

CUSTODIAL INTERFERENCE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes in sanctions for custodial interference.

Highlighted Provisions:

This bill:

- ▶ allows a person to be charged with a third degree felony after two instances of being held in contempt for custodial interference;
- ▶ redefines custodial interference to require that 24 hours have to have passed before it can be charged; and
- ▶ deletes the provision for a class B misdemeanor.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-3-220, as last amended by Laws of Utah 2010, Chapters 276 and 374

76-5-303, as repealed and reenacted by Laws of Utah 2010, Chapter 374

76-5-303.5, as enacted by Laws of Utah 2010, Chapter 374

ENACTS:

76-5-303.1, Utah Code Annotated 1953



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

Section 1. Section **53-3-220** is amended to read:

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

(1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's conviction for:

(i) manslaughter or negligent homicide resulting from driving a motor vehicle, or automobile homicide under Section 76-5-207 or 76-5-207.5;

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

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

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

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

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

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

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

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

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

(xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle;

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

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

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

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

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

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

(xviii) custodial interference, under:

(A) Subsection 76-5-303(3), which suspension shall be for a period of ~~[30]~~ 90 days, unless the court provides the division with an order of suspension for a shorter period of time; or

(B) Subsection 76-5-303(4), which suspension shall be for a period of ~~[90]~~ 180 days, unless the court provides the division with an order of suspension for a shorter period of time[; ~~or~~].

~~[(C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days, unless the court provides the division with an order of suspension for a shorter period of time.]~~

(b) The division shall immediately revoke the license of a person upon receiving a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

(i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle; or

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

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

(i) any violation of:

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

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

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

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

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

(ii) any criminal offense that prohibits:

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

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

(d) (i) The division shall immediately suspend a person's driver license for conviction of the offense of theft of motor vehicle fuel under Section 76-6-404.7 if the division receives:

(A) an order from the sentencing court requiring that the person's driver license be suspended; and

(B) a record of the conviction.

(ii) An order of suspension under this section is at the discretion of the sentencing court, and may not be for more than 90 days for each offense.

(e) (i) The division shall immediately suspend for one year the license of a person upon receiving a record of:

(A) conviction for the first time for a violation under Section 32B-4-411; or

(B) an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under Section 32B-4-411.

(ii) The division shall immediately suspend for a period of two years the license of a

person upon receiving a record of:

(A) (I) conviction for a second or subsequent violation under Section 32B-4-411; and

(II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior conviction for a violation under Section 32B-4-411; or

(B) (I) a second or subsequent adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under Section 32B-4-411; and

(II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under Section 32B-4-411.

(iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

(A) for a conviction or adjudication described in Subsection (1)(e)(i):

(I) impose a suspension for one year beginning on the date of conviction; or

(II) if the person is under the age of eligibility for a driver license, impose a suspension that begins on the date of conviction and continues for one year beginning on the date of eligibility for a driver license; or

(B) for a conviction or adjudication described in Subsection (1)(e)(ii):

(I) impose a suspension for a period of two years; or

(II) if the person is under the age of eligibility for a driver license, impose a suspension that begins on the date of conviction and continues for two years beginning on the date of eligibility for a driver license.

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

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

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

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

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

(3) When the division receives a report under Subsection (2)(c) or (d) that a person is

driving while the person's license is denied, suspended, disqualified, or revoked, the person is entitled to a hearing regarding the extension of the time of denial, suspension, disqualification, or revocation originally imposed under Section 53-3-221.

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

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

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

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

(A) the person has had the period of the first denial, suspension, revocation, or disqualification extended for a period of at least three years;

(B) the division receives written verification from the person's primary care physician that:

(I) to the physician's knowledge the person has not used any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner within the last three years; and

(II) the physician is not aware of any physical, emotional, or mental impairment that would affect the person's ability to operate a motor vehicle safely; and

(C) for a period of one year prior to the date of the request for a limited driving privilege:

(I) the person has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle;

(II) the division has not received a report of an arrest for a violation of any motor vehicle law in which the person was involved as the operator of the vehicle; and

(III) the division has not received a report of an accident in which the person was involved as an operator of a vehicle.

(b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege authorized in this Subsection (4):

(A) is limited to when undue hardship would result from a failure to grant the privilege; and

(B) may be granted only once to any person during any single period of denial, suspension, revocation, or disqualification, or extension of that denial, suspension, revocation, or disqualification.

(ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

(A) is limited to when the limited privilege is necessary for the person to commute to school or work; and

(B) may be granted only once to any person during any single period of denial, suspension, revocation, or disqualification, or extension of that denial, suspension, revocation, or disqualification.

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

Section 2. Section **76-5-303** is amended to read:

76-5-303. Custodial interference.

(1) As used in this section:

(a) "Child" means a person under the age of 18.

(b) "Custody" means court-ordered physical custody entered by a court of competent jurisdiction.

(c) "Visitation" means court-ordered parent-time or visitation entered by a court of competent jurisdiction.

(2) (a) A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child for at least 24 hours, with the intent to interfere with the visitation of the child.

(b) A person who is entitled to visitation of a child is guilty of custodial interference if,

during a period of time when the person is not entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody of the child for at least 24 hours, with the intent to interfere with the custody of the child.

~~[(3) Except as provided in Subsection (4) or (5), custodial interference is a class B misdemeanor.]~~

~~[(4)] (3)~~ Except as provided in Subsection ~~[(5)] (4)~~, the actor described in Subsection (2) is guilty of a class A misdemeanor ~~[if the actor:]~~.

~~[(a) commits custodial interference; and]~~

~~[(b) has been convicted of custodial interference at least twice in the two-year period immediately preceding the day on which the commission of custodial interference described in Subsection (4)(a) occurs.]~~

~~[(5)] (4)~~ Custodial interference is a felony of the third degree if~~[-]~~:

(a) during the course of the custodial interference, the actor described in Subsection (2) removes, causes the removal, or directs the removal of the child from the state~~[-]~~; or

(b) the actor described in Subsection (2) has been convicted of or held in contempt for custodial interference at least twice in the two-year period immediately preceding the day on which the most recent commission of custodial interference described in Subsection (2) occurs.

~~[(6)] (5)~~ In addition to the affirmative defenses described in Section 76-5-305, it is an affirmative defense to the crime of custodial interference that:

(a) the action is consented to by the person whose custody or visitation of the child was interfered with; or

(b) (i) the action is based on a reasonable belief that the action is necessary to protect a child from abuse, including sexual abuse; and

(ii) before engaging in the action, the person reports the person's intention to engage in the action, and the basis for the belief described in Subsection ~~[(6)] (5)~~(b)(i), to the Division of Child and Family Services or law enforcement.

~~[(7)] (6)~~ In addition to the other penalties described in this section, a person who is convicted of custodial interference is subject to the driver license suspension provisions of Subsection 53-3-220(1)(a)(xviii).

Section 3. Section **76-5-303.1** is enacted to read:

76-5-303.1. Custodial interference -- Civil contempt action.

(1) A person who is entitled to visitation with or custody of a minor child may, upon a violation of the person's visitation or custody, file an affidavit and statement of facts for a notice and order to show cause with the court having jurisdiction in the custody proceedings. The statement shall include specifics detailing the violation of the court's custody or visitation order, including:

- (a) the name of the person to be held in contempt;
- (b) the person's relationship to the minor child; and
- (c) the date or inclusive dates of the violation.

(2) The court shall proceed in accordance with Title 78B, Chapter 6, Part 3, Contempt. Upon a finding of contempt, the order of the court shall include a statement to the person that if subsequently found in contempt for a violation of the court's custody or visitation order, the person may be subject to additional criminal penalties in accordance with Section 76-5-303.

Section 4. Section **76-5-303.5** is amended to read:

76-5-303.5. Notification of conviction of custodial interference.

(1) As used in this section:

- (a) "Convicted" means that a person has received a conviction.
- (b) "Conviction" is as defined in Section 53-3-102.

(2) If a person is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

- (a) a class [B] A misdemeanor, under Subsection 76-5-303(3); or
- ~~[(b) a class A misdemeanor, under Subsection 76-5-303(4); or]~~
- ~~[(c)]~~ (b) a felony, under Subsection 76-5-303~~[(5)]~~(4).

Legislative Review Note

as of 1-10-12 11:41 AM

Office of Legislative Research and General Counsel