

HB0295S01 compared with HB0295

~~{deleted text}~~ shows text that was in HB0295 but was deleted in HB0295S01.

Inserted text shows text that was not in HB0295 but was inserted into HB0295S01.

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Representative Steve Eliason proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies penalties for driving under the influence if the individual is also convicted for driving in the wrong direction during the same occurrence.

Highlighted Provisions:

This bill:

- ▶ ~~{prohibits a plea to impaired driving if}~~ increases the ~~{individual was}~~ penalty for driving under the influence ~~{and}~~ to a class A misdemeanor if the individual was also driving in the wrong direction on a freeway or controlled-access highway during the same occurrence;~~{~~

~~—————> increases the penalty for driving under the influence to a class A misdemeanor if the individual was also driving in the wrong direction on a freeway or controlled-access highway during the same occurrence;~~

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- ~~modifies ignition interlock requirements for an individual convicted of driving under the influence if the individual was also driving in the wrong direction on a freeway or controlled-access highway during the same occurrence;~~
- ~~modifies the definition of an alcohol restricted driver to include certain individuals convicted of driving under the influence while also driving in the wrong direction on a freeway or controlled-access highway;}~~ and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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

Utah Code Sections Affected:

AMENDS:

41-6a-503, as last amended by Laws of Utah 2009, Chapter 214

~~{ **41-6a-518.2**, as last amended by Laws of Utah 2016, Chapter 149~~

~~**41-6a-529 (Superseded 12/30/18)**, as last amended by Laws of Utah 2008, Chapter 226~~

~~**41-6a-529 (Effective 12/30/18)**, as last amended by Laws of Utah 2017, Chapter 283~~

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

Section 1. Section **41-6a-503** is amended to read:

41-6a-503. Penalties for driving under the influence violations.

- (1) A person who violates for the first or second time Section 41-6a-502 is guilty of a:
- (a) class B misdemeanor; or
 - (b) class A misdemeanor if the person:
 - (i) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
 - (ii) had a passenger under 16 years of age in the vehicle at the time of the offense; ~~[or]~~
 - (iii) was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense~~[-];~~ or
 - (iv) at the time of the violation of Section 41-6a-502, also violated Section 41-6a-714.
- (2) A person who violates Section 41-6a-502 is guilty of a third degree felony if:

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(a) the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;

(b) the person has two or more prior convictions as defined in Subsection 41-6a-501(2), each of which is within 10 years of:

(i) the current conviction under Section 41-6a-502; or

(ii) the commission of the offense upon which the current conviction is based; or

(c) the conviction under Section 41-6a-502 is at any time after a conviction of:

(i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

(ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

(iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of conviction is reduced under Section 76-3-402.

(3) 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 Section 76-5-207 whether or not the injuries arise from the same episode of driving.

~~{ Section 2. Section 41-6a-518.2 is amended to read:~~

~~41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition interlock system.~~

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

~~(a) "Ignition interlock system" means a constant monitoring device or any similar device that:~~

~~(i) is in working order at the time of operation or actual physical control; and~~

~~(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8).~~

~~(b) (i) "Interlock restricted driver" means a person who:~~

~~(A) has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system;~~

~~(B) within the last 18 months has been convicted of a driving under the influence violation under Section 41-6a-502 that was committed on or after July 1, 2009;~~

~~(C) (i) within the last three years has been convicted of an offense that occurred after~~

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~~May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and~~

~~—— (H) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years from the date that one or more prior offenses was committed if the prior offense resulted in a conviction as defined in Subsection 41-6a-501(2);~~

~~—— (D) (I) within the last six years has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018; and~~

~~—— (H) the offense described under Subsection (1)(b)(i)(D)(I) is committed within 10 years from the date that one or more prior offenses were committed if the prior offense resulted in a conviction as defined in Subsection 41-6a-501(2);~~

~~—— [(D)] (E) within the last three years has been convicted of a violation of this section;~~

~~—— [(E)] (F) within the last three years has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1, 2006;~~

~~—— [(F)] (G) within the last three years has been convicted of a violation of Section 41-6a-502 and was under the age of 21 at the time the offense was committed;~~

~~—— (H) within the last four years and six months has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018;~~

~~—— [(G)] (I) within the last six years has been convicted of a felony violation of Section 41-6a-502 for an offense that occurred after May 1, 2006; [or]~~

~~—— (J) within the last nine years has been convicted of a felony violation of Section 41-6a-502 and a violation of Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018;~~

~~—— [(H)] (K) within the last 10 years has been convicted of automobile homicide under Section 76-5-207 for an offense that occurred after May 1, 2006[.]; or~~

~~—— (L) within the last 13 years has been convicted of a violation of automobile homicide under Section 76-5-207 and a violation of Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018.~~

~~—— (ii) " Interlock restricted driver" does not include a person:~~

~~—— (A) whose conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under~~

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~~Section 41-6a-517; and~~

~~—— (B) whose prior convictions described in Subsection (1)(b)(i)(C)(II) are all convictions under Section 41-6a-517.~~

~~—— (2) The division shall post the ignition interlock restriction on a person's electronic record that is available to law enforcement.~~

~~—— (3) For purposes of this section, a plea of guilty or no contest to a violation of Section 41-6a-502 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.~~

~~—— (4) An interlock restricted driver who operates or is in actual physical control of a vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.~~

~~—— (5) It is an affirmative defense to a charge of a violation of Subsection (4) if:~~

~~—— (a) the interlock restricted driver operated or was in actual physical control of a vehicle owned by the interlock restricted driver's employer;~~

~~—— (b) the interlock restricted driver had given written notice to the employer of the interlock restricted driver's interlock restricted status prior to the operation or actual physical control under Subsection (5)(a);~~

~~—— (c) the interlock restricted driver had on the interlock restricted driver's person, or in the vehicle, at the time of operation or physical control employer verification, as defined in Subsection 41-6a-518(1); and~~

~~—— (d) the operation or actual physical control described in Subsection (5)(a) was in the scope of the interlock restricted driver's employment.~~

~~—— (6) The affirmative defense described in Subsection (5) does not apply to:~~

~~—— (a) an employer-owned motor vehicle that is made available to an interlock restricted driver for personal use; or~~

~~—— (b) a motor vehicle owned by a business entity that is entirely or partly owned or controlled by the interlock restricted driver.~~

~~—— Section 3. Section 41-6a-529 (Superseded 12/30/18) is amended to read:~~

~~—— 41-6a-529 (Superseded 12/30/18). Definitions -- Alcohol restricted drivers.~~

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

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- ~~—— (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 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 seven years has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018;~~
- ~~—— [(d)] (e) 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~~

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~~(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;~~

~~—— (f) within the last 15 years has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, 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, and the offense occurred after May 8, 2018;~~

~~—— [(c)] (g) at any time has been convicted of:~~

~~—— (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)] (h) at the time of operation of a vehicle is under 21 years of age.~~

~~—— (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 4. Section **41-6a-529 (Effective 12/30/18)** is amended to read:~~

~~—— **41-6a-529 (Effective 12/30/18). 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 41-6a-512;~~

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

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~~—— (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 seven years has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, and the offense occurred after May 8, 2018;~~

~~—— [(d)] (c) 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;~~

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~~— (f) within the last 15 years has been convicted of a violation of Section 41-6a-502 and Section 41-6a-714 during the same occurrence, 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, and the offense occurred after May 8, 2018;~~

~~— [(c)] (g) at any time has been convicted of:~~

~~— (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;~~

~~— [(f)] (h) at the time of operation of a vehicle is under 21 years of age; or~~

~~— [(g)] (i) 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. **Effective date:**~~

~~— This bill takes effect on May 8, 2018, except that the amendments to Section 41-6a-529 (Effective 12/30/18) take effect on December 30, 2018.~~

Legislative Review Note

Office of Legislative Research and General Counsel