

Representative Paul Ray proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carlene M. Walker

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends provisions relating to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ enacts an impaired driving plea;
- ▶ provides that a plea to a driving under the influence violation for an offense committed on or after July 1, 2008 may be entered as an impaired driving conviction in certain circumstances;
- ▶ provides that an impaired driving conviction is a class B misdemeanor;
- ▶ provides requirements for a court entering a conviction of impaired driving in certain circumstances;
- ▶ requires the court to notify the Driver License Division of an impaired driving conviction;
- ▶ provides sentencing requirements for impaired driving convictions;
- ▶ provides that certain plea requirements when the prosecution agrees to a plea of guilty or no contest to an alcohol or drug-related reckless charge in satisfaction or



26 substitute of an original charge of driving under the influence only apply to an offense
27 committed before July 1, 2008;

28 ▶ clarifies that certain license reinstatement provisions only apply to a certain 90 day
29 suspension period imposed by the Driver License Division;

30 ▶ increases the administrative impound fee for a driving under the influence violation
31 impound;

32 ▶ repeals the prohibition on the use of pleas held in abeyance for driving under the
33 influence violations that is prohibited beginning on July 1, 2008;

34 ▶ eliminates the repeal of the provisions governing the use of pleas in abeyance for
35 driving under the influence violations; and

36 ▶ makes technical changes.

37 **Monies Appropriated in this Bill:**

38 This bill appropriates:

39 ▶ as an ongoing appropriation subject to future budget constraints, \$660,000 from the
40 General Fund for fiscal year 2008-09 to the Department of Public Safety, Utah
41 Highway Patrol; and

42 ▶ as an ongoing appropriation subject to future budget constraints, \$660,000 from the
43 General Fund for fiscal year 2008-09 to the Department of Public Safety, Liquor
44 Law Enforcement Program.

45 **Other Special Clauses:**

46 This bill provides an effective date.

47 **Utah Code Sections Affected:**

48 AMENDS:

49 **41-6a-501**, as enacted by Laws of Utah 2005, Chapter 2

50 **41-6a-510**, as renumbered and amended by Laws of Utah 2005, Chapter 2

51 **41-6a-512**, as enacted by Laws of Utah 2005, Chapter 2

52 **41-6a-518.2**, as enacted by Laws of Utah 2006, Chapter 341

53 **41-6a-529**, as last amended by Laws of Utah 2007, Chapter 261

54 **41-6a-1406**, as last amended by Laws of Utah 2005, Chapter 56 and renumbered and
55 amended by Laws of Utah 2005, Chapter 2

56 **53-3-220**, as last amended by Laws of Utah 2007, Chapter 261

- 57 **53-3-223**, as last amended by Laws of Utah 2007, Chapter 261
- 58 **63-55b-177**, as last amended by Laws of Utah 2006, Chapter 341
- 59 **76-5-207**, as last amended by Laws of Utah 2006, Chapter 341
- 60 **76-10-528**, as last amended by Laws of Utah 2005, Chapter 2
- 61 **77-2a-3**, as last amended by Laws of Utah 2006, Chapter 341

62 ENACTS:

63 **41-6a-502.5**, Utah Code Annotated 1953



64
65 *Be it enacted by the Legislature of the state of Utah:*

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

67 **41-6a-501. Definitions.**

68 (1) As used in this part:

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

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

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

73 (B) an educational series; or

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

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

77 (b) "Drug" or "drugs" means:

78 (i) a controlled substance as defined in Section 58-37-2;

79 (ii) a drug as defined in Section 58-17b-102; or

80 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
81 human body, can impair the ability of a person to safely operate a motor vehicle.

82 ~~[(b)]~~ (c) "Educational series" means an educational series obtained at a substance abuse
83 program that is approved by the Board of Substance Abuse and Mental Health in accordance
84 with Section 62A-15-105.

85 ~~[(c)]~~ (d) "Negligence" means simple negligence, the failure to exercise that degree of
86 care that an ordinarily reasonable and prudent person exercises under like or similar
87 circumstances.

88 [~~(d)~~] (e) "Screening" means a preliminary appraisal of a person:

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

90 (A) an assessment; or

91 (B) an educational series; and

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

94 [~~(e)~~] (f) "Serious bodily injury" means bodily injury that creates or causes:

95 (i) serious permanent disfigurement;

96 (ii) protracted loss or impairment of the function of any bodily member or organ; or

97 (iii) a substantial risk of death.

98 [~~(f)~~] (g) "Substance abuse treatment" means treatment obtained at a substance abuse
99 program that is approved by the Board of Substance Abuse and Mental Health in accordance
100 with Section 62A-15-105.

101 [~~(g)~~] (h) "Substance abuse treatment program" means a state licensed substance abuse
102 program.

103 [~~(h)~~] (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
104 Section 41-6a-102; and

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

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

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

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

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

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

111 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
112 combination of both-related reckless driving under [~~Sections~~];

113 (I) Section 41-6a-512; and

114 (II) Section 41-6a-528; or

115 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
116 41-6a-502.5;

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

119 (iv) local ordinances similar to Section 41-6a-502 [or], alcohol, any drug, or a
120 combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5
121 adopted in compliance with Section 41-6a-510;

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

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

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

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

131 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
132 through (viii) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is
133 the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed
134 in accordance with the plea in abeyance agreement, for purposes of:

135 (i) enhancement of penalties under:

136 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

137 (B) automobile homicide under Section 76-5-207; and

138 (ii) expungement under Section 77-18-12.

139 Section 2. Section **41-6a-502.5** is enacted to read:

140 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**

141 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of
142 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of
143 impaired driving under this section if:

144 (a) the defendant completes court ordered probation requirements; or

145 (b) (i) the prosecutor agrees as part of a negotiated plea; and

146 (ii) the court finds the plea to be in the interest of justice.

147 (2) A conviction entered under this section is a class B misdemeanor.

148 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of
149 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

150 (ii) If the defendant fails to appear before the court and establish successful completion
151 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an
152 amended conviction of Section 41-6a-502.

153 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of
154 conviction.

155 (b) The court may enter a conviction of impaired driving immediately under
156 Subsection (1)(b).

157 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor
158 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one
159 degree.

160 (5) The court shall notify the Driver License Division of each conviction entered under
161 this section.

162 (6) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a
163 sentencing court to order a convicted person to participate in a screening, an assessment, or an
164 educational series, or obtain substance abuse treatment or do a combination of those things,
165 apply to a conviction entered under this section.

166 (b) The court shall render the same order regarding screening, assessment, an
167 educational series, or substance abuse treatment in connection with a first, second, or
168 subsequent conviction under this section as the court would render in connection with applying
169 respectively, the first, second, or subsequent conviction requirements of Subsection
170 41-6a-505(1), (2), or (3).

171 Section 3. Section **41-6a-510** is amended to read:

172 **41-6a-510. Local DUI and related ordinances and reckless driving and impaired**
173 **driving ordinances -- Consistent with code.**

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

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

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

180 (i) a chemical test or chemical tests;

- 181 (ii) evidentiary presumptions;
- 182 (iii) penalties; or
- 183 (iv) any combination of the matters described in Subsection (1).

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

187 Section 4. Section **41-6a-512** is amended to read:

188 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

189 (1) (a) The prosecution shall state for the record a factual basis for a plea, including
190 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the
191 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no
192 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an
193 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,
194 2008:

- 195 (i) reckless driving under Section 41-6a-528; or
- 196 (ii) an ordinance enacted under Section 41-6a-510.

197 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows
198 whether there was consumption of alcohol, drugs, or a combination of both, by the defendant,
199 in connection with the violation.

200 (2) The court shall advise the defendant before accepting the plea offered under this
201 section of the consequences of a violation of Section 41-6a-528.

202 (3) The court shall notify the Driver License Division of each conviction of Section
203 41-6a-528 entered under this section.

204 (4) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a
205 sentencing court to order a convicted person to participate in a screening, an assessment, or an
206 educational series or obtain substance abuse treatment or do a combination of those things,
207 apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

208 (b) The court shall render the same order regarding screening, assessment, an
209 educational series, or substance abuse treatment in connection with a first, second, or
210 subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would
211 render in connection with applying respectively, the first, second, or subsequent conviction

212 requirements of Subsections 41-6a-505(1), (2), and (3).

213 Section 5. Section **41-6a-518.2** is amended to read:

214 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
215 **interlock system.**

216 (1) As used in this section:

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

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

220 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
221 41-6a-518(8); and

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

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

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

227 (II) the ~~[conviction]~~ offense described under Subsection (1)(b)(i)(B)(I) is committed
228 within ten years [of one or more prior convictions] from the date that one or more prior
229 offenses was committed if the prior offense resulted in a conviction as defined in Subsection
230 41-6a-501(2);

231 (C) within the last three years has been convicted of a violation of this section;

232 (D) within the last three years has had the person's driving privilege revoked for refusal
233 to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1,
234 2006;

235 (E) within the last three years has been convicted of a violation of Section 41-6a-502
236 and was under the age of 21 at the time the offense was committed;

237 ~~[(E)]~~ (F) within the last six years has been convicted of a felony violation of Section
238 41-6a-502 for an offense that occurred after May 1, 2006; or

239 ~~[(F)]~~ (G) within the last ten years has been convicted of automobile homicide under
240 Section 76-5-207 for an offense that occurred after May 1, 2006; and

241 (ii) "interlock restricted driver" does not include a person if:

242 (A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction under

243 Section 41-6a-517; and

244 (B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are
245 convictions under Section 41-6a-517.

246 (2) For purposes of this section, a plea of guilty or no contest to a violation of Section
247 41-6a-502 which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the
248 equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in
249 accordance with the plea in abeyance agreement.

250 (3) An interlock restricted driver that operates or is in actual physical control of a
251 vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

252 (4) (a) It is an affirmative defense to a charge of a violation of Subsection (3) if:

253 (i) an interlock restricted driver:

254 (A) operated or was in actual physical control of a vehicle owned by the interlock
255 restricted driver's employer;

256 (B) had given written notice to the employer of the interlock restricted driver's
257 interlock restricted status prior to the operation or actual physical control under Subsection
258 (4)(a)(i); and

259 (C) had on the interlock restricted driver's person or in the vehicle at the time of
260 operation or physical control proof of having given notice to the interlock restricted driver's
261 employer; and

262 (ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the
263 scope of the interlock restricted driver's employment.

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

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

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

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

270 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

273 (a) within the last two years:

274 (i) has been convicted of:

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

276 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
277 41-6a-512;

278 (C) impaired driving under Section 41-6a-502.5;

279 ~~[(C)]~~ (D) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a
280 combination of both-related reckless driving, or impaired driving adopted in compliance with
281 Section 41-6a-510;

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

284 ~~[(E)]~~ (F) statutes or ordinances previously in effect in this state or in effect in any other
285 state, the United States, or any district, possession, or territory of the United States which
286 would constitute a violation of Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a combination of
287 both-related reckless driving, or impaired driving if committed in this state, including
288 punishments administered under 10 U.S.C. Sec. 815; or

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

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

293 (c) within the last five years:

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

296 (ii) ~~[(A)]~~ has been convicted of ~~[an offense described in Subsection (1)(a)(i); and]~~ a
297 class A misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008;

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

299 ~~[(F) is 21 years of age or older; and]~~

300 ~~[(H) has a passenger under 16 years of age in the vehicle;]~~

301 (d) within the last ten years:

302 (i) has been convicted of an offense described in Subsection (1)(a)(i) which
303 ~~[conviction]~~ offense was committed within ten years of ~~[a prior conviction for an]~~ the
304 commission of a prior offense described in Subsection (1)(a)(i) for which the person was

305 convicted; or

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

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

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

311 (e) at any time has been convicted of:

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

314 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
315 1, 2005[~~;~~]; or

316 (f) at the time of operation of a vehicle is under 21 years of age.

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

321 Section 7. Section **41-6a-1406** is amended to read:

322 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**
323 **requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

324 (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under
325 Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace
326 officer or by an order of a person acting on behalf of a law enforcement agency or highway
327 authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the
328 expense of the owner.

329 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or
330 impounded to:

331 (a) a state impound yard; or

332 (b) if none, a garage, docking area, or other place of safety.

333 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be
334 removed by a tow truck motor carrier that meets standards established:

335 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

336 (b) by the department under Subsection (10).

337 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report
338 of the removal shall be sent to the Motor Vehicle Division by:

339 (i) the peace officer or agency by whom the peace officer is employed; and

340 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck
341 operator is employed.

342 (b) The report shall be in a form specified by the Motor Vehicle Division and shall
343 include:

344 (i) the operator's name, if known;

345 (ii) a description of the vehicle, vessel, or outboard motor;

346 (iii) the vehicle identification number or vessel or outboard motor identification
347 number;

348 (iv) the license number or other identification number issued by a state agency;

349 (v) the date, time, and place of impoundment;

350 (vi) the reason for removal or impoundment;

351 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or
352 outboard motor; and

353 (viii) the place where the vehicle, vessel, or outboard motor is stored.

354 (c) Until the tow truck operator or tow truck motor carrier reports the removal as
355 required under this Subsection (4), a tow truck motor carrier or impound yard may not:

356 (i) collect any fee associated with the removal; and

357 (ii) begin charging storage fees.

358 (5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the
359 registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner
360 prescribed by Section 41-1a-114.

361 (b) The notice shall:

362 (i) state the date, time, and place of removal, the name, if applicable, of the person
363 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,
364 and the place where the vehicle, vessel, or outboard motor is stored;

365 (ii) state that the registered owner is responsible for payment of towing, impound, and
366 storage fees charged against the vehicle, vessel, or outboard motor;

367 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the
368 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

369 (iv) inform the registered owner and lienholder of the division's intent to sell the
370 vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or
371 impoundment under this section, the owner, lien holder, or the owner's agent fails to make a
372 claim for release of the vehicle, vessel, or outboard motor.

373 (c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor
374 Vehicle Division shall make a reasonable effort to notify the registered owner and any lien
375 holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

376 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where
377 the vehicle, vessel, or outboard motor is stored.

378 (6) (a) The vehicle, vessel, or outboard motor shall be released after the registered
379 owner, lien holder, or the owner's agent:

380 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of
381 the State Tax Commission;

382 (ii) presents identification sufficient to prove ownership of the impounded vehicle,
383 vessel, or outboard motor;

384 (iii) completes the registration, if needed, and pays the appropriate fees;

385 (iv) if the impoundment was made under Section 41-6a-527, pays an administrative
386 impound fee of [~~\$230~~] \$330; and

387 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard
388 motor is stored.

389 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under
390 Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

391 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be
392 deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;
393 and

394 (iii) the remainder of the administrative impound fee assessed under Subsection
395 (6)(a)(iv) shall be deposited in the General Fund.

396 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be
397 waived or refunded by the State Tax Commission if the registered owner, lien holder, or

398 owner's agent presents written evidence to the State Tax Commission that:

399 (i) the Driver License Division determined that the arrested person's driver license
400 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter
401 or other report from the Driver License Division presented within 30 days of the final
402 notification from the Driver License Division; or

403 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the
404 stolen vehicle report presented within 30 days of the impoundment.

405 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered
406 owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in
407 accordance with that section and the proceeds, if any, shall be disposed of as provided under
408 Section 41-1a-1104.

409 (b) The date of impoundment is considered the date of seizure for computing the time
410 period provided under Section 41-1a-1103.

411 (8) The registered owner who pays all fees and charges incurred in the impoundment of
412 the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and
413 charges, together with damages, court costs, and attorney fees, against the operator of the
414 vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

415 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,
416 or outboard motor.

417 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
418 the department shall make rules setting the performance standards for towing companies to be
419 used by the department.

420 (11) (a) The Motor Vehicle Division may specify that a report required under
421 Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and
422 retrieval of the information.

423 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the
424 administrator of the database may adopt a schedule of fees assessed for utilizing the database.

425 (ii) The fees under this Subsection (11)(b) shall:

426 (A) be reasonable and fair; and

427 (B) reflect the cost of administering the database.

428 Section 8. Section **53-3-220** is amended to read:

429 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
430 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
431 **Limited driving privileges.**

432 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
433 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division
434 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's
435 conviction for any of the following offenses:

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

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

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

445 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
446 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
447 regulating driving on highways;

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

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

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

452 (viii) two charges of reckless driving, impaired driving, or any combination of reckless
453 driving and impaired driving committed within a period of 12 months; but if upon a first
454 conviction of reckless driving or impaired driving the judge or justice recommends suspension
455 of the convicted person's license, the division may after a hearing suspend the license for a
456 period of three months;

457 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
458 required in Section 41-6a-210;

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

460 requires disqualification;

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

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

465 (xiii) operating or being in actual physical control of a motor vehicle while having any
466 measurable controlled substance or metabolite of a controlled substance in the person's body in
467 violation of Section 41-6a-517;

468 (xiv) until July 30, 2015, operating or being in actual physical control of a motor
469 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;

470 (xv) operating or being in actual physical control of a motor vehicle while having any
471 measurable or detectable amount of alcohol in the person's body in violation of Section
472 41-6a-530;

473 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in
474 violation of Section 41-6a-606; and

475 (xvii) operating or being in actual physical control of a motor vehicle in this state
476 without an ignition interlock system in violation of Section 41-6a-518.2.

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

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

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

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

487 (i) any violation of:

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

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

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

491 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
492 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or
493 (ii) any criminal offense that prohibits:
494 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance
495 that is prohibited under the acts described in Subsection (1)(c)(i); or
496 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
497 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).
498 (2) The division shall extend the period of the first denial, suspension, revocation, or
499 disqualification for an additional like period, to a maximum of one year for each subsequent
500 occurrence, upon receiving:
501 (a) a record of the conviction of any person on a charge of driving a motor vehicle
502 while the person's license is denied, suspended, revoked, or disqualified;
503 (b) a record of a conviction of the person for any violation of the motor vehicle law in
504 which the person was involved as a driver;
505 (c) a report of an arrest of the person for any violation of the motor vehicle law in
506 which the person was involved as a driver; or
507 (d) a report of an accident in which the person was involved as a driver.
508 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
509 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
510 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
511 or revocation originally imposed under Section 53-3-221.
512 (4) (a) The division may extend to a person the limited privilege of driving a motor
513 vehicle to and from the person's place of employment or within other specified limits on
514 recommendation of the trial judge in any case where a person is convicted of any of the
515 offenses referred to in Subsections (1) and (2) except:
516 (i) automobile homicide under Subsection (1)(a)(i);
517 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
518 (1)(b), and (1)(c); and
519 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
520 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,
521 41-6a-517, a local ordinance which complies with the requirements of Subsection

522 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person
523 was charged with violating as a result of a plea bargain after having been originally charged
524 with violating one or more of these sections or ordinances.

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

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

532 Section 9. Section **53-3-223** is amended to read:

533 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
534 **Hearing and decision -- Suspension and fee -- Judicial review.**

535 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
536 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
537 certain blood or breath alcohol concentration and driving under the influence of any drug,
538 alcohol, or combination of a drug and alcohol or while having any measurable controlled
539 substance or metabolite of a controlled substance in the person's body in violation of Section
540 41-6a-517, the peace officer may, in connection with arresting the person, request that the
541 person submit to a chemical test or tests to be administered in compliance with the standards
542 under Section 41-6a-520.

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

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

550 (3) If the person submits to a chemical test and the test results indicate a blood or
551 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
552 makes a determination, based on reasonable grounds, that the person is otherwise in violation

553 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
554 arrest, give notice of the division's intention to suspend the person's license to drive a motor
555 vehicle.

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

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

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

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

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

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

567 (a) the person's license certificate;

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

569 (c) a signed report in a manner specified by the division indicating the chemical test
570 results, if any; and

571 (d) any other basis for the peace officer's determination that the person has violated
572 Section 41-6a-502 or 41-6a-517.

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

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

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

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

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

584 (ii) whether the person refused to submit to the test; and
585 (iii) the test results, if any.
586 (d) (i) In connection with a hearing the division or its authorized agent:
587 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and
588 the production of relevant books and papers; or
589 (B) may issue subpoenas for the attendance of necessary peace officers.
590 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
591 accordance with the rates established in Section 78-46-28.
592 (e) The division may designate one or more employees to conduct the hearing.
593 (f) Any decision made after a hearing before any designated employee is as valid as if
594 made by the division.
595 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
596 grounds to believe that the person was driving a motor vehicle in violation of Section
597 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
598 notice, or if a hearing is not requested under this section, the division shall suspend the person's
599 license or permit to operate a motor vehicle for a period of:
600 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or
601 (ii) one year beginning on the 30th day after the date of arrest for a second or
602 subsequent suspension for an offense that occurred within the previous ten years.
603 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall
604 reinstate a person's license prior to completion of the 90 day suspension period imposed under
605 Subsection (7)(a)(i) [~~if the person's charge for a violation of Section 41-6a-502 or 41-6a-517 is~~
606 ~~reduced or dismissed~~]:
607 (A) immediately upon receiving written verification of the person's dismissal of a
608 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received
609 prior to completion of the suspension period[-]; or
610 [~~(ii) The division shall immediately reinstate a person's license upon receiving written~~
611 ~~verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or~~
612 ~~41-6a-517.~~]
613 [~~(iii) The division shall reinstate a person's license no sooner than 60 days beginning~~
614 ~~on the 30th day after the date of arrest upon receiving written verification of the person's~~

615 ~~reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517.]~~

616 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon
617 receiving written verification of the person's reduction of a charge for a violation of Section
618 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the
619 suspension period.

620 ~~[(iv)]~~ (ii) If a person's license is reinstated under this Subsection (7)(b), the person is
621 required to pay the license reinstatement fees under Subsections 53-3-105(29) and (30).

622 (iii) The driver license reinstatements authorized under this Subsection (7)(b) only
623 apply to a 90 day suspension period imposed under Subsection (7)(a)(i).

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

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

632 Section 10. Section **63-55b-177** is amended to read:

633 **63-55b-177. Repeal dates, Title 77.**

634 ~~[Section 77-2a-3.1 is repealed June 30, 2008.]~~

635 Section 11. Section **76-5-207** is amended to read:

636 **76-5-207. Automobile homicide.**

637 (1) As used in this section~~[-,"motor"]~~:

638 (a) "Drug" or "drugs" means:

639 (i) a controlled substance as defined in Section 58-37-2;

640 (ii) a drug as defined in Section 58-17b-102; or

641 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
642 human body, can impair the ability of a person to safely operate a motor vehicle.

643 (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile,
644 truck, van, motorcycle, train, engine, watercraft, or aircraft.

645 (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person

646 operates a motor vehicle in a negligent manner causing the death of another and:

647 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
648 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
649 test;

650 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
651 and any drug to a degree that renders the person incapable of safely operating a vehicle; or

652 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
653 operation.

654 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is
655 subsequent to a conviction as defined in Subsection 41-6a-501(2).

656 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to
657 exercise that degree of care that reasonable and prudent persons exercise under like or similar
658 circumstances.

659 (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the
660 person operates a motor vehicle in a criminally negligent manner causing the death of another
661 and:

662 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
663 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
664 test;

665 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
666 and any drug to a degree that renders the person incapable of safely operating a vehicle; or

667 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
668 operation.

669 (b) As used in this Subsection (3), "criminally negligent" means criminal negligence as
670 defined by Subsection 76-2-103(4).

671 (4) The standards for chemical breath analysis as provided by Section 41-6a-515 and
672 the provisions for the admissibility of chemical test results as provided by Section 41-6a-516
673 apply to determination and proof of blood alcohol content under this section.

674 (5) Calculations of blood or breath alcohol concentration under this section shall be
675 made in accordance with Subsection 41-6a-502(1).

676 (6) The fact that a person charged with violating this section is or has been legally

677 entitled to use alcohol or a drug is not a defense.

678 (7) Evidence of a defendant's blood or breath alcohol content or drug content is
679 admissible except when prohibited by Rules of Evidence or the constitution.

680 Section 12. Section **76-10-528** is amended to read:

681 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**
682 **drugs unlawful.**

683 (1) Any person who carries a dangerous weapon while under the influence of alcohol
684 or a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor.
685 Under the influence means the same level of influence or blood or breath alcohol concentration
686 as provided in Subsections 41-6a-502(1)(a)[(i)] through [(iii)](c).

687 (2) It is not a defense to prosecution under this section that the person:

688 (a) is licensed in the pursuit of wildlife of any kind; or

689 (b) has a valid permit to carry a concealed firearm.

690 Section 13. Section **77-2a-3** is amended to read:

691 **77-2a-3. Manner of entry of plea -- Powers of court.**

692 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
693 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

694 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
695 agreement may be entered into without a personal appearance before a magistrate.

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

698 (a) reduce the degree of the offense and enter judgment of conviction and impose
699 sentence for a lower degree of offense; or

700 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

701 (3) Upon finding that a defendant has successfully completed the terms of a plea in
702 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
703 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
704 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
705 invoke Section 76-3-402 to further reduce the degree of the offense.

706 (4) The court may require the Department of Corrections to assist in the administration
707 of the plea in abeyance agreement as if the defendant were on probation to the court under

708 Section 77-18-1.

709 (5) The terms of a plea in abeyance agreement may include:

710 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
711 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
712 the same manner as if paid as a fine for a criminal conviction under Section 78-3-14.5 and a
713 surcharge under Title 63, Chapter 63a, Crime Victim Reparation Trust, Public Safety Support
714 Funds, Substance Abuse Prevention Account, and Services for Victims of Domestic Violence
715 Account, and which may not exceed in amount the maximum fine and surcharge which could
716 have been imposed upon conviction and sentencing for the same offense;

717 (b) an order that the defendant pay restitution to the victims of his actions as provided
718 in Title 77, Chapter 38a, Crime Victims Restitution Act;

719 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
720 required by the terms of the agreement; and

721 (d) an order that the defendant comply with any other conditions which could have
722 been imposed as conditions of probation upon conviction and sentencing for the same offense.

723 (6) A court may not hold a plea in abeyance without the consent of both the
724 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
725 plea in abeyance is final.

726 (7) No plea may be held in abeyance in any case involving a sexual offense against a
727 victim who is under the age of 14.

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

730 Section 14. **Appropriation.**

731 (1) As an ongoing appropriation subject to future budget constraints, there is
732 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the Department of
733 Public Safety, Utah Highway Patrol to be used for additional Driving Under the Influence Law
734 Enforcement Officers.

735 (2) As an ongoing appropriation subject to future budget constraints, there is
736 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the Department of
737 Public Safety, Liquor Law Enforcement Program to be used for additional Liquor Law
738 Enforcement Officers.

739 Section 15. **Effective date.**

740 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2008.

741 (2) If approved by two-thirds of all members elected to each house, the amendments to

742 Sections 53-3-223 and 76-10-528 take effect upon approval by the governor, or the day

743 following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the

744 governor's signature, or in the case of a veto, the date of veto override.