

DUI LIABILITY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends various provisions related to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ criminalizes a person's refusal to submit to a chemical test for alcohol or drugs related to suspicion of driving under the influence of alcohol or drugs in certain circumstances;
- ▶ provides penalties for a person's refusal to submit to a chemical test for alcohol or drugs related to suspicion of driving under the influence of alcohol or drugs;
- ▶ clarifies that driving under the influence is a strict liability offense;
- ▶ clarifies provisions related to driving in the wrong direction while driving under the influence;
- ▶ clarifies that the determination whether an individual is in actual physical control of a vehicle includes consideration of the totality of the circumstances, and creates a safe harbor provision related to that determination; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

29 AMENDS:

- 30 **41-6a-501**, as last amended by Laws of Utah 2018, Chapter 52
- 31 **41-6a-502**, as last amended by Laws of Utah 2017, Chapter 283
- 32 **41-6a-503**, as last amended by Laws of Utah 2018, Chapter 138
- 33 **41-6a-509**, as last amended by Laws of Utah 2017, Chapter 446
- 34 **41-6a-518.2**, as last amended by Laws of Utah 2019, Chapter 271
- 35 **41-6a-520**, as last amended by Laws of Utah 2019, Chapters 77 and 349
- 36 **41-6a-529**, as last amended by Laws of Utah 2018, Chapter 52
- 37 **53-3-220**, as last amended by Laws of Utah 2018, Chapters 121 and 133
- 38 **53-3-223**, as last amended by Laws of Utah 2019, Chapter 77
- 39 **53-3-231**, as last amended by Laws of Utah 2019, Chapter 77
- 40 **77-40-105 (Effective 05/01/20)**, as last amended by Laws of Utah 2019, Chapter 448

41 ENACTS:

42 **41-6a-521.1**, Utah Code Annotated 1953



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

45 Section 1. Section **41-6a-501** is amended to read:

46 **41-6a-501. Definitions.**

47 (1) As used in this part:

48 (a) "Actual physical control" is determined by a consideration of the totality of the
49 circumstances, but does not include a circumstance in which:

50 (i) the person is asleep inside the vehicle;

51 (ii) the person is not in the driver's seat of the vehicle;

52 (iii) the engine of the vehicle is not running;

53 (iv) the vehicle is lawfully parked; and

54 (v) under the facts presented, it is evident that the person did not drive the vehicle to
55 the location while under the influence of alcohol, a drug, or the combined influence of alcohol

56 and any drug.

57 ~~[(a)]~~ (b) "Assessment" means an in-depth clinical interview with a licensed mental
58 health therapist:

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

60 (A) substance abuse treatment that is obtained at a substance abuse program;

61 (B) an educational series; or

62 (C) a combination of Subsections ~~[(1)(a)(i)(A)]~~ (1)(b)(i)(A) and (B); and

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

65 ~~[(b)]~~ (c) "Driving under the influence court" means a court that is approved as a driving
66 under the influence court by the Utah Judicial Council according to standards established by
67 the Judicial Council.

68 ~~[(c)]~~ (d) "Drug" or "drugs" means:

69 (i) a controlled substance as defined in Section 58-37-2;

70 (ii) a drug as defined in Section 58-17b-102; or

71 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
72 human body, can impair the ability of a person to safely operate a motor vehicle.

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

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

79 ~~[(f)]~~ (g) "Novice learner driver" means an individual who:

80 (i) has applied for a Utah driver license;

81 (ii) has not previously held a driver license in this state or another state; and

82 (iii) has not completed the requirements for issuance of a Utah driver license.

83 ~~[(g)]~~ (h) "Screening" means a preliminary appraisal of a person:

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

85 (A) an assessment; or

86 (B) an educational series; and

87 (ii) that is approved by the Division of Substance Abuse and Mental Health in

88 accordance with Section [62A-15-105](#).

89 ~~[(h)]~~ (i) "Serious bodily injury" means bodily injury that creates or causes:

90 (i) serious permanent disfigurement;

91 (ii) protracted loss or impairment of the function of any bodily member or organ; or

92 (iii) a substantial risk of death.

93 ~~[(i)]~~ (j) "Substance abuse treatment" means treatment obtained at a substance abuse

94 program that is approved by the Division of Substance Abuse and Mental Health in accordance

95 with Section [62A-15-105](#).

96 ~~[(j)]~~ (k) "Substance abuse treatment program" means a state licensed substance abuse

97 program.

98 ~~[(k)]~~ (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in

99 Section [41-6a-102](#); and

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

101 (A) an off-highway vehicle as defined under Section [41-22-2](#); and

102 (B) a motorboat as defined in Section [73-18-2](#).

103 (2) As used in Section [41-6a-503](#):

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

105 violation of:

106 (i) driving under the influence under Section [41-6a-502](#);

107 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

108 combination of both-related reckless driving under:

109 (I) Section [41-6a-512](#); and

- 110 (II) Section 41-6a-528; or
- 111 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
- 112 41-6a-502.5;
- 113 (iii) driving with any measurable controlled substance that is taken illegally in the body
- 114 under Section 41-6a-517;
- 115 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
- 116 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
- 117 compliance with Section 41-6a-510;
- 118 (v) automobile homicide under Section 76-5-207;
- 119 (vi) Subsection 58-37-8(2)(g);
- 120 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
- 121 conviction is reduced under Section 76-3-402; ~~[or]~~
- 122 (viii) refusal of a chemical test under Subsection 41-6a-520(7); or
- 123 ~~[(viii)]~~ (ix) statutes or ordinances previously in effect in this state or in effect in any
- 124 other state, the United States, or any district, possession, or territory of the United States which
- 125 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
- 126 both-related reckless driving if committed in this state, including punishments administered
- 127 under 10 U.S.C. Sec. 815.
- 128 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
- 129 through ~~[(viii)]~~ (ix) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
- 130 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been
- 131 subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for
- 132 purposes of:
 - 133 (i) enhancement of penalties under:
 - 134 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
 - 135 (B) automobile homicide under Section 76-5-207; and
 - 136 (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.

137 (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent
138 of a conviction even if the charge has been subsequently dismissed in accordance with the Utah
139 Rules of Juvenile Procedure for the purposes of enhancement of penalties under:

140 (i) this part; and

141 (ii) automobile homicide under Section 76-5-207.

142 Section 2. Section 41-6a-502 is amended to read:

143 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**
144 **both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

145 (1) A person may not operate or be in actual physical control of a vehicle within this
146 state if the person:

147 (a) has sufficient alcohol in the person's body that a subsequent chemical test shows
148 that the person has a blood or breath alcohol concentration of .05 grams or greater at the time
149 of the test;

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

152 (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of
153 operation or actual physical control.

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

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

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

- 164 (5) An offense described in this section is a strict liability offense.
- 165 (6) A guilty or no contest plea to an offense described in this section may not be held in
- 166 abeyance.

167 Section 3. Section **41-6a-503** is amended to read:

168 **41-6a-503. Penalties for driving under the influence violations.**

169 (1) A person who violates for the first or second time Section **41-6a-502** is guilty of a:

- 170 (a) class B misdemeanor; or
- 171 (b) class A misdemeanor if the person:
 - 172 (i) has also inflicted bodily injury upon another as a proximate result of having
 - 173 operated the vehicle in a negligent manner;
 - 174 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense;
 - 175 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
 - 176 vehicle at the time of the offense; or
 - 177 (iv) at the time of the violation of Section **41-6a-502**, also violated Section 41-6a-712
 - 178 or 41-6a-714.

179 (2) A person who violates Section **41-6a-502** is guilty of a third degree felony if:

- 180 (a) the person has also inflicted serious bodily injury upon another as a proximate
- 181 result of having operated the vehicle in a negligent manner;
- 182 (b) the person has two or more prior convictions as defined in Subsection
- 183 **41-6a-501(2)**, each of which is within 10 years of:
 - 184 (i) the current conviction under Section **41-6a-502**; or
 - 185 (ii) the commission of the offense upon which the current conviction is based; or
 - 186 (c) the conviction under Section **41-6a-502** is at any time after a conviction of:
 - 187 (i) automobile homicide under Section **76-5-207** that is committed after July 1, 2001;
 - 188 (ii) a felony violation of Section **41-6a-502** or a statute previously in effect in this state
 - 189 that would constitute a violation of Section **41-6a-502** that is committed after July 1, 2001; or
 - 190 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of

191 conviction is reduced under Section 76-3-402.

192 (3) A person is guilty of a separate offense for each victim suffering bodily injury or
193 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
194 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the
195 same episode of driving.

196 Section 4. Section 41-6a-509 is amended to read:

197 **41-6a-509. Driver license suspension or revocation for a driving under the**
198 **influence violation.**

199 (1) The Driver License Division shall, if the person is 21 years of age or older at the
200 time of arrest:

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

203 (b) revoke for a period of two years the license of a person if:

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

205 (ii) the current ~~[driving under the influence]~~ violation under Section 41-6a-502 is
206 committed~~[:-(A)]~~ within a period of 10 years from the date of the prior violation~~[-and]~~.

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

208 (2) The Driver License Division shall, if the person is 19 years of age or older but
209 under 21 years of age at the time of arrest:

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

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

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

- 218 (ii) has not been issued an operator license;
- 219 (c) revoke the person's driver license until the person is 21 years of age or for a period
220 of two years, whichever is longer, if:
- 221 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- 222 (ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 is
223 committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior
224 violation; or
- 225 (d) deny the person's application for a license or learner's permit until the person is 21
226 years of age or for a period of two years, whichever is longer, if:
- 227 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
- 228 (ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 is
229 committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior
230 violation; and
- 231 (iii) the person has not been issued an operator license.
- 232 (3) The Driver License Division shall, if the person is under 19 years of age at the time
233 of arrest:
- 234 (a) suspend the person's driver license until the person is 21 years of age if the person
235 is convicted for the first time of a [~~driving under the influence~~] violation under Section
236 41-6a-502 [~~of an offense that was committed on or after July 1, 2009~~];
- 237 (b) deny the person's application for a license or learner's permit until the person is 21
238 years of age if the person:
- 239 (i) is convicted for the first time of a [~~driving under the influence~~] violation under
240 Section 41-6a-502 [~~of an offense committed on or after July 1, 2009~~]; and
- 241 (ii) has not been issued an operator license;
- 242 (c) revoke the person's driver license until the person is 21 years of age if:
- 243 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- 244 (ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 is

245 committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior
246 violation; or

247 (d) deny the person's application for a license or learner's permit until the person is 21
248 years of age if:

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

250 (ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 is
251 committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior
252 violation; and

253 (iii) the person has not been issued an operator license.

254 (4) The Driver License Division shall suspend or revoke the license of a person as
255 ordered by the court under Subsection [~~(10)~~] (9).

256 [~~(5) The Driver License Division shall:~~]

257 [~~(a) deny, suspend, or revoke the operator's license of a person convicted under Section
258 41-6a-502 of an offense that was committed prior to July 1, 2009, for the denial, suspension, or
259 revocation periods in effect prior to July 1, 2009; or]~~

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

262 [(i) the person was 20 years of age or older but under 21 years of age at the time of
263 arrest; and]

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

266 [(6)] (5) The Driver License Division shall subtract from any suspension or revocation
267 period the number of days for which a license was previously suspended under Section
268 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
269 which the record of conviction is based.

270 [(7)] (6) If a conviction recorded as impaired driving is amended to a driving under the
271 influence conviction under Section 41-6a-502 in accordance with Subsection

272 41-6a-502.5(3)(a)(ii), the Driver License Division:

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

275 (b) shall start the suspension or revocation time under Subsection (1) on the date of the
276 amended conviction.

277 [~~8~~] (7) A court that reported a conviction of a violation of Section 41-6a-502 for a
278 violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the
279 suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to
280 completion of the suspension period if the person:

281 (a) completes at least six months of the license suspension;

282 (b) completes a screening;

283 (c) completes an assessment, if it is found appropriate by a screening under Subsection
284 [~~8~~] (7)(b);

285 (d) completes substance abuse treatment if it is found appropriate by the assessment
286 under Subsection [~~8~~] (7)(c);

287 (e) completes an educational series if substance abuse treatment is not required by an
288 assessment under Subsection [~~8~~] (7)(c) or the court does not order substance abuse treatment;

289 (f) has not been convicted of a violation of any motor vehicle law in which the person
290 was involved as the operator of the vehicle during the suspension period imposed under
291 Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

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

294 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
295 person has not unlawfully consumed alcohol during the suspension period imposed under
296 Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

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

299 knowledge the person has not unlawfully consumed alcohol during the suspension period
300 imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

301 ~~[(9)]~~ (8) If the court shortens a person's license suspension period in accordance with
302 the requirements of Subsection ~~[(8)]~~ (7), the court shall forward the order shortening the
303 person's suspension period prior to the completion of the suspension period imposed under
304 Subsection (2)(a) or (b) or Subsection (3)(a) or (b) to the Driver License Division.

305 ~~[(10)]~~ (9) (a) (i) In addition to any other penalties provided in this section, a court may
306 order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to
307 be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or
308 two years to remove from the highways those persons who have shown they are safety hazards.

309 (ii) The additional suspension or revocation period provided in this Subsection ~~[(10)]~~
310 (9) shall begin the date on which the individual would be eligible to reinstate the individual's
311 driving privilege for a violation of Section 41-6a-502.

312 (b) If the court suspends or revokes the person's license under this Subsection ~~[(10)]~~
313 (9), the court shall prepare and send to the Driver License Division an order to suspend or
314 revoke that person's driving privileges for a specified period of time.

315 ~~[(11)]~~ (10) (a) The court shall notify the Driver License Division if a person fails to:

316 (i) complete all court ordered:

317 (A) screening;

318 (B) assessment;

319 (C) educational series;

320 (D) substance abuse treatment; and

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

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

323 (b) Upon receiving the notification described in Subsection ~~[(11)]~~ (10)(a), the division
324 shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and
325 (3).

326 ~~[(12)]~~ (11) (a) A court that reported a conviction of a violation of Section 41-6a-502 to
327 the Driver License Division may shorten the suspension period imposed under Subsection (1)
328 before completion of the suspension period if the person is participating in or has successfully
329 completed a 24-7 sobriety program as defined in Section 41-6a-515.5.

330 (b) If the court shortens a person's license suspension period in accordance with the
331 requirements of this Subsection ~~[(12)]~~ (11), the court shall forward to the Driver License
332 Division the order shortening the person's suspension period.

333 (c) The court shall notify the Driver License Division if a person fails to complete all
334 requirements of a 24-7 sobriety program.

335 (d) Upon receiving the notification described in Subsection ~~[(12)]~~ (11)(c), the division
336 shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and
337 (3).

338 Section 5. Section 41-6a-518.2 is amended to read:

339 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
340 **interlock system.**

341 (1) As used in this section:

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

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

345 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
346 41-6a-518(8).

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

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

350 (B) within the last 18 months has been convicted of a [~~driving under the influence~~]
351 violation under Section 41-6a-502 [~~that was committed on or after July 1, 2009~~] or Subsection
352 41-6a-520(7);

353 (C) (I) within the last three years has been convicted of an offense [~~that occurred after~~
354 ~~May 1, 2006~~] which would be a conviction as defined under Section 41-6a-501; and

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

358 (D) within the last three years has been convicted of a violation of this section;

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

362 (F) within the last three years has been convicted of a violation of Section 41-6a-502 or
363 Subsection 41-6a-520(7) and was under the age of 21 at the time the offense was committed;

364 (G) within the last six years has been convicted of a felony violation of Section
365 41-6a-502 or Subsection 41-6a-520(7) for an offense that occurred after May 1, 2006; or

366 (H) within the last 10 years has been convicted of automobile homicide under Section
367 76-5-207 for an offense that occurred after May 1, 2006.

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

369 (A) whose conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under
370 Section 41-6a-502 that does not involve alcohol or a conviction under Section 41-6a-517 and
371 whose prior convictions described in Subsection (1)(b)(i)(C)(II) are all convictions under
372 Section 41-6a-502 that did not involve alcohol or convictions under Section 41-6a-517;

373 (B) whose conviction described in Subsection (1)(b)(i)(B) or (F) is a conviction under
374 Section 41-6a-502 that does not involve alcohol and the convicting court notifies the Driver
375 License Division at the time of sentencing that the conviction does not involve alcohol; or

376 (C) whose conviction described in Subsection (1)(b)(i)(B), (C), or (F) is a conviction
377 under Section 41-6a-502 that does not involve alcohol and the ignition interlock restriction is
378 removed as described in Subsection (7).

379 (2) The division shall post the ignition interlock restriction on a person's electronic

380 record that is available to law enforcement.

381 (3) For purposes of this section, a plea of guilty or no contest to a violation of Section
382 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
383 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
384 reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

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

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

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

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

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

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

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

403 (7) (a) An individual with an ignition interlock restriction may petition the division for
404 removal of the restriction if the individual's offense did not involve alcohol.

405 (b) If the division is able to establish that an individual's offense did not involve
406 alcohol, the division may remove the ignition interlock restriction.

407 Section 6. Section **41-6a-520** is amended to read:

408 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**
409 **tests -- Refusal -- Warning, report.**

410 (1) (a) A person operating a motor vehicle in this state is considered to have given the
411 person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for
412 the purpose of determining whether the person was operating or in actual physical control of a
413 motor vehicle while:

414 (i) having a blood or breath alcohol content statutorily prohibited under Section
415 [41-6a-502](#), [41-6a-530](#), or [53-3-231](#);

416 (ii) under the influence of alcohol, any drug, or combination of alcohol and any drug
417 under Section [41-6a-502](#); or

418 (iii) having any measurable controlled substance or metabolite of a controlled
419 substance in the person's body in violation of Section [41-6a-517](#).

420 (b) A test or tests authorized under this Subsection (1) must be administered at the
421 direction of a peace officer having grounds to believe that person to have been operating or in
422 actual physical control of a motor vehicle while in violation of any provision under Subsections
423 (1)(a)(i) through (iii).

424 (c) (i) The peace officer determines which of the tests are administered and how many
425 of them are administered.

426 (ii) If a peace officer requests more than one test, refusal by a person to take one or
427 more requested tests, even though the person does submit to any other requested test or tests, is
428 a refusal under this section.

429 (d) (i) A person who has been requested under this section to submit to a chemical test
430 or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be
431 administered.

432 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
433 not a defense to taking a test requested by a peace officer, and it is not a defense in any

434 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
435 requested test or tests.

436 (2) (a) A peace officer requesting a test or tests shall warn a person that refusal to
437 submit to the test or tests may result in criminal prosecution, revocation of the person's license
438 to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or
439 detectable amount of alcohol in the person's body depending on the person's prior driving
440 history, and a three-year prohibition of driving without an ignition interlock device if the
441 person:

- 442 (i) has been placed under arrest;
- 443 (ii) has then been requested by a peace officer to submit to any one or more of the
444 chemical tests under Subsection (1); and
- 445 (iii) refuses to submit to any chemical test requested.

446 (b) (i) Following the warning under Subsection (2)(a), if the person does not
447 immediately request that the chemical test or tests as offered by a peace officer be
448 administered, a peace officer shall, on behalf of the Driver License Division and within 24
449 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's
450 privilege or license to operate a motor vehicle.

451 (ii) When a peace officer gives the notice on behalf of the Driver License Division, the
452 peace officer shall supply to the operator, in a manner specified by the Driver License Division,
453 basic information regarding how to obtain a hearing before the Driver License Division.

454 (c) As a matter of procedure, the peace officer shall submit a signed report, within 10
455 calendar days after the day on which notice is provided under Subsection (2)(b), that:

456 (i) the peace officer had grounds to believe the arrested person was in violation of any
457 provision under Subsections (1)(a)(i) through (iii); and

458 (ii) the person had refused to submit to a chemical test or tests under Subsection (1).

459 (3) Upon the request of the person who was tested, the results of the test or tests shall
460 be made available to the person.

461 (4) (a) The person to be tested may, at the person's own expense, have a physician or a
462 physician assistant of the person's own choice administer a chemical test in addition to the test
463 or tests administered at the direction of a peace officer.

464 (b) The failure or inability to obtain the additional test does not affect admissibility of
465 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
466 test or tests to be taken at the direction of a peace officer.

467 (c) The additional test shall be subsequent to the test or tests administered at the
468 direction of a peace officer.

469 (5) For the purpose of determining whether to submit to a chemical test or tests, the
470 person to be tested does not have the right to consult an attorney or have an attorney, physician,
471 or other person present as a condition for the taking of any test.

472 (6) Notwithstanding the provisions in this section, a blood test taken under this section
473 is subject to Section [77-23-213](#).

474 (7) A person is guilty of refusing a chemical test if a peace officer has issued the
475 warning required in Subsection (2)(a) and the person refuses to submit to a test of the person's
476 blood under Subsection (1) after a court has issued a warrant to draw and test the blood.

477 (8) A person who violates Subsection (7) is guilty of:

478 (a) a third degree felony if:

479 (i) the person has two or more prior convictions as defined in Subsection [41-6a-501\(2\)](#),
480 each of which is within 10 years of:

481 (A) the current conviction; or

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

483 (ii) the conviction is at any time after a conviction of:

484 (A) automobile homicide under Section [76-5-207](#);

485 (B) a felony violation of this section or Section [41-6a-502](#); or

486 (C) any conviction described in Subsection (8)(a)(ii) which judgment of conviction is
487 reduced under Section [76-3-402](#); or

488 (b) a class B misdemeanor if none of the circumstances in Subsection (8)(a) applies.

489 (9) As part of any sentence for a conviction of violating this section, the court shall
490 impose the same sentencing as outlined for driving under the influence violations in Section
491 41-6a-505, based on whether this is a first, second, or subsequent conviction as defined by
492 Subsection 41-6a-501(2), with the following modifications:

493 (a) any jail sentence shall be 24 consecutive hours more than would be required under
494 Section 41-6a-505;

495 (b) any fine imposed shall be \$100 more than would be required under Section
496 41-6a-505; and

497 (c) the court shall order one or more of the following:

498 (i) the installation of an ignition interlock system as a condition of probation for the
499 individual in accordance with Section 41-6a-518;

500 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
501 device as a condition of probation for the individual; or

502 (iii) the imposition of home confinement through the use of electronic monitoring in
503 accordance with Section 41-6a-506.

504 (10) (a) The offense of refusal to submit to a chemical test under this section does not
505 merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.

506 (b) A guilty or no contest plea to an offense of refusal to submit to a chemical test
507 under this section may not be held in abeyance.

508 Section 7. Section **41-6a-521.1** is enacted to read:

509 **41-6a-521.1. Driver license denial or revocation for a criminal conviction for a**
510 **refusal to submit to a chemical test violation.**

511 (1) The Driver License Division shall, if the person is 21 years of age or older at the
512 time of arrest:

513 (a) revoke for a period of 18 months the operator's license of a person convicted for the
514 first time under Subsection 41-6a-520(7); or

515 (b) revoke for a period of 36 months the license of a person if:
516 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
517 (ii) the current refusal to submit to a chemical test violation under Subsection
518 41-6a-520(7) is committed within a period of 10 years from the date of the prior violation.
519 (2) The Driver License Division shall, if the person is under 21 years of age at the time
520 of arrest:
521 (a) revoke the person's driver license until the person is 21 years of age or for a period
522 of two years, whichever is longer; or
523 (b) revoke the person's driver license until the person is 21 years of age or for a period
524 of 36 months, whichever is longer, if:
525 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
526 (ii) the current refusal to submit to a chemical test violation under Subsection
527 41-6a-520(7) is committed within a period of 10 years from the date of the prior violation; or
528 (c) if the person has not been issued an operator license:
529 (i) deny the person's application for a license or learner's permit until the person is 21
530 years of age or for a period of two years, whichever is longer; or
531 (ii) deny the person's application for a license or learner's permit until the person is 21
532 years of age or for a period of 36 months, whichever is longer, if:
533 (A) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
534 (B) the current refusal to submit to a chemical test violation under Subsection
535 41-6a-520(7) is committed within a period of 10 years from the date of the prior violation.
536 (3) The Driver License Division shall suspend or revoke the license of a person as
537 ordered by the court under Subsection (5).
538 (4) The Driver License Division shall subtract from any revocation period the number
539 of days for which a license was previously revoked under Section 53-3-221 if the previous
540 revocation was based on the same occurrence upon which the record of conviction under
541 Subsection 41-6a-520(7) is based.

542 (5) (a) (i) In addition to any other penalties provided in this section, a court may order
 543 the driver license of a person who is convicted of a violation of Subsection 41-6a-520(7) to be
 544 revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to
 545 remove from the highways those persons who have shown they are safety hazards.

546 (ii) The additional revocation period provided in this Subsection (5) shall begin the
 547 date on which the individual would be eligible to reinstate the individual's driving privilege for
 548 a violation of Subsection 41-6a-520(7).

549 (b) If the court suspends or revokes the person's license under this Subsection (5), the
 550 court shall prepare and send to the Driver License Division an order to suspend or revoke that
 551 person's driving privileges for a specified period of time.

552 (6) (a) The court shall notify the Driver License Division if a person fails to:

553 (i) complete all court ordered:

554 (A) screening;

555 (B) assessment;

556 (C) educational series;

557 (D) substance abuse treatment; and

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

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

560 (b) Upon receiving the notification described in Subsection (6)(a), the Driver License
 561 Division shall suspend the person's driving privilege in accordance with Subsections
 562 53-3-221(2) and (3).

563 Section 8. Section **41-6a-529** is amended to read:

564 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

567 (a) within the last two years:

568 (i) has been convicted of:

- 569 (A) a misdemeanor violation of Section 41-6a-502;
- 570 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
571 41-6a-512;
- 572 (C) impaired driving under Section 41-6a-502.5;
- 573 (D) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
574 of both-related reckless driving, or impaired driving adopted in compliance with Section
575 41-6a-510;
- 576 (E) a violation described in Subsections (1)(a)(i)(A) through (D), which judgment of
577 conviction is reduced under Section 76-3-402; or
- 578 (F) statutes or ordinances previously in effect in this state or in effect in any other state,
579 the United States, or any district, possession, or territory of the United States which would
580 constitute a violation of Section 41-6a-502, alcohol, any drug, or a combination of both-related
581 reckless driving, or impaired driving if committed in this state, including punishments
582 administered under 10 U.S.C. Sec. 815; or
- 583 (ii) has had the person's driving privilege suspended under Section 53-3-223 for an
584 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;
- 585 (b) within the last three years has been convicted of a violation of this section or
586 Section 41-6a-518.2;
- 587 (c) within the last five years:
- 588 (i) has had the person's driving privilege revoked through an administrative action for
589 refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred on or after
590 July 1, 2005; [~~or~~]
- 591 (ii) has been convicted of a misdemeanor conviction for refusal to submit to a chemical
592 test under Subsection 41-6a-520(7); or
- 593 [~~(i)~~] (iii) has been convicted of a class A misdemeanor violation of Section 41-6a-502
594 committed on or after July 1, 2008;
- 595 (d) within the last 10 years:

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

599 (ii) has been convicted of a felony violation of refusal to submit to a chemical test
600 under Subsection 41-6a-520(7); or

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

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

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

606 (e) at any time has been convicted of:

607 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or
608 after July 1, 2005; or

609 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
610 1, 2005;

611 (f) at the time of operation of a vehicle is under 21 years of age; or

612 (g) is a novice learner driver.

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

618 Section 9. Section 53-3-220 is amended to read:

619 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
620 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
621 **Limited driving privileges.**

622 (1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter

623 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or
624 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
625 receiving a record of the person's conviction for:

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

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

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

635 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
636 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
637 regulating driving on highways;

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

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

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

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

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

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

650 requires disqualification;

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

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

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

658 (xiv) operating or being in actual physical control of a motor vehicle while having any
659 measurable or detectable amount of alcohol in the person's body in violation of Section
660 41-6a-530;

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

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

665 (xvii) custodial interference, under:

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

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

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

672 (xviii) refusal of a chemical test under Subsection 41-6a-520(7).

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

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

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

679 (c) Except when action is taken under Section 53-3-219 for the same offense, upon
680 receiving a record of conviction, the division shall immediately suspend for six months the
681 license of the convicted person if the person was convicted of one of the following offenses
682 while the person was an operator of a motor vehicle:

683 (i) any violation of:

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

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

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

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

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

689 (ii) any criminal offense that prohibits:

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

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

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

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

698 (B) a record of the conviction.

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

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

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

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

706 (ii) The division shall immediately suspend for a period of two years the license of a
707 person upon receiving a record of:

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

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

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

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

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

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

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

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

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

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

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

727 (iv) Upon receipt of the first order suspending a person's driving privileges under
728 Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(i) if
729 ordered by the court in accordance with Subsection 32B-4-411(3)(a).

730 (v) Upon receipt of the second or subsequent order suspending a person's driving

731 privileges under Section 32B-4-411, the division shall reduce the suspension period under
732 Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

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

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

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

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

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

743 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
744 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
745 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
746 or revocation originally imposed under Section 53-3-221.

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

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

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

754 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
755 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,

756 41-6a-517, a local ordinance which complies with the requirements of Subsection

757 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person

758 was charged with violating as a result of a plea bargain after having been originally charged
759 with violating one or more of these sections or ordinances, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

793 Section 10. Section 53-3-223 is amended to read:

794 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
795 **Hearing and decision -- Suspension and fee -- Judicial review.**

796 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
797 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
798 certain blood or breath alcohol concentration and driving under the influence of any drug,
799 alcohol, or combination of a drug and alcohol or while having any measurable controlled
800 substance or metabolite of a controlled substance in the person's body in violation of Section
801 41-6a-517, the peace officer may, in connection with arresting the person, request that the
802 person submit to a chemical test or tests to be administered in compliance with the standards
803 under Section 41-6a-520.

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

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

811 (3) If the person submits to a chemical test and the test results indicate a blood or

812 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
813 makes a determination, based on reasonable grounds, that the person is otherwise in violation
814 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
815 arrest, give notice of the division's intention to suspend the person's license to drive a motor
816 vehicle.

817 (4) When a peace officer gives notice on behalf of the division, the peace officer shall
818 supply to the driver, in a manner specified by the division, basic information regarding how to
819 obtain a prompt hearing before the division.

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

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

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

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

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

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

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

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

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

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

838 (i) whether a peace officer had reasonable grounds to believe the person was driving a

839 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

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

841 (iii) the test results, if any.

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

843 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and

844 the production of relevant books and papers; or

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

846 (ii) The division shall pay witness fees and mileage from the Transportation Fund in

847 accordance with the rates established in Section 78B-1-119.

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

849 (f) Any decision made after a hearing before any designated employee is as valid as if

850 made by the division.

851 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable

852 grounds to believe that the person was driving a motor vehicle in violation of Section

853 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the

854 notice, or if a hearing is not requested under this section, the division shall:

855 (i) if the person is 21 years of age or older at the time of arrest [~~and the arrest was made~~

856 ~~on or after July 1, 2009~~], suspend the person's license or permit to operate a motor vehicle for a

857 period of:

858 (A) 120 days beginning on the 45th day after the date of arrest for a first suspension; or

859 (B) two years beginning on the 45th day after the date of arrest for a second or

860 subsequent suspension for an offense that occurred within the previous 10 years; or

861 (ii) if the person is under 21 years of age at the time of arrest [~~and the arrest was made~~

862 ~~on or after May 14, 2013~~]:

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

864 (I) for a period of six months, beginning on the 45th day after the date of arrest for a

865 first suspension; or

866 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
867 beginning on the 45th day after the date of arrest for a second or subsequent suspension for an
868 offense that occurred within the previous 10 years; or

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

870 (I) for a period of six months beginning on the 45th day after the date of the arrest for a
871 first suspension, if the person has not been issued an operator license; or

872 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
873 beginning on the 45th day after the date of arrest for a second or subsequent suspension for an
874 offense that occurred within the previous 10 years.

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

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

878 ~~[(ii) from July 1, 2009, through June 30, 2011, if:]~~

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

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

883 ~~[(iii) prior to May 14, 2013, for an offense that was committed prior to May 14, 2013.]~~

884 ~~[(c)]~~ (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division
885 shall reinstate a person's license prior to completion of the 120 day suspension period imposed
886 under Subsection (7)(a)(i)(A):

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

890 (B) no sooner than 60 days beginning on the 45th day after the date of arrest upon
891 receiving written verification of the person's reduction of a charge for a violation of Section
892 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the

893 suspension period.

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

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

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

903 (iii) If a person's license is reinstated under this Subsection (7)[~~(c)~~](b), the person is
904 required to pay the license reinstatement fees under Subsections 53-3-105(24) and (25).

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

907 [~~(8)(a) Notwithstanding the provisions in Subsection (7)(b)(iii), the division shall~~
908 ~~shorten a person's two-year license suspension period that is currently in effect to a six-month~~
909 ~~suspension period if:]~~

910 [~~(i) the driver was under the age of 19 at the time of arrest;]~~

911 [~~(ii) the offense was a first offense that was committed prior to May 14, 2013; and]~~

912 [~~(iii) the suspension under Subsection (7)(b)(iii) was based on the same occurrence~~
913 ~~upon which the following written verifications are based:]~~

914 [~~(A) a court order shortening the driver license suspension for a violation of Section~~
915 ~~41-6a-502 pursuant to Subsection 41-6a-509(8);]~~

916 [~~(B) a court order shortening the driver license suspension for a violation of Section~~
917 ~~41-6a-517 pursuant to Subsection 41-6a-517(11);]~~

918 [~~(C) a court order shortening the driver license suspension for a violation of Section~~
919 ~~32B-4-409;]~~

920 [~~(D)~~] a dismissal for a violation of Section ~~41-6a-502~~, Section ~~41-6a-517~~, or Section
921 ~~32B-4-409~~;

922 [~~(E)~~] a notice of declination to prosecute for a charge under Section ~~41-6a-502~~, Section
923 ~~41-6a-517~~, or Section ~~32B-4-409~~;

924 [~~(F)~~] a reduction of a charge under Section ~~41-6a-502~~, Section ~~41-6a-517~~, or Section
925 ~~32B-4-409~~; or]

926 [~~(G)~~] other written documentation acceptable to the division.]

927 [~~(b)~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
928 the division may make rules establishing requirements for acceptable written documentation to
929 shorten a person's driver license suspension period under Subsection (8)(a)(iii)(G).]

930 [~~(c)~~] If a person's license sanction is shortened under this Subsection (8), the person is
931 required to pay the license reinstatement fees under Subsections ~~53-3-105~~(24) and (25).]

932 [~~(9)~~] (8) (a) The division shall assess against a person, in addition to any fee imposed
933 under Subsection ~~53-3-205~~(12) for driving under the influence, a fee under Section ~~53-3-105~~ to
934 cover administrative costs, which shall be paid before the person's driving privilege is
935 reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or
936 court decision that the suspension was not proper.

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

940 [~~(10)~~] (9) (a) Notwithstanding the provisions in Subsection (7)(a)(i) or (ii), the division
941 shall reinstate a person's license before completion of the suspension period imposed under
942 Subsection (7)(a)(i) or (ii) if the reporting court notifies the Driver License Division that the
943 defendant is participating in or has successfully completed a 24-7 sobriety program as defined
944 in Section ~~41-6a-515.5~~.

945 (b) If a person's license is reinstated under Subsection [~~(10)~~] (9)(a), the person is
946 required to pay the license reinstatement fees under Subsections ~~53-3-105~~(24) and (25).

947 Section 11. Section **53-3-231** is amended to read:

948 **53-3-231. Person under 21 may not operate a vehicle or motorboat with**
949 **detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing**
950 **and decision -- Suspension of license or operating privilege -- Fees -- Judicial review --**
951 **Referral to local substance abuse authority or program.**

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

953 (i) "Local substance abuse authority" has the same meaning as provided in Section
954 [62A-15-102](#).

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

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

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

963 (b) A person who violates Subsection (2)(a), in addition to any other applicable
964 penalties arising out of the incident, shall have the person's operator license denied or
965 suspended as provided in Subsection (7).

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

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

973 (c) If the person submits to a chemical test and the test results indicate a blood, breath,

974 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
975 determination, based on reasonable grounds, that the person is otherwise in violation of
976 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the
977 arrest, give notice of the division's intention to deny or suspend the person's license to operate a
978 vehicle or refusal to issue a license under this section.

979 (4) When a peace officer gives notice on behalf of the division, the peace officer shall
980 supply to the operator, in a manner specified by the division, basic information regarding how
981 to obtain a prompt hearing before the division.

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

- 984 (a) a copy of the citation issued for the offense;
- 985 (b) a signed report in a manner specified by the Driver License Division indicating the
986 chemical test results, if any; and
- 987 (c) any other basis for a peace officer's determination that the person has violated
988 Subsection (2).

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

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

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

- 996 (A) the county in which the arrest occurred; or
- 997 (B) a county that is adjacent to the county in which the arrest occurred.

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

1000 (c) The hearing shall be documented and shall cover the issues of:

1001 (i) whether a peace officer had reasonable grounds to believe the person was operating
1002 a motor vehicle or motorboat in violation of Subsection (2)(a);

1003 (ii) whether the person refused to submit to the test; and

1004 (iii) the test results, if any.

1005 (d) In connection with a hearing, the division or its authorized agent may administer
1006 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
1007 books and papers and records as defined in Section 46-4-102.

1008 (e) One or more members of the division may conduct the hearing.

1009 (f) Any decision made after a hearing before any number of the members of the
1010 division is as valid as if made after a hearing before the full membership of the division.

1011 (7) If, after a hearing, the division determines that a peace officer had reasonable
1012 grounds to believe that the person was driving a motor vehicle in violation of Subsection (2)(a),
1013 if the person fails to appear before the division as required in the notice, or if the person does
1014 not request a hearing under this section, the division shall for a person under 21 years of age on
1015 the date of arrest:

1016 (a) deny the person's license until the person complies with Subsection ~~[(11)]~~ (10)(b)(i)
1017 but for a period of not less than six months beginning on the 45th day after the date of arrest for
1018 a first offense under Subsection (2)(a) ~~[committed on or after May 14, 2013];~~

1019 (b) suspend the person's license until the person complies with Subsection ~~[(11)]~~
1020 (10)(b)(i) and until the person is 21 years of age or for a period of two years, whichever is
1021 longer, beginning on the 45th day after the date of arrest for a second or subsequent offense
1022 under Subsection (2)(a) ~~[committed on or after July 1, 2009, and]~~ within 10 years of a prior
1023 denial or suspension;

1024 (c) deny the person's application for a license or learner's permit until the person
1025 complies with Subsection ~~[(11)]~~ (10)(b)(i) but for a period of not less than six months
1026 beginning on the 45th day after the date of the arrest, if:

1027 (i) the person has not been issued an operator license; and

1028 (ii) the suspension is for a first offense under Subsection (2)(a) [~~committed on or after~~
1029 ~~July 1, 2009~~];

1030 (d) deny the person's application for a license or learner's permit until the person
1031 complies with Subsection [~~(11)~~] (10)(b)(i) and until the person is 21 years of age or for a period
1032 of two years, whichever is longer, beginning on the 45th day after the date of the arrest, if:

1033 (i) the person has not been issued an operator license; and

1034 (ii) the suspension is for a second or subsequent offense under Subsection (2)(a)
1035 committed [~~on or after July 1, 2009, and~~] within 10 years of a prior denial or suspension[~~;~~ or].
1036 [~~(e) deny or suspend a person's license for the denial and suspension periods in effect:~~]
1037 [~~(i) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed~~
1038 ~~prior to July 1, 2009;~~]
1039 [~~(ii) from July 1, 2009, through June 30, 2011, if the person was 20 years 6 months of~~
1040 ~~age or older but under 21 years of age at the time of arrest and the conviction under Subsection~~
1041 ~~(2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or]~~
1042 [~~(iii) prior to May 14, 2013, for a violation under Subsection (2)(a) that was committed~~
1043 ~~prior to May 14, 2013.~~]

1044 [(8)(a) ~~Notwithstanding the provisions in Subsection (7)(e)(iii), the division shall~~
1045 ~~shorten a person's one-year license suspension or denial period that is currently in effect to a~~
1046 ~~six-month suspension or denial period if:~~]
1047 [(i) ~~the driver was under the age of 19 at the time of arrest;~~]
1048 [(ii) ~~the offense was a first offense that was committed prior to May 14, 2013; and]~~
1049 [(iii) ~~the suspension or denial under Subsection (7)(e)(iii) was based on the same~~
1050 ~~occurrence upon which the following written verifications are based:~~]
1051 [(A) ~~a court order shortening the driver license suspension for a violation of Section~~
1052 ~~41-6a-502 pursuant to Subsection 41-6a-509(8);]~~
1053 [(B) ~~a court order shortening the driver license suspension for a violation of Section~~
1054 ~~41-6a-517 pursuant to Subsection 41-6a-517(11);]~~

1055 [~~(C)~~] a court order shortening the driver license suspension for a violation of Section
1056 ~~32B-4-409~~;

1057 [~~(D)~~] a dismissal for a violation of Section ~~41-6a-502~~, Section ~~41-6a-517~~, or Section
1058 ~~32B-4-409~~;

1059 [~~(E)~~] a notice of declination to prosecute for a charge under Section ~~41-6a-502~~, Section
1060 ~~41-6a-517~~, or Section ~~32B-4-409~~;

1061 [~~(F)~~] a reduction of a charge under Section ~~41-6a-502~~, Section ~~41-6a-517~~, or Section
1062 ~~32B-4-409~~; or]

1063 [~~(G)~~] other written documentation acceptable to the division.]

1064 [~~(b)~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1065 the division may make rules establishing requirements for acceptable documentation to shorten
1066 a person's driver license suspension or denial period under this Subsection (8).]

1067 [~~(c)~~] If a person's license sanction is shortened under this Subsection (8), the person is
1068 required to pay the license reinstatement fees under Subsections ~~53-3-105~~(24) and (25).]

1069 [~~(9)~~] (8) (a) (i) Following denial or suspension the division shall assess against a
1070 person, in addition to any fee imposed under Subsection ~~53-3-205~~(12), a fee under Section
1071 ~~53-3-105~~, which shall be paid before the person's driving privilege is reinstated, to cover
1072 administrative costs.

1073 (ii) This fee shall be canceled if the person obtains an unappealed division hearing or
1074 court decision that the suspension was not proper.

1075 (b) A person whose operator license has been denied, suspended, or postponed by the
1076 division under this section following an administrative hearing may file a petition within 30
1077 days after the suspension for a hearing on the matter which, if held, is governed by Section
1078 ~~53-3-224~~.

1079 [~~(10)~~] (9) After reinstatement of an operator license for a first offense under this
1080 section, a report authorized under Section ~~53-3-104~~ may not contain evidence of the denial or
1081 suspension of the person's operator license under this section if the person has not been

1082 convicted of any other offense for which the denial or suspension may be extended.

1083 ~~[(11)]~~ (10) (a) In addition to the penalties in Subsection ~~[(9)]~~ (8), a person who violates
1084 Subsection (2)(a) shall:

1085 (i) obtain an assessment and recommendation for appropriate action from a substance
1086 abuse program, but any associated costs shall be the person's responsibility; or

1087 (ii) be referred by the division to the local substance abuse authority for an assessment
1088 and recommendation for appropriate action.

1089 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
1090 license within five years of the effective date of the license sanction under Subsection (7) is
1091 contingent upon successful completion of the action recommended by the local substance
1092 abuse authority or the substance abuse program.

1093 (ii) The local substance abuse authority's or the substance abuse program's
1094 recommended action shall be determined by an assessment of the person's alcohol abuse and
1095 may include:

1096 (A) a targeted education and prevention program;

1097 (B) an early intervention program; or

1098 (C) a substance abuse treatment program.

1099 (iii) Successful completion of the recommended action shall be determined by
1100 standards established by the Division of Substance Abuse and Mental Health.

1101 (c) At the conclusion of the penalty period imposed under Subsection (2), the local
1102 substance abuse authority or the substance abuse program shall notify the division of the
1103 person's status regarding completion of the recommended action.

1104 (d) The local substance abuse authorities and the substance abuse programs shall
1105 cooperate with the division in:

1106 (i) conducting the assessments;

1107 (ii) making appropriate recommendations for action; and

1108 (iii) notifying the division about the person's status regarding completion of the

1109 recommended action.

1110 (e) (i) The local substance abuse authority is responsible for the cost of the assessment
1111 of the person's alcohol abuse, if the assessment is conducted by the local substance abuse
1112 authority.

1113 (ii) The local substance abuse authority or a substance abuse program selected by a
1114 person is responsible for:

1115 (A) conducting an assessment of the person's alcohol abuse; and

1116 (B) for making a referral to an appropriate program on the basis of the findings of the
1117 assessment.

1118 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees
1119 associated with the recommended program to which the person selected or is referred.

1120 (B) The costs and fees under Subsection ~~[(+)]~~ (10)(e)(iii)(A) shall be based on a
1121 sliding scale consistent with the local substance abuse authority's policies and practices
1122 regarding fees for services or determined by the substance abuse program.

1123 Section 12. Section **77-40-105 (Effective 05/01/20)** is amended to read:

1124 **77-40-105 (Effective 05/01/20). Requirements to apply for a certificate of**
1125 **eligibility to expunge conviction.**

1126 (1) An individual convicted of an offense may apply to the bureau for a certificate of
1127 eligibility to expunge the record of conviction as provided in this section.

1128 (2) An individual is not eligible to receive a certificate of eligibility from the bureau if:

1129 (a) the conviction for which expungement is sought is:

1130 (i) a capital felony;

1131 (ii) a first degree felony;

1132 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

1133 (iv) felony automobile homicide;

1134 (v) a felony ~~[violation of]~~ conviction described in Subsection 41-6a-501(2);

1135 (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

1136 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
1137 (b) a criminal proceeding is pending against the petitioner; or
1138 (c) the petitioner intentionally or knowingly provides false or misleading information
1139 on the application for a certificate of eligibility.

1140 (3) A petitioner seeking to obtain expungement for a record of conviction is not
1141 eligible to receive a certificate of eligibility from the bureau until all of the following have
1142 occurred:

1143 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
1144 conviction for which expungement is sought;

1145 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section
1146 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

1147 (c) the following time periods have elapsed from the date the petitioner was convicted
1148 or released from incarceration, parole, or probation, whichever occurred last, for each
1149 conviction the petitioner seeks to expunge:

1150 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
1151 felony conviction of Subsection 58-37-8(2)(g);

1152 (ii) seven years in the case of a felony;

1153 (iii) five years in the case of any class A misdemeanor or a felony drug possession
1154 offense;

1155 (iv) four years in the case of a class B misdemeanor; or

1156 (v) three years in the case of any other misdemeanor or infraction.

1157 (4) The bureau may not count pending or previous infractions, traffic offenses, or
1158 minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or
1159 minor regulatory offenses, when determining expungement eligibility.

1160 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1161 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1162 including previously expunged convictions, contains any of the following, except as provided

1163 in Subsection (8):

1164 (a) two or more felony convictions other than for drug possession offenses, each of
1165 which is contained in a separate criminal episode;

1166 (b) any combination of three or more convictions other than for drug possession
1167 offenses that include two class A misdemeanor convictions, each of which is contained in a
1168 separate criminal episode;

1169 (c) any combination of four or more convictions other than for drug possession
1170 offenses that include three class B misdemeanor convictions, each of which is contained in a
1171 separate criminal episode; or

1172 (d) five or more convictions other than for drug possession offenses of any degree
1173 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

1174 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1175 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1176 including previously expunged convictions, contains any of the following:

1177 (a) three or more felony convictions for drug possession offenses, each of which is
1178 contained in a separate criminal episode; or

1179 (b) any combination of five or more convictions for drug possession offenses, each of
1180 which is contained in a separate criminal episode.

1181 (7) If the petitioner's criminal history contains convictions for both a drug possession
1182 offense and a non drug possession offense arising from the same criminal episode, that criminal
1183 episode shall be counted as provided in Subsection (5) if any non drug possession offense in
1184 that episode:

1185 (a) is a felony or class A misdemeanor; or

1186 (b) has the same or a longer waiting period under Subsection (3) than any drug
1187 possession offense in that episode.

1188 (8) If at least 10 years have elapsed from the date the petitioner was convicted or
1189 released from incarceration, parole, or probation, whichever occurred last, for all convictions,

1190 then each eligibility limit defined in Subsection (5) shall be increased by one.

1191 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board
1192 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned
1193 crimes pursuant to Section [77-27-5.1](#).

1194 Section 13. **Effective date.**

1195 This bill takes effect on July 1, 2020.