

**DUI AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: Bradley G. Last

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**LONG TITLE**

**General Description:**

This bill modifies the Motor Vehicles Code and the Uniform Driver License Act by amending provisions relating to driving under the influence.

**Highlighted Provisions:**

This bill:

- ▶ defines driving under the influence court;
  - ▶ provides that certain reports issued by the Driver License Division may not contain evidence of an impaired driving conviction if the reporting court notifies the Driver License Division that the defendant is participating in or has completed the program of a driving under the influence court with exception for a CDL license holder or a violation that occurred in a commercial vehicle;
  - ▶ provides that if an impaired driving conviction is amended to a driving under the influence conviction in certain circumstances, the Driver License Division shall start the applicable suspension or revocation on the date of the amended conviction and may not subtract any time for which the license was previously suspended or revoked;
  - ▶ requires the Driver License Division to reinstate a person's driver license prior to completion of a certain 90-day suspension period immediately upon receiving written verification of the person's conviction of impaired driving if:
    - the written verification is received prior to completion of the suspension period;
- and
- the reporting court notifies the Driver License Division that the defendant is

30 participating in or has successfully completed the program of a driving under the influence  
31 court; and

32       ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       None

37 **Utah Code Sections Affected:**

38 AMENDS:

39       **41-6a-501**, as last amended by Laws of Utah 2008, Chapter 226

40       **41-6a-502.5**, as enacted by Laws of Utah 2008, Chapter 226

41       **41-6a-509**, as enacted by Laws of Utah 2005, Chapter 2

42       **53-3-223**, as last amended by Laws of Utah 2008, Chapters 3, 226, and 304



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

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

46       **41-6a-501. Definitions.**

47       (1) As used in this part:

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

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

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

52       (B) an educational series; or

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

54       (ii) that is approved by the Board of Substance Abuse and Mental Health in

55 accordance with Section 62A-15-105.

56       (b) "Driving under the influence court" means a court that is approved as a driving  
57 under the influence court by the Utah Judicial Council according to standards established by

58 the Judicial Council.

59 [~~(b)~~] (c) "Drug" or "drugs" means:

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

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

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

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

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

70 [~~(e)~~] (f) "Screening" means a preliminary appraisal of a person:

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

72 (A) an assessment; or

73 (B) an educational series; and

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

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

77 (i) serious permanent disfigurement;

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

79 (iii) a substantial risk of death.

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

83 [~~(h)~~] (i) "Substance abuse treatment program" means a state licensed substance abuse  
84 program.

85 [~~(i)~~] (j) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in

86 Section 41-6a-102; and

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

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

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

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

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

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

93 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

94 combination of both-related reckless driving under:

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

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

97 (B) for an offense committed on or after July 1, 2008, impaired driving under Section

98 41-6a-502.5;

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

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

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

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

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

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

113 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)

114 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,  
115 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been  
116 subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for  
117 purposes of:

- 118 (i) enhancement of penalties under:
  - 119 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
  - 120 (B) automobile homicide under Section 76-5-207; and
- 121 (ii) expungement under Section 77-18-12.

122 Section 2. Section **41-6a-502.5** is amended to read:

123 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**

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

- 127 (a) the defendant completes court ordered probation requirements; or
- 128 (b) (i) the prosecutor agrees as part of a negotiated plea; and
- 129 (ii) the court finds the plea to be in the interest of justice.

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

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

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

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

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

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

142 degree.

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

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

149 (b) The court shall render the same order regarding screening, assessment, an  
150 educational series, or substance abuse treatment in connection with a first, second, or  
151 subsequent conviction under this section as the court would render in connection with  
152 applying respectively, the first, second, or subsequent conviction requirements of Subsection  
153 41-6a-505(1), (2), or (3).

154 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section  
155 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the  
156 reporting court notifies the Driver License Division that the defendant is participating in or has  
157 successfully completed the program of a driving under the influence court.

158 (b) The provisions of Subsection (7)(a) do not apply to a report concerning:

159 (i) a CDL license holder; or

160 (ii) a violation that occurred in a commercial motor vehicle.

161 Section 3. Section **41-6a-509** is amended to read:

162 **41-6a-509. Driver license suspension or revocation for a driving under the**  
163 **influence violation.**

164 (1) (a) The Driver License Division shall:

165 (i) suspend for 90 days the operator's license of a person convicted for the first time  
166 under Section 41-6a-502;

167 (ii) revoke for one year the license of a person convicted of any subsequent offense  
168 under Section 41-6a-502 or if the person has a prior conviction as defined under Subsection  
169 41-6a-501(2) if the violation is committed within a period of ten years from the date of the

170 prior violation; and

171 (iii) suspend or revoke the license of a person as ordered by the court under Subsection  
172 (2).

173 (b) The Driver License Division shall subtract from any suspension or revocation  
174 period the number of days for which a license was previously suspended under Section  
175 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon  
176 which the record of conviction is based.

177 (c) If a conviction recorded as impaired driving is amended to a driving under the  
178 influence conviction under Section 41-6a-502 in accordance with Subsection  
179 41-6a-502.5(3)(a)(ii), the Driver License Division:

180 (i) may not subtract from any suspension or revocation any time for which a license  
181 was previously suspended or revoked under Section 53-3-223 or 53-3-231; and

182 (ii) shall start the suspension or revocation time under Subsection (1)(a) on the date of  
183 the amended conviction.

184 (2) (a) (i) In addition to any other penalties provided in this section, a court may order  
185 the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be  
186 suspended or revoked for an additional period of 90 days, 180 days, one year, or two years to  
187 remove from the highways those persons who have shown they are safety hazards.

188 (ii) The additional suspension or revocation period provided in this Subsection (2)  
189 shall begin the date on which the individual would be eligible to reinstate the individual's  
190 driving privilege for a violation of Section 41-6a-502.

191 (b) If the court suspends or revokes the person's license under this Subsection (2), the  
192 court shall prepare and send to the Driver License Division an order to suspend or revoke that  
193 person's driving privileges for a specified period of time.

194 (3) (a) The court shall notify the Driver License Division if a person fails to:

195 (i) complete all court ordered:

196 (A) screening;

197 (B) assessment;

- 198 (C) educational series;
- 199 (D) substance abuse treatment; and
- 200 (E) hours of work in a compensatory-service work program; or
- 201 (ii) pay all fines and fees, including fees for restitution and treatment costs.
- 202 (b) Upon receiving the notification described in Subsection (3)(a), the division shall
- 203 suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

204 Section 4. Section **53-3-223** is amended to read:

205 **53-3-223. Chemical test for driving under the influence -- Temporary license --**  
206 **Hearing and decision -- Suspension and fee -- Judicial review.**

207 (1) (a) If a peace officer has reasonable grounds to believe that a person may be  
208 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a  
209 certain blood or breath alcohol concentration and driving under the influence of any drug,  
210 alcohol, or combination of a drug and alcohol or while having any measurable controlled  
211 substance or metabolite of a controlled substance in the person's body in violation of Section  
212 41-6a-517, the peace officer may, in connection with arresting the person, request that the  
213 person submit to a chemical test or tests to be administered in compliance with the standards  
214 under Section 41-6a-520.

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

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

222 (3) If the person submits to a chemical test and the test results indicate a blood or  
223 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer  
224 makes a determination, based on reasonable grounds, that the person is otherwise in violation  
225 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of

226 arrest, give notice of the division's intention to suspend the person's license to drive a motor  
227 vehicle.

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

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

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

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

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

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

239 (a) the person's license certificate;

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

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

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

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

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

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

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

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

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

257 (iii) the test results, if any.

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

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

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

262 (ii) The division shall pay witness fees and mileage from the Transportation Fund in  
263 accordance with the rates established in Section 78B-1-119.

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

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

267 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable  
268 grounds to believe that the person was driving a motor vehicle in violation of Section  
269 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the  
270 notice, or if a hearing is not requested under this section, the division shall suspend the  
271 person's license or permit to operate a motor vehicle for a period of:

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

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

275 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall  
276 reinstate a person's license prior to completion of the 90 day suspension period imposed under  
277 Subsection (7)(a)(i):

278 (A) immediately upon receiving written verification of the person's dismissal of a  
279 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received  
280 prior to completion of the suspension period; or

281 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon

282 receiving written verification of the person's reduction of a charge for a violation of Section  
283 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the  
284 suspension period.

285 (ii) Notwithstanding the provisions in Subsection (7)(a)(i) or (7)(b)(i), the division  
286 shall reinstate a person's license prior to completion of the 90-day suspension period imposed  
287 under Subsection (7)(a)(i) immediately upon receiving written verification of the person's  
288 conviction of impaired driving under Section 41-6a-502.5 if:

289 (A) the written verification is received prior to completion of the suspension period;  
290 and

291 (B) the reporting court notifies the Driver License Division that the defendant is  
292 participating in or has successfully completed the program of a driving under the influence  
293 court as defined in Section 41-6a-501.

294 [~~iii~~] (iii) If a person's license is reinstated under this Subsection (7)(b), the person is  
295 required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

296 [~~iii~~] (iv) The driver license reinstatements authorized under this Subsection (7)(b)  
297 only apply to a 90 day suspension period imposed under Subsection (7)(a)(i).

298 (8) (a) The division shall assess against a person, in addition to any fee imposed under  
299 Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to  
300 cover administrative costs, which shall be paid before the person's driving privilege is  
301 reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or  
302 court decision that the suspension was not proper.

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