

## HB0139S01 compared with HB0139

~~{deleted text}~~ shows text that was in HB0139 but was deleted in HB0139S01.

inserted text shows text that was not in HB0139 but was inserted into HB0139S01.

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Representative Steve Eliason proposes the following substitute bill:

### DUI LIABILITY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: \_\_\_\_\_

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#### 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;
- ▶ ~~{makes}~~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; and

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- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

#### AMENDS:

**41-6a-501**, as last amended by Laws of Utah 2018, Chapter 52

**41-6a-502**, as last amended by Laws of Utah 2017, Chapter 283

**41-6a-503**, as last amended by Laws of Utah 2018, Chapter 138

**41-6a-509**, as last amended by Laws of Utah 2017, Chapter 446

**41-6a-518.2**, as last amended by Laws of Utah 2019, Chapter 271

**41-6a-520**, as last amended by Laws of Utah 2019, Chapters 77 and 349

~~† **41-6a-521**, as last amended by Laws of Utah 2019, Chapter 77~~

† **41-6a-529**, as last amended by Laws of Utah 2018, Chapter 52

**53-3-220**, as last amended by Laws of Utah 2018, Chapters 121 and 133

**53-3-223**, as last amended by Laws of Utah 2019, Chapter 77

**53-3-231**, as last amended by Laws of Utah 2019, Chapter 77

~~† **77-40-105 (Superseded 05/01/20)**, as last amended by Laws of Utah 2018, Chapter 266~~

† **77-40-105 (Effective 05/01/20)**, as last amended by Laws of Utah 2019, Chapter 448

#### ENACTS:

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

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

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

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

(1) As used in this part:

(a) "Actual physical control" does not include a circumstance in which:

(i) the person is asleep inside the vehicle;

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

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

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(iv) the vehicle is lawfully parked; and

(v) under the facts presented, it is evident that the person could not have driven the vehicle to the location while under the influence of alcohol, a drug, or the combined influence of alcohol and any drug.

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

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

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

(B) an educational series; or

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

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

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

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

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

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

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

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

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

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

(i) has applied for a Utah driver license;

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

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

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

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

(A) an assessment; or

(B) an educational series; and

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

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

(i) serious permanent disfigurement;

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

(iii) a substantial risk of death.

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

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

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

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

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

(B) a motorboat as defined in Section 73-18-2.

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

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

(i) driving under the influence under Section 41-6a-502;

(ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a combination of both-related reckless driving under:

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

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

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

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

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

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

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

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

(viii) refusal of a chemical test under ~~Section~~ Subsection 41-6a-520(7); or

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

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

(i) enhancement of penalties under:

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

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

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

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

(i) this part; and

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

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

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

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

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state if the person:

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

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

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

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

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

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

(5) An offense described in this section is a strict liability offense.

(6) ~~{(a)}~~ A guilty or no contest plea to an offense described in this section may not be held in abeyance.

~~{ (b) An admission to an offense described in this section in juvenile court may not result in dismissal.~~

‡ Section 3. 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;

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(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-712 or 41-6a-714.

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

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

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

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

(a) suspend for a period of 120 days the operator's license of a person convicted for the first time under Section 41-6a-502 [~~of an offense committed on or after July 1, 2009~~] ~~or~~ 41-6a-520; or

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

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

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(ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 ~~for 41-6a-520~~ is committed [~~:(A)~~] within a period of 10 years from the date of the prior violation [~~; and~~].

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

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

(a) suspend the person's driver license until the person is 21 years of age or for a period of one year, whichever is longer, if the person is convicted for the first time of a [~~driving under the influence~~] violation under Section 41-6a-502 ~~for 41-6a-520~~ of an offense that was committed on or after July 1, 2011;

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

(i) is convicted for the first time of a [~~driving under the influence~~] violation under Section 41-6a-502 ~~for 41-6a-520~~ of an offense committed on or after July 1, 2011; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age or for a period of two years, whichever is longer, if:

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

(ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 ~~for 41-6a-520~~ is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of two years, whichever is longer, if:

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

(ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 ~~for 41-6a-520~~ is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior violation; and

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

(3) The Driver License Division shall, if the person is under 19 years of age at the time of arrest:

(a) suspend the person's driver license until the person is 21 years of age if the person



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is convicted for the first time of a [~~driving under the influence~~] violation under Section 41-6a-502 [~~of an offense that was committed on or after July 1, 2009~~] ~~{ or 41-6a-520 }~~;

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

(i) is convicted for the first time of a [~~driving under the influence~~] violation ~~{ }~~ under Section 41-6a-502 [~~of an offense committed on or after July 1, 2009~~] ~~{ or 41-6a-520 }~~; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age if:

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

(ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 ~~{ or 41-6a-520 }~~ is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior violation; or

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

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

(ii) the current [~~driving under the influence~~] violation under Section 41-6a-502 ~~{ or 41-6a-520 }~~ is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the date of the prior violation; and

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

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

~~{(5) The Driver License Division shall:}~~

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

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

~~{(i) the person was 20 years of age or older but under 21 years of age at the time of arrest; and}~~

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

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

~~[(7)]~~ (6) If a conviction recorded as impaired driving is amended to a driving under the influence conviction under Section 41-6a-502 in accordance with Subsection 41-6a-502.5(3)(a)(ii), the Driver License Division:

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

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

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

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

(b) completes a screening;

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

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

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

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

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

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

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(ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

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

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

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

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

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

(i) complete all court ordered:

(A) screening;

(B) assessment;

(C) educational series;

(D) substance abuse treatment; and

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

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

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

~~[(12)]~~ (11) (a) A court that reported a conviction of a violation of Section 41-6a-502 to the Driver License Division may shorten the suspension period imposed under Subsection (1)

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before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section 41-6a-515.5.

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

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

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

Section 5. 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~~] or Subsection 41-6a-520(7);

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

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

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

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

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

~~(H)~~ ~~(G)~~ 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.

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

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

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

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

(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:

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(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.

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

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

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

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

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

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

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

(iii) having any measurable controlled substance or metabolite of a controlled

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substance in the person's body in violation of Section 41-6a-517.

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

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

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

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

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

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

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

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

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privilege or license to operate a motor vehicle.

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

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

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

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

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

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

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

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

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

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

(7) A person is guilty of refusing a chemical test if the person~~;~~

~~— (a) refuses to submit to a breath test under Subsection (1) after receiving the warnings under Subsection (2)(a);~~

~~— (b) intentionally provides an insufficient breath sample for analysis after submitting to a breath test under Subsection (1); or~~

~~— (c) } refuses to submit to a test of the person's blood~~}, urine, or oral fluids~~ under Subsection (1) after a court has issued a warrant to draw and test the blood~~}, urine, or oral~~~~



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fluids.

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

(a) a third degree felony if:

(i) the person has two or more prior convictions as defined in Subsection 41-6a-501(2),

each of which is within 10 years of:

(A) the current conviction; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) (a) The offense of refusal to submit to a chemical test under this section does not merge with any violation of Section ~~32B-4-409~~, 41-6a-502, ~~41-6a-530~~, or ~~53-3-231~~.

~~41-6a-517~~, or ~~41-6a-530~~.

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

Section 7. Section ~~41-6a-521.1~~ is ~~amended~~ enacted to read:

~~41-6a-521.~~ Revocation hearing for refusal -- Appeal.

~~(1) (a) A person who has been notified of the Driver License Division's intention to revoke the person's license under Section 41-6a-520 is entitled to a hearing.~~

~~(b) A request for the hearing shall be made in writing within 10 calendar days after the day on which notice is provided.~~

~~(c) Upon request in a manner specified by the Driver License Division,~~

the 1. Driver license denial or revocation for a criminal conviction for a refusal to submit to a chemical test violation.

(1) The Driver License Division shall ~~grant to the person an opportunity to be heard within 29 days after the date of arrest.~~

~~(d) If the person does not make a request for a hearing before the~~ , if the person is 21 years of age or older at the time of arrest:

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

(b) revoke for a period of 36 months the license of a person if:

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

(ii) the current refusal to submit to a chemical test violation under Subsection 41-6a-520(7) is committed within a period of 10 years from the date of the prior violation.

(2) The Driver License Division ~~under this Subsection (1), the person's privilege to operate a motor vehicle in the state is revoked beginning on the 45th day after the date of arrest:~~

~~(i) for a person 21 years of age or older on the date of arrest, for a period of:~~

~~(A) 18 months, unless Subsection (1)(d)(i)(B) applies; or~~

~~(B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:~~

~~(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231; or~~

~~(II) conviction for an offense that occurred within the previous 10 years from the date~~

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~~of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;~~

~~—— (ii) for a person} shall, if the person is under 21 years of age {on} at the {date} time of arrest:~~

~~(A) a) revoke the person's driver license until the person is 21 years of age or for a period of two years, whichever is longer, if the arrest was made on or after July 1, 2011, unless Subsection (1)(d)(ii)(B) applies; or~~

~~—— (B) } ; or~~

~~(b) revoke the person's driver license until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and};~~

~~(i) the person has had a previous:~~

~~—— (I) license sanction for an offense that occurred within the previous} a prior conviction as defined under Subsection 41-6a-501(2); and~~

~~(ii) the current refusal to submit to a chemical test violation under Subsection 41-6a-520(7) is committed within a period of 10 years from the date of {arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231; or~~

~~—— (II) conviction for an offense that occurred within the previous} the prior violation; or~~

~~(c) if the person has not been issued an operator license:~~

~~(i) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of two years, whichever is longer; or~~

~~(ii) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of 36 months, whichever is longer, if:~~

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

~~(B) the current refusal to submit to a chemical test violation under Subsection 41-6a-520(7) is committed within a period of 10 years from the date of {arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or~~

~~—— (iii) for a person that was arrested prior to July 1, 2009, for the suspension periods in effect prior to July 1, 2009.~~

~~—— (2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in:~~

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- ~~(i) the county in which the offense occurred; or~~
- ~~(ii) a county which is adjacent to the county in which the offense occurred;~~
- ~~(b) The Driver License Division may hold a hearing in some other county if the Driver License Division and the person both agree;~~
- ~~(3) The hearing shall be documented and shall cover the issues of:~~
- ~~(a) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, or 53-3-231; and~~
- ~~(b) whether the person refused to submit to the test or tests under Section 41-6a-520;~~
- ~~(4) (a) In connection with the hearing, the division or its authorized agent:~~
- ~~(i) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; and~~
- ~~(ii) shall issue subpoenas for the attendance of necessary peace officers;~~
- ~~(b) the prior violation.~~
- (3) The Driver License Division shall {pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.
- ~~(5) (a) If after a hearing, the} suspend or revoke the license of a person as ordered by the court under Subsection (5).~~
- (4) The Driver License Division {determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before} shall subtract from any revocation period the number of days for which a license was previously revoked under Section 53-3-221 if the previous revocation was based on the same occurrence upon which the record of conviction under Subsection 41-6a-520(7) is based.
- (5) (a) (i) In addition to any other penalties provided in this section, a court may order the driver license of a person who is convicted of a violation of Subsection 41-6a-520(7) to be revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.
- (ii) The additional revocation period provided in this Subsection (5) shall begin the date on which the individual would be eligible to reinstate the individual's driving privilege for a violation of Subsection 41-6a-520(7).
- (b) If the court suspends or revokes the person's license under this Subsection (5), the

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court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(6) (a) The court shall notify the Driver License Division ~~{as required in the notice}~~ if a person fails to:

(i) complete all court ordered:

(A) screening;

(B) assessment;

(C) educational series;

(D) substance abuse treatment; and

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

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

(b) Upon receiving the notification described in Subsection (6)(a), the Driver License Division shall ~~{revoke the person's license or permit to operate a motor vehicle in Utah beginning on the date the hearing is held:~~

~~—— (i) for a person 21 years of age or older on the date of arrest, for a period of:~~

~~—— (A) 18 months unless Subsection (5)(a)(i)(B) applies; or~~

~~—— (B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:~~

~~—— (I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231; or~~

~~—— (II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;~~

~~—— (ii) for a person under 21 years of age on the date of arrest:~~

~~—— (A) until the person is 21 years of age or for a period of two years, whichever is longer, for an arrest that was made on or after July 1, 2011, and unless Subsection (5)(a)(ii)(B) applies; or~~

~~—— (B) until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:~~

~~—— (I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231; or~~

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~~—— (ii) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or~~

~~—— (iii) for a person that was arrested prior to July 1, 2009, for the revocation periods in effect prior to July 1, 2009.~~

~~—— (b) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid before the person's }suspend the person's driving privilege }is reinstated, to cover administrative costs.~~

~~—— (c) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under Subsection (2) that the revocation was improper.~~

~~—— (6) (a) Any person whose license has been revoked by the Driver License Division under this section following an administrative hearing may seek judicial review unless the person is a defendant in a pending or adjudicated criminal prosecution for violating Section 41-6a-520.~~

~~—— (b) Judicial review of an informal adjudicative proceeding is a trial.~~

~~—— (c) Venue is in the district court in the county in which the offense occurred.~~

~~}in accordance with Subsections 53-3-221(2) and (3).~~

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

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

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

(a) within the last two years:

(i) has been convicted of:

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

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

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(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 has been convicted of a misdemeanor~~ through an administrative action for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; ~~for~~

~~— (ii) } [or]~~

(ii) has been convicted of a misdemeanor conviction for refusal to submit to a chemical test under Subsection 41-6a-520(7); or

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

(d) within the last 10 years:

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

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

[(ii)] (iii) 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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(e) 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) at the time of operation of a vehicle is under 21 years of age; or

(g) is a novice learner 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 9. Section 53-3-220 is amended to read:

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

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

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

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

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

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



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regulating driving on highways;

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

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

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

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

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

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

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

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

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

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

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

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

(xvii) custodial interference, under:

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

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

(C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days, unless the court provides the division with an order of suspension for a shorter period of time~~[-]; or~~  
(xviii) refusal of a chemical test under Subsection 41-6a-520(7).

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

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

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

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

(i) any violation of:

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

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

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

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

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

(ii) any criminal offense that prohibits:

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

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

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

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

(B) a record of the conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(v) Upon receipt of the second or subsequent order suspending a person's driving privileges under Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

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

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

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

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

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

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

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

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

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

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

(A) the person has had the period of the first denial, suspension, revocation, or

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disqualification extended for a period of at least three years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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denied under this chapter.

Section ~~9~~10. Section 53-3-223 is amended to read:

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

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

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

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

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of arrest, give notice of the division's intention to suspend the person's license to drive a motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

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

(iii) the test results, if any.

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

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or

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

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.

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

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

(7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the

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

(i) if the person is 21 years of age or older at the time of arrest ~~[and the arrest was made on or after July 1, 2009]~~, suspend the person's license or permit to operate a motor vehicle for a period of:

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

(B) two years beginning on the 45th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(ii) if the person is under 21 years of age at the time of arrest ~~[and the arrest was made on or after May 14, 2013]~~:

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

(I) for a period of six months, beginning on the 45th day after the date of arrest for a first suspension; or

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

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

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

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

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

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

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

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

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

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

~~[(c)]~~ (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division



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shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):

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

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

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

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

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

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

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

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

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

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

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

~~[(A) a court order shortening the driver license suspension for a violation of Section 41-6a-502 pursuant to Subsection 41-6a-509 ~~{(8)}~~ {(7)}]~~

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

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

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

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

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

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

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

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

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

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

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

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

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Section ~~{10}~~11. Section 53-3-231 is amended to read:

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

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

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

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

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

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

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

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

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

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the arrest, give notice of the division's intention to deny or suspend the person's license to operate a

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vehicle or refusal to issue a license under this section.

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

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

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

(b) a signed report in a manner specified by the Driver License Division indicating the chemical test results, if any; and

(c) any other basis for a peace officer's determination that the person has violated Subsection (2).

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

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

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

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

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

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

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

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

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

(iii) the test results, if any.

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

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

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

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

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

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

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

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

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

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

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

(ii) the suspension is for a second or subsequent offense under Subsection (2)(a) committed ~~[on or after July 1, 2009, and]~~ within 10 years of a prior denial or suspension~~;~~ or]

~~[(c) deny or suspend a person's license for the denial and suspension periods in effect:]~~

~~[(i) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed prior to July 1, 2009;]~~

~~[(ii) from July 1, 2009, through June 30, 2011, if the person was 20 years 6 months of~~

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~~age or older but under 21 years of age at the time of arrest and the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or~~

~~[(iii) prior to May 14, 2013, for a violation under Subsection (2)(a) that was committed prior to May 14, 2013.]~~

~~[(8) (a) Notwithstanding the provisions in Subsection (7)(c)(iii), the division shall shorten a person's one-year license suspension or denial period that is currently in effect to a six-month suspension or denial period if:]~~

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

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

~~[(iii) the suspension or denial under Subsection (7)(c)(iii) was based on the same occurrence upon which the following written verifications are based:]~~

~~[(A) a court order shortening the driver license suspension for a violation of Section 41-6a-502 pursuant to Subsection 41-6a-509{(7)(8)}{(7)}]~~

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

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

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

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

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

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

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

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

~~[(9)] (8) (a) (i) Following denial or suspension the division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section~~

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53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

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

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

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

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

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

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

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

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

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

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

(c) At the conclusion of the penalty period imposed under Subsection (2), the local

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substance abuse authority or the substance abuse program shall notify the division of the person's status regarding completion of the recommended action.

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

- (i) conducting the assessments;
- (ii) making appropriate recommendations for action; and
- (iii) notifying the division about the person's status regarding completion of the recommended action.

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

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

- (A) conducting an assessment of the person's alcohol abuse; and
- (B) for making a referral to an appropriate program on the basis of the findings of the assessment.

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

(B) The costs and fees under Subsection ~~[(11)]~~ (10)(e)(iii)(A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services or determined by the substance abuse program.

~~{ Section 11. Section 77-40-105 (Superseded 05/01/20) is amended to read:~~

~~77-40-105 (Superseded 05/01/20). Eligibility for expungement of conviction --~~

### ~~Requirements:~~

~~(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.~~

~~(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:~~

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

~~(i) a capital felony;~~

~~(ii) a first degree felony;~~

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



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- ~~—— (iv) felony automobile homicide;~~
- ~~—— (v) a felony [violation of] conviction described in Subsection 41-6a-501(2);~~
- ~~—— (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or~~
- ~~—— (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);~~
- ~~—— (b) a criminal proceeding is pending against the petitioner; or~~
- ~~—— (c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.~~
- ~~—— (3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:~~
  - ~~—— (a) all fines and interest ordered by the court related to the conviction for which expungement is sought have been paid in full;~~
  - ~~—— (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and~~
  - ~~—— (c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:~~
    - ~~—— (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);~~
    - ~~—— (ii) seven years in the case of a felony;~~
    - ~~—— (iii) five years in the case of any class A misdemeanor or a felony drug possession offense;~~
    - ~~—— (iv) four years in the case of a class B misdemeanor; or~~
    - ~~—— (v) three years in the case of any other misdemeanor or infraction.~~
- ~~—— (4) The bureau may not count pending or previous infractions, traffic offenses, or minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or minor regulatory offenses, when determining expungement eligibility.~~
- ~~—— (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):~~

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

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

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

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

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

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

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

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

~~—— (a) is a felony or class A misdemeanor; or~~

~~—— (b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode;~~

~~—— (8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one;~~

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

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

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

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

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

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

(i) a capital felony;

(ii) a first degree felony;

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

(iv) felony automobile homicide;

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

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

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

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

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

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

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

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

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

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

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

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

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

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):

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

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

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

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

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

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

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

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

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

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

(8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one.

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

### Section 13. **Effective date.**

~~{(1) Except as provided in Subsection (2), this}~~ This bill takes effect on ~~{May 12,~~  
2020.

~~———— (2) If approved by two-thirds of all the members elected to each house, Section~~  
77-40-105 (Effective 05/01/20) takes effect on May July 1, 2020.