

## SB0050S01 compared with SB0050

~~{deleted text}~~ shows text that was in SB0050 but was deleted in SB0050S01.

Inserted text shows text that was not in SB0050 but was inserted into SB0050S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

### AUTOMOBILE INSURANCE REGISTRY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

House Sponsor: ~~{~~ Norman K Thurston

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#### LONG TITLE

#### General Description:

This bill amends provisions related to motor vehicle insurance.

#### Highlighted Provisions:

This bill:

▶ amends provisions related to a peace officer's seizure of a motor vehicle operated without insurance coverage;

▶ amends provisions related to evidence of a motor vehicle owner's or operator's security;~~{~~

~~▶ permits a motor vehicle owner to bring a cause of action against a public entity that employs a law enforcement officer;}~~ and

▶ amends post-accident security requirements.

#### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

[41-1a-1101](#), as last amended by Laws of Utah 2014, Chapter 382

**41-12a-303.2**, as last amended by Laws of Utah 2016, Chapters 303 and 356

**41-12a-501**, as last amended by Laws of Utah 2005, Chapter 2

~~{ [63G-7-301](#), as last amended by Laws of Utah 2015, Chapter 342~~

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

[Section 1. Section 41-1a-1101 is amended to read:](#)

**41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.**

(1) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

(a) that the division or the peace officer has reason to believe has been stolen;

(b) on which any identification number has been defaced, altered, or obliterated;

(c) that has been abandoned in accordance with Section 41-6a-1408;

(d) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days;

(e) that is placed on the water with improper registration;

(f) that is being operated on a highway:

(i) with registration that has been expired for more than three months;

(ii) having never been properly registered by the current owner; or

(iii) with registration that is suspended or revoked; or

(g) (i) that the division or the peace officer has reason to believe has been involved in an accident described in Section 41-6a-401, 41-6a-401.3, or 41-6a-401.5; and

(ii) whose operator did not remain at the scene of the accident until the operator fulfilled the requirements described in Section 41-6a-401 or 41-6a-401.7.

(2) (a) Subject to the restriction in Subsection (2)(b), the division or any peace officer, without a warrant, ~~shall~~ may seize and take possession of any vehicle that is being operated

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on a highway without owner's or operator's security in effect for the vehicle as required under Section 41-12a-301 ~~unless the division or any peace officer makes a reasonable determination that:~~

~~(i) the seizure of the vehicle would present a public safety concern to the operator or any of the occupants in the vehicle; or~~

~~(ii) the impoundment of the vehicle would prevent the division or the peace officer from addressing other public safety considerations.~~

(b) The division or any peace officer may not seize and take possession of a vehicle under Subsection (2)(a):

(i) if the operator of the vehicle is not carrying evidence of owner's or operator's security as defined in Section 41-12a-303.2 in the vehicle unless the division or peace officer verifies that owner's or operator's security is not in effect for the vehicle through the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803; or

(ii) if the operator of the vehicle is carrying evidence of owner's or operator's security as defined in Section 41-12a-303.2 in the vehicle and the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803 indicates that the owner's or operator's security is not in effect for the vehicle, unless the division or a peace officer makes a reasonable attempt to independently verify that owner's or operator's security is not in effect for the vehicle.

(3) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(4) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this section shall comply with the provisions of Section 41-6a-1406.

(5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules setting standards for public garages, impound lots, and impound yards that may be used by peace officers and the division.

(b) The standards shall be equitable, reasonable, and unrestrictive as to the number of public garages, impound lots, or impound yards per geographical area.

(6) (a) Except as provided under Subsection (6)(b), a person may not operate or allow to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated under this part without prior written permission of the owner of the vehicle.

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(b) Incidental and necessary operation of a vehicle to move the vehicle from one parking space to another within the facility and that is necessary for the normal management of the facility is not prohibited under Subsection (6)(a).

(7) A person who violates the provisions of Subsection (6) is guilty of a class C misdemeanor.

(8) The division or the peace officer who seizes a vehicle shall record the mileage shown on the vehicle's odometer at the time of seizure, if:

- (a) the vehicle is equipped with an odometer; and
- (b) the odometer reading is accessible to the division or the peace officer.

Section ~~41-12a-303~~2. Section **41-12a-303.2** is amended to read:

### **41-12a-303.2. Evidence of owner's or operator's security to be carried when operating motor vehicle -- Defense -- Penalties.**

(1) As used in this section:

(a) "Division" means the Motor Vehicle Division of the State Tax Commission.

(b) "Registration materials" means the evidences of motor vehicle registration, including all registration cards, license plates, temporary permits, and nonresident temporary permits.

(2) (a) (i) A person operating a motor vehicle shall:

(A) have in the person's immediate possession evidence of owner's or operator's security for the motor vehicle the person is operating; and

(B) display it upon demand of a peace officer.

(ii) A person is exempt from the requirements of Subsection (2)(a)(i) if the person is operating:

(A) a government-owned or leased motor vehicle; or

(B) an employer-owned or leased motor vehicle and is driving it with the employer's permission.

(iii) A person operating a vehicle that is owned by a rental company, as defined in Section 31A-22-311, may comply with Subsection (2)(a)(i) by having in the person's immediate possession, or displaying, the rental vehicle's rental agreement, as defined in Section 31A-22-311.

(b) Evidence of owner's or operator's security includes any one of the following:

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- (i) a copy of the operator's valid:
  - (A) insurance policy;
  - (B) insurance policy declaration page;
  - (C) binder notice;
  - (D) renewal notice; or
  - (E) card issued by an insurance company as evidence of insurance;
- (ii) a certificate of insurance issued under Section 41-12a-402;
- (iii) a certified copy of a surety bond issued under Section 41-12a-405;
- (iv) a certificate of the state treasurer issued under Section 41-12a-406;
- (v) a certificate of self-funded coverage issued under Section 41-12a-407; ~~[or]~~
- (vi) information that the vehicle or driver is insured from the Uninsured Motorist

Identification Database Program created under Title 41, Chapter 12a, Part 8, Uninsured Motorist Identification Database Program~~[-];~~ or

(vii) (A) information that the vehicle is operated with a temporary permit issued and displayed as described in Section 41-1a-211 or 41-3-302;

(B) evidence that the vehicle was purchased within the previous 30 days; and

(C) evidence of an existing insurance policy issued to the owner of the vehicle.

(c) Evidence of insurance provided under Subsection (2)(b) shall not create insurance coverage not specifically provided for in the vehicle owner's insurance policy.

~~[(e)]~~ (d) A card issued by an insurance company as evidence of owner's or operator's security under Subsection (2)(b)(i)(E) on or after July 1, 2014, may not display the owner's or operator's address on the card.

~~[(d)]~~ (e) (i) A person may provide to a peace officer evidence of owner's or operator's security described in this Subsection (2) in:

(A) a hard copy format; or

(B) an electronic format using a mobile electronic device.

(ii) If a person provides evidence of owner's or operator's security in an electronic format using a mobile electronic device under this Subsection (2)(d), the peace officer viewing the owner's or operator's security on the mobile electronic device may not view any other content on the mobile electronic device.

(iii) Notwithstanding any other provision under this section, a peace officer is not

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subject to civil liability or criminal penalties under this section if the peace officer inadvertently views content other than the evidence of owner's or operator's security on the mobile electronic device.

~~(e)~~ (f) (i) Evidence of owner's or operator's security from the Uninsured Motorist Identification Database Program described under Subsection (2)(b)(vi) supercedes any evidence of owner's or operator's security described under Subsection (2)(b)(i)(D) or (E).

(ii) A peace officer may not cite or arrest a person for a violation of Subsection (2)(a) if the Uninsured Motorist Identification Database Program created under Title 41, Chapter 12a, Part 8, Uninsured Motorist Identification Database Program, information indicates that the vehicle or driver is insured.

(3) It is an affirmative defense to a charge under this section that the person had owner's or operator's security in effect for the vehicle the person was operating at the time of the person's citation or arrest.

(4) (a) Evidence of owner's or operator's security as defined under Subsection (2)(b) or a written statement from an insurance producer or company verifying that the person had the required motor vehicle insurance coverage on the date specified is considered proof of owner's or operator's security for purposes of Subsection (3) and Section 41-12a-804.

(b) The court considering a citation issued under this section shall allow the evidence or a written statement under Subsection (4)(a) and a copy of the citation to be faxed or mailed to the clerk of the court to satisfy Subsection (3).

(c) The notice under Section 41-12a-804 shall specify that the written statement under Subsection (4)(a) and a copy of the notice shall be faxed or mailed to the designated agent to satisfy the proof of owner's or operator's security required under Section 41-12a-804.

(5) A violation of this section is an infraction, and the fine shall be not less than:

(a) \$400 for a first offense; and

(b) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(6) Upon receiving notification from a court of a conviction for a violation of this section, the department:

(a) shall suspend the person's driver license; and

(b) may not renew the person's driver license or issue a driver license to the person

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until the person gives the department proof of owner's or operator's security.

(i) This proof of owner's or operator's security shall be given by any of the ways required under Section 41-12a-401.

(ii) This proof of owner's or operator's security shall be maintained with the department for a three-year period.

(iii) An insurer that provides a certificate of insurance as provided under Section 41-12a-402 or 41-12a-403 may not terminate the insurance policy unless notice of termination is filed with the department no later than 10 days after termination as required under Section 41-12a-404.

(iv) If a person who has canceled the certificate of insurance applies for a license within three years from the date proof of owner's or operator's security was originally required, the department shall refuse the application unless the person reestablishes proof of owner's or operator's security and maintains the proof for the remainder of the three-year period.

~~{ (7) A person may bring a civil cause of action in a court of competent jurisdiction against the public entity that employs a law enforcement officer for the law enforcement officer's failure to comply with a provision of Subsection (2)(c)(ii).~~

‡ Section ~~{2}~~3. Section **41-12a-501** is amended to read:

### **41-12a-501. Post-accident security.**

(1) (a) Unless excepted under Subsection (2), the operator of a motor vehicle involved in an accident in the state and any owner who has not previously satisfied the requirement of security under Section 41-12a-301 shall file post-accident security with the department for the benefit of persons obtaining judgments against the operator on account of bodily injury, death, or property damage caused by the accident.

(b) The security shall be in an amount determined by the department to be sufficient to satisfy judgments arising from bodily injury, death, or property damage resulting from the accident that may be recovered against the operator, but may not exceed the minimum single limit under Subsection 31A-22-304(2).

(c) The department shall determine the amount of post-accident security on the basis of reports and other evidence submitted to the department by interested parties, including officials investigating the accident.

(d) In setting the amount of post-accident security, the department may not take into

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account alleged damages resulting from pain and suffering.

(e) Persons who fail to file required post-accident security are subject to the penalties under Subsection (3).

(2) The operator is exempted from the post-accident requirement under Subsection (1) if any of the following conditions are satisfied:

(a) No bodily injury, death, or damage to the property of one person in excess of the damage limit specified under Section 41-6a-401 resulted from the accident.

(b) No injury, death, or property damage was suffered by any person other than the owner or operator.

(c) The owner of the motor vehicle was in compliance with the owner's security requirement under Section 41-12a-301 at the time of the accident and the operator had permission from the owner to operate the motor vehicle.

(d) The operator was in compliance with the operator's security requirement under Section 41-12a-301 at the time of the accident.

(e) The operator has filed satisfactory evidence with the department that the operator has been released from liability, has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident and is not in default on that agreement.

(f) The motor vehicle involved in the accident was operated by a nonresident who had an insurance policy or bond covering the accident, but not fully complying with the policy provision requirements under Section 31A-22-302, if the policy or bond is sufficient to provide full recovery for claimants and the policy or bond is issued by an insurer licensed in the state.

(g) The operator at the time of the accident was operating a motor vehicle owned or leased by the operator's employer and driven with the employer's permission.

(h) Evidence as to the extent of injuries or property damage caused by the accident has not been submitted by or on behalf of any person affected by the accident within [~~six months~~] ~~{two}~~ three years following the date of the accident.

(i) The motor vehicle was legally parked at the time of the accident.

(j) The motor vehicle was an emergency vehicle acting in the line of duty at the time of the accident.

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(k) The motor vehicle involved in the accident is owned by the United States, this state, or any political subdivision of this state, if the operator was using the vehicle with the permission of the owner.

(l) The motor vehicle was legally stopped at a stop sign, traffic signal, or at the direction of a peace officer at the time of the accident.

(3) (a) If an operator who is required to file post-accident security under Subsection (1) does not do so within 10 days after receiving notice of the requirement of security, the department shall suspend the driver's license of the operator and all registrations of the owner, if he is a resident of the state.

(b) If the operator is not a resident of Utah, the department shall suspend the privilege of operating a motor vehicle within the state and of using, in the state, any owned motor vehicle.

(c) Notice of these suspensions shall be sent to the owner or operator no less than 15 days prior to the effective date of the suspension.

~~{ Section 3. Section 63G-7-301 is amended to read:~~

~~63G-7-301. Waivers of immunity.~~

~~(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.~~

~~(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.~~

~~(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.~~

~~(2) Immunity from suit of each governmental entity is waived:~~

~~(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;~~

~~(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;~~

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~~—— (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;~~

~~—— (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;~~

~~—— (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;~~

~~—— (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;~~

~~—— (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;~~

~~—— (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:~~

~~—— (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or~~

~~—— (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement; [and]~~

~~—— (i) subject to Subsection 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment[.]; or~~

~~—— (j) as to any action brought against a public entity that employs a law enforcement officer for failing to comply with a provision of Section 41-12a-303.2.~~

**Legislative Review Note**

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