

HB0155S01 compared with HB0155

~~text~~ shows text that was in HB0155 but was deleted in HB0155S01.

Inserted text shows text that was not in HB0155 but was inserted into HB0155S01.

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Representative Norman K Thurston proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE AND PUBLIC SAFETY

REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ reduces the blood alcohol content limit for driving under the influence;
- ▶ reduces the blood alcohol content limit in relation to certain criminal offenses;
- ▶ defines "novice learner driver";
- ▶ defines "novice licensed driver";
- ▶ modifies the definition of "alcohol restricted driver" to include a novice learner driver and a novice licensed driver; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

34A-3-112, as renumbered and amended by Laws of Utah 1997, Chapter 375

41-6a-501, as last amended by Laws of Utah 2010, Chapter 283

41-6a-502, as last amended by Laws of Utah 2010, Chapter 109

41-6a-529, as last amended by Laws of Utah 2008, Chapter 226

76-5-207, as last amended by Laws of Utah 2009, Chapter 214

ENACTS:

41-6a-515.5, Utah Code Annotated 1953

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

Section 1. Section **34A-3-112** is amended to read:

34A-3-112. Employee's willful misconduct.

(1) Notwithstanding anything contained in this chapter, an employee or dependent of any employee is not entitled to receive compensation for disability or death from an occupational disease when the disability or death, wholly or in part, was caused by the purposeful self-exposure of the employee.

(2) Except in cases resulting in death:

(a) Compensation provided for in this chapter shall be reduced 15% when the occupational disease is caused by the willful failure of the employee:

(i) to use safety devices when provided by the employer; or

(ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee.

(b) Except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsections (2)(b)(i) through (iii), disability compensation may not be awarded under this chapter to an employee when the major contributing cause of the

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employee's disease is the employee's:

- (i) use of illegal substances;
- (ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or
- (iii) intoxication from alcohol with a blood or breath alcohol concentration of [~~.08~~] .05

grams or greater as shown by a chemical test.

Section 2. Section **41-6a-501** is amended to read:

41-6a-501. Definitions.

(1) As used in this part:

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

- (i) used to determine if a person is in need of:
 - (A) substance abuse treatment that is obtained at a substance abuse program;
 - (B) an educational series; or
 - (C) a combination of Subsections (1)(a)(i)(A) and (B); and
- (ii) that is approved by the Division of Substance Abuse and Mental Health in

accordance with Section 62A-15-105.

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

(c) "Drug" or "drugs" means:

- (i) a controlled substance as defined in Section 58-37-2;
- (ii) a drug as defined in Section 58-17b-102; or
- (iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

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

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

(f) "Novice learner driver" means an individual who:

(i) has applied for a Utah driver license;

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- (ii) has not previously held a driver license in this state or another state; and
- (iii) has not completed the requirements for issuance of a Utah driver license.

(g) "Novice licensed driver" means an individual who:

- (i) has completed the requirements for issuance of a Utah driver license;
- (ii) was issued a Utah driver license within the last two years; and
- (iii) has not previously held a driver license in this state or another state.

~~(f)~~ (h) "Screening" means a preliminary appraisal of a person:

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

- (A) an assessment; or
- (B) an educational series; and

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

~~(g)~~ (i) "Serious bodily injury" means bodily injury that creates or causes:

- (i) serious permanent disfigurement;
- (ii) protracted loss or impairment of the function of any bodily member or organ; or
- (iii) a substantial risk of death.

~~(h)~~ (j) "Substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

~~(i)~~ (k) "Substance abuse treatment program" means a state licensed substance abuse program.

~~(j)~~ (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in Section 41-6a-102; and

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

- (A) an off-highway vehicle as defined under Section 41-22-2; and
- (B) a motorboat as defined in Section 73-18-2.

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

(a) "Conviction" means any conviction arising from a separate episode of driving for a violation of:

- (i) driving under the influence under Section 41-6a-502;
- (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

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combination of both-related reckless driving under:

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

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

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

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

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

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

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

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

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

(b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i) through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

(i) enhancement of penalties under:

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

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

(ii) expungement under Title 77, Chapter 40, Utah Expungement Act.

Section 3. Section **41-6a-502** is amended to read:

41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.

(1) A person may not operate or be in actual physical control of a vehicle within this

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state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of the test;

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

(c) has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

(4) Beginning on July 1, 2012, a court shall, monthly, send to the Division of Occupational and Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving under the influence, in whole or in part, of a prescribed controlled substance.

Section 4. Section ~~{41-6a-529}~~41-6a-515.5 is ~~{amended}~~enacted to read:

41-6a-515.5. Field sobriety test training.

Each law enforcement agency shall ensure that each peace officer receives training on the current standard field sobriety testing guidelines established by the National Highway Traffic Safety Administration.

Section 5. Section 41-6a-529 is amended to read:

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

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

(a) within the last two years:

(i) has been convicted of:

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

(B) alcohol, any drug, or a combination of both-related reckless driving under Section

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41-6a-512;

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

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

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

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

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

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

(c) within the last five years:

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

(ii) has been convicted of a class A misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008;

(d) within the last 10 years:

(i) has been convicted of an offense described in Subsection (1)(a)(i) which offense was committed within 10 years of the commission of a prior offense described in Subsection (1)(a)(i) for which the person was convicted; or

(ii) has had the person's driving privilege revoked for refusal to submit to a chemical test and the refusal is within 10 years after:

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

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

(e) at any time has been convicted of:

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- (i) automobile homicide under Section 76-5-207 for an offense that occurred on or after July 1, 2005; or
- (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July 1, 2005; ~~[or]~~
- (f) at the time of operation of a vehicle is under 21 years of age~~[-];~~ or
- (g) is a novice learner driver or a novice licensed driver.

(2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section ~~5~~6. Section **76-5-207** is amended to read:

76-5-207. Automobile homicide.

- (1) As used in this section:
 - (a) "Drug" or "drugs" means:
 - (i) a controlled substance as defined in Section 58-37-2;
 - (ii) a drug as defined in Section 58-17b-102; or
 - (iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.
 - (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.
- (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:
 - (i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of the test;
 - (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or
 - (iii) has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of operation.
- (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is

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subsequent to a conviction as defined in Subsection 41-6a-501(2).

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

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

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of [~~-.08~~] .05 grams or greater at the time of the test;

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

(iii) has a blood or breath alcohol concentration of [~~-.08~~] .05 grams or greater at the time of operation.

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

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

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

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

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

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 7. Effective date.

This bill takes effect on December 30, 2018.