measurable controlled substance that is taken illegally in the body
77 under Section 41-6a-517;

78 (iv) local ordinances similar to Section 41-6a-502 or 41-6a-517 or alcohol, any drug, or
79 a combination of both-related reckless driving adopted in compliance with Section 41-6a-510;

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

81 (vi) Subsection 58-37-8(2)(g);

82 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
83 conviction is reduced under Section 76-3-402; or

84 (viii) statutes or ordinances previously in effect in this state or in effect in any other
85 state, the United States, or any district, possession, or territory of the United States which
86 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
87 both-related reckless driving if committed in this state, including punishments administered
88 under 10 U.S.C. Sec. 815.

89 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)

90 through (viii) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is
91 the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed
92 in accordance with the plea in abeyance agreement, for purposes of:

- 93 (i) enhancement of penalties under:
- 94 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
- 95 (B) automobile homicide under Section 76-5-207; and
- 96 (ii) expungement under Section 77-18-12.

97 Section 2. Section **41-6a-510** is amended to read:

98 **41-6a-510. Local DUI and related ordinances and reckless driving ordinances --**
99 **Consistent with code.**

100 (1) An ordinance adopted by a local authority that governs the following matters shall
101 be consistent with the provisions in this code which govern the following matters:

102 (a) a person's operating or being in actual physical control of a motor vehicle while
103 having alcohol in the blood or while under the influence of alcohol or any drug or the
104 combined influence of alcohol and any drug; or

105 (b) in relation to any of the matters described in Subsection (1)(a), the use of:

- 106 (i) a chemical test or chemical tests;
- 107 (ii) evidentiary presumptions;
- 108 (iii) penalties; or
- 109 (iv) any combination of the matters described in Subsection (1).

110 (2) An ordinance adopted by a local authority that governs reckless driving, or
111 operating a vehicle in willful or wanton disregard for the safety of persons or property shall be
112 consistent with the provisions of this code which govern those matters.

113 (3) An ordinance adopted by a local authority that governs driving with any measurable
114 controlled substance in the body shall be consistent with the provisions of this code which
115 govern those matters.

116 Section 3. Section **41-6a-527** is amended to read:

117 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
118 **requirements -- Removal of vehicle by owner.**

119 (1) If a peace officer arrests or cites the operator of a vehicle for violating Section
120 41-6a-502, 41-6a-517, 41-6a-520, or 53-3-232, a local ordinance similar to Section 41-6a-502

121 or 41-6a-517 which complies with Subsection 41-6a-510(1) or (3), or 53-3-227(4), the peace
 122 officer shall seize and impound the vehicle in accordance with Section 41-6a-1406, except as
 123 provided under Subsection (2).

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

126 (a) the registered owner:

127 (i) requests to remove the vehicle from the scene; and

128 (ii) presents to the peace officer sufficient identification to prove ownership of the
 129 vehicle or motorboat;

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

131 (i) complies with all restrictions of his operator's license; and

132 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,
 133 41-6a-517, or 41-6a-520, a local ordinance similar to Section 41-6a-502 or 41-6a-517 which
 134 complies with Subsection 41-6a-510(1) or (2) or 53-3-227(4) if permitted to operate the
 135 vehicle; and

136 (c) the vehicle itself is legally operable.

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

139 Section 4. Section **53-3-220** is amended to read:

140 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
 141 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
 142 **Limited driving privileges.**

143 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
 144 [6] 6a, Traffic [~~Rules and Regulations~~] Code, specifically provides for denial, suspension, or
 145 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
 146 receiving a record of the person's conviction for any of the following offenses:

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

149 (ii) driving or being in actual physical control of a motor vehicle while under the
 150 influence of alcohol, any drug, or combination of them to a degree that renders the person
 151 incapable of safely driving a motor vehicle as prohibited in Section [~~41-6-44~~] 41-6a-502 or as

152 prohibited in an ordinance that complies with the requirements of Subsection [~~41-6-43~~]
153 41-6a-510(1);

154 (iii) driving or being in actual physical control of a motor vehicle while having a blood
155 or breath alcohol content prohibited in Section [~~41-6-44~~] 41-6a-502 or as prohibited in an
156 ordinance that complies with the requirements of Subsection [~~41-6-43~~] 41-6a-510(1);

157 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
158 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
159 regulating driving on highways;

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

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

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

164 (viii) two charges of reckless driving committed within a period of 12 months; but if
165 upon a first conviction of reckless driving the judge or justice recommends suspension of the
166 convicted person's license, the division may after a hearing suspend the license for a period of
167 three months;

168 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
169 required in Section [~~41-6-13.5~~] 41-6a-206;

170 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that
171 requires disqualification;

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

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

176 (xiii) operating or being in actual physical control of a motor vehicle while having any
177 measurable controlled substance or metabolite of a controlled substance in the person's body in
178 violation of Section [~~41-6-44.6~~] 41-6a-517 or as prohibited in an ordinance that complies with
179 the requirements of Subsection 41-6a-510(3); and

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

182 (b) The division shall immediately revoke the license of a person upon receiving a

183 record of an adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996, for any of the
184 following offenses:

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

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

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

192 (i) any violation of:

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

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

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

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

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

198 (ii) any criminal offense that prohibits:

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

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

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

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

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

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

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

213 (b) For a violation of Subsection 53-3-227(4), the division shall extend the period of

214 the first suspension, revocation, or disqualification for an additional one-year period.

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

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

- 223 (i) automobile homicide under Subsection (1)(a)(i);
- 224 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
225 (1)(b), and (1)(c); and

226 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
227 revocation, or disqualification was imposed because of a violation of Section [~~41-6-44~~, Section
228 ~~41-6-44.6~~] 41-6a-502, 41-6a-517, a local ordinance which complies with the requirements of
229 Subsection [~~41-6-43~~] 41-6a-510(1) or (3), Section [~~41-6-44.10~~] 41-6a-520, or Section
230 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a
231 plea bargain after having been originally charged with violating one or more of these sections
232 or ordinances.

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

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

240 Section 5. Section **53-3-223** is amended to read:

241 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
242 **Hearing and decision -- Suspension and fee -- Judicial review.**

243 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
244 violating or has violated Section [~~41-6-44~~] 41-6a-502, prohibiting the operation of a vehicle

245 with a certain blood or breath alcohol concentration and driving under the influence of any
246 drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled
247 substance or metabolite of a controlled substance in the person's body in violation of Section
248 [~~41-6-44.6~~] 41-6a-517 the peace officer may, in connection with arresting the person, request
249 that the person submit to a chemical test or tests to be administered in compliance with the
250 standards under Section [~~41-6-44.10~~] 41-6a-520.

251 (b) In this section[-];

252 (i) a reference to Section [~~41-6-44~~] 41-6a-502 includes any similar local ordinance
253 adopted in compliance with Subsection [~~41-6-43~~] 41-6a-510(1)[-]; and

254 (ii) a reference to Section 41-6a-517 includes any similar local ordinance adopted in
255 compliance with Subsection 41-6a-510(3).

256 (2) The peace officer shall advise a person prior to the person's submission to a
257 chemical test that a test result indicating a violation of Section [~~41-6-44 or 41-6-44.6~~]
258 41-6a-502 or 41-6a-517 shall, and the existence of a blood alcohol content sufficient to render
259 the person incapable of safely driving a motor vehicle may, result in suspension or revocation
260 of the person's license to drive a motor vehicle.

261 (3) If the person submits to a chemical test and the test results indicate a blood or
262 breath alcohol content in violation of Section [~~41-6-44~~] 41-6a-502 or [~~41-6-44.6~~] 41-6a-517 or
263 if a peace officer makes a determination, based on reasonable grounds, that the person is
264 otherwise in violation of Section [~~41-6-44~~] 41-6a-502, a peace officer shall, on behalf of the
265 division and within 24 hours of arrest, give notice of the division's intention to suspend the
266 person's license to drive a motor vehicle.

267 (4) (a) When a peace officer gives notice on behalf of the division, the peace officer
268 shall:

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

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

272 (iii) supply to the driver, in a manner specified by the division, basic information
273 regarding how to obtain a prompt hearing before the division.

274 (b) A citation issued by a peace officer may, if provided in a manner specified by the
275 division, also serve as the temporary license certificate.

276 (5) As a matter of procedure, a peace officer shall send to the division within ten
277 calendar days after the day on which notice is provided:

- 278 (a) the person's license certificate;
- 279 (b) a copy of the citation issued for the offense;
- 280 (c) a signed report in a manner specified by the division indicating the chemical test
281 results, if any; and

282 (d) any other basis for the peace officer's determination that the person has violated
283 Section ~~[41-6-44]~~ 41-6a-502 or ~~[41-6-44.6]~~ 41-6a-517.

284 (6) (a) Upon request in a manner specified by the division, the division shall grant to
285 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
286 heard shall be made within ten calendar days of the day on which notice is provided under
287 Subsection (5).

288 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the
289 division in the county in which the arrest occurred.

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

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

293 (i) whether a peace officer had reasonable grounds to believe the person was driving a
294 motor vehicle in violation of Section ~~[41-6-44]~~ 41-6a-502 or ~~[41-6-44.6]~~ 41-6a-517;

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

296 (iii) the test results, if any.

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

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

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

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

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

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

306 (g) After the hearing, the division shall order whether the person's license to drive a

307 motor vehicle is suspended or not.

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

311 (7) (a) A first suspension, whether ordered or not challenged under this Subsection (7),
312 is for a period of 90 days, beginning on the 30th day after the date of the arrest.

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

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

321 (b) A person whose license has been suspended by the division under this section may
322 file a petition within 30 days after the suspension for a hearing on the matter which, if held, is
323 governed by Section 53-3-224.

324 Section 6. Section **53-3-232** is amended to read:

325 **53-3-232. Conditional license -- May not operate a vehicle or motorboat with**
326 **alcohol in body penalty.**

327 (1) As used in this section, "qualifying conviction" means:

328 (a) a conviction of a violation of Section [~~41-6-44~~] 41-6a-502, Section [~~41-6-44.6~~]
329 41-6a-517, a local ordinance which complies with the requirements of Subsection [~~41-6-43~~]
330 41-6a-510(1) or (3), Section 76-5-207, or of alcohol-related reckless driving as described under
331 Subsection [~~41-6-44(9)~~] 41-6a-512(1);

332 (b) a revocation under Section [~~41-6-44.10~~] 41-6a-521 if the revocation is not based on
333 the same arrest as a conviction under Subsection (1)(a); or

334 (c) a violation of Subsection (3).

335 (2) The division may only issue, reinstate, or renew a driver license in the form of a no
336 alcohol conditional license to a person who has a qualifying conviction for a period of:

337 (a) two years after issuance of a Utah driver license or permit following a first

338 qualifying conviction that occurred within the previous ten years from the date of arrest; and

339 (b) ten years after issuance of a Utah driver license or permit following a second or
340 subsequent qualifying conviction that occurred within the previous ten years from the date of
341 arrest.

342 (3) A no alcohol conditional license shall be issued on the condition that the person
343 may not operate or be in actual physical control of a vehicle or motorboat in this state with any
344 alcohol in the person's body.

345 (4) It is a class B misdemeanor for a person who has been issued a no alcohol
346 conditional license to operate or be in actual physical control of a vehicle or motorboat in this
347 state in violation of Subsection (3).

348 Section 7. Section **62A-15-502** is amended to read:

349 **62A-15-502. Penalty for DUI conviction -- Amounts.**

350 (1) Courts of record and not of record may at sentencing assess against the defendant,
351 in addition to any fine, an amount that will fully compensate agencies that treat the defendant
352 for their costs in each case where a defendant is convicted of violating:

353 (a) Section [~~41-6-44 or 41-6-44.6~~] 41-6a-502 or 41-6a-517;

354 (b) a criminal prohibition resulting from a plea bargain after an original charge of
355 violating Section [~~41-6-44~~] 41-6a-502; or

356 (c) an ordinance that complies with the requirements of Subsection [~~41-6-43~~]
357 41-6a-510(1) or (3).

358 (2) The fee assessed shall be collected by the court or an entity appointed by the court.

Legislative Review Note
as of 2-10-05 5:11 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0314

Driving With Any Measurable Controlled Substance in the Body

17-Feb-05

3:43 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact for individuals who comply with the laws and statutes of the state.

Office of the Legislative Fiscal Analyst