

SB0028S01 compared with SB0028

~~{deleted text}~~ shows text that was in SB0028 but was deleted in SB0028S01.

inserted text shows text that was not in SB0028 but was inserted into SB0028S01.

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Senator Scott K. Jenkins proposes the following substitute bill:

ALCOHOL OR DRUG RELATED OFFENSE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~— The Transportation Interim Committee recommended this bill.~~

~~{General Description:~~

This bill modifies provisions relating to the driver license suspension period and other sentencing requirements for certain alcohol or drug related offenses.

Highlighted Provisions:

This bill:

- ▶ amends the administrative suspension periods for certain alcohol related offenses;
- ▶ amends the driver license suspension period for a person convicted of certain alcohol or drug related offenses;
- ▶ provides that a court may shorten a person's driver license suspension period for certain alcohol or drug related offenses prior to the completion of the suspension

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period if the person completes certain requirements; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

41-6a-509, as last amended by Laws of Utah 2009, Chapters 201 and 390

41-6a-517, as last amended by Laws of Utah 2009, Chapter 390

41-6a-521, as last amended by Laws of Utah 2009, Chapters 40 and 390

53-3-223, as last amended by Laws of Utah 2009, Chapters 40, 201, and 390

53-3-231 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapter 276

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

Section 1. Section **41-6a-509** is amended to read:

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

(1) ~~[(a)]~~ The Driver License Division shall ~~[(a)]~~

~~[(i)]~~ if the person is 21 years of age or older at the time of arrest:

~~[(A)]~~ ~~[(a)]~~ suspend for a period of 120 days the operator's license of a person convicted for the first time under Section 41-6a-502 of an offense committed on or after July 1, 2009;

~~and~~ ~~or~~

~~[(B)]~~ ~~[(b)]~~ revoke for a period of two years the license of a person if:

~~[(i)]~~ ~~[(i)]~~ the person has a prior conviction as defined under Subsection 41-6a-501(2);

and

~~[(ii)]~~ ~~[(ii)]~~ the current driving under the influence violation under Section 41-6a-502 is committed:

~~[(Aa)]~~ ~~[(A)]~~ within a period of 10 years from the date of the prior violation; and

~~[(Bb)]~~ ~~[(B)]~~ on or after July 1, 2009 ~~[(a)]~~.

~~[(iii)]~~ ~~2~~ The Driver License Division shall, if the person is 19 years of age or older but

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under 21 years of age at the time of arrest:

~~(A)a~~ suspend the person's driver license until the person is 21 years of age or for a period of one year, whichever is longer, if the person is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2011;

~~(B)b~~ deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of one year, whichever is longer, if the person:

~~(i)~~ is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2011; and

~~(ii)~~ has not been issued an operator license;

~~(C)c~~ revoke the person's driver license until the person is 21 years of age or for a period of two years, whichever is longer, if:

~~(i)~~ the person has a prior conviction as defined under Subsection 41-6a-501(2); and

~~(ii)~~ the current driving under the influence violation under Section 41-6a-502 is committed;

~~(Aa)~~ on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

~~(Bb)~~ on or after July 1, 2009; or

~~(D)d~~ deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of two years, whichever is longer, if:

~~(i)~~ the person has a prior conviction as defined under Subsection 41-6a-501(2);

~~(ii)~~ the current driving under the influence violation under Section 41-6a-502 is committed;

~~(Aa)~~ on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

~~(Bb)~~ on or after July 1, 2009; and

~~(iii)~~ the person has not been issued an operator license;

~~(ii)~~ ~~(iii)~~ 3) The Driver License Division shall if the person is under ~~[21]~~ 19 years of age at the time of arrest:

~~(A)~~ (a) suspend the person's driver license until the person is 21 years of age [or for a period of 120 days, whichever is longer,] if the person is convicted for the first time of a

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driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2009;

~~[(B)]~~ (b) deny the person's application for a license or learner's permit until the person is 21 years of age ~~[or for a period of 120 days, whichever is longer,]~~ if the person:

~~[(F)]~~ (i) is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2009; and

~~[(H)]~~ (ii) has not been issued an operator license;

~~[(E)]~~ (c) revoke the person's driver license until the person is 21 years of age ~~[or for a period of two years, whichever is longer,]~~ if:

~~[(F)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

~~[(H)]~~ (ii) the current driving under the influence violation under Section 41-6a-502 is committed ~~[-;]~~

~~_____]~~ (Aa) on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; ~~[and]~~ or

~~[(Bb) on or after July 1, 2009; or]~~

~~[(D)]~~ (d) deny the person's application for a license or learner's permit until the person is 21 years of age ~~[or for a period of two years, whichever is longer,]~~ if:

~~[(F)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

~~[(H)]~~ (ii) the current driving under the influence violation under Section 41-6a-502 is committed ~~[-;]~~

~~_____]~~ (Aa) on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and ~~_____]~~

~~[(Bb) on or after July 1, 2009; and]~~

~~[(H)]~~ (iii) the person has not been issued an operator license ~~[-; and]~~

~~[(iii)]~~ (3) The Driver License Division shall suspend or revoke the license of a person as ordered by the court under Subsection ~~[(2)]~~ (9).

~~[(b)]~~ (4) The Driver License Division shall:

~~[(i)]~~ a) deny, suspend, or revoke the operator's license of a person convicted under Section 41-6a-502 of an offense that was committed prior to July 1, 2009, for the denial, suspension, or revocation periods in effect prior to July 1, 2009 ~~[-;]~~ or

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(fii)b deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

(fA)i the person was f1920 years of age or older but under 21 years of age at the time of arrest; and

(fB)ii the conviction under Section 41-6a-502 is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

(f)1(5) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(f)1(6) If a conviction recorded as impaired driving is amended to a driving under the influence conviction under Section 41-6a-502 in accordance with Subsection 41-6a-502.5(3)(a)(ii), the Driver License Division:

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

(f+)b shall start the suspension or revocation time under Subsection (1)(f+a) on the date of the amended conviction.

(f)7 A court that reported a conviction of a violation of Section 41-6a-502 for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (f+)2(a)(ii)(A) or (fB)b or Subsection (f+)3(a)(iii)(A) or (fB)b prior to completion of the suspension period if the person:

(f)a (fA)i for a suspension imposed under Subsection (f+)2(a)(ii)(A) or (fB)b, completes at least six months of the license suspension; or

(fB)ii for a license suspension imposed under Subsection (f+)3(a)(iii)(A) or (fB)b, completes at least two years of the license suspension;

(fii)b completes a screening;

(fiii)c completes an assessment, if it is found appropriate by a screening under Subsection (f+)7(f)(iii)b;

(fiv)d completes substance abuse treatment if it is found appropriate by the assessment under Subsection (f+)7(f)(iii)c;

(fv)e completes an educational series if substance abuse treatment is not required by

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an assessment under Subsection (f1)7)(e)(iii)c) or the court does not order substance abuse treatment:

(fvii)f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (f1)2)(a)(ii)(A) or (B)b) or Subsection (f1)3)(a)(iii)(A) or (B)b):

(fviii)g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(fviii)h) (A)i) is 18 years of age or older and provides a sworn statement to the court that the person has not ~~fingered or had access to~~ consumed alcohol in violation of Section 32B-4-409 during the suspension period imposed under Subsection (f1)2)(a)(ii)(A) or (B)b) or Subsection (f1)3)(a)(iii)(A) or (B)b); or

(B)ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person

~~(f) has not consumed alcohol in violation of Section 32B-4-409 during the suspension period imposed under Subsection (f1)2)(a)(ii)(A) or (B)b) or Subsection (f1)(a)(iii)(A) or (B); and~~

~~(H) has not had access to alcohol during the suspension period imposed under Subsection (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B);~~

~~(f)3)(a) or (b).~~

(8) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (f1)e)7), the court shall forward the order shortening the person's suspension period prior to the completion of the suspension period imposed under Subsection (f1)2)(a)(ii)(A) or (B)b) or Subsection (f1)3)(a)(iii)(A) or (B)b) to the Driver License Division.

(2)1(9) (a) (i) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(ii) The additional suspension or revocation period provided in this Subsection (2)1(9) shall begin the date on which the individual would be eligible to reinstate the individual's

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driving privilege for a violation of Section 41-6a-502.

(b) If the court suspends or revokes the person's license under this Subsection ~~[(2)]~~[(9)], the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

~~[(3)]~~[(10)] (a) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered:

(A) screening;

(B) assessment;

(C) educational series;

(D) substance abuse treatment; and

(E) hours of work in a compensatory-service work program; or

(ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification described in Subsection ~~[(3)]~~[(10)](a), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

Section 2. Section **41-6a-517** is amended to read:

41-6a-517. Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.

(1) As used in this section:

(a) "Controlled substance" means any substance scheduled under Section 58-37-4.

(b) "Practitioner" has the same meaning as provided in Section 58-37-2.

(c) "Prescribe" has the same meaning as provided in Section 58-37-2.

(d) "Prescription" has the same meaning as provided in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was:

(a) involuntarily ingested by the accused;

(b) prescribed by a practitioner for use by the accused; or

(c) otherwise legally ingested.

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~~[(b)]~~ ~~(f)(8)~~ The Driver License Division shall, ~~(f)~~ if the person is under ~~[21]~~ 19 years of age on the date of arrest:

~~[(i)]~~ (a) suspend, until the person is 21 years of age ~~[or for a period of 120 days]~~, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

~~[(ii)]~~ (b) revoke, until the person is 21 years of age ~~[or for a period of two years]~~, the driver license of a person if:

~~[(A)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

~~[(B)]~~ (ii) the current violation under Subsection (2) is committed ~~[(f)]~~ ~~—~~ ~~(f)~~ on or after July 1, 2009, and within a period of 10 years after the date of the prior violation ~~[(f)]~~ ~~;~~ ~~and~~ ~~[(f)]~~.

~~[(H)]~~ ~~on or after July 1, 2009;~~

~~[(e)]~~ ~~(f)(9)~~ The Driver License Division shall ~~(f)~~ subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based ~~[(f)]~~ ~~;~~ ~~and~~ ~~[(f)]~~.

(10) The Driver License Division shall:

~~[(d)]~~ ~~(f)(i)a~~ deny, suspend, or revoke a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was committed prior to July 1, 2009 ~~[(f)]~~ ~~;~~ ~~or~~

~~[(ii)b]~~ deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

~~[(A)]~~ i the person was ~~(f)(9)~~ 20 years of age or older but under 21 years of age at the time of arrest; and

~~[(B)]~~ ii the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

~~(f)(11)~~ A court that reported a conviction of a violation of this section for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (f)(7)(f)(i)a or (f)(8)(f)(i)a prior to completion of the suspension period if the person:

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(a) (i) for a license suspension imposed under Subsection ~~(6)7~~(~~b~~)(~~1~~)a, completes at least six months of the license suspension; or

(ii) for a license suspension imposed under Subsection ~~(6)8~~(~~c~~)(~~1~~)a, completes at least two years of the license suspension;

(b) completes a screening;

(c) completes an assessment, if it is found appropriate by a screening under Subsection ~~(7)11~~(b);

(d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection ~~(7)11~~(c);

(e) completes an educational series if substance abuse treatment is not required by the assessment under Subsection ~~(7)11~~(c) or the court does not order substance abuse treatment;

(f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection ~~(6)7~~(~~b~~)(~~1~~)a or ~~(6)8~~(~~c~~)a(i);

(g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(h) (i) is 18 years of age or older and provides a sworn statement to the court that the person has not ~~ingested or had access to~~consumed a controlled ~~substances~~substance not prescribed by a practitioner for use by the person or alcohol in violation of Section 32B-4-409 during the suspension period imposed under Subsection ~~(6)7~~(~~b~~)(~~1~~)a or ~~(6)8~~(~~c~~)(~~1~~)a; or

(ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or other sworn statement to the court certifying that to the parent or legal guardian's knowledge the person

~~(A) } has not consumed a controlled substance not prescribed by a practitioner for use by the person or alcohol }during the suspension period imposed under Subsection (6)(b)(i) or (6)(c)(i); and~~

~~(B) has not had access to a controlled substance not prescribed by a practitioner for use by the person or alcohol}in violation of Section 32B-4-409 during the suspension period imposed under Subsection ~~(6)7~~(~~b~~)(~~1~~)a or ~~(6)8~~(~~c~~)(~~1~~)a.~~

~~(8)12~~ If the court shortens a person's license suspension period in accordance with the requirements of Subsection ~~(7)11~~, the court shall forward the order shortening the

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person's license suspension period prior to the completion of the suspension period imposed under Subsection ~~(6;7)~~(~~b~~)(~~i~~)(~~a~~) or ~~(6;8)~~(~~c~~)(~~i~~)(~~a~~) to the Driver License Division.

~~(7)~~ ~~(9;13)~~ (a) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered screening and assessment, educational series, and substance abuse treatment; or

(ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

~~(8)~~ ~~(10;14)~~ The court shall order supervised probation in accordance with Section 41-6a-507 for a person convicted under Subsection (2).

Section 3. Section **41-6a-521** is amended to read:

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

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

(b) A request for the hearing shall be made in writing within 10 calendar days after the day on which notice is provided.

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

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

(i) for a person 21 years of age or older on the date of arrest, for a period of:

(A) ~~[18 months]~~ two years if the arrest was made on or after July 1, 2011, unless Subsection (1)(d)(i)(B) applies; or

(B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

(II) conviction for an offense that occurred within the previous 10 years from the date

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of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;

(ii) for a person under 21 years of age on the date of arrest:

(A) until the person is 21 years of age or for a period of [~~18 months~~] two years, whichever is longer, if the arrest was made on or after July 1, [~~2009~~] 2011, unless Subsection (1)(d)(ii)(B) applies; or

(B) until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or

(iii) for a person that was arrested prior to July 1, 2009, for the suspension periods in effect prior to July 1, 2009.

(2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in:

(i) the county in which the offense occurred; or

(ii) a county which is adjacent to the county in which the offense occurred.

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

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

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

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

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

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

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

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(b) The Driver License Division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.

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

(i) for a person 21 years of age or older on the date of arrest, for a period of:

(A) [~~18 months~~] two years if the arrest was made on or after July 1, 2011, and unless Subsection (5)(a)(i)(B) applies; or

(B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;

(ii) for a person under 21 years of age on the date of arrest:

(A) until the person is 21 years of age or for a period of [~~18 months~~] two years, whichever is longer, for an arrest that was made on or after July 1, [~~2009~~] 2011, and unless Subsection (5)(a)(ii)(B) applies; or

(B) until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or

(iii) for a person that was arrested prior to July 1, 2009, for the revocation periods in

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effect prior to July 1, 2009.

(b) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:

(a) the person's license certificate;

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

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

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

(6) (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within 10 calendar days of the day on which notice is provided under Subsection (5).

(b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in:

(A) the county in which the arrest occurred; or

(B) a county that is adjacent to the county in which the arrest occurred.

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

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

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

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

(iii) the test results, if any.

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

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

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

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

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

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

(7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:

(i) if the person is 21 years of age or older at the time of arrest and the arrest was made on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a period of:

(A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or

(B) two years beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; ~~or~~

(ii) if the person is 19 years of age or older but under 21 years of age at the time of arrest and the arrest was made on or after July 1, 2011:

(A) suspend the person's license or permit to operate a motor vehicle:

(I) for a period of six months, beginning on the 30th day after the date of arrest for a first suspension; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

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(B) deny the person's application for a license or learner's permit:

(I) for a period of six months for a first suspension, if the person has not been issued an operator license; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

~~[(ii)]~~ (iii) if the person is under ~~[21]~~ 19 years of age at the time of arrest and the arrest was made on or after July 1, 2009:

(A) suspend the person's license or permit to operate a motor vehicle:

~~(I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]~~
for a period of two years beginning on the 30th day after the date of arrest for a first suspension; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(B) deny the person's application for a license or learner's permit:

~~(I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]~~
for a period of two years for a first suspension, if the person has not been issued an operator license; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years.

(b) The division shall deny or suspend a person's license for the denial and suspension periods in effect:

(i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009[-]; or

(ii) from July 1, 2009, through June 30, 2011, if:

(A) the person was ~~19~~20 years 6 months of age or older but under 21 years of age at the time of arrest; and

(B) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

(c) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall

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reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):

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

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

(ii) Notwithstanding the provisions in Subsection (7)(a)(i)(~~A~~) or (7)(b)(~~(i)~~), the division shall reinstate a person's license prior to completion of the [90] 120-day suspension period imposed under Subsection (7)(a)(i)(~~A~~) immediately upon receiving written verification of the person's conviction of impaired driving under Section 41-6a-502.5 if:

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

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

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

(iv) The driver license reinstatements authorized under this Subsection (7)(c) only apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

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

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

Section 5. Section **53-3-231 (Effective 07/01/11)** is amended to read:

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53-3-231 (Effective 07/01/11). Person under 21 may not operate a vehicle or motorboat with detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse authority or program.

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

(i) "Local substance abuse authority" has the same meaning as provided in Section 62A-15-102.

(ii) "Substance abuse program" means any substance abuse program licensed by the Department of Human Services or the Department of Health and approved by the local substance abuse authority.

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6a-502(1).

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol concentration in the person's body as shown by a chemical test.

(b) A person who violates Subsection (2)(a), in addition to any other applicable penalties arising out of the incident, shall have the person's operator license denied or suspended as provided in Subsection (8).

(3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32B-4-409, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.

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

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

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

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

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

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

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

(6) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:

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

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

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

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

(7) (a) (i) Upon request in a manner specified by the division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32B-4-409.

(ii) The request shall be made within 10 calendar days of the day on which notice is provided.

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

(A) the county in which the arrest occurred; or

(B) a county that is adjacent to the county in which the arrest occurred.

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

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

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

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

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(iii) the test results, if any.

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

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

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

(8) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Subsection (2)(a), if the person fails to appear before the division as required in the notice, or if the person does not request a hearing under this section, the division shall:

(a) for a person 19 years of age or older but under 21 years of age on the date of arrest:

(i) deny the person's license ~~{} until [the person is 21 years of age or for a period of 120 days, whichever is longer,]~~ the person complies with Subsection (11)(b)(i) but for a period of not less than six months beginning on the 30th day after the date of arrest for a first offense under Subsection (2)(a) committed on or after July 1, 2009;

~~[(b)]~~ (ii) suspend the person's license until the person complies with Subsection(11)(b)(i) and until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent offense under Subsection (2)(a)~~;~~

~~— [(i) {} (A) {} committed on or after July 1, 2009, and {} within 10 years of a prior denial or suspension; [and]~~

~~[(ii) {} (B) {} committed on or after July 1, 2009;]~~

~~[(c)]~~ (iii) deny the person's application for a license or learner's permit ~~{} until [the person is 21 years of age or for a period of one year, whichever is longer,]~~ the person complies with Subsection (11)(b)(i) but for a period of not less than six months if:

~~[(+)]~~ (A) the person has not been issued an operator license; and

~~[(+)]~~ (B) the suspension is for a first offense under Subsection (2)(a) committed on or after July 1, 2009;

~~[(d)]~~ (iv) deny the person's application for a license or learner's permit until the person complies with Subsection (11)(b)(i) and until the person is 21 years of age or for a period of

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two years, whichever is longer, if:

~~[(i)]~~ (A) the person has not been issued an operator license; and

~~[(ii)]~~ (B) the suspension is for a second or subsequent offense under Subsection

(2)(a)~~;~~

~~_____~~ ~~[(A)]~~ ~~[(H)]~~ committed on or after July 1, 2009, and ~~[(I)]~~ within 10 years of a prior denial or suspension; ~~[and] or~~

~~[(B)]~~ ~~[(H)]~~ ~~committed on or after July 1, 2009, or~~

~~[(e)]~~ (v) deny or suspend a person's license for the denial and suspension periods in effect:

(A) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed prior to July 1, 2009~~[-]; or~~

(B) from July 1, 2009, through June 30, 2011, if~~;~~

~~_____~~ ~~[(I)]~~ the person was ~~[(I)]~~ 20 years 6 months of age or older but under 21 years of age at the time of arrest~~;~~ and~~;~~

~~_____~~ ~~[(H)]~~ the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; and

(b) for a person under 19 years of age on the date of arrest:

(i) deny the person's license until the person complies with Subsection (11)(b)(i) but for a period of ~~[(I)]~~ not less than one year beginning on the 30th day after the date of arrest for a first offense under Subsection (2)(a) committed on or after July 1, 2009;

(ii) suspend the person's license until the person complies with Subsection (11)(b)(i) and until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent offense under Subsection (2)(a)~~;~~

~~_____~~ ~~[(A)]~~ committed on or after July 1, 2009, and within 10 years of a prior denial or suspension~~;~~ and

~~_____~~ ~~[(B)]~~ ~~committed on or after July 1, 2009~~;

(iii) deny the person's application for a license or learner's permit until the person complies with Subsection (11)(b)(i) but for a period of ~~[(I)]~~ not less than one year if:

(A) the person has not been issued an operator license; and

(B) the suspension is for a first offense under Subsection (2)(a) committed on or after

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July 1, 2009:

(iv) deny the person's application for a license or learner's permit until the person ~~complies with Subsection(11)(b)(i) and until the person~~ is 21 years of age or for a period of two years, whichever is longer, if:

(A) the person has not been issued an operator license; and

(B) the suspension is for a second or subsequent offense under Subsection (2)(a)~~;~~

~~— (F) committed on or after July 1, 2009, and within 10 years of a prior denial or suspension~~;~~ and~~

~~— (H) committed on or after July 1, 2009; or~~

(v) deny or suspend a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed prior to July 1, 2009.

(9) (a) (i) Following denial or suspension the division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

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

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

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

(11) (a) In addition to the penalties in Subsection (8), a person who violates Subsection (2)(a) shall:

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

(ii) be referred by the division to the local substance abuse authority for an assessment

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and recommendation for appropriate action.

(b) (i) Reinstatement of the person's operator license or the right to obtain an operator license within five years of the effective date of the license sanction under Subsection (8) is contingent upon successful completion of the action recommended by the local substance abuse authority or the substance abuse program.

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

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

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

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

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

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

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

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

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

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

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

(iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees

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associated with the recommended program to which the person selected or is referred.

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

Section 6. **Effective date.**

This bill takes effect on July 1, 2011.

†

Legislative Review Note

~~as of 11-17-10 2:21 PM~~

~~Office of Legislative Research and General Counsel}~~