

1 **DRIVING UNDER THE INFLUENCE**

2 **AMENDMENTS**

3 2007 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 and the Public Safety Code by amending
11 provisions related to driving under the influence.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ clarifies the application of the ten-year look back period for felony driving under the
15 influence violations;

16 ▶ amends the definition of alcohol restricted driver;

17 ▶ provides that a court shall order an ignition interlock system as a condition of
18 probation for an alcohol restricted driver violation or describe why the order would
19 not be appropriate;

20 ▶ increases the fee for a license reinstatement application for an alcohol or
21 drug-related offense;

22 ▶ increases the administrative fee for license reinstatement after an alcohol or drug-
23 related offense;

24 ▶ provides that the Driver License Division shall deny, suspend, disqualify, or revoke
25 a person's license for certain violations;

26 ▶ requires the Driver License Division to immediately revoke, deny, suspend, or
27 disqualify a person's driver license upon receiving record of a person's conviction



28 for operating a vehicle without an ignition interlock system if the person is an interlock
29 restricted driver; and

30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **41-6a-503**, as enacted by Chapter 2 and last amended by Chapter 91, Laws of Utah
38 2005

39 **41-6a-521**, as enacted by Chapter 2 and last amended by Chapter 91, Laws of Utah
40 2005

41 **41-6a-529**, as last amended by Chapter 341, Laws of Utah 2006

42 **41-6a-530**, as enacted by Chapter 91, Laws of Utah 2005

43 **53-3-105**, as last amended by Chapter 201, Laws of Utah 2006

44 **53-3-106**, as last amended by Chapter 201, Laws of Utah 2006

45 **53-3-220**, as last amended by Chapter 168, Laws of Utah 2006

46 **53-3-223**, as last amended by Chapter 2, Laws of Utah 2005

47 **53-3-224**, as last amended by Chapter 226, Laws of Utah 1999

48 **53-3-231**, as last amended by Chapter 2, Laws of Utah 2005

49 **53-3-418**, as last amended by Chapter 2, Laws of Utah 2005



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

52 Section 1. Section **41-6a-503** is amended to read:

53 **41-6a-503. Penalties for driving under the influence violations.**

54 (1) A person convicted the first or second time of a violation of Section 41-6a-502 is
55 guilty of a:

56 (a) class B misdemeanor; or

57 (b) class A misdemeanor if the person:

58 (i) has also inflicted bodily injury upon another as a proximate result of having

59 operated the vehicle in a negligent manner;

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

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

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

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

67 (b) the person has two or more prior convictions as defined in Subsection
68 41-6a-501(2), each of which is within ten years of:

69 (i) the current conviction under Section 41-6a-502 [~~is within ten years of two or more~~
70 ~~prior convictions as defined in Subsection 41-6a-501(2)]; or~~

71 (ii) the commission of the offense upon which the current conviction is based; or

72 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:

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

74 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state
75 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

76 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of
77 conviction is reduced under Section 76-3-402.

78 Section 2. Section **41-6a-521** is amended to read:

79 **41-6a-521. Revocation hearing for refusal -- Appeal.**

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

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

84 (c) Upon request in a manner specified by the Driver License Division, the Driver
85 License Division shall grant to the person an opportunity to be heard within 29 days after the
86 date of arrest.

87 (d) If the person does not make a request for a hearing before the Driver License
88 Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state
89 is revoked beginning on the 30th day after the date of arrest for a period of:

90 (i) 18 months unless Subsection (1)(d)(ii) applies; or

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

92 (A) license sanction for an offense that occurred within the previous ten years from the
93 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
94 53-3-232; or

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

98 (2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person,
99 the hearing shall be conducted by the Driver License Division in the county in which the
100 offense occurred.

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

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

104 (a) whether a peace officer had reasonable grounds to believe that a person was
105 operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231,
106 or 53-3-232; and

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

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

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

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

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

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

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

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

121 (A) license sanction for an offense that occurred within the previous ten years from the
122 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
123 53-3-232; or

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

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

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

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

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

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

136 Section 3. Section **41-6a-529** is amended to read:

137 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

140 (a) within the last two years:

141 (i) has been convicted of:

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

143 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
144 41-6a-512;

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

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

149 (E) statutes or ordinances previously in effect in this state or in effect in any other state,
150 the United States, or any district, possession, or territory of the United States which would
151 constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of

152 both-related reckless driving if committed in this state, including punishments administered
153 under 10 U.S.C. Sec. 815; or

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

156 (b) within the last three years has been convicted of a violation of this section or
157 Section 41-6a-518.2;

158 [~~(b)~~] (c) within the last five years:

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

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

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

163 (I) is 21 years of age or older; and

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

165 [~~(c)~~] (d) within the last ten years:

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

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

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

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

173 [~~(d)~~] (e) at any time has been convicted of:

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

176 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
177 1, 2005.

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

182 Section 4. Section **41-6a-530** is amended to read:

183 **41-6a-530. Alcohol restricted drivers -- Prohibited from operating a vehicle while**
184 **having any measurable or detectable amount of alcohol in the person's body -- Penalties.**

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

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

190 (a) a chemical test;

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

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

193 (3) For any person convicted of a violation of this section, the court shall order the
194 installation of an ignition interlock system as a condition of probation in accordance with
195 Section 41-6a-518 or describe on the record or in a minute entry why the order would not be
196 appropriate.

197 Section 5. Section **53-3-105** is amended to read:

198 **53-3-105. Fees for licenses, renewals, extensions, reinstatements, rescheduling,**
199 **and identification cards.**

200 The following fees apply under this chapter:

201 (1) An original class D license application under Section 53-3-205 is \$20.

202 (2) An original class M license application under Section 53-3-205 is \$22.50.

203 (3) An original provisional license application for a class D license under Section
204 53-3-205 is \$25.

205 (4) An original provisional license application for a class M license under Section
206 53-3-205 is \$27.50.

207 (5) An original application for a motorcycle endorsement under Section 53-3-205 is
208 \$7.50.

209 (6) An original application for a taxicab endorsement under Section 53-3-205 is \$5.

210 (7) A learner permit application under Section 53-3-210.5 is \$15.

211 (8) A renewal of a class D license under Section 53-3-214 is \$20 unless Subsection
212 (14) applies.

213 (9) A renewal of a class M license under Section 53-3-214 is \$22.50.

- 214 (10) A renewal of a provisional license application for a class D license under Section
215 53-3-214 is \$20.
- 216 (11) A renewal of a provisional license application for a class M license under Section
217 53-3-214 is \$22.50.
- 218 (12) A renewal of a motorcycle endorsement under Section 53-3-214 is \$7.50.
- 219 (13) A renewal of a taxicab endorsement under Section 53-3-214 is \$5.
- 220 (14) A renewal of a class D license for a person 65 and older under Section 53-3-214 is
221 \$8.
- 222 (15) An extension of a class D license under Section 53-3-214 is \$15 unless Subsection
223 (21) applies.
- 224 (16) An extension of a class M license under Section 53-3-214 is \$17.50.
- 225 (17) An extension of a provisional license application for a class D license under
226 Section 53-3-214 is \$15.
- 227 (18) An extension of a provisional license application for a class M license under
228 Section 53-3-214 is \$17.50.
- 229 (19) An extension of a motorcycle endorsement under Section 53-3-214 is \$7.50.
- 230 (20) An extension of a taxicab endorsement under Section 53-3-214 is \$5.
- 231 (21) An extension of a class D license for a person 65 and older under Section
232 53-3-214 is \$6.
- 233 (22) An original or renewal application for a commercial class A, B, or C license or an
234 original or renewal of a provisional commercial class A or B license under Part 4, Uniform
235 Commercial Driver License Act, is:
- 236 (a) \$35 for the knowledge test; and
237 (b) \$55 for the skills test.
- 238 (23) Each original CDL endorsement for passengers, hazardous material, double or
239 triple trailers, or tankers is \$5.
- 240 (24) An original CDL endorsement for a school bus under Part 4, Uniform Commercial
241 Driver License Act, is \$5.
- 242 (25) A renewal of a CDL endorsement under Part 4, Uniform Commercial Driver
243 License Act, is \$5.
- 244 (26) A retake of a CDL knowledge or a CDL skills test provided for in Section

245 53-3-205 is \$15.

246 (27) A retake of a CDL endorsement test provided for in Section 53-3-205 is \$5.

247 (28) A duplicate class A, B, C, D, or M license certificate under Section 53-3-215 is
248 \$13.

249 (29) (a) A license reinstatement application under Section 53-3-205 is \$25.

250 (b) A license reinstatement application under Section 53-3-205 for an alcohol, drug, or
251 combination of alcohol and any drug-related offense is [~~\$25~~] \$35 in addition to the fee under
252 Subsection (29)(a).

253 (30) (a) An administrative fee for license reinstatement after an alcohol, drug, or
254 combination of alcohol and any drug-related offense under Section 41-6a-520, 53-3-223, or
255 53-3-231 or an alcohol, drug, or combination of alcohol and any drug-related offense under
256 Part 4, Uniform Commercial Driver License Act, is [~~\$150~~] \$160.

257 (b) This administrative fee is in addition to the fees under Subsection (29).

258 (31) (a) An administrative fee for providing the driving record of a driver under
259 Section 53-3-104 or 53-3-420 is \$4.

260 (b) The division may not charge for a report furnished under Section 53-3-104 to a
261 municipal, county, state, or federal agency.

262 (32) A rescheduling fee under Section 53-3-205 or 53-3-407 is \$25.

263 (33) An identification card application under Section 53-3-808 is \$8.

264 Section 6. Section **53-3-106** is amended to read:

265 **53-3-106. Disposition of revenues under this chapter -- Restricted account created**
266 **-- Uses as provided by appropriation -- Nonlapsing.**

267 (1) There is created within the Transportation Fund a restricted account known as the
268 "Department of Public Safety Restricted Account."

269 (2) The account consists of monies generated from the following revenue sources:

270 (a) all monies received under this chapter;

271 (b) administrative fees received according to the fee schedule authorized under this
272 chapter and Section 63-38-3.2; and

273 (c) any appropriations made to the account by the Legislature.

274 (3) (a) The account shall earn interest.

275 (b) All interest earned on account monies shall be deposited in the account.

276 (4) The expenses of the department in carrying out this chapter shall be provided for by
277 legislative appropriation from this account.

278 (5) The amount in excess of [~~\$35~~] \$45 of the fees collected under Subsection
279 53-3-105(30) shall be appropriated by the Legislature from this account to the department to
280 implement the provisions of Section 53-1-117, except that of the amount in excess of [~~\$35~~]
281 \$45, \$30 shall be deposited in the State Laboratory Drug Testing restricted account created in
282 Section 26-1-34.

283 (6) All monies received under Subsection 41-6a-1406(6)(b)(ii) shall be appropriated by
284 the Legislature from this account to the department to implement the provisions of Section
285 53-1-117.

286 (7) Appropriations to the department from the account are nonlapsing.

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

288 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
289 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
290 **Limited driving privileges.**

291 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
292 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division
293 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's
294 conviction for any of the following offenses:

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

297 (ii) driving or being in actual physical control of a motor vehicle while under the
298 influence of alcohol, any drug, or combination of them to a degree that renders the person
299 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited
300 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

301 (iii) driving or being in actual physical control of a motor vehicle while having a blood
302 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an ordinance that
303 complies with the requirements of Subsection 41-6a-510(1);

304 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
305 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
306 regulating driving on highways;

- 307 (v) any felony under the motor vehicle laws of this state;
- 308 (vi) any other felony in which a motor vehicle is used to facilitate the offense;
- 309 (vii) failure to stop and render aid as required under the laws of this state if a motor
310 vehicle accident results in the death or personal injury of another;
- 311 (viii) two charges of reckless driving committed within a period of 12 months; but if
312 upon a first conviction of reckless driving the judge or justice recommends suspension of the
313 convicted person's license, the division may after a hearing suspend the license for a period of
314 three months;
- 315 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
316 required in Section 41-6a-210;
- 317 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that
318 requires disqualification;
- 319 (xi) discharging or allowing the discharge of a firearm from a vehicle in violation of
320 Subsection 76-10-508(2);
- 321 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or
322 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);
- 323 (xiii) operating or being in actual physical control of a motor vehicle while having any
324 measurable controlled substance or metabolite of a controlled substance in the person's body in
325 violation of Section 41-6a-517;
- 326 (xiv) until July 30, 2015, operating or being in actual physical control of a motor
327 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;
- 328 (xv) operating or being in actual physical control of a motor vehicle while having any
329 measurable or detectable amount of alcohol in the person's body in violation of Section
330 41-6a-530; [~~and~~]
- 331 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in
332 violation of Section 41-6a-606[-]; and
- 333 (xvii) operating or being in actual physical control of a motor vehicle in this state
334 without an ignition interlock system in violation of Section 41-6a-518.2.
- 335 (b) The division shall immediately revoke the license of a person upon receiving a
336 record of an adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996, for any of the
337 following offenses:

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

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

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

345 (i) any violation of:

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

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

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

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

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

351 (ii) any criminal offense that prohibits:

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

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

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

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

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

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

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

366 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
367 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
368 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,

369 or revocation originally imposed under Section 53-3-221.

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

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

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

377 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
378 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,
379 41-6a-517, a local ordinance which complies with the requirements of Subsection
380 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person
381 was charged with violating as a result of a plea bargain after having been originally charged
382 with violating one or more of these sections or ordinances.

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

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

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

391 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
392 **Hearing and decision -- Suspension and fee -- Judicial review.**

393 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
394 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
395 certain blood or breath alcohol concentration and driving under the influence of any drug,
396 alcohol, or combination of a drug and alcohol or while having any measurable controlled
397 substance or metabolite of a controlled substance in the person's body in violation of Section
398 41-6a-517, the peace officer may, in connection with arresting the person, request that the
399 person submit to a chemical test or tests to be administered in compliance with the standards

400 under Section 41-6a-520.

401 (b) In this section, a reference to Section 41-6a-502 includes any similar local
402 ordinance adopted in compliance with Subsection 41-6a-510(1).

403 (2) The peace officer shall advise a person prior to the person's submission to a
404 chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall,
405 and the existence of a blood alcohol content sufficient to render the person incapable of safely
406 driving a motor vehicle may, result in suspension or revocation of the person's license to drive
407 a motor vehicle.

408 (3) If the person submits to a chemical test and the test results indicate a blood or
409 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
410 makes a determination, based on reasonable grounds, that the person is otherwise in violation
411 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
412 arrest, give notice of the division's intention to suspend the person's license to drive a motor
413 vehicle.

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

- 416 (i) take the Utah license certificate or permit, if any, of the driver;
- 417 (ii) issue a temporary license certificate effective for only 29 days from the date of
418 arrest; and
- 419 (iii) supply to the driver, in a manner specified by the division, basic information
420 regarding how to obtain a prompt hearing before the division.

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

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

- 425 (a) the person's license certificate;
- 426 (b) a copy of the citation issued for the offense;
- 427 (c) a signed report in a manner specified by the division indicating the chemical test
428 results, if any; and
- 429 (d) any other basis for the peace officer's determination that the person has violated
430 Section 41-6a-502 or 41-6a-517.

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

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

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

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

440 (i) whether a peace officer had reasonable grounds to believe the person was driving a
441 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

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

443 (iii) the test results, if any.

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

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

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

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

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

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

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

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

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

460 ~~[(b) A second or subsequent suspension for an offense that occurred within the
461 previous ten years under this Subsection (7) is for a period of one year, beginning on the 30th~~

462 day after the date of arrest.]

463 (7) If, after a hearing, the division determines that the person violated Section
464 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
465 notice, or if a hearing is not requested under this section, the division shall suspend the person's
466 license or permit to operate a motor vehicle for a period of:

467 (a) 90 days beginning on the 30th day after the date of arrest for a first suspension; or

468 (b) one year beginning on the 30th day after the date of arrest for a second or
469 subsequent suspension for an offense that occurred within the previous ten years.

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

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

478 Section 9. Section **53-3-224** is amended to read:

479 **53-3-224. Filing a petition for hearing -- Judicial review of license cancellation,**
480 **revocation, or suspension -- Scope of review.**

481 (1) A person denied a license or whose license has been cancelled, suspended, or
482 revoked by the division following an administrative hearing may seek judicial review of the
483 division's order.

484 (2) (a) Venue for judicial review of informal adjudicative proceedings is in the district
485 court in the county where the offense occurred, which resulted in the cancellation, suspension,
486 or revocation.

487 (b) Persons not residing in the state shall file in Salt Lake County or the county where
488 the offense occurred, which resulted in the cancellation, suspension, or revocation.

489 Section 10. Section **53-3-231** is amended to read:

490 **53-3-231. Person under 21 may not operate a vehicle or motorboat with**
491 **detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing**
492 **and decision -- Suspension of license or operating privilege -- Fees -- Judicial review --**

493 **Referral to local substance abuse authority or program.**

494 (1) (a) As used in this section:

495 (i) "Local substance abuse authority" has the same meaning as provided in Section
496 62A-15-102.497 (ii) "Substance abuse program" means any substance abuse program licensed by the
498 Department of Human Services or the Department of Health and approved by the local
499 substance abuse authority.500 (b) Calculations of blood, breath, or urine alcohol concentration under this section shall
501 be made in accordance with the procedures in Subsection 41-6a-502(1).502 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
503 control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol
504 concentration in the person's body as shown by a chemical test.505 (b) ~~[(i)]~~ A person ~~[with a valid operator license]~~ who violates Subsection (2)(a), in
506 addition to any other applicable penalties arising out of the incident, shall have the person's
507 operator license denied or suspended as provided in Subsection ~~[(2)(b)(ii)]~~ (8).508 ~~[(ii) (A) For a first offense under Subsection (2)(a), the division shall deny the person's~~
509 ~~operator license if ordered or not challenged under this section for a period of 90 days~~
510 ~~beginning on the 30th day after the date of the arrest under Section 32A-12-209.]~~511 ~~[(B) For a second or subsequent offense under Subsection (2)(a), within three years of~~
512 ~~a prior denial or suspension, the division shall suspend the person's operator license for a~~
513 ~~period of one year beginning on the 30th day after the date of arrest.]~~514 ~~[(c) (i) A person who has not been issued an operator license who violates Subsection~~
515 ~~(2)(a), in addition to any other penalties arising out of the incident, shall be punished as~~
516 ~~provided in Subsection (2)(c)(ii).]~~517 ~~[(ii) For one year or until the person is 17, whichever is longer, a person may not~~
518 ~~operate a vehicle and the division may not issue the person an operator license or learner's~~
519 ~~permit.]~~520 (3) (a) When a peace officer has reasonable grounds to believe that a person may be
521 violating or has violated Subsection (2), the peace officer may, in connection with arresting the
522 person for a violation of Section 32A-12-209, request that the person submit to a chemical test
523 or tests to be administered in compliance with the standards under Section 41-6a-520.

524 (b) The peace officer shall advise a person prior to the person's submission to a
525 chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or
526 suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

527 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
528 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
529 determination, based on reasonable grounds, that the person is otherwise in violation of
530 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the
531 arrest, give notice of the division's intention to deny or suspend the person's license to operate a
532 vehicle or refusal to issue a license under [~~Subsection (2)~~] this section.

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

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

535 (b) issue a temporary license certificate effective for only 29 days from the date of
536 arrest if the driver had a valid operator's license; and

537 (c) supply to the operator, in a manner specified by the division, basic information
538 regarding how to obtain a prompt hearing before the division.

539 (5) A citation issued by a peace officer may, if provided in a manner specified by the
540 division, also serve as the temporary license certificate under Subsection (4)(b).

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

543 (a) the person's driver license certificate, if any;

544 (b) a copy of the citation issued for the offense;

545 (c) a signed report in a manner specified by the Driver License Division indicating the
546 chemical test results, if any; and

547 (d) any other basis for a peace officer's determination that the person has violated
548 Subsection (2).

549 (7) (a) (i) Upon request in a manner specified by the division, the Driver License
550 Division shall grant to the person an opportunity to be heard within 29 days after the date of
551 arrest under Section 32A-12-209.

552 (ii) The request shall be made within ten calendar days of the day on which notice is
553 provided.

554 (b) (i) Except as provided in Subsection (7)(b)(ii), a hearing, if held, shall be before the

555 division in the county in which the arrest occurred.

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

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

559 (i) whether a peace officer had reasonable grounds to believe the person was operating
560 a motor vehicle or motorboat in violation of Subsection (2)(a);

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

562 (iii) the test results, if any.

563 (d) In connection with a hearing, the division or its authorized agent may administer
564 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
565 books and papers and records as defined in Section 46-4-102.

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

567 (f) Any decision made after a hearing before any number of the members of the
568 division is as valid as if made after a hearing before the full membership of the division.

569 ~~[(g) After the hearing, the division shall order whether the person:]~~

570 ~~[(i) with a valid license to operate a motor vehicle will have the person's license denied
571 or not or suspended or not; or]~~

572 ~~[(ii) without a valid operator license will be refused a license under Subsection (2)(c):]~~

573 ~~[(h) If the person for whom the hearing is held fails to appear before the division as
574 required in the notice, the division shall order whether the person shall have the person's
575 license denied, suspended, or not denied or suspended, or whether an operator license will be
576 refused or not refused:]~~

577 (8) If, after a hearing, the division determines that the person violated Subsection
578 (2)(a), if the person fails to appear before the division as required in the notice, or if the person
579 does not request a hearing under this section, the division shall:

580 (a) deny the person's license for a period of 90 days beginning on the 30th day after the
581 date of arrest for a first offense under Subsection (2)(a);

582 (b) suspend the person's license for a period of one year beginning on the 30th day after
583 the date of arrest for a second or subsequent offense under Subsection (2)(a) within three years
584 of a prior denial or suspension; or

585 (c) deny the person's application for a license or learner's permit until the person is 17

586 years of age or for a period of one year, whichever is longer, if the person has not been issued
587 an operator license.

588 [~~8~~] (9) (a) (i) Following denial or suspension the division shall assess against a
589 person, in addition to any fee imposed under Subsection 53-3-205(13), a fee under Section
590 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover
591 administrative costs.

592 (ii) This fee shall be canceled if the person obtains an unappealed division hearing or
593 court decision that the suspension was not proper.

594 (b) A person whose operator license has been denied, suspended, or postponed by the
595 division under this section following an administrative hearing may file a petition within 30
596 days after the suspension for a hearing on the matter which, if held, is governed by Section
597 53-3-224.

598 [~~9~~] (10) After reinstatement of an operator license for a first offense under this
599 section, a report authorized under Section 53-3-104 may not contain evidence of the denial or
600 suspension of the person's operator license under this section if the person has not been
601 convicted of any other offense for which the denial or suspension may be extended.

602 [~~10~~] (11) (a) In addition to the penalties in Subsection [~~2~~] (8), a person who violates
603 Subsection (2)(a) shall:

604 (i) obtain an assessment and recommendation for appropriate action from a substance
605 abuse program, but any associated costs shall be the person's responsibility; or

606 (ii) be referred by the division to the local substance abuse authority for an assessment
607 and recommendation for appropriate action.

608 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
609 license is contingent upon successful completion of the action recommended by the local
610 substance abuse authority or the substance abuse program.

611 (ii) The local substance abuse authority's or the substance abuse program's
612 recommended action shall be determined by an assessment of the person's alcohol abuse and
613 may include:

614 (A) a targeted education and prevention program;

615 (B) an early intervention program; or

616 (C) a substance abuse treatment program.

617 (iii) Successful completion of the recommended action shall be determined by
618 standards established by the Division of Substance Abuse and Mental Health.

619 (c) At the conclusion of the penalty period imposed under Subsection (2), the local
620 substance abuse authority or the substance abuse program shall notify the division of the
621 person's status regarding completion of the recommended action.

622 (d) The local substance abuse authorities and the substance abuse programs shall
623 cooperate with the division in:

624 (i) conducting the assessments;

625 (ii) making appropriate recommendations for action; and

626 (iii) notifying the division about the person's status regarding completion of the
627 recommended action.

628 (e) (i) The local substance abuse authority is responsible for the cost of the assessment
629 of the person's alcohol abuse, if the assessment is conducted by the local substance abuse
630 authority.

631 (ii) The local substance abuse authority or a substance abuse program selected by a
632 person is responsible for:

633 (A) conducting an assessment of the person's alcohol abuse; and

634 (B) for making a referral to an appropriate program on the basis of the findings of the
635 assessment.

636 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees
637 associated with the recommended program to which the person selected or is referred.

638 (B) The costs and fees under Subsection [~~(10)~~] (11)(e)(iii)(A) shall be based on a
639 sliding scale consistent with the local substance abuse authority's policies and practices
640 regarding fees for services or determined by the substance abuse program.

641 Section 11. Section **53-3-418** is amended to read:

642 **53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.**

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

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

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

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

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

657 (3) If a peace officer or port-of-entry agent has reasonable cause to believe that a
658 person may be violating this section, the peace officer or port-of-entry agent may request the
659 person to submit to a chemical test to be administered in compliance with Section 41-6a-515.

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

665 (5) If test results under this section indicate .04 grams or greater of alcohol
666 concentration or the person refuses to submit to any test requested under this section, a peace
667 officer or port-of-entry agent shall, on behalf of the division and within 24 hours of the arrest,
668 give the person notice of the division's intention to disqualify the person's privilege to drive a
669 commercial motor vehicle.

670 (6) When a peace officer or port-of-entry agent gives notice under Subsection (5), the
671 peace officer or port-of-entry agent shall:

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

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

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

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

678 (7) A notice of disqualification issued under Subsection (6) may serve also as the

679 temporary license certificate under that subsection, if provided in a manner specified by the
680 division.

681 (8) As a matter of procedure, a peace officer or port-of-entry agent shall, within ten
682 calendar days after the day on which notice is provided, send to the division the person's
683 license certificate, a copy of the notice, and a report signed by the peace officer or port-of-entry
684 agent that indicates the results of any chemical test administered or that the person refused a
685 test.

686 (9) (a) A person disqualified under this section has the right to a hearing regarding the
687 disqualification.

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

691 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), a hearing held under this
692 section shall be held before the division and in the county where the notice was issued.

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

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

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

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

699 (iii) any test results obtained.

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

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

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

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

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

710 (11) (a) If the division disqualifies a person under this section following an
711 administrative hearing, the person may petition for a hearing under Section 53-3-224.

712 (b) The petition shall be filed within 30 days after the division issues the
713 disqualification.

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

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

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

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

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

Legislative Review Note
as of 11-15-06 4:45 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-06 9:41 AM

The Transportation Interim Committee recommended this bill.

S.B. 4 - Driving Under the Influence Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

It is estimated that provisions of the bill will increase state revenues by \$186,200 annually beginning FY 2008. The Department of Public Safety will require \$168,400 in restricted funds in FY 2008 and \$143,400 each fiscal year thereafter for personnel and associated expenses.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
Transportation Fund Restricted	\$0	\$168,400	\$143,400	\$0	\$186,200	\$186,200
Total	\$0	\$168,400	\$143,400	\$0	\$186,200	\$186,200

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. There would be some increased costs to local justice courts.