

ALCOHOL RESTRICTED DRIVERS

2005 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 certain persons operating a vehicle with any measurable or detectable amount of alcohol in the person's body.

Highlighted Provisions:

This bill:

- ▶ changes the restricted blood alcohol content level for certain persons and changes the violation from a driving under the influence violation to an alcohol restricted driver violation;
- ▶ defines certain persons as alcohol restricted drivers;
- ▶ provides that it is a class B misdemeanor for an alcohol restricted driver to drive a vehicle with any measurable or detectable amount of alcohol in the person's body;
- ▶ requires a peace officer to warn a person that has been placed under arrest for refusing to submit to a chemical test for alcohol or drugs that a refusal to submit to a chemical test for alcohol or drugs may result in a five or ten-year prohibition of the person driving with any measurable or detectable amount of alcohol in the person's body;
- ▶ provides that a peace officer may impound a vehicle for certain violations;
- ▶ prohibits the Driver License Division from issuing, reinstating, or renewing a driver license in the form of a no alcohol conditional license beginning on July 1, 2005;
- ▶ repeals provisions regarding:
 - no alcohol conditional licenses beginning on July 1, 2015; and
 - coded licenses beginning on July 1, 2005; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect July 1, 2005.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

41-6a-502, as renumbered and amended by Chapter 2, Laws of Utah 2005

41-6a-503, as enacted by Chapter 2, Laws of Utah 2005

41-6a-520, as renumbered and amended by Chapter 2, Laws of Utah 2005

41-6a-521, as enacted by Chapter 2, Laws of Utah 2005

41-6a-524, as enacted by Chapter 2, Laws of Utah 2005

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

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

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

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

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

ENACTS:

41-6a-529, Utah Code Annotated 1953

41-6a-530, Utah Code Annotated 1953

REPEALS:

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

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

Section 1. Section **41-6a-502** is amended to read:

41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration.

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

(a) has sufficient alcohol in 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;

(b) 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

(c) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control~~;~~or.

~~[(d) (i) is 21 years of age or older;]~~

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

~~[(iii) has committed a violation of this Subsection (1)(d) within ten years of a prior conviction as defined in Subsection 41-6a-501(2); and]~~

~~[(iv) (A) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test; or]~~

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

(2) 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 violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

Section 2. Section **41-6a-503** is amended to read:

41-6a-503. Penalties for driving under the influence violations.

(1) A person convicted the first or second time of a violation of [~~Subsections~~] Section 41-6a-502~~[(1)(a) through (c)]~~ is guilty of a:

- (a) class B misdemeanor; or
- (b) class A misdemeanor if the person:
 - (i) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
 - (ii) had a passenger under 16 years of age in the vehicle at the time of the offense; or
 - (iii) 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.

(2) A person convicted of a violation of Section 41-6a-502 is guilty of a third degree felony if:

- (a) the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
- (b) the conviction under Section 41-6a-502 is within ten years of two or more prior convictions as defined in Subsection 41-6a-501(2); or
- (c) the conviction under Section 41-6a-502 is at any time after a conviction of:
 - (i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;
 - (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or
 - (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of conviction is reduced under Section 76-3-402.

~~[(3) A person convicted of a violation of Subsection 41-6a-502(1)(d) is guilty of:]~~

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

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

Section 3. Section **41-6a-520** is amended to read:

41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.

(1) (a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for

the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, 53-3-231, or 53-3-232~~[, or Subsection 53-3-227(4)]~~;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

(b) A test or tests authorized under this Subsection (1) must be 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 in violation of any provision under Subsections (1)(a)(i) through (iii).

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

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

(d) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids 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.

(2) (a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in revocation of the person's license to operate a motor vehicle and a five or ten-year prohibition of the person driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history if the person:

- (i) has been placed under arrest;
 - (ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and
 - (iii) refuses to submit to any chemical test requested.
- (b) (i) 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, on behalf of the Driver License Division 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.
- (ii) When a peace officer gives the notice on behalf of the Driver License 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;
- and
- (C) supply to the operator, 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 provided in a manner specified by the Driver License Division, 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 day on which notice is provided under Subsection (2)(b), that:
- (i) the peace officer had grounds to believe the arrested person was in violation of any provision under Subsections (1)(a)(i) through (iii); and
 - (ii) the person had refused to submit to a chemical test or tests under Subsection (1).
- (3) Upon the request of the person who was tested, the results of the test or tests shall be made available to the person.
- (4) (a) The person to be tested may, at the person's own expense, have a physician of 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.

(5) 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.

Section 4. Section **41-6a-521** is amended to read:

41-6a-521. Revocation hearing for refusal -- Appeal.

(1) (a) A person who has been notified of the Driver License Division's intention to revoke the person's license under Section 41-6a-520 is entitled to a hearing.

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

(c) Upon 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.

(d) If the person does not make a request for a hearing before the Driver License Division under this Subsection (1), 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:

- (i) 18 months unless Subsection (1)(d)(ii) applies; or
- (ii) 24 months if the person has had a previous:

(A) license sanction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232 [~~or Subsection 53-3-227(4)~~]; or

(B) conviction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502.

(2) (a) Except as provided in Subsection (2)(b), 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.

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

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

(a) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231, or [~~Subsection 53-3-227(4)~~] 53-3-232; and

(b) whether the person refused to submit to the test or tests under Section 41-6a-520.

(4) (a) In connection with the hearing, the division or its authorized agent:

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

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

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

(5) (a) 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 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) 18 months unless Subsection (5)(a)(ii) applies; or

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

(A) license sanction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232[-; ~~or Subsection 53-3-227(4)~~]; or

(B) conviction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute

a violation of Section 41-6a-502.

(b) 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.

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

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

(b) Judicial review of an informal adjudicative proceeding is a trial.

(c) Venue is in the district court in the county in which the offense occurred.

Section 5. Section **41-6a-524** is amended to read:

41-6a-524. Refusal as evidence.

If a person under arrest refuses to submit to a chemical test or tests or any additional test under Section 41-6a-520, 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:

(1) under the influence of:

(a) alcohol;

(b) any drug; or

(c) a combination of alcohol and any drug; [~~or~~]

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

(3) having any measurable or detectable amount of alcohol in the person's body if the person is an alcohol restricted driver as defined under Section 41-6a-529; or

(4) having any measurable or detectable amount of alcohol in the person's body if the person has been issued a conditional license under Section 53-3-232.

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

41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound

requirements -- Removal of vehicle by owner.

(1) If a peace officer arrests or cites the operator of a vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-520, [~~or~~] 41-6a-530, 53-3-231, 53-3-232, Subsection 41-6a-518(10), or a local ordinance similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1), [~~or 53-3-227(4);~~] the peace officer shall seize and impound the vehicle in accordance with Section 41-6a-1406, except as provided under Subsection (2).

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

(a) the registered owner:

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

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

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

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

(ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502, 41-6a-517, [~~or~~] 41-6a-520, 41-6a-530, 53-3-231, 53-3-232, Subsection 41-6a-518(10), or a local ordinance similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) [~~or 53-3-227(4)~~] if permitted to operate the vehicle; and

(c) the vehicle itself is legally operable.

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

Section 7. Section **41-6a-529** is enacted to read:

41-6a-529. Definitions -- Alcohol restricted drivers.

(1) As used in this section and section 41-6a-530, "alcohol restricted driver" means a person who:

(a) within the last two years:

(i) has been convicted of:

(A) a misdemeanor violation of Section 41-6a-502;

(B) alcohol, any drug, or a combination of both-related reckless driving under Section 41-6a-512;

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

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

(E) statutes or ordinances previously in effect in this state or 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 Section 41-6a-502 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; or

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

(b) within the last five years:

(i) has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; or

(ii) (A) has been convicted of an offense described in Subsection (1)(a)(i); and

(B) at the time of operation or actual physical control of a vehicle the person:

(I) is 21 years of age or older;

(II) has a passenger under 16 years of age in the vehicle;

(c) within the last ten years:

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

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

(A) a prior refusal to submit to a chemical test under Section 41-6a-520; or

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

(d) at any time has been convicted of:

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

(ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July 1, 2005.

(2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to a violation described in Subsection (1)(a)(i) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 8. Section **41-6a-530** is enacted to read:

41-6a-530. Alcohol restricted drivers -- Prohibited from operating a vehicle while having any measurable or detectable amount of alcohol in the person's body -- Penalties.

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

(2) A "measurable or detectable amount" of alcohol in the person's body may be established by:

(a) a chemical test;

(b) evidence other than a chemical test; or

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

Section 9. 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] 6a, Traffic [~~Rules and Regulations~~] Code, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of 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~~] 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection [~~41-6-43~~] 41-6a-510(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~~] 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection [~~41-6-43~~] 41-6a-510(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~~] 41-6a-206;

(x) any offense specified in Part 4, 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~~] 41-6a-517; [~~and~~]

(xiv) until July 30, 2015, 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[-]; and

(xv) operating or being in actual physical control of a motor vehicle while having any measurable or detectable amount of alcohol in the person's body in violation of Section 41-6a-530.

(b) The division shall immediately revoke the license of a person upon receiving a record of an adjudication under Title 78, Chapter 3a, Juvenile 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) ~~[(a)]~~ 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:

~~[(i)]~~ (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;

~~[(ii)]~~ (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;

~~[(iii)]~~ (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

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

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

(3) When the division receives a report under Subsection (2)~~[(a)(iii)]~~(c) or ~~[(iv)]~~ (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]~~ 41-6a-502, 41-6a-517, a local ordinance which complies with the requirements of

Subsection [~~41-6-43~~] 41-6a-510(1), Section [~~41-6-44.10~~] 41-6a-520, 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 10. Section **53-3-227** is amended to read:

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

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

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

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

- (i) a refusal to submit to a chemical test under Section [~~41-6-44.10~~] 41-6a-520;
- (ii) a violation of Section [~~41-6-44~~] 41-6a-502;
- (iii) a violation of a local ordinance that complies with the requirements of Section [~~41-6-43~~] 41-6a-510;
- (iv) a violation of Section [~~41-6-44.6~~] 41-6a-517;

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. 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]~~ 41-6a-502, Section ~~[41-6-44.6]~~ 41-6a-517, a local ordinance which complies with the requirements of Subsection ~~[41-6-43]~~ 41-6a-510(1), Section 76-5-207, or of alcohol-related reckless driving as described under Subsection ~~[41-6-44(9)]~~ 41-6a-512(1);

(b) a revocation under Section ~~[41-6-44.10]~~ 41-6a-521 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]~~ (a) Until June 30, 2005, 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)]~~ (i) two years after 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)]~~ (ii) ten years after 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.

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

(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 12. Section **63-55-253** is amended to read:

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

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

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

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

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

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

Section 13. **Repealer.**

This bill repeals:

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

Section 14. **Effective date.**

This bill takes effect July 1, 2005.

Section 15. **Coordinating S.B. 42 with H.B. 65.**

If this S.B. 42 and H.B. 65, Driver License and Commercial Driver License Amendments, both pass, it is the intent of the Legislature that Subsection 53-3-220(1)(a)(xv) in S.B. 42 supercedes Subsection 53-3-220(1)(a)(xv) in H.B. 65 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.