

1 **DRIVING UNDER THE INFLUENCE**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carlene M. Walker**

6 House Sponsor: Paul Ray

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Motor Vehicles Code, the State Affairs in General Code, and the
11 Code of Criminal Procedure by amending provisions related to driving under the
12 influence violations.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides and amends definitions;
- 16 ▶ prohibits an interlock restricted driver from operating or being in actual physical
17 control of a vehicle without an ignition interlock system;
- 18 ▶ provides penalties for operation without an ignition interlock system;
- 19 ▶ provides an affirmative defense for an ignition interlock system violation;
- 20 ▶ repeals the requirement that a person's driver license be coded if the person is
21 required to use an ignition interlock system;
- 22 ▶ requires a peace officer to warn a person that has been placed under arrest for
23 refusing to submit to a chemical test for alcohol or drugs that a refusal may result in
24 a three-year prohibition of driving without an ignition interlock device;
- 25 ▶ provides that a peace officer shall impound a vehicle if the peace officer cites a
26 person for an ignition interlock system violation;
- 27 ▶ extends the repeal of restrictions on pleas to driving under the influence violations



28 from June 30, 2006 to June 30, 2008;

29 ▶ repeals the provision that prohibits a plea in abeyance to a driving under the
30 influence violation beginning on July 1, 2006;

31 ▶ prohibits a plea in abeyance to a driving under the influence violation beginning on
32 July 1, 2008;

33 ▶ amends restrictions on pleas to driving under the influence violations; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **41-6a-518**, as renumbered and amended by Chapter 2, Laws of Utah 2005

42 **41-6a-520**, as renumbered and amended by Chapter 2 and last amended by Chapter 91,
43 Laws of Utah 2005

44 **41-6a-527**, as renumbered and amended by Chapter 2 and last amended by Chapter 91,
45 Laws of Utah 2005

46 **41-6a-529**, as enacted by Chapter 91, Laws of Utah 2005

47 **63-55b-177**, as enacted by Chapter 228, Laws of Utah 2004

48 **77-2a-3 (Effective 07/01/06)**, as last amended by Chapters 203 and 228, Laws of Utah
49 2004

50 **77-2a-3.1**, as last amended by Chapter 2, Laws of Utah 2005

51 ENACTS:

52 **41-6a-518.1**, Utah Code Annotated 1953

53 **41-6a-518.2**, Utah Code Annotated 1953



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

56 Section 1. Section **41-6a-518** is amended to read:

57 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**

58 **Impecuniosity -- Fee.**

59 (1) As used in this section:

60 (a) "Commissioner" means the commissioner of the Department of Public Safety.

61 (b) "Ignition interlock system" or "system" means a constant monitoring device or any
62 similar device certified by the commissioner that prevents a motor vehicle from being started
63 or continuously operated without first determining the driver's breath alcohol concentration.

64 (c) "Probation provider" means the supervisor and monitor of the ignition interlock
65 system required as a condition of probation who contracts with the court in accordance with
66 Subsections 41-6a-507(2) and (3).

67 (2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and
68 41-6a-505, and in addition to any requirements imposed as a condition of probation, the court
69 may require that any person who is convicted of violating Section 41-6a-502 and who is
70 granted probation may not operate a motor vehicle during the period of probation unless that
71 motor vehicle is equipped with a functioning, certified ignition interlock system installed and
72 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood
73 alcohol concentration exceeds a level ordered by the court.

74 (b) If a person convicted of violating Section 41-6a-502 was under the age of 21 when
75 the violation occurred, the court shall order the installation of the ignition interlock system as a
76 condition of probation.

77 ~~[(c) (i) If a person is convicted of a violation of Section 41-6a-502 within ten years of a~~
78 ~~prior conviction as defined in Subsection 41-6a-501(2), the court shall order the installation of~~
79 ~~the ignition interlock system, at the person's expense, for all motor vehicles registered to that~~
80 ~~person and all motor vehicles operated by that person for the period of probation.]~~

81 [(ii)] (c) The division shall post the ignition interlock restriction on the electronic
82 record available to law enforcement.

83 (d) This section does not apply to a person convicted of a violation of Section
84 41-6a-502 whose violation involves drugs other than alcohol.

85 (3) ~~[Except as provided in Subsection (2)(c), if]~~ If the court imposes the use of an
86 ignition interlock system as a condition of probation, the court shall:

87 (a) stipulate on the record the requirement for and the period of the use of an ignition
88 interlock system;

89 (b) order that an ignition interlock system be installed on each motor vehicle owned or

90 operated by the probationer, at the probationer's expense;

91 ~~[(e) order the probationer to submit his driver license to the Driver License Division in~~
92 ~~accordance with Subsection (5);]~~

93 ~~[(d)]~~ (c) immediately notify the Driver License Division and the person's probation
94 provider of the order; and

95 ~~[(e)]~~ (d) require the probationer to provide proof of compliance with the court's order
96 to the probation provider within 30 days of the order.

97 (4) (a) The probationer shall provide timely proof of installation within 30 days of an
98 order imposing the use of a system or show cause why the order was not complied with to the
99 court or to the probationer's probation provider.

100 (b) The probation provider shall notify the court of failure to comply under Subsection
101 (4)(a).

102 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification
103 under Subsection (4)(b), the court shall order the Driver License Division to suspend the
104 probationer's driving privileges for the remaining period during which the compliance was
105 imposed.

106 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
107 to excuse the probationer's failure to comply with the court's order.

108 ~~[(5) (a) If use of an ignition interlock system is required under this section, the division~~
109 ~~may not issue, reinstate, or renew the driver license of that person unless that requirement is~~
110 ~~coded on the person's driver license.]~~

111 ~~[(b) (i) If the division receives a notice that a person with a valid driver license that~~
112 ~~does not require a driver license withdrawal is required to use an ignition interlock system, the~~
113 ~~division shall notify the person that he has ten calendar days to apply to the division for an~~
114 ~~ignition interlock system requirement coded on the license.]~~

115 ~~[(ii) The division shall suspend the driver license of the person after the ten-day period~~
116 ~~until the person applies to the division for an ignition interlock system requirement coded on~~
117 ~~the license.]~~

118 ~~[(6)]~~ (5) (a) Any probationer required to install an ignition interlock system shall have
119 the system monitored by the manufacturer or dealer of the system for proper use and accuracy
120 at least semiannually and more frequently as the court may order.

121 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
122 court or the person's probation provider.

123 (ii) The report shall be issued within 14 days following each monitoring.

124 ~~[(7)]~~ (6) (a) If an ignition interlock system is ordered installed, the probationer shall
125 pay the reasonable costs of leasing or buying and installing and maintaining the system.

126 (b) A probationer may not be excluded from this section for inability to pay the costs,
127 unless:

128 (i) the probationer files an affidavit of impecuniosity; and

129 (ii) the court enters a finding that the probationer is impecunious.

130 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
131 probationer to make partial or installment payments of costs when appropriate.

132 (d) The ignition interlock provider shall cover the costs of waivers by the court under
133 this Subsection ~~[(7)]~~ (6).

134 ~~[(8)]~~ (7) (a) If a probationer is required in the course and scope of employment to
135 operate a motor vehicle owned by the probationer's employer, the probationer may operate that
136 motor vehicle without installation of an ignition interlock system only if:

137 (i) the motor vehicle is used in the course and scope of employment;

138 (ii) the employer has been notified that the employee is restricted; and

139 (iii) the employee has proof of the notification in his possession while operating the
140 employer's motor vehicle.

141 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
142 probationer subject to this section for personal use, no exemption under this section shall apply.

143 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
144 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
145 system shall notify the employer and obtain consent in writing from the employer to install a
146 system in the employer-owned motor vehicle.

147 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
148 by a probationer subject to this section is not a motor vehicle owned by the employer and does
149 not qualify for an exemption under this Subsection ~~[(8)]~~ (7).

150 ~~[(9) Upon conviction for violation of this section, the court shall notify the Driver
151 License Division to immediately suspend the probationer's license to operate a motor vehicle~~

152 for the remainder of the period of probation.]

153 [~~(10) (a) It is a class B misdemeanor for a person to:~~]

154 [~~(i) circumvent or tamper with the operation of an ignition interlock system;]~~

155 [~~(ii) knowingly furnish a motor vehicle without an ignition interlock system to~~
156 ~~someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped~~
157 ~~with an ignition interlock system that is in working order;]~~

158 [~~(iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a~~
159 ~~driving restriction is imposed under this section;]~~

160 [~~(iv) request another person to blow into an ignition interlock system, if the person is~~
161 ~~required to have a system and the person requests or solicits another to blow into the system to~~
162 ~~start the motor vehicle in order to circumvent the system;]~~

163 [~~(v) blow into an ignition interlock system or start a motor vehicle equipped with an~~
164 ~~ignition interlock system for the purpose of providing an operable motor vehicle to another~~
165 ~~person required to have a system;]~~

166 [~~(vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless~~
167 ~~the system has been certified by the commissioner and the manufacturer of the system has~~
168 ~~affixed a warning label, as approved by the commissioner on the system, stating that the~~
169 ~~tampering, circumventing, or other misuse of the system is a class B misdemeanor; or]~~

170 [~~(vii) operate a motor vehicle in violation of any ignition interlock restriction.]~~

171 [~~(b) This Subsection (10) does not apply if the starting of a motor vehicle, or the~~
172 ~~request to start a motor vehicle, equipped with an ignition interlock system is done for the~~
173 ~~purpose of safety or mechanical repair of the system or the motor vehicle and the person~~
174 ~~subject to the court order does not drive the motor vehicle.]~~

175 [~~(11)~~] (8) (a) In accordance with Title 63, Chapter 46a, Utah Administrative
176 Rulemaking Act, the commissioner shall make rules setting standards for the certification of
177 ignition interlock systems.

178 (b) The standards under Subsection (8)(a) shall require that the system:

179 (i) not impede the safe operation of the motor vehicle;

180 (ii) have features that make circumventing difficult and that do not interfere with the
181 normal use of the motor vehicle;

182 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

183 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
184 concentration exceeds [~~an ordered~~] a specified level;

185 (v) work accurately and reliably in an unsupervised environment;

186 (vi) resist tampering and give evidence if tampering is attempted;

187 (vii) operate reliably over the range of motor vehicle environments; and

188 (viii) be manufactured by a party who will provide liability insurance.

189 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
190 independent laboratory tests relied upon in certification of ignition interlock systems by other
191 states.

192 (d) A list of certified systems shall be published by the commissioner and the cost of
193 certification shall be borne by the manufacturers or dealers of ignition interlock systems
194 seeking to sell, offer for sale, or lease the systems.

195 (e) (i) In accordance with Section 63-38-3.2, the commissioner may establish an annual
196 dollar assessment against the manufacturers of ignition interlock systems distributed in the
197 state for the costs incurred in certifying.

198 (ii) The assessment under Subsection [~~(H)~~] (8)(e)(i) shall be apportioned among the
199 manufacturers on a fair and reasonable basis.

200 [~~(H2)~~] (9) There shall be no liability on the part of, and no cause of action of any nature
201 shall arise against, the state or its employees in connection with the installation, use, operation,
202 maintenance, or supervision of an interlock ignition system as required under this section.

203 Section 2. Section **41-6a-518.1** is enacted to read:

204 **41-6a-518.1. Tampering with an ignition interlock system.**

205 (1) As used in this section:

206 (a) "ignition interlock system" has the same meaning as defined in Section 41-6a-518;

207 and

208 (b) "interlock restricted driver" has the same meaning as defined in Section
209 41-6a-518.2.

210 (2) (a) A person may not:

211 (i) circumvent or tamper with the operation of an ignition interlock system;

212 (ii) knowingly furnish an interlock restricted driver a motor vehicle without an ignition
213 interlock system unless authorized under Subsection 41-6a-518(7);

214 (iii) blow into an ignition interlock system or start a motor vehicle equipped with an
215 ignition interlock system for the purpose of allowing an interlock restricted driver to operate a
216 motor vehicle; or

217 (iv) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless
218 the system has been certified by the commissioner as required under Subsection 41-6a-518(8).

219 (b) An interlock restricted driver may not:

220 (i) rent, lease, or borrow a motor vehicle without an ignition interlock system; or

221 (ii) request another person to blow into an ignition interlock system in order to allow
222 the interlock restricted driver to operate the motor vehicle.

223 (c) A violation of any provision under this Subsection (2) is a class B misdemeanor.

224 (3) It is an affirmative defense to a charge of a violation of this section if:

225 (a) the starting of a motor vehicle, or the request to start a motor vehicle, that is
226 equipped with an ignition interlock system is done for the purpose of safety or mechanical
227 repair of the system or the motor vehicle; and

228 (b) the interlock restricted driver does not operate the motor vehicle.

229 Section 3. Section **41-6a-518.2** is enacted to read:

230 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
231 **interlock system.**

232 (1) As used in this section:

233 (a) "ignition interlock system" means a constant monitoring device or any similar
234 device that:

235 (i) is in working order at the time of operation or actual physical control; and

236 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
237 41-6a-518(8); and

238 (b) (i) "interlock restricted driver" means a person who:

239 (A) has been ordered by a court or the Board of Pardons and Parole as a condition of
240 probation or parole not to operate a motor vehicle without an ignition interlock system;

241 (B) (I) within the last three years has been convicted of an offense that occurred after
242 May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and

243 (II) the conviction described under Subsection (1)(b)(i)(B)(I) is within ten years of one
244 or more prior convictions as defined in Subsection 41-6a-501(2);

- 245 (C) within the last three years has been convicted of a violation of this section;
246 (D) within the last three years has had the person's driving privilege revoked for refusal
247 to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1,
248 2006;
249 (E) within the last six years has been convicted of a felony violation of Section
250 41-6a-502 for an offense that occurred after May 1, 2006; or
251 (F) within the last ten years has been convicted of automobile homicide under Section
252 76-5-207 for an offense that occurred after May 1, 2006; and
253 (ii) "interlock restricted driver" does not include a person if:
254 (A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction under
255 Section 41-6a-517; and
256 (B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are
257 convictions under Section 41-6a-517.
258 (2) For purposes of this section, a plea of guilty or no contest to a violation of Section
259 41-6a-502 which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the
260 equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in
261 accordance with the plea in abeyance agreement.
262 (3) An interlock restricted driver that operates or is in actual physical control of a
263 vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.
264 (4) (a) It is an affirmative defense to a charge of a violation of Subsection (3) if:
265 (i) an interlock restricted driver:
266 (A) operated or was in actual physical control of a vehicle owned by the interlock
267 restricted driver's employer;
268 (B) had given written notice to the employer of the interlock restricted driver's
269 interlock restricted status prior to the operation or actual physical control under Subsection
270 (4)(a)(i); and
271 (C) had on the interlock restricted driver's person or in the vehicle at the time of
272 operation or physical control proof of having given notice to the interlock restricted driver's
273 employer; and
274 (ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the
275 scope of the interlock restricted driver's employment.

276 (b) The affirmative defense under Subsection (4)(a) does not apply to:

277 (i) an employer-owned motor vehicle that is made available to an interlock restricted
278 driver for personal use; or

279 (ii) a motor vehicle owned by a business entity that is all or partly owned or controlled
280 by the interlock restricted driver.

281 Section 4. Section **41-6a-520** is amended to read:

282 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**
283 **tests -- Refusal -- Warning, report.**

284 (1) (a) A person operating a motor vehicle in this state is considered to have given the
285 person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for
286 the purpose of determining whether the person was operating or in actual physical control of a
287 motor vehicle while:

288 (i) having a blood or breath alcohol content statutorily prohibited under Section
289 41-6a-502, 41-6a-530, 53-3-231, or 53-3-232;

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

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

294 (b) A test or tests authorized under this Subsection (1) must be administered at the
295 direction of a peace officer having grounds to believe that person to have been operating or in
296 actual physical control of a motor vehicle while in violation of any provision under Subsections
297 (1)(a)(i) through (iii).

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

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

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

306 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is

307 not a defense to taking a test requested by a peace officer, and it is not a defense in any
308 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
309 requested test or tests.

310 (2) (a) A peace officer requesting a test or tests shall warn a person that refusal to
311 submit to the test or tests may result in revocation of the person's license to operate a motor
312 vehicle ~~[and]~~, a five or ten-year prohibition of ~~[the person]~~ driving with any measurable or
313 detectable amount of alcohol in the person's body depending on the person's prior driving
314 history, and a three-year prohibition of driving without an ignition interlock device if the
315 person:

316 (i) has been placed under arrest;

317 (ii) has then been requested by a peace officer to submit to any one or more of the
318 chemical tests under Subsection (1); and

319 (iii) refuses to submit to any chemical test requested.

320 (b) (i) Following the warning under Subsection (2)(a), if the person does not
321 immediately request that the chemical test or tests as offered by a peace officer be
322 administered, a peace officer shall, on behalf of the Driver License Division and within 24
323 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's
324 privilege or license to operate a motor vehicle.

325 (ii) When a peace officer gives the notice on behalf of the Driver License Division, the
326 peace officer shall:

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

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

330 (C) supply to the operator, in a manner specified by the Driver License Division, basic
331 information regarding how to obtain a hearing before the Driver License Division.

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

334 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten
335 calendar days after the day on which notice is provided under Subsection (2)(b), that:

336 (i) the peace officer had grounds to believe the arrested person was in violation of any
337 provision under Subsections (1)(a)(i) through (iii); and

338 (ii) the person had refused to submit to a chemical test or tests under Subsection (1).

339 (3) Upon the request of the person who was tested, the results of the test or tests shall
340 be made available to the person.

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

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

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

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

352 Section 5. Section **41-6a-527** is amended to read:

353 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
354 **requirements -- Removal of vehicle by owner.**

355 (1) If a peace officer arrests [~~or~~], cites, or refers for administrative action the operator
356 of a vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530,
357 53-3-231, 53-3-232, [~~Subsection 41-6a-518(10),~~] or a local ordinance similar to Section
358 41-6a-502 which complies with Subsection 41-6a-510(1), the peace officer shall seize and
359 impound the vehicle in accordance with Section 41-6a-1406, except as provided under
360 Subsection (2).

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

363 (a) the registered owner:

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

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

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

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

369 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,
370 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231, 53-3-232, [Subsection
371 ~~41-6a-518(10)~~, or] a local ordinance similar to Section 41-6a-502 which complies with
372 Subsection 41-6a-510(1) if permitted to operate the vehicle; and

373 (c) the vehicle itself is legally operable.

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

376 Section 6. Section **41-6a-529** is amended to read:

377 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

380 (a) within the last two years:

381 (i) has been convicted of:

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

383 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
384 41-6a-512;

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

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

389 (E) statutes or ordinances previously in effect in this state or in effect in any other state,
390 the United States, or any district, possession, or territory of the United States which would
391 constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
392 both-related reckless driving if committed in this state, including punishments administered
393 under 10 U.S.C. Sec. 815; or

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

396 (b) within the last five years:

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

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

400 (B) at the time of operation or actual physical control of a vehicle the person:
401 (I) is 21 years of age or older; and
402 (II) has a passenger under 16 years of age in the vehicle;
403 (c) within the last ten years:
404 (i) has been convicted of an offense described in Subsection (1)(a)(i) which conviction
405 was within ten years of a prior conviction for an offense described in Subsection (1)(a)(i); or
406 (ii) has had the person's driving privilege revoked for refusal to submit to a chemical
407 test and the refusal is within ten years after:
408 (A) a prior refusal to submit to a chemical test under Section 41-6a-520; or
409 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not
410 based on the same arrest as the refusal; or
411 (d) at any time has been convicted of:
412 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or
413 after July 1, 2005; or
414 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
415 1, 2005.

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

420 Section 7. Section **63-55b-177** is amended to read:
421 **63-55b-177. Repeal dates, Title 77.**
422 Section 77-2a-3.1 is repealed June 30, [~~2006~~] 2008.

423 Section 8. Section **77-2a-3 (Effective 07/01/06)** is amended to read:
424 **77-2a-3 (Effective 07/01/06). Manner of entry of plea -- Powers of court.**
425 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
426 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.
427 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
428 agreement may be entered into without a personal appearance before a magistrate.

429 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
430 defendant has successfully completed the terms of the agreement:

- 431 (a) reduce the degree of the offense and enter judgment of conviction and impose
432 sentence for a lower degree of offense; or
- 433 (b) allow withdrawal of defendant's plea and order the dismissal of the case.
- 434 (3) Upon finding that a defendant has successfully completed the terms of a plea in
435 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
436 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
437 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
438 invoke Section 76-3-402 to further reduce the degree of the offense.
- 439 (4) The court may require the Department of Corrections to assist in the administration
440 of the plea in abeyance agreement as if the defendant were on probation to the court under
441 Section 77-18-1.
- 442 (5) The terms of a plea in abeyance agreement may include:
- 443 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
444 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
445 the same manner as if paid as a fine for a criminal conviction under Section 78-3-14.5 and a
446 surcharge under Title 63, Chapter 63a, Crime Victim Reparation Trust, Public Safety Support
447 Funds, Substance Abuse Prevention Account, and Services for Victims of Domestic Violence
448 Account, and which may not exceed in amount the maximum fine and surcharge which could
449 have been imposed upon conviction and sentencing for the same offense;
- 450 (b) an order that the defendant pay restitution to the victims of his actions as provided
451 in Title 77, Chapter 38a, Crime Victims Restitution Act;
- 452 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
453 required by the terms of the agreement; and
- 454 (d) an order that the defendant comply with any other conditions which could have
455 been imposed as conditions of probation upon conviction and sentencing for the same offense.
- 456 (6) A court may not hold a plea in abeyance without the consent of both the
457 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
458 plea in abeyance is final.
- 459 (7) No plea may be held in abeyance in any case involving[~~:(a)~~] a sexual offense
460 against a victim who is under the age of 14[~~;~~~~or~~].
- 461 [~~(b) a driving under the influence violation under Section 41-6a-502;~~]

462 (8) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a
463 driving under the influence violation under Section 41-6a-502.

464 Section 9. Section **77-2a-3.1** is amended to read:

465 **77-2a-3.1. Restrictions on pleas to driving under the influence violations.**

466 (1) As used in this section, [~~an "education or treatment incentive program" means a~~
467 ~~program that includes:~~] a "driving under the influence court" means an intensive judicially
468 supervised treatment program:

469 (a) as defined by rules of the Utah Judicial Council; and

470 (b) that has been approved by the Utah Judicial Council as a driving under the
471 influence court.

472 [~~(a) a screening as defined in Section 41-6a-501 that is approved by the Board of~~
473 ~~Substance Abuse and Mental Health in accordance with Section 62A-15-105;]~~

474 [~~(b) an assessment as defined in Section 41-6a-501 that is approved by the Board of~~
475 ~~Substance Abuse and Mental Health in accordance with Section 62A-15-105, if found~~
476 ~~appropriate in a screening under Subsection (1)(a);]~~

477 [~~(c) (i) an educational series as defined in Section 41-6a-501 that is approved by the~~
478 ~~Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105; or]~~

479 [~~(ii) a substance abuse treatment program as defined in Section 41-6a-501 that is~~
480 ~~approved by the Board of Substance Abuse and Mental Health in accordance with Section~~
481 ~~62A-15-105, if found appropriate in an assessment under Subsection (1)(b);]~~

482 [~~(d) regular court reviews for compliance;]~~

483 [~~(e) random drug and alcohol testing; and]~~

484 [~~(f) if a substance abuse treatment program is found appropriate under Subsection~~
485 ~~(1)(c), at least monthly reports from the substance abuse treatment program to the court.]~~

486 (2) (a) A plea may not be held in abeyance in any case involving a driving under the
487 influence violation under Section 41-6a-502 that is punishable as a felony or class A
488 misdemeanor.

489 (b) A plea to a driving under the influence violation under Section 41-6a-502 that is
490 punishable as a class B misdemeanor may not be held in abeyance unless:

491 (i) (A) the plea is entered pursuant to [~~an education or treatment incentive program]~~
492 participation in a driving under the influence court; and

493 (B) the ~~[education or treatment incentive program]~~ plea is approved by the district
494 attorney, county attorney, attorney general, or chief prosecutor of a municipality; or

495 (ii) evidentiary issues or other circumstances justify resolution of the case with a plea
496 in abeyance.

497 (3) A plea to a driving under the influence violation under Section 41-6a-502 may not
498 be dismissed or entered as a conviction of a lesser offense pursuant to Subsection (2)(b)(i) if
499 the defendant:

500 (a) has been convicted of any other violation which is defined as a conviction under
501 Subsection 41-6a-501(2);

502 (b) has had a plea to any other violation of Section 41-6a-502 held in abeyance; or

503 (c) in the current case:

504 (i) operated a vehicle in a negligent manner proximately resulting in bodily injury to
505 another or property damage to an extent requiring reporting to a law enforcement agency under
506 Section 41-6a-401;

507 (ii) had a blood or breath alcohol level of .16 or higher; or

508 (iii) had a passenger under 18 years of age in the vehicle at the time of the offense.

509 ~~[(4) A decision by a prosecuting attorney not to establish an education or treatment
510 incentive program is final.]~~

511 Section 10. **Effective date.**

512 This bill takes effect on May 1, 2006, except that the amendments to Sections 77-2a-3
513 (Effective 07/01/06) and 77-2a-3.1 take effect on July 1, 2006.

Legislative Review Note
as of 11-9-05 4:06 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

Interim Committee Note
as of 12-21-05 7:21 AM

The Transportation Interim Committee recommended this bill.