

1 **ALCOHOL RESTRICTED DRIVERS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Carlene M. Walker**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Motor Vehicles Code and the Public Safety Code to amend
8 provisions relating to certain persons operating a vehicle with any measurable **§ OR DETECTABLE §**
9 amount
10 of alcohol in the person's body.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ changes the restricted blood alcohol content level for certain persons and changes
14 the violation from a driving under the influence violation to an alcohol restricted
15 driver violation;

16 ▶ defines certain persons as alcohol restricted drivers;

17 ▶ provides that it is a class B misdemeanor for an alcohol restricted driver to drive a
18 vehicle with any measurable **§ OR DETECTABLE §** amount of alcohol in the person's body;

19 ▶ requires a peace officer to warn a person that has been placed under arrest for
20 refusing to submit to a chemical test for alcohol or drugs that a refusal to submit to a
21 chemical test for alcohol or drugs may result in a five or ten-year prohibition of the
22 person driving with any measurable **§ OR DETECTABLE §** amount of alcohol in the person's body;

22a **§ ▶ PROVIDES THAT A PEACE OFFICER MAY IMPOUND A VEHICLE FOR CERTAIN VIOLATIONS; §**

23 ▶ prohibits the Driver License Division from issuing, reinstating, or renewing a driver
24 license in the form of a no alcohol conditional license beginning on July 1, 2005;

25 ▶ repeals provisions regarding:

- 26 • no alcohol conditional licenses beginning on July 1, 2005; and
- 27 • coded licenses beginning on July 1, 2005; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect July 1, 2005.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **41-6-44**, as last amended by Chapters 161, 205 and 228, Laws of Utah 2004

36 **41-6-44.10**, as last amended by Chapters 161 and 205, Laws of Utah 2004

37 **41-6-44.30**, as last amended by Chapter 200, Laws of Utah 2002

38 **53-3-220**, as last amended by Chapters 161 and 205, Laws of Utah 2004

39 **53-3-227**, as last amended by Chapter 205, Laws of Utah 2004

40 **53-3-232**, as last amended by Chapter 161, Laws of Utah 2004

41 **63-55-253**, as last amended by Chapter 90, Laws of Utah 2004

42 ENACTS:

43 **41-6-44.40**, Utah Code Annotated 1953

44 **41-6-44.41**, Utah Code Annotated 1953

45 REPEALS:

46 **53-3-233**, as last amended by Chapter 161, Laws of Utah 2004



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

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

50 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both**
51 **or with specified or unsafe blood alcohol concentration -- Measurement of blood or**
52 **breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties --**
53 **Suspension or revocation of license.**

54 (1) As used in this section:

55 (a) "assessment" means an in-depth clinical interview with a licensed mental health
56 therapist:

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

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

59 (B) an educational series; or
60 (C) a combination of Subsections (1)(a)(i)(A) and (B); and
61 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance
62 with Section 62A-15-105.

63 (b) (i) "conviction" means any conviction for a violation of:
64 (A) this section;
65 (B) alcohol, any drug, or a combination of both-related reckless driving under
66 Subsections (9) and (10);
67 (C) Section 41-6-44.6, driving with any measurable controlled substance that is taken
68 illegally in the body;
69 (D) local ordinances similar to this section or alcohol, any drug, or a combination of
70 both-related reckless driving adopted in compliance with Section 41-6-43;
71 (E) automobile homicide under Section 76-5-207;
72 (F) Subsection 58-37-8(2)(g);
73 (G) a violation described in Subsections (1)(b)(i)(A) through (F), which judgment of
74 conviction is reduced under Section 76-3-402; or
75 (H) statutes or ordinances in effect in any other state, the United States, or any district,
76 possession, or territory of the United States which would constitute a violation of this section
77 or alcohol, any drug, or a combination of both-related reckless driving if committed in this
78 state, including punishments administered under 10 U.S.C. Sec. 815;

79 (ii) a plea of guilty or no contest to a violation described in Subsections (1)(b)(i)(A)
80 through (H) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is
81 the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed
82 in accordance with the plea in abeyance agreement, for purposes of:

83 (A) enhancement of penalties under:
84 (I) this Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving; and
85 (II) automobile homicide under Section 76-5-207; and
86 (B) expungement under Section 77-18-12[-];

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

- 90 (d) "screening" means a preliminary appraisal of a person:
- 91 (i) used to determine if the person is in need of:
- 92 (A) an assessment; or
- 93 (B) an educational series; and
- 94 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance
- 95 with Section 62A-15-105;
- 96 (e) "serious bodily injury" means bodily injury that creates or causes serious permanent
- 97 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
- 98 creates a substantial risk of death;
- 99 (f) "substance abuse treatment" means treatment obtained at a substance abuse program
- 100 that is approved by the Board of Substance Abuse and Mental Health in accordance with
- 101 Section 62A-15-105;
- 102 (g) "substance abuse treatment program" means a state licensed substance abuse
- 103 program;
- 104 (h) a violation of this section includes a violation under a local ordinance similar to this
- 105 section adopted in compliance with Section 41-6-43; and
- 106 (i) the standard of negligence is that of simple negligence, the failure to exercise that
- 107 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
- 108 circumstances.
- 109 (2) (a) A person may not operate or be in actual physical control of a vehicle within
- 110 this state if the person:
- 111 (i) has sufficient alcohol in the person's body that a subsequent chemical test shows
- 112 that the person has a blood or breath alcohol concentration of .08 grams or greater at the time
- 113 of the test;
- 114 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
- 115 and any drug to a degree that renders the person incapable of safely operating a vehicle; or
- 116 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
- 117 operation or actual physical control[;].
- 118 [~~(iv) (A) is 21 years of age or older;~~]
- 119 [~~(B) has sufficient alcohol in the person's body that a subsequent chemical test shows~~
- 120 ~~that the person has a blood or breath alcohol concentration of .05 grams or greater at the time~~

121 of the test;]

122 [~~(C) has a passenger under 16 years of age in the vehicle at the time of operation or~~
123 ~~actual physical control; and]~~

124 [~~(D) committed the offense within ten years of a prior conviction; or]~~

125 [~~(v) (A) is 21 years of age or older;]~~

126 [~~(B) has a blood or breath alcohol concentration of .05 grams or greater at the time of~~
127 ~~operation or actual physical control;]~~

128 [~~(C) has a passenger under 16 years of age in the vehicle at the time of operation or~~
129 ~~actual physical control; and]~~

130 [~~(D) committed the offense within ten years of a prior conviction;]~~

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

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

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

138 (i) class B misdemeanor; or

139 (ii) class A misdemeanor if the person:

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

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

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

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

148 [~~(c) A person convicted of a violation of Subsection (2)(a)(iv) or (v) is guilty of:]~~

149 [~~(i) a class B misdemeanor; or]~~

150 [~~(ii) a class A misdemeanor if the person has also inflicted bodily injury upon another~~
151 ~~as a proximate result of having operated the vehicle in a negligent manner;]~~

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

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

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

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

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

161 (i) order the person to participate in a screening;

162 (ii) order the person to participate in an assessment, if it is found appropriate by a
163 screening under Subsection (4)(c)(i);

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

166 (iv) impose a fine of not less than \$700.

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

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

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

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

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

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

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

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

- 183 (i) order the person to participate in a screening;
- 184 (ii) order the person to participate in an assessment, if it is found appropriate by a
185 screening under Subsection (5)(c)(i);
- 186 (iii) order the person to participate in an educational series if the court does not order
187 substance abuse treatment as described under Subsection (5)(d); and
- 188 (iv) impose a fine of not less than \$800.
- 189 (d) The court may order the person to obtain substance abuse treatment if the substance
190 abuse treatment program determines that substance abuse treatment is appropriate.
- 191 (e) The court shall order probation for the person in accordance with Subsection (14).
- 192 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:
193 (i) a third or subsequent conviction under this section within ten years of two or more
194 prior convictions; or
195 (ii) at any time after a conviction of:
196 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;
197 or
198 (B) a felony violation under this section that is committed after July 1, 2001.
- 199 (b) Any conviction described in this Subsection (6) which judgment of conviction is
200 reduced under Section 76-3-402 is a conviction for purposes of this section.
- 201 (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
202 sentence and places the defendant on probation the court shall impose:
203 (i) a fine of not less than \$1,500; and
204 (ii) a mandatory jail sentence of not less than 1,500 hours.
- 205 (d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to
206 obtain a screening and assessment and substance abuse treatment at a substance abuse
207 treatment program providing intensive care or inpatient treatment and long-term closely
208 supervised follow-through after treatment for not less than 240 hours.
- 209 (e) In addition to the penalties required under Subsection (6)(c), if the court orders
210 probation, the probation shall be supervised probation which may include requiring the person
211 to participate in home confinement through the use of electronic monitoring in accordance with
212 Subsection (13).
- 213 (7) The mandatory portion of any sentence required under this section may not be

214 suspended and the convicted person is not eligible for parole or probation until any sentence
215 imposed under this section has been served. Probation or parole resulting from a conviction for
216 a violation under this section may not be terminated.

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

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

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

228 (A) complete all court ordered:

229 (I) screening;

230 (II) assessment;

231 (III) educational series;

232 (IV) substance abuse treatment; and

233 (V) hours of work in compensatory-service work program; or

234 (B) pay all fines and fees, including fees for restitution and treatment costs.

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

237 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
238 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
239 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this
240 section, the prosecution shall state for the record a factual basis for the plea, including whether
241 or not there had been consumption of alcohol, drugs, or a combination of both, by the
242 defendant in connection with the violation.

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

245 the violation.

246 (b) The court shall advise the defendant before accepting the plea offered under this
247 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section
248 41-6-45.

249 (c) The court shall notify the Driver License Division of each conviction of Section
250 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

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

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

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

261 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
262 (12).

263 (b) The Driver License Division shall subtract from any suspension or revocation
264 period the number of days for which a license was previously suspended under Section
265 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
266 which the record of conviction is based.

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

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

274 (b) If the court suspends or revokes the person's license under this Subsection (12)(b),
275 the court shall prepare and send to the Driver License Division an order to suspend or revoke

276 that person's driving privileges for a specified period of time.

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

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

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

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

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

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

289 (d) The court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

319 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
320 evidence that the person had a blood alcohol level of .16 or higher, the court shall order the
321 following, or describe on record why the order or orders are not appropriate:

322 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d); and

323 (b) one or both of the following:

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

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

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

329 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of**
330 **tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person**
331 **incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

332 (1) (a) A person operating a motor vehicle in this state is considered to have given the
333 person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for
334 the purpose of determining whether the person was operating or in actual physical control of a
335 motor vehicle while having a blood or breath alcohol content statutorily prohibited under
336 Section 41-6-44, 41-6-44.41, 53-3-231, or 53-3-232, while under the influence of alcohol, any
337 drug, or combination of alcohol and any drug under Section 41-6-44, or while having any

338 measurable controlled substance or metabolite of a controlled substance in the person's body in
 339 violation of Section 41-6-44.6, if the test is or tests are administered at the direction of a peace
 340 officer having grounds to believe that person to have been operating or in actual physical
 341 control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited
 342 under Section 41-6-44, 41-6-44.41, 53-3-231, or 53-3-232, or while under the influence of
 343 alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while
 344 having any measurable controlled substance or metabolite of a controlled substance in the
 345 person's body in violation of Section 41-6-44.6.

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

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

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

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

358 (2) (a) If the person has been placed under arrest, has then been requested by a peace
 359 officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to
 360 submit to any chemical test requested, the person shall be warned by the peace officer
 361 requesting the test or tests that a refusal to submit to the test or tests can result in:

362 (i) revocation of the person's license to operate a motor vehicle[-]; and

363 (ii) a five or ten-year prohibition of the person driving with any measurable § OR

363a DETECTABLE § amount of

364 alcohol in the person's body depending on the person's prior driving history.

365 (b) Following the warning under Subsection (2)(a), if the person does not immediately
 366 request that the chemical test or tests as offered by a peace officer be administered, a peace
 367 officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give
 368 notice of the Driver License Division's intention to revoke the person's privilege or license to

369 operate a motor vehicle. When a peace officer gives the notice on behalf of the Driver License
370 Division, the peace officer shall:

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

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

374 (iii) supply to the operator, in a manner specified by the Driver License Division, basic
375 information regarding how to obtain a hearing before the Driver License Division.

376 (c) A citation issued by a peace officer may, if provided in a manner specified by the
377 Driver License Division, also serve as the temporary license certificate.

378 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten
379 calendar days after the day on which notice is provided under Subsection (2)(b), that the peace
380 officer had grounds to believe the arrested person had been operating or was in actual physical
381 control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited
382 under Section 41-6-44, 41-6-44.41, 53-3-231, or 53-3-232, or while under the influence of
383 alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while
384 having any measurable controlled substance or metabolite of a controlled substance in the
385 person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a
386 chemical test or tests under Subsection (1).

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

389 (ii) A request for the hearing shall be made in writing within ten calendar days after the
390 day on which notice is provided.

391 (iii) Upon request in a manner specified by the Driver License Division, the Driver
392 License Division shall grant to the person an opportunity to be heard within 29 days after the
393 date of arrest.

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

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

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

399 (I) license sanction for an offense that occurred within the previous ten years from the

400 date of arrest under this section, Section 41-6-44.6, 41-6-44.41, 53-3-223, 53-3-231, or
401 53-3-232; or

402 (II) conviction for an offense that occurred within the previous ten years from the date
403 of arrest under Section 41-6-44.

404 (f) (i) Except as provided in Subsection (2)(f)(ii), if a hearing is requested by the
405 person, the hearing shall be conducted by the Driver License Division in the county in which
406 the offense occurred.

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

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

410 (i) whether a peace officer had reasonable grounds to believe that a person was
411 operating a motor vehicle in violation of Section 41-6-44, 41-6-44.6, [~~or~~] 41-6-44.41,
412 53-3-231, or 53-3-232; and

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

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

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

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

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

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

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

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

427 (I) license sanction for an offense that occurred within the previous ten years from the
428 date of arrest under this section, Section 41-6-44.6, 41-6-44.41, 53-3-223, 53-3-231, or
429 53-3-232; or

430 (II) conviction for an offense that occurred within the previous ten years from the date

431 of arrest under Section 41-6-44.

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

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

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

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

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

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

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

451 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
452 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person
453 whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or
454 medical facility at which the sample is drawn, is immune from any civil or criminal liability
455 arising from drawing the sample, if the test is administered according to standard medical
456 practice.

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

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

462 test or tests to be taken at the direction of a peace officer.

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

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

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

472 (a) under the influence of alcohol, any drug, or combination of alcohol and any drug;
473 ~~or while~~];

474 (b) having any measurable controlled substance or metabolite of a controlled substance
475 in the person's body[-:];

476 (c) having any measurable § OR DETECTABLE § amount of alcohol in the person's body if
476a the person is an
477 alcohol restricted driver as defined under Section 41-6-44.40; or

478 (d) having any measurable § OR DETECTABLE § amount of alcohol in the person's body if
478a the person has
479 been issued a conditional driver license under Section 53-3-232.

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

481 **41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound**
482 **requirements -- Removal of vehicle by owner.**

483 (1) If a peace officer arrests or cites the operator of a vehicle for violating Section
484 41-6-44, 41-6-44.6, [or] 41-6-44.10, 41-6-44.41, § 53-3-231, § or 53-3-232, § SUBSECTION
484a 41-6-44.7(10), § or a local ordinance similar to

485 Section 41-6-44 which complies with Subsection 41-6-43(1), the peace officer shall seize and
486 impound the vehicle in accordance with Section 41-6-102.5, except as provided under
487 Subsection (2).

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

490 (a) the registered owner:

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

492 (ii) presents to the peace officer sufficient identification to prove ownership of the

493 vehicle or motorboat;

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

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

496 (ii) would not, in the judgment of the officer, be in violation of Section 41-6-44,

497 41-6-44.6, [or] 41-6-44.10, 41-6-44.41, or 53-3-232, or a local ordinance similar to Section

498 41-6-44 which complies with Subsection 41-6-43(1), if permitted to operate the vehicle; and

499 (c) the vehicle itself is legally operable.

500 (3) If necessary for transportation of a motorboat for impoundment under this section,

501 the motorboat's trailer may be used to transport the motorboat.

502 Section 4. Section **41-6-44.40** is enacted to read:

503 **41-6-44.40. Definitions - Alcohol restricted drivers.**

504 (1) As used in this section and Section 41-6-44.41, "alcohol restricted driver" means a

505 person who:

506 (a) within the last two years:

507 (i) has been convicted of:

508 (A) a misdemeanor violation of Section 41-6-44;

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

510 Subsection 41-6-44(9) or (10);

511 (C) local ordinances similar to Section 41-6-44 or alcohol, any drug, or a combination
512 of both-related reckless driving adopted in compliance with Section 41-6-43;

513 (D) a violation described in Subsections (1)(a)(i)(A) through (C), which judgment of
514 conviction is reduced under Section 76-3-402; or

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

519 (ii) has had the person's driving privilege suspended under Section 53-3-223 based on
520 an arrest which occurred on or after July 1, 2005;

521 (b) within the last five years:

522 (i) has had the person's driving privilege revoked for refusal to submit to a chemical

523 test under Section 41-6-44.10, which refusal occurred on or after July 1, 2005; or

524 (ii) (A) has been convicted of an offense described in Subsection (1)(a)(i); and
 525 (B) at the time of operation or actual physical control of a vehicle the person:
 526 (I) is 21 years of age or older; and
 527 (II) has a passenger under 16 years of age in the vehicle;
 528 (c) within the last ten years:

529 (i) has been convicted of an offense described in Subsection (1)(a)(i) which conviction
 530 was within ten years of a prior conviction for an offense described in Subsection (1)(a)(i); or

531 (ii) has had the person's driving privilege revoked for refusal to submit to a chemical
 532 test and the refusal is within ten years after:

533 (A) a prior refusal to submit to a chemical test under Section 41-6-44.10; or

534 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not
 535 based on the same arrest as the refusal; or

536 (d) at any time has been convicted of:

537 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or
 538 after July 1, 2005; or

539 (ii) a felony violation of Section 41-6-44 for an offense that occurred on or after July 1,
 540 2005.

541 (2) For purposes of this section and Section 41-6-44.41, a plea of guilty or no contest to
 542 a violation described in Subsection (1)(a)(i) which plea is held in abeyance under Title 77,
 543 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
 544 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

545 Section 5. Section **41-6-44.41** is enacted to read:

546 **41-6-44.41. Alcohol restricted drivers - Prohibited from operating a vehicle while**
 547 **having any measurable amount of alcohol in the person's body -- Penalties.**

548 (1) An alcohol restricted driver who operates or is in actual physical control of a
 549 vehicle in this state with any measurable **§ OR DETECTABLE §** amount of alcohol in the person's
 549a body is guilty of a
 550 class B misdemeanor.

551 (2) A "measurable **§ OR DETECTABLE §** amount" of alcohol in the person's body may be
 551a established by:

552 (a) a chemical test;

553 (b) evidence other than a chemical test; or

554 (c) a combination of Subsections (2)(a) and (b).

555 Section 6. Section **53-3-220** is amended to read:

556 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
557 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
558 **Limited driving privileges.**

559 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
560 6, Traffic Rules and Regulations, specifically provides for denial, suspension, or
561 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
562 receiving a record of the person's conviction for any of the following offenses:

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

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

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

572 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
573 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
574 regulating driving on highways;

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

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

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

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

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

585 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that

586 requires disqualification;

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

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

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

594 (xiv) until June 30, 2015, operating or being in actual physical control of a motor
595 vehicle while having any alcohol in the person's body in violation of Section 53-3-232[-]; and

596 (xv) operating or being in actual physical control of a motor vehicle while having any

596a **§ MEASURABLE OR DETECTABLE AMOUNT OF §**

597 alcohol in the person's body in violation of Section 41-6-44.41.

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

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

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

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

608 (i) any violation of:

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

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

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

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

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

614 (ii) any criminal offense that prohibits:

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

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

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

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

624 ~~[(ii)]~~ (b) a record of a conviction of the person for any violation of the motor vehicle
625 law in which the person was involved as a driver;

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

628 ~~[(iv)]~~ (d) a report of an accident in which the person was involved as a driver.

629 ~~[(b) For a violation of Subsection 53-3-227(4), the division shall extend the period of~~
630 ~~the first suspension, revocation, or disqualification for an additional one-year period.]~~

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

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

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

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

642 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
643 revocation, or disqualification was imposed because of a violation of Section 41-6-44, Section
644 41-6-44.6, a local ordinance which complies with the requirements of Subsection 41-6-43(1),
645 Section 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged
646 with violating as a result of a plea bargain after having been originally charged with violating
647 one or more of these sections or ordinances.

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

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

655 Section 7. Section **53-3-227** is amended to read:

656 **53-3-227. Driving a motor vehicle prohibited while driving privilege denied,**
657 **suspended, disqualified, or revoked -- Penalties.**

658 (1) A person whose driving privilege has been denied, suspended, disqualified, or
659 revoked under this chapter or under the laws of the state in which the person's driving privilege
660 was granted and who drives any motor vehicle upon the highways of this state while that
661 driving privilege is denied, suspended, disqualified, or revoked shall be punished as provided
662 in this section.

663 (2) A person convicted of a violation of Subsection (1), other than a violation specified
664 in Subsection (3) [~~or (4)~~], is guilty of a class C misdemeanor.

665 (3) (a) A person is guilty of a class B misdemeanor if the person's conviction under
666 Subsection (1) is based on the person driving a motor vehicle while the person's driving
667 privilege is suspended, disqualified, or revoked for:

668 (i) a refusal to submit to a chemical test under Section 41-6-44.10;

669 (ii) a violation of Section 41-6-44;

670 (iii) a violation of a local ordinance that complies with the requirements of Section
671 41-6-43;

672 (iv) a violation of Section 41-6-44.6;

673 (v) a violation of Section 76-5-207;

674 (vi) a criminal action that the person plead guilty to as a result of a plea bargain after
675 having been originally charged with violating one or more of the sections or ordinances under
676 this Subsection (3);

677 (vii) a revocation or suspension which has been extended under Subsection
678 53-3-220(2); or

679 (viii) where disqualification is the result of driving a commercial motor vehicle while
680 the person's CDL is disqualified, suspended, canceled, or revoked under Subsection
681 53-3-414(1).

682 (b) A person is guilty of a class B misdemeanor if the person's conviction under
683 Subsection (1) is based on the person driving a motor vehicle while the person's driving
684 privilege is suspended, disqualified, or revoked by any state, the United States, or any district,
685 possession, or territory of the United States for violations corresponding to the violations listed
686 in Subsections (3)(a)(i) through (viii).

687 (c) A fine imposed under this Subsection (3) shall be at least the maximum fine for a
688 class C misdemeanor under Section 76-3-301.

689 ~~[(4) (a) A person is guilty of a class B misdemeanor if:]~~

690 ~~[(i) the person's conviction under Subsection (1) is based on the person driving a motor~~
691 ~~vehicle while the person's driving privilege is suspended, disqualified, or revoked for:]~~

692 ~~[(A) any violations listed in Subsections (3)(a)(i) through (vi); or]~~

693 ~~[(B) a violation listed in Subsection (3)(a)(vii) if the original revocation or suspension~~
694 ~~was based on any violations listed in Subsections (3)(a)(i) through (vi); and]~~

695 ~~[(ii) the person had any alcohol in the person's body at the time of the violation under~~
696 ~~Subsection (1):]~~

697 ~~[(b) A person is guilty of a class B misdemeanor if:]~~

698 ~~[(i) the person's conviction under Subsection (1) is based on the person driving a motor~~
699 ~~vehicle while the person's driving privilege is suspended, disqualified, or revoked by any state,~~
700 ~~the United States, or any district, possession, or territory of the United States for violations~~
701 ~~corresponding to:]~~

702 ~~[(A) the violations listed in Subsections (3)(a)(i) through (vi); or]~~

703 ~~[(B) a violation listed in Subsection (3)(a)(vii) if the original revocation or suspension~~
704 ~~was based on any violation corresponding to the violations listed in Subsections (3)(a)(i)~~
705 ~~through (vi); and]~~

706 ~~[(ii) the person had any alcohol in the person's body at the time of the violation under~~
707 ~~Subsection (1):]~~

708 ~~[(c) (i) As part of any sentence imposed for a violation of this Subsection (4), the court~~
709 ~~shall order:]~~

710 [~~(A) a jail sentence of not less than 48 consecutive hours;~~]

711 [~~(B) a compensatory-service work program for not less than 48 hours; or]~~

712 [~~(C) home confinement through the use of electronic monitoring in accordance with~~
713 ~~Subsection 41-6-44(13);]~~

714 [~~(ii) In addition to the penalties under Subsection (4)(c)(i), the court shall impose a fine~~
715 ~~of not less than \$750.]~~

716 Section 8. Section **53-3-232** is amended to read:

717 **53-3-232. Conditional license -- May not operate a vehicle or motorboat with**
718 **alcohol in body penalty.**

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

720 (a) a conviction of a violation of Section 41-6-44, Section 41-6-44.6, a local ordinance
721 which complies with the requirements of Subsection 41-6-43(1), Section 76-5-207, or of
722 alcohol-related reckless driving as described under Subsection 41-6-44(9);

723 (b) a revocation under Section 41-6-44.10 if the revocation is not based on the same
724 arrest as a conviction under Subsection (1)(a); or

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

726 (2) ~~[The]~~ (a) Until June 30, 2005, the division may only issue, reinstate, or renew a
727 driver license in the form of a no alcohol conditional license to a person who has a qualifying
728 conviction for a period of:

729 ~~[(a)]~~ (i) two years after issuance of a Utah driver license or permit following a first
730 qualifying conviction that occurred within the previous ten years from the date of arrest; and

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

734 (b) Beginning on July 1, 2005, the division may not issue, reinstate, or renew a driver
735 license in the form of a no alcohol conditional license.

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

739 (4) It is a class B misdemeanor for a person who has been issued a no alcohol
740 conditional license to operate or be in actual physical control of a vehicle or motorboat in this

741 state in violation of Subsection (3).

742 Section 9. Section **63-55-253** is amended to read:

743 **63-55-253. Repeal dates, Titles 53, 53A, and 53B.**

744 The following provisions of Title 53A are repealed on the following dates:

745 (1) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is
746 repealed July 1, 2005.

747 (2) The State Instructional Materials Commission, created in Section 53A-14-101, is
748 repealed July 1, 2011.

749 (3) Title 53A, Chapter 20a, Public Education Revenue Bond Act, is repealed July 1,
750 2007.

751 (4) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

752 Section 10. **Effective date.**

753 This bill takes effect July 1, 2005.

754 Section 11. **Repealer.**

755 This bill repeals:

756 Section **53-3-233, Coded licenses.**

Legislative Review Note
as of 1-13-05 4:49 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 SB0042

Alcohol Restricted Drivers

25-Jan-05

11:56 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact for those who comply with provisions of the bill.

Office of the Legislative Fiscal Analyst