

**DUI AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Don L. Ipson

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**LONG TITLE**

**General Description:**

This bill amends provisions related to driving under the influence and refusal of a chemical test.

**Highlighted Provisions:**

This bill:

- ▶ combines separate sections that include the elements of a driving under the influence offense into a single section;
- ▶ combines separate sections that include the elements of a refusal of a chemical test offense into a single section; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**24-4-102**, as last amended by Laws of Utah 2022, Chapters 116, 274

**31A-22-303**, as last amended by Laws of Utah 2020, Chapter 76

**41-6a-501**, as last amended by Laws of Utah 2022, Chapter 116

**41-6a-502**, as last amended by Laws of Utah 2022, Chapter 415

**41-6a-505**, as last amended by Laws of Utah 2022, Chapters 116, 134 and 137

**41-6a-518**, as last amended by Laws of Utah 2022, Chapter 272

30 [41-6a-518.2](#), as last amended by Laws of Utah 2022, Chapter 116  
 31 [41-6a-520](#), as last amended by Laws of Utah 2022, Chapters 116, 134  
 32 [41-6a-521.1](#), as enacted by Laws of Utah 2020, Chapter 177  
 33 [41-6a-527](#), as last amended by Laws of Utah 2017, Chapter 181  
 34 [41-6a-529](#), as last amended by Laws of Utah 2022, Chapter 116  
 35 [53-3-218](#), as last amended by Laws of Utah 2022, Chapter 426  
 36 [53-3-220](#), as last amended by Laws of Utah 2022, Chapter 116  
 37 [53-3-227](#), as last amended by Laws of Utah 2008, Chapter 250  
 38 [58-37f-201](#), as last amended by Laws of Utah 2022, Chapter 116  
 39 [58-37f-703](#), as last amended by Laws of Utah 2016, Chapter 99  
 40 [76-5-102.1](#), as enacted by Laws of Utah 2022, Chapter 116  
 41 [76-5-207](#), as last amended by Laws of Utah 2022, Chapters 116, 181 and last amended  
 42 by Coordination Clause, Laws of Utah 2022, Chapter 116  
 43 [77-2a-3](#), as last amended by Laws of Utah 2022, Chapter 116

44 ENACTS:

45 [41-6a-520.1](#), Utah Code Annotated 1953

46 REPEALS:

47 [41-6a-503](#), as last amended by Laws of Utah 2022, Chapters 116, 134 and 137



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

50 Section 1. Section **24-4-102** is amended to read:

51 **24-4-102. Property subject to forfeiture.**

52 (1) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:

53 (a) seized property that was used to facilitate the commission of an offense that is a  
54 violation of federal or state law; and

55 (b) seized proceeds.

56 (2) If seized property is used to facilitate an offense that is a violation of Section

57 [76-10-1204](#), [76-10-1205](#), [76-10-1206](#), or [76-10-1222](#), an agency may not forfeit the property if

58 the forfeiture would constitute a prior restraint on the exercise of an affected party's rights  
59 under the First Amendment to the Constitution of the United States or Utah Constitution,  
60 Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's  
61 rights under the First Amendment to the Constitution of the United States or Utah Constitution,  
62 Article I, Section 15.

63 (3) If a motor vehicle is used in an offense that is a violation of Section [41-6a-502](#),  
64 [41-6a-517](#), a local ordinance that complies with the requirements of Subsection [41-6a-510\(1\)](#),  
65 Subsection [76-5-102.1\(2\)\(b\)](#), or Section [76-5-207](#), an agency may not seek forfeiture of the  
66 motor vehicle, unless:

67 (a) the operator of the vehicle has previously been convicted of an offense committed  
68 after May 12, 2009, that is:

69 (i) a felony driving under the influence violation under Section [41-6a-502](#) or  
70 Subsection [76-5-102.1\(2\)\(a\)](#);

71 (ii) a felony violation under Subsection [76-5-102.1\(2\)\(b\)](#);

72 (iii) a violation under Section [76-5-207](#); or

73 (iv) operating a motor vehicle with any amount of a controlled substance in an  
74 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,  
75 Laws of Utah 2021, Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#); or

76 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or  
77 disqualified license and:

78 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)  
79 was imposed because of a violation under:

80 (A) Section [41-6a-502](#);

81 (B) Section [41-6a-517](#);

82 (C) a local ordinance that complies with the requirements of Subsection [41-6a-510\(1\)](#);

83 (D) Section [~~41-6a-520~~] [41-6a-520.1](#);

84 (E) operating a motor vehicle with any amount of a controlled substance in an  
85 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,

86 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

87 (F) Section 76-5-102.1;

88 (G) Section 76-5-207; or

89 (H) a criminal prohibition as a result of a plea bargain after having been originally  
90 charged with violating one or more of the sections or ordinances described in Subsections  
91 (3)(b)(i)(A) through (G); or

92 (ii) the denial, suspension, revocation, or disqualification described in Subsections  
93 (3)(b)(i)(A) through (H):

94 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,  
95 revocation, or disqualification; and

96 (B) the original denial, suspension, revocation, or disqualification was imposed  
97 because of a violation described in Subsections (3)(b)(i)(A) through (H).

98 (4) If a peace officer seizes property incident to an arrest solely for possession of a  
99 controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 58-37-8(2)(b)(i), an  
100 agency may not seek to forfeit the property that was seized in accordance with the arrest.

101 Section 2. Section 31A-22-303 is amended to read:

102 **31A-22-303. Motor vehicle liability coverage.**

103 (1) (a) In addition to complying with the requirements of Chapter 21, Insurance  
104 Contracts in General, and [~~Chapter 22, Part 2, Liability Insurance in General~~] Part 2, Liability  
105 Insurance in General, a policy of motor vehicle liability coverage under Subsection  
106 31A-22-302(1)(a) shall:

107 (i) name the motor vehicle owner or operator in whose name the policy was purchased,  
108 state that named insured's address, the coverage afforded, the premium charged, the policy  
109 period, and the limits of liability;

110 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor  
111 vehicles on which coverage is granted, insure the person named in the policy, insure any other  
112 person using any named motor vehicle with the express or implied permission of the named  
113 insured, and, except as provided in Section 31A-22-302.5, insure any person included in

114 Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of  
115 the ownership, maintenance, or use of these motor vehicles within the United States and  
116 Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not  
117 less than the minimum limits specified under Section 31A-22-304; or

118 (B) if it is an operator's policy, insure the person named as insured against loss from  
119 the liability imposed upon him by law for damages arising out of the insured's use of any motor  
120 vehicle not owned by him, within the same territorial limits and with the same limits of liability  
121 as in an owner's policy under Subsection (1)(a)(ii)(A);

122 (iii) except as provided in Section 31A-22-302.5, insure persons related to the named  
123 insured by blood, marriage, adoption, or guardianship who are residents of the named insured's  
124 household, including those who usually make their home in the same household but  
125 temporarily live elsewhere, to the same extent as the named insured;

126 (iv) where a claim is brought by the named insured or a person described in Subsection  
127 (1)(a)(iii), the available coverage of the policy may not be reduced or stepped-down because:

128 (A) a permissive user driving a covered motor vehicle is at fault in causing an accident;  
129 or

130 (B) the named insured or any of the persons described in ~~this~~ Subsection (1)(a)(iii)  
131 driving a covered motor vehicle is at fault in causing an accident; and

132 (v) cover damages or injury resulting from a covered driver of a motor vehicle who is  
133 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not  
134 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the  
135 extent that a person of ordinary prudence would not attempt to continue driving.

136 (b) The driver's liability under Subsection (1)(a)(v) is limited to the insurance  
137 coverage.

138 (c) (i) "Guardianship" under Subsection (1)(a)(iii) includes the relationship between a  
139 foster parent and a minor who is in the legal custody of the Division of Child and Family  
140 Services if:

141 (A) the minor resides in a foster home, as defined in Section 62A-2-101, with a foster

142 parent who is the named insured; and

143 (B) the foster parent has signed to be jointly and severally liable for compensatory  
144 damages caused by the minor's operation of a motor vehicle in accordance with Section  
145 [53-3-211](#).

146 (ii) "Guardianship" as defined under this Subsection (1)(c) ceases to exist when a  
147 minor described in Subsection (1)(c)(i)(A) is no longer a resident of the named insured's  
148 household.

149 (2) (a) A policy containing motor vehicle liability coverage under Subsection  
150 [31A-22-302\(1\)\(a\)](#) may:

151 (i) provide for the prorating of the insurance under that policy with other valid and  
152 collectible insurance;

153 (ii) grant any lawful coverage in addition to the required motor vehicle liability  
154 coverage;

155 (iii) if the policy is issued to a person other than a motor vehicle business, limit the  
156 coverage afforded to a motor vehicle business or its officers, agents, or employees to the  
157 minimum limits under Section [31A-22-304](#), and to those instances when there is no other valid  
158 and collectible insurance with at least those limits, whether the other insurance is primary,  
159 excess, or contingent; and

160 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other  
161 than the motor vehicle business or its officers, agents, or employees to the minimum limits  
162 under Section [31A-22-304](#), and to those instances when there is no other valid and collectible  
163 insurance with at least those limits, whether the other insurance is primary, excess, or  
164 contingent.

165 (b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned  
166 by a motor vehicle business shall be primary coverage.

167 (ii) The liability insurance coverage of a motor vehicle business shall be secondary to  
168 the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

169 (3) Motor vehicle liability coverage need not insure any liability:

170 (a) under any workers' compensation law under Title 34A, Utah Labor Code;

171 (b) resulting from bodily injury to or death of an employee of the named insured, other  
172 than a domestic employee, while engaged in the employment of the insured, or while engaged  
173 in the operation, maintenance, or repair of a designated vehicle; or

174 (c) resulting from damage to property owned by, rented to, bailed to, or transported by  
175 the insured.

176 (4) An insurance carrier providing motor vehicle liability coverage has the right to  
177 settle any claim covered by the policy, and if the settlement is made in good faith, the amount  
178 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

179 (5) A policy containing motor vehicle liability coverage imposes on the insurer the  
180 duty to defend, in good faith, any person insured under the policy against any claim or suit  
181 seeking damages which would be payable under the policy.

182 (6) (a) If a policy containing motor vehicle liability coverage provides an insurer with  
183 the defense of lack of cooperation on the part of the insured, that defense is not effective  
184 against a third person making a claim against the insurer, unless there was collusion between  
185 the third person and the insured.

186 (b) If the defense of lack of cooperation is not effective against the claimant, after  
187 payment, the insurer is subrogated to the injured person's claim against the insured to the extent  
188 of the payment and is entitled to reimbursement by the insured after the injured third person has  
189 been made whole with respect to the claim against the insured.

190 (7) (a) A policy of motor vehicle coverage may limit coverage to the policy minimum  
191 limits under Section 31A-22-304 if the policy or a specifically reduced premium was extended  
192 to the insured upon express written declaration executed by the insured that the insured motor  
193 vehicle would not be operated by a person described in Subsection (7)(c) operating in a manner  
194 described in Subsection (7)(b)(i).

195 (b) (i) A policy of motor vehicle liability coverage may limit coverage as described in  
196 Subsection (7)(a) if the insured motor vehicle is operated by an individual described in  
197 Subsection (7)(c) if the individual described in Subsection (7)(c) is guilty of:

- 198 (A) driving under the influence as described in Section [41-6a-502](#);
- 199 (B) impaired driving as described in Section [41-6a-502.5](#); or
- 200 (C) operating a vehicle with a measurable controlled substance in the individual's body
- 201 as described in Section [41-6a-517](#).

202 (ii) An individual's refusal to submit to a chemical test as described in [~~Section~~]

203 Sections [41-6a-520](#) and [41-6a-520.1](#) is admissible evidence, but not conclusive, that the

204 individual is guilty of an offense described in Subsection (7)(b)(i).

205 (c) A reduction in coverage as described in Subsection (7)(a) applies to the following

206 individuals:

- 207 (i) the insured;
- 208 (ii) the spouse of the insured; or
- 209 (iii) if the individual has a separate policy as a secondary source of coverage, and:
  - 210 (A) the individual is over the age of 21 and resides in the household of the insured; or
  - 211 (B) the individual is a permissible user of the motor vehicle.

212 (d) A reduction in coverage as described in Subsection (7)(a) does not apply to an

213 individual under the age of 21 who is a relative of the insured and a resident of the insured's

214 household.

215 (8) (a) When a claim is brought exclusively by a named insured or a person described

216 in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual

217 described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

- 218 (i) by submitting the claim to binding arbitration; or
- 219 (ii) through litigation.

220 (b) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),

221 the claimant may not elect to resolve the claim through binding arbitration under this section

222 without the written consent of both parties and the defendant's liability insurer.

223 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to

224 binding arbitration under Subsection (8)(a)(i) shall be resolved by a panel of three arbitrators.

225 (ii) Unless otherwise agreed on in writing by the parties, each party shall select an



226 arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

227 (d) Unless otherwise agreed on in writing by the parties, each party will pay the fees  
228 and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs  
229 of the third arbitrator.

230 (e) Except as otherwise provided in this section, an arbitration procedure conducted  
231 under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act,  
232 unless otherwise agreed on in writing by the parties.

233 (f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah  
234 Rules of Civil Procedure.

235 (ii) All issues of discovery shall be resolved by the arbitration panel.

236 (g) A written decision of two of the three arbitrators shall constitute a final decision of  
237 the arbitration panel.

238 (h) Prior to the rendering of the arbitration award:

239 (i) the existence of a liability insurance policy may be disclosed to the arbitration  
240 panel; and

241 (ii) the amount of all applicable liability insurance policy limits may not be disclosed to  
242 the arbitration panel.

243 (i) The amount of the arbitration award may not exceed the liability limits of all the  
244 defendant's applicable liability insurance policies, including applicable liability umbrella  
245 policies. If the initial arbitration award exceeds the liability limits of all applicable liability  
246 insurance policies, the arbitration award shall be reduced to an amount equal to the liability  
247 limits of all applicable liability insurance policies.

248 (j) The arbitration award is the final resolution of all claims between the parties unless  
249 the award was procured by corruption, fraud, or other undue means.

250 (k) If the arbitration panel finds that the action was not brought, pursued, or defended  
251 in good faith, the arbitration panel may award reasonable fees and costs against the party that  
252 failed to bring, pursue, or defend the claim in good faith.

253 (l) Nothing in this section is intended to limit any claim under any other portion of an

254 applicable insurance policy.

255 (9) An at-fault driver or an insurer issuing a policy of insurance under this part that is  
256 covering an at-fault driver may not reduce compensation to an injured party based on the  
257 injured party not being covered by a policy of insurance that provides personal injury  
258 protection coverage under Sections [31A-22-306](#) through [31A-22-309](#).

259 Section 3. Section **41-6a-501** is amended to read:

260 **41-6a-501. Definitions.**

261 (1) As used in this part:

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

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

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

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

267 (iv) the vehicle is lawfully parked; and

268 (v) under the facts presented, it is evident that the person did not drive the vehicle to  
269 the location while under the influence of alcohol, a drug, or the combined influence of alcohol  
270 and any drug.

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

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

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

275 (B) an educational series; or

276 (C) a combination of Subsections (1)(b)(i)(A) and (B); and

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

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

- 282 (d) "Drug" or "drugs" means:
- 283 (i) a controlled substance as defined in Section 58-37-2;
- 284 (ii) a drug as defined in Section 58-17b-102; or
- 285 (iii) a substance that, when knowingly, intentionally, or recklessly taken into the human
- 286 body, can impair the ability of a person to safely operate a motor vehicle.
- 287 (e) "Educational series" means an educational series obtained at a substance abuse
- 288 program that is approved by the Division of Substance Abuse and Mental Health in accordance
- 289 with Section 62A-15-105.
- 290 (f) "Negligence" means simple negligence, the failure to exercise that degree of care
- 291 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.
- 292 (g) "Novice learner driver" means an individual who:
- 293 (i) has applied for a Utah driver license;
- 294 (ii) has not previously held a driver license in this state or another state; and
- 295 (iii) has not completed the requirements for issuance of a Utah driver license.
- 296 (h) "Screening" means a preliminary appraisal of a person:
- 297 (i) used to determine if the person is in need of:
- 298 (A) an assessment; or
- 299 (B) an educational series; and
- 300 (ii) that is approved by the Division of Substance Abuse and Mental Health in
- 301 accordance with Section 62A-15-105.
- 302 (i) "Serious bodily injury" means bodily injury that creates or causes:
- 303 (i) serious permanent disfigurement;
- 304 (ii) protracted loss or impairment of the function of any bodily member or organ; or
- 305 (iii) a substantial risk of death.
- 306 (j) "Substance abuse treatment" means treatment obtained at a substance abuse
- 307 program that is approved by the Division of Substance Abuse and Mental Health in accordance
- 308 with Section 62A-15-105.
- 309 (k) "Substance abuse treatment program" means a state licensed substance abuse

310 program.

311 (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in  
312 Section [41-6a-102](#); and

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

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

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

316 (2) As used in [~~Section [41-6a-503](#)~~] Sections [41-6a-502](#) and [41-6a-520.1](#):

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

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

320 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a  
321 combination of both-related reckless driving under[~~†~~] Sections [41-6a-512](#) and [41-6a-528](#); or

322 [~~(f) Section [41-6a-512](#); and~~

323 [~~(ff) Section [41-6a-528](#); or~~

324 (B) for an offense committed on or after July 1, 2008, impaired driving under Section  
325 [41-6a-502.5](#);

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

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

331 (v) Section [76-5-207](#);

332 (vi) operating a motor vehicle with any amount of a controlled substance in an  
333 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,  
334 Laws of Utah 2021, Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#);

335 (vii) negligently operating a vehicle resulting in injury under Section [76-5-102.1](#);

336 (viii) a violation described in Subsections (2)(a)(i) through (vii), which judgment of  
337 conviction is reduced under Section [76-3-402](#);

338 (ix) refusal of a chemical test under Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1); or  
 339 (x) statutes or ordinances previously in effect in this state or in effect in any other state,  
 340 the United States, or any district, possession, or territory of the United States which would  
 341 constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of  
 342 both-related reckless driving if committed in this state, including punishments administered  
 343 under 10 U.S.C. Sec. 815.

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

- 348 (i) enhancement of penalties under this [~~Chapter 6a, Part 5, Driving Under the~~  
 349 ~~Influence and Reckless Driving~~] part; and
- 350 (ii) expungement under [~~Title 77, Chapter 40, Expungement~~] Title 77, Chapter 40a,  
 351 Expungement.

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

- 355 (i) this part;
- 356 (ii) negligently operating a vehicle resulting in injury under Section 76-5-102.1; and
- 357 (iii) negligently operating a vehicle resulting in death under Section 76-5-207.

358 (3) As used in Section 41-6a-505, "controlled substance" does not include an inactive  
 359 metabolite of a controlled substance.

360 Section 4. Section **41-6a-502** is amended to read:

361 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**  
 362 **both or with specified or unsafe blood alcohol concentration -- Penalties -- Reporting of**  
 363 **convictions.**

364 (1) [~~A person may not operate or be~~] An actor commits driving under the influence if  
 365 the actor operates or is in actual physical control of a vehicle within this state if the [person]

366 actor:

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

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

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

375 (2) (a) A violation of Subsection (1) is a class B misdemeanor.

376 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A  
377 misdemeanor if the actor:

378 (i) has a passenger younger than 16 years old in the vehicle at the time of the offense;

379 (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle  
380 at the time of the offense;

381 (iii) the actor also violated Section [41-6a-712](#) or [41-6a-714](#) at the time of the offense;

382 or

383 (iv) has one prior conviction within 10 years of:

384 (A) the current conviction under Subsection (1); or

385 (B) the commission of the offense upon which the current conviction is based.

386 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree  
387 felony if:

388 (i) the actor has two or more prior convictions each of which is within 10 years of:

389 (A) the current conviction; or

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

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

392 (A) a violation of Section [76-5-207](#);

393 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-520.1](#), or a statute

394 previously in effect in this state that would constitute a violation of this section; or

395 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of  
396 conviction is reduced under Section 76-3-402.

397 ~~[(2)]~~ (3) Alcohol concentration in the blood shall be based upon grams of alcohol per  
398 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of  
399 alcohol per 210 liters of breath.

400 ~~[(3)]~~ (4) A violation of this section includes a violation under a local ordinance similar  
401 to this section adopted in compliance with Section 41-6a-510.

402 ~~[(4)]~~ (5) ~~[Beginning on July 1, 2012, a]~~ A court shall, monthly, send to the Division of  
403 Professional Licensing, created in Section 58-1-103, a report containing the name, case  
404 number, and, if known, the date of birth of each person convicted during the preceding month  
405 of a violation of this section for whom there is evidence that the person was driving under the  
406 influence, in whole or in part, of a prescribed controlled substance.

407 ~~[(5)]~~ (6) An offense described in this section is a strict liability offense.

408 ~~[(6)]~~ (7) A guilty or no contest plea to an offense described in this section may not be  
409 held in abeyance.

410 (8) An actor is guilty of a separate offense under Subsection (1) for each passenger in  
411 the vehicle that is younger than 16 years old at the time of the offense.

412 Section 5. Section 41-6a-505 is amended to read:

413 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**  
414 **drugs, or a combination of both violations.**

415 (1) As part of any sentence for a first conviction of Section 41-6a-502 where there is  
416 admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had  
417 a blood or breath alcohol level of .05 or higher in addition to any measurable controlled  
418 substance, or had a combination of two or more controlled substances in the individual's body  
419 that were not recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis  
420 Act or prescribed:

421 (a) the court shall:

- 422 (i) (A) impose a jail sentence of not less than five days; or
- 423 (B) impose a jail sentence of not less than two days in addition to home confinement of
- 424 not fewer than 30 consecutive days through the use of electronic monitoring that includes a
- 425 substance abuse testing instrument in accordance with Section 41-6a-506;
- 426 (ii) order the individual to participate in a screening;
- 427 (iii) order the individual to participate in an assessment, if it is found appropriate by a
- 428 screening under Subsection (1)(a)(ii);
- 429 (iv) order the individual to participate in an educational series if the court does not
- 430 order substance abuse treatment as described under Subsection (1)(b);
- 431 (v) impose a fine of not less than \$700;
- 432 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 433 (vii) (A) order the individual to pay the administrative impound fee described in
- 434 Section 41-6a-1406; or
- 435 (B) if the administrative impound fee was paid by a party described in Subsection
- 436 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 437 reimburse the party;
- 438 (viii) (A) order the individual to pay the towing and storage fees described in Section
- 439 72-9-603; or
- 440 (B) if the towing and storage fees were paid by a party described in Subsection
- 441 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 442 reimburse the party; or
- 443 (ix) unless the court determines and states on the record that an ignition interlock
- 444 system is not necessary for the safety of the community and in the best interest of justice, order
- 445 the installation of an ignition interlock system as described in Section 41-6a-518; and
- 446 (b) the court may:
- 447 (i) order the individual to obtain substance abuse treatment if the substance abuse
- 448 treatment program determines that substance abuse treatment is appropriate;
- 449 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section



450 41-6a-515.5 if the individual is 21 years old or older; or

451 (iii) order a combination of Subsections (1)(b)(i) and (ii).

452 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety  
453 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
454 under Subsection (1)(a).

455 (b) If an individual described in Subsection (1) fails to successfully complete all of the  
456 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence  
457 described in Subsection (2)(a).

458 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described  
459 in Subsection (1):

460 (a) the court shall:

461 (i) (A) impose a jail sentence of not less than two days; or

462 (B) require the individual to work in a compensatory-service work program for not less  
463 than 48 hours;

464 (ii) order the individual to participate in a screening;

465 (iii) order the individual to participate in an assessment, if it is found appropriate by a  
466 screening under Subsection (3)(a)(ii);

467 (iv) order the individual to participate in an educational series if the court does not  
468 order substance abuse treatment as described under Subsection (3)(b);

469 (v) impose a fine of not less than \$700;

470 (vi) (A) order the individual to pay the administrative impound fee described in Section  
471 41-6a-1406; or

472 (B) if the administrative impound fee was paid by a party described in Subsection  
473 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
474 reimburse the party; or

475 (vii) (A) order the individual to pay the towing and storage fees described in Section  
476 72-9-603; or

477 (B) if the towing and storage fees were paid by a party described in Subsection

478 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
479 reimburse the party; and

480 (b) the court may:

481 (i) order the individual to obtain substance abuse treatment if the substance abuse  
482 treatment program determines that substance abuse treatment is appropriate;

483 (ii) order probation for the individual in accordance with Section 41-6a-507;

484 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section  
485 41-6a-515.5 if the individual is 21 years old or older; or

486 (iv) order a combination of Subsections (3)(b)(i) through (iii).

487 (4) (a) If an individual described in Subsection (3) is participating in a 24/7 sobriety  
488 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
489 under Subsection (3)(a).

490 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of  
491 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail  
492 sentence described in Subsection (4)(a).

493 (5) If an individual has a prior conviction as defined in [~~Subsection 41-6a-501(2)~~]  
494 Section 41-6a-501 that is within 10 years of the current conviction under Section 41-6a-502 or  
495 the commission of the offense upon which the current conviction is based and where there is  
496 admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had  
497 a blood or breath alcohol level of .05 or higher in addition to any measurable controlled  
498 substance, or had a combination of two or more controlled substances in the individual's body  
499 that were not recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis  
500 Act or prescribed:

501 (a) the court shall:

502 (i) (A) impose a jail sentence of not less than 20 days;

503 (B) impose a jail sentence of not less than 10 days in addition to home confinement of  
504 not fewer than 60 consecutive days through the use of electronic monitoring that includes a  
505 substance abuse testing instrument in accordance with Section 41-6a-506; or

506 (C) impose a jail sentence of not less than 10 days in addition to ordering the  
507 individual to obtain substance abuse treatment, if the court finds that substance abuse treatment  
508 is more likely to reduce recidivism and is in the interests of public safety;

509 (ii) order the individual to participate in a screening;

510 (iii) order the individual to participate in an assessment, if it is found appropriate by a  
511 screening under Subsection (5)(a)(ii);

512 (iv) order the individual to participate in an educational series if the court does not  
513 order substance abuse treatment as described under Subsection (5)(b);

514 (v) impose a fine of not less than \$800;

515 (vi) order probation for the individual in accordance with Section 41-6a-507;

516 (vii) order the installation of an ignition interlock system as described in Section  
517 41-6a-518;

518 (viii) (A) order the individual to pay the administrative impound fee described in  
519 Section 41-6a-1406; or

520 (B) if the administrative impound fee was paid by a party described in Subsection  
521 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
522 reimburse the party; or

523 (ix) (A) order the individual to pay the towing and storage fees described in Section  
524 72-9-603; or

525 (B) if the towing and storage fees were paid by a party described in Subsection  
526 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
527 reimburse the party; and

528 (b) the court may:

529 (i) order the individual to obtain substance abuse treatment if the substance abuse  
530 treatment program determines that substance abuse treatment is appropriate;

531 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section  
532 41-6a-515.5 if the individual is 21 years old or older; or

533 (iii) order a combination of Subsections (5)(b)(i) and (ii).

534 (6) (a) If an individual described in Subsection (5) is participating in a 24/7 sobriety  
535 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
536 under Subsection (5)(a) after the individual has served a minimum of:

- 537 (i) five days of the jail sentence for a second offense; or
- 538 (ii) 10 days of the jail sentence for a third or subsequent offense.

539 (b) If an individual described in Subsection (6)(a) fails to successfully complete all of  
540 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail  
541 sentence described in Subsection (6)(a).

542 (7) If an individual has a prior conviction as defined in [~~Subsection 41-6a-501(2)~~]  
543 Section 41-6a-501 that is within 10 years of the current conviction under Section 41-6a-502 or  
544 the commission of the offense upon which the current conviction is based and that does not  
545 qualify under Subsection (5):

546 (a) the court shall:

- 547 (i) (A) impose a jail sentence of not less than 10 days; or
- 548 (B) impose a jail sentence of not less than 5 days in addition to home confinement of  
549 not fewer than 30 consecutive days through the use of electronic monitoring that includes a  
550 substance abuse testing instrument in accordance with Section 41-6a-506;
- 551 (ii) order the individual to participate in a screening;
- 552 (iii) order the individual to participate in an assessment, if it is found appropriate by a  
553 screening under Subsection (7)(a)(ii);
- 554 (iv) order the individual to participate in an educational series if the court does not  
555 order substance abuse treatment as described under Subsection (7)(b);
- 556 (v) impose a fine of not less than \$800;
- 557 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 558 (vii) (A) order the individual to pay the administrative impound fee described in  
559 Section 41-6a-1406; or

560 (B) if the administrative impound fee was paid by a party described in Subsection  
561 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

562 reimburse the party; or

563 (viii) (A) order the individual to pay the towing and storage fees described in Section  
564 72-9-603; or

565 (B) if the towing and storage fees were paid by a party described in Subsection  
566 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
567 reimburse the party; and

568 (b) the court may:

569 (i) order the individual to obtain substance abuse treatment if the substance abuse  
570 treatment program determines that substance abuse treatment is appropriate;

571 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section  
572 41-6a-515.5 if the individual is 21 years old or older; or

573 (iii) order a combination of Subsections (7)(b)(i) and (ii).

574 (8) (a) If an individual described in Subsection (7) is participating in a 24/7 sobriety  
575 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
576 under Subsection (7)(a) after the individual has served a minimum of:

577 (i) five days of the jail sentence for a second offense; or

578 (ii) 10 days of the jail sentence for a third or subsequent offense.

579 (b) If an individual described in Subsection (8)(a) fails to successfully complete all of  
580 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail  
581 sentence described in Subsection (8)(a).

582 (9) Under Subsection [~~41-6a-503(3)~~] 41-6a-502(2)(c), if the court suspends the  
583 execution of a prison sentence and places the defendant on probation where there is admissible  
584 evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or  
585 breath alcohol level of .05 in addition to any measurable controlled substance, or had a  
586 combination of two or more controlled substances in the person's body that were not  
587 recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act or  
588 prescribed, the court shall impose:

589 (a) a fine of not less than \$1,500;

590 (b) a jail sentence of not less than 120 days;

591 (c) home confinement of not fewer than 120 consecutive days through the use of  
592 electronic monitoring that includes a substance abuse testing instrument in accordance with  
593 Section [41-6a-506](#); and

594 (d) supervised probation.

595 (10) (a) For Subsection (9) or Subsection [~~41-6a-503(3)(a)~~] [41-6a-502\(2\)\(c\)\(i\)](#), the  
596 court:

597 (i) shall impose an order requiring the individual to obtain a screening and assessment  
598 for alcohol and substance abuse, and treatment as appropriate; and

599 (ii) may impose an order requiring the individual to participate in a 24/7 sobriety  
600 program as defined in Section [41-6a-515.5](#) if the individual is 21 years old or older.

601 (b) If an individual described in Subsection (10)(a)(ii) fails to successfully complete all  
602 of the requirements of the 24/7 sobriety program, the court shall impose the suspended prison  
603 sentence described in Subsection (9).

604 (11) Under Subsection [~~41-6a-503(3)~~] [41-6a-502\(2\)\(c\)](#), if the court suspends the  
605 execution of a prison sentence and places the defendant on probation with a sentence not  
606 described in Subsection (9), the court shall impose:

607 (a) a fine of not less than \$1,500;

608 (b) a jail sentence of not less than 60 days;

609 (c) home confinement of not fewer than 60 consecutive days through the use of  
610 electronic monitoring that includes a substance abuse testing instrument in accordance with  
611 Section [41-6a-506](#); and

612 (d) supervised probation.

613 (12) (a) (i) Except as described in Subsection (12)(a)(ii), a court may not suspend the  
614 requirements of this section.

615 (ii) A court may suspend requirements as described in Subsection (2), (4), (6), or (8).

616 (b) A court, with stipulation of both parties and approval from the judge, may convert a  
617 jail sentence required in this section to electronic home confinement.

618 (c) A court may order a jail sentence imposed as a condition of misdemeanor probation  
619 under this section to be served in multiple two-day increments at weekly intervals if the court  
620 determines that separate jail increments are necessary to ensure the defendant can serve the  
621 statutorily required jail term and maintain employment.

622 (13) If an individual is convicted of a violation of Section 41-6a-502 and there is  
623 admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, the  
624 court shall order the following, or describe on record why the order or orders are not  
625 appropriate:

626 (a) treatment as described under Subsection (1)(b), (3)(b), (5)(b), or (7)(b); and

627 (b) one or more of the following:

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

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

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

634 Section 6. Section 41-6a-518 is amended to read:

635 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost -- Indigency**  
636 **-- Fee.**

637 (1) As used in this section:

638 (a) "Commissioner" means the commissioner of the Department of Public Safety.

639 (b) "Employer verification" means written verification from the employer that:

640 (i) the employer is aware that the employee is an interlock restricted driver;

641 (ii) the vehicle the employee is operating for employment purposes is not made  
642 available to the employee for personal use;

643 (iii) the business entity that employs the employee is not entirely or partly owned or  
644 controlled by the employee;

645 (iv) the employer's auto insurance company is aware that the employee is an interlock

646 restricted driver; and

647 (v) the employee has been added to the employer's auto insurance policy as an operator  
648 of the vehicle.

649 (c) "Ignition interlock system" or "system" means a constant monitoring device or any  
650 similar device certified by the commissioner that prevents a motor vehicle from being started  
651 or continuously operated without first determining the driver's breath alcohol concentration.

652 (d) "Probation provider" means the supervisor and monitor of the ignition interlock  
653 system required as a condition of probation who contracts with the court in accordance with  
654 Subsections [41-6a-507\(2\)](#) and (3).

655 (2) (a) In addition to any other penalties imposed under Sections [~~41-6a-503~~]  
656 [41-6a-502](#) and [41-6a-505](#), and in addition to any requirements imposed as a condition of  
657 probation, unless the court determines and states on the record that an ignition interlock system  
658 is not necessary for the safety of the community and in the best interest of justice, the court  
659 shall require that any person who is convicted of violating Section [41-6a-502](#) and who is  
660 granted probation may not operate a motor vehicle during the period of probation unless that  
661 motor vehicle is equipped with a functioning, certified ignition interlock system installed and  
662 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood  
663 alcohol concentration exceeds .02 grams or greater.

664 (b) If a person convicted of violating Section [41-6a-502](#) was under the age of 21 when  
665 the violation occurred, the court shall order the installation of the ignition interlock system as a  
666 condition of probation.

667 (c) (i) If a person is convicted of a violation of Section [41-6a-502](#) within 10 years of a  
668 prior conviction as defined in [~~Subsection [41-6a-501\(2\)](#)~~] Section [41-6a-501](#), the court shall  
669 order the installation of the interlock ignition system, at the person's expense, for all motor  
670 vehicles registered to that person and all motor vehicles operated by that person.

671 (ii) A person who operates a motor vehicle without an ignition interlock device as  
672 required under this Subsection (2)(c) is in violation of Section [41-6a-518.2](#).

673 (d) The division shall post the ignition interlock restriction on the electronic record



674 available to law enforcement.

675 (e) This section does not apply to a person convicted of a violation of Section  
676 41-6a-502 whose violation does not involve alcohol.

677 (3) If the court imposes the use of an ignition interlock system as a condition of  
678 probation, the court shall:

679 (a) stipulate on the record the requirement for and the period of the use of an ignition  
680 interlock system;

681 (b) order that an ignition interlock system be installed on each motor vehicle owned or  
682 operated by the probationer, at the probationer's expense;

683 (c) immediately notify the Driver License Division and the person's probation provider  
684 of the order; and

685 (d) require the probationer to provide proof of compliance with the court's order to the  
686 probation provider within 30 days of the order.

687 (4) (a) The probationer shall provide timely proof of installation within 30 days of an  
688 order imposing the use of a system or show cause why the order was not complied with to the  
689 court or to the probationer's probation provider.

690 (b) The probation provider shall notify the court of failure to comply under Subsection  
691 (4)(a).

692 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification  
693 under Subsection (4)(b), the court shall order the Driver License Division to suspend the  
694 probationer's driving privileges for the remaining period during which the compliance was  
695 imposed.

696 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable  
697 to excuse the probationer's failure to comply with the court's order.

698 (5) (a) Any probationer required to install an ignition interlock system shall have the  
699 system monitored by the manufacturer or dealer of the system for proper use and accuracy at  
700 least semiannually and more frequently as the court may order.

701 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the

702 court or the person's probation provider.

703 (ii) The report shall be issued within 14 days following each monitoring.

704 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the  
705 reasonable costs of leasing or buying and installing and maintaining the system.

706 (b) A probationer may not be excluded from this section for inability to pay the costs,  
707 unless:

708 (i) the probationer files an affidavit of indigency in accordance with Section  
709 78A-2-302; and

710 (ii) the court enters a finding that the probationer is indigent.

711 (c) In lieu of waiver of the entire amount of the cost, the court may direct the  
712 probationer to make partial or installment payments of costs when appropriate.

713 (d) The ignition interlock provider shall cover the costs of waivers by the court under  
714 this Subsection (6).

715 (7) (a) If a probationer is required in the course and scope of employment to operate a  
716 motor vehicle owned by the probationer's employer, the probationer may operate that motor  
717 vehicle without installation of an ignition interlock system only if:

718 (i) the motor vehicle is used in the course and scope of employment;

719 (ii) the employer has been notified that the employee is restricted; and

720 (iii) the employee has employer verification in the employee's possession while  
721 operating the employer's motor vehicle.

722 (b) (i) To the extent that an employer-owned motor vehicle is made available to a  
723 probationer subject to this section for personal use, no exemption under this section shall apply.

724 (ii) A probationer intending to operate an employer-owned motor vehicle for personal  
725 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock  
726 system shall notify the employer and obtain consent in writing from the employer to install a  
727 system in the employer-owned motor vehicle.

728 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled  
729 by a probationer subject to this section is not a motor vehicle owned by the employer and does

730 not qualify for an exemption under this Subsection (7).

731 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
732 the commissioner shall make rules setting standards for the certification of ignition interlock  
733 systems.

734 (b) The standards under Subsection (8)(a) shall require that the system:

735 (i) not impede the safe operation of the motor vehicle;

736 (ii) have features that make circumventing difficult and that do not interfere with the  
737 normal use of the motor vehicle;

738 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

739 (iv) prevent the motor vehicle from being started if the driver's breath alcohol  
740 concentration exceeds .02 grams or greater;

741 (v) work accurately and reliably in an unsupervised environment;

742 (vi) resist tampering and give evidence if tampering is attempted;

743 (vii) operate reliably over the range of motor vehicle environments; and

744 (viii) be manufactured by a party who will provide liability insurance.

745 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or  
746 independent laboratory tests relied upon in certification of ignition interlock systems by other  
747 states.

748 (d) A list of certified systems shall be published by the commissioner and the cost of  
749 certification shall be borne by the manufacturers or dealers of ignition interlock systems  
750 seeking to sell, offer for sale, or lease the systems.

751 (e) (i) In accordance with Section [63J-1-504](#), the commissioner may establish an  
752 annual dollar assessment against the manufacturers of ignition interlock systems distributed in  
753 the state for the costs incurred in certifying.

754 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the  
755 manufacturers on a fair and reasonable basis.

756 (f) The commissioner shall require a provider of an ignition interlock system certified  
757 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,

758 Ignition Interlock System Program Act.

759 (9) A violation of this section is a class C misdemeanor.

760 (10) There shall be no liability on the part of, and no cause of action of any nature shall  
761 arise against, the state or its employees in connection with the installation, use, operation,  
762 maintenance, or supervision of an interlock ignition system as required under this section.

763 Section 7. Section **41-6a-518.2** is amended to read:

764 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**  
765 **interlock system.**

766 (1) As used in this section:

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

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

770 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection  
771 [41-6a-518\(8\)](#).

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

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

775 (B) within the last 18 months has been convicted of a violation under Section  
776 [41-6a-502](#), Subsection [~~[41-6a-520\(7\)](#)~~ [41-6a-520.1\(1\)](#)], or Section [76-5-102.1](#);

777 (C) (I) within the last three years has been convicted of an offense which would be a  
778 conviction as defined under Section [41-6a-501](#); and

779 (II) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years  
780 from the date that one or more prior offenses was committed if the prior offense resulted in a  
781 conviction as defined in [~~Subsection [41-6a-501\(2\)](#)~~ Section [41-6a-501](#)];

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

783 (E) within the last three years has had the person's driving privilege revoked through an  
784 administrative action for refusal to submit to a chemical test under Section [41-6a-520](#);

785 (F) within the last three years has been convicted of a violation of Section [41-6a-502](#),

786 Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#), or Section [76-5-102.1](#) and was under the age of 21  
787 at the time the offense was committed;

788 (G) within the last six years has been convicted of a felony violation of Section  
789 [41-6a-502](#), Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#), or Section [76-5-102.1](#) for an offense that  
790 occurred after May 1, 2006; or

791 (H) within the last 10 years has been convicted of a violation of Section [76-5-207](#) for  
792 an offense that occurred after May 1, 2006.

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

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

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

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

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

806 (3) For purposes of this section, a plea of guilty or no contest to a violation of Section  
807 [41-6a-502](#) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,  
808 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently  
809 reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

813 (a) the interlock restricted driver operated or was in actual physical control of a vehicle

814 owned by the interlock restricted driver's employer;

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

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

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

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

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

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

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

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

832 Section 8. Section 41-6a-520 is amended to read:

833 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**  
834 **tests -- Refusal -- Warning, report.**

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

839 (i) having a blood or breath alcohol content statutorily prohibited under Section  
840 41-6a-502, 41-6a-530, or 53-3-231;

841 (ii) under the influence of alcohol, any drug, or combination of alcohol and any drug

842 under Section 41-6a-502; or

843 (iii) having any measurable controlled substance or metabolite of a controlled  
844 substance in the person's body in violation of Section 41-6a-517.

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

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

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

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

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

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

867 (i) has been placed under arrest;

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

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

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

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

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

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

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

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

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

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

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

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

897 (6) Notwithstanding the provisions in this section, a blood test taken under this section



898 is subject to Section [77-23-213](#).

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

902 ~~[(8) A person who violates Subsection (7) commits an offense classified as a~~  
903 ~~misdemeanor or felony in accordance with Subsections [41-6a-503](#)(1), (2), and (3).]~~

904 ~~[(9) As part of any sentence for a conviction of violating this section, the court shall~~  
905 ~~impose the same sentencing as outlined for driving under the influence violations in Section~~  
906 ~~[41-6a-505](#), based on whether this is a first, second, or subsequent conviction as defined by~~  
907 ~~Subsection [41-6a-501](#)(2), with the following modifications:]~~

908 ~~[(a) any jail sentence shall be 24 consecutive hours more than would be required under~~  
909 ~~Section [41-6a-505](#);~~]

910 ~~[(b) any fine imposed shall be \$100 more than would be required under Section~~  
911 ~~[41-6a-505](#); and]~~

912 ~~[(c) the court shall order one or more of the following:]~~

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

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

917 ~~[(iii) the imposition of home confinement through the use of electronic monitoring in~~  
918 ~~accordance with Section [41-6a-506](#).]~~

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

921 ~~[(b) In accordance with Subsection [77-2a-3](#)(8), a guilty or no contest plea to an offense~~  
922 ~~of refusal to submit to a chemical test under this section may not be held in abeyance.]~~

923 Section 9. Section [41-6a-520.1](#) is enacted to read:

924 **[41-6a-520.1](#). Refusing a chemical test.**

925 **(1) An actor commits refusing a chemical test if:**

- 926 (a) a peace officer issues the warning required in Subsection [41-6a-520\(2\)\(a\)](#);  
927 (b) a court issues a warrant to draw and test the blood; and  
928 (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's  
929 blood.
- 930 (2) (a) A violation of Subsection (1) is a class B misdemeanor.  
931 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A  
932 misdemeanor if the actor:
- 933 (i) has a passenger younger than 16 years old in the vehicle at the time the officer had  
934 grounds to believe the actor was driving under the influence;
- 935 (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle  
936 at the time the officer had grounds to believe the actor was driving under the influence;
- 937 (iii) also violated Section [41-6a-712](#) or [41-6a-714](#) at the time of the offense; or  
938 (iv) has one prior conviction within 10 years of:
- 939 (A) the current conviction under Subsection (1); or  
940 (B) the commission of the offense upon which the current conviction is based.
- 941 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree  
942 felony if:
- 943 (i) the actor has two or more prior convictions, each of which is within 10 years of:  
944 (A) the current conviction; or  
945 (B) the commission of the offense upon which the current conviction is based; or  
946 (ii) the current conviction is at any time after a conviction of:
- 947 (A) a violation of Section [76-5-207](#);  
948 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-502](#), or a statute  
949 previously in effect in this state that would constitute a violation of this section; or
- 950 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of  
951 conviction is reduced under Section [76-3-402](#).
- 952 (3) As part of any sentence for a conviction of violating this section, the court shall  
953 impose the same sentencing as outlined for driving under the influence violations in Section

954 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the  
955 following modifications:

956 (a) any jail sentence shall be 24 consecutive hours more than is required under Section  
957 41-6a-505;

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

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

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

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

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

966 (4) (a) The offense of refusing a chemical test under this section does not merge with  
967 any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.

968 (b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense  
969 of refusal to submit to a chemical test under this section may not be held in abeyance.

970 (5) An actor is guilty of a separate offense under Subsection (1) for each passenger in  
971 the vehicle that is younger than 16 years old at the time the officer had grounds to believe the  
972 actor was driving under the influence.

973 Section 10. Section **41-6a-521.1** is amended to read:

974 **41-6a-521.1. Driver license denial or revocation for a criminal conviction for a**  
975 **refusal to submit to a chemical test violation.**

976 (1) The Driver License Division shall, if the person is 21 years [~~of age~~] old or older at  
977 the time of arrest:

978 (a) revoke for a period of 18 months the operator's license of a person convicted for the  
979 first time under Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1); or

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

981 (i) the person has a prior conviction as defined under [~~Subsection 41-6a-501(2)~~]

982 Section 41-6a-501; and

983 (ii) the current refusal to submit to a chemical test violation under Subsection  
984 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the  
985 prior violation.

986 (2) The Driver License Division shall, if the person is under 21 years [~~of age~~] old at the  
987 time of arrest:

988 (a) revoke the person's driver license until the person is 21 years [~~of age~~] old or for a  
989 period of two years, whichever is longer; [~~or~~]

990 (b) revoke the person's driver license until the person is 21 years [~~of age~~] old or for a  
991 period of 36 months, whichever is longer, if:

992 (i) the person has a prior conviction as defined under [~~Subsection 41-6a-501(2)~~]  
993 Section 41-6a-501; and

994 (ii) the current refusal to submit to a chemical test violation under Subsection  
995 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the  
996 prior violation; or

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

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

1000 (ii) deny the person's application for a license or learner's permit until the person is 21  
1001 years [~~of age~~] old or for a period of 36 months, whichever is longer, if:

1002 (A) the person has a prior conviction as defined under [~~Subsection 41-6a-501(2)~~]  
1003 Section 41-6a-501; and

1004 (B) the current refusal to submit to a chemical test violation under Subsection  
1005 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the  
1006 prior violation.

1007 (3) The Driver License Division shall suspend or revoke the license of a person as  
1008 ordered by the court under Subsection (5).

1009 (4) The Driver License Division shall subtract from any revocation period the number

1010 of days for which a license was previously revoked under Section [~~53-3-221~~] [41-6a-521](#) if the  
1011 previous revocation was based on the same occurrence upon which the record of conviction  
1012 under Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#) is based.

1013 (5) (a) (i) In addition to any other penalties provided in this section, a court may order  
1014 the driver license of a person who is convicted of a violation of Subsection [~~41-6a-520(7)~~]  
1015 [41-6a-520.1\(1\)](#) to be revoked for an additional period of 90 days, 120 days, 180 days, one year,  
1016 or two years to remove from the highways those persons who have shown they are safety  
1017 hazards.

1018 (ii) The additional revocation period provided in this Subsection (5) shall begin the  
1019 date on which the individual would be eligible to reinstate the individual's driving privilege for  
1020 a violation of Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#).

1021 (b) If the court suspends or revokes the person's license under this Subsection (5), the  
1022 court shall prepare and send to the Driver License Division an order to suspend or revoke that  
1023 person's driving privileges for a specified period of time.

1024 (6) (a) The court shall notify the Driver License Division if a person fails to:

1025 (i) complete all court ordered:

1026 (A) screening;

1027 (B) assessment;

1028 (C) educational series;

1029 (D) substance abuse treatment; and

1030 (E) hours of work in a compensatory-service work program; or

1031 (ii) pay all fines and fees, including fees for restitution and treatment costs.

1032 (b) Upon receiving the notification described in Subsection (6)(a), the Driver License  
1033 Division shall suspend the person's driving privilege in accordance with Subsections  
1034 [53-3-221\(2\)](#) and (3).

1035 Section 11. Section ~~41-6a-527~~ is amended to read:

1036 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**  
1037 **requirements -- Removal of vehicle by owner.**

1038 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a  
1039 vehicle for violating Section [41-6a-502](#), [41-6a-517](#), [41-6a-518.2](#), [41-6a-520](#), [41-6a-520.1](#),  
1040 [41-6a-530](#), [41-6a-606](#), [53-3-231](#), Subsections [53-3-227\(3\)\(a\)\(i\)](#) through ~~[(v)]~~ [\(vii\)](#), Subsection  
1041 ~~[53-3-227\(3\)\(a\)\(ix\)](#)~~ [53-3-277\(3\)\(a\)\(x\)](#), or a local ordinance similar to Section [41-6a-502](#) which  
1042 complies with Subsection [41-6a-510\(1\)](#), the peace officer shall seize and impound the vehicle  
1043 in accordance with Section [41-6a-1406](#), except as provided under Subsection (2).

1044 (2) If a registered owner of the vehicle, other than the operator, is present at the time of  
1045 arrest, the peace officer may release the vehicle to that registered owner, but only if:

1046 (a) the registered owner:

1047 (i) requests to remove the vehicle from the scene; and

1048 (ii) presents to the peace officer sufficient identification to prove ownership of the  
1049 vehicle or motorboat;

1050 (b) the registered owner identifies a driver with a valid operator's license who:

1051 (i) complies with all restrictions of his operator's license; and

1052 (ii) would not, in the judgment of the officer, be in violation of Section [41-6a-502](#),  
1053 [41-6a-517](#), [41-6a-518.2](#), [41-6a-520](#), [41-6a-520.1](#), [41-6a-530](#), [53-3-231](#), or a local ordinance  
1054 similar to Section [41-6a-502](#) which complies with Subsection [41-6a-510\(1\)](#) if permitted to  
1055 operate the vehicle; and

1056 (c) the vehicle itself is legally operable.

1057 (3) If necessary for transportation of a motorboat for impoundment under this section,  
1058 the motorboat's trailer may be used to transport the motorboat.

1059 Section 12. Section **41-6a-529** is amended to read:

1060 **41-6a-529. Definitions -- Alcohol restricted drivers.**

1061 (1) As used in this section and Section [41-6a-530](#), "alcohol restricted driver" means a  
1062 person who:

1063 (a) within the last two years:

1064 (i) has been convicted of:

1065 (A) a misdemeanor violation of Section [41-6a-502](#) or [76-5-102.1](#);

1066 (B) alcohol, any drug, or a combination of both-related reckless driving under Section  
1067 [41-6a-512](#);

1068 (C) impaired driving under Section [41-6a-502.5](#);

1069 (D) local ordinances similar to Section [41-6a-502](#) or [76-5-102.1](#), alcohol, any drug, or  
1070 a combination of both-related reckless driving, or impaired driving adopted in compliance with  
1071 Section [41-6a-510](#);

1072 (E) a violation described in Subsections (1)(a)(i)(A) through (D), which judgment of  
1073 conviction is reduced under Section [76-3-402](#); or

1074 (F) statutes or ordinances previously in effect in this state or in effect in any other state,  
1075 the United States, or any district, possession, or territory of the United States which would  
1076 constitute a violation of Section [41-6a-502](#) or [76-5-102.1](#), alcohol, any drug, or a combination  
1077 of both-related reckless driving, or impaired driving if committed in this state, including  
1078 punishments administered under 10 U.S.C. Sec. 815; or

1079 (ii) has had the person's driving privilege suspended under Section [53-3-223](#) for an  
1080 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

1081 (b) within the last three years has been convicted of a violation of this section or  
1082 Section [41-6a-518.2](#);

1083 (c) within the last five years:

1084 (i) has had the person's driving privilege revoked through an administrative action for  
1085 refusal to submit to a chemical test under Section [41-6a-520](#), which refusal occurred on or after  
1086 July 1, 2005;

1087 (ii) has been convicted of a misdemeanor conviction for refusal to submit to a chemical  
1088 test under Subsection [~~[41-6a-520\(7\)](#)~~] [41-6a-520.1\(1\)](#); or

1089 (iii) has been convicted of a class A misdemeanor violation of Section [41-6a-502](#) or  
1090 [76-5-102.1](#) committed on or after July 1, 2008;

1091 (d) within the last 10 years:

1092 (i) has been convicted of an offense described in Subsection (1)(a)(i) which offense  
1093 was committed within 10 years of the commission of a prior offense described in Subsection

1094 (1)(a)(i) for which the person was convicted;  
1095 (ii) has been convicted of a felony violation of refusal to submit to a chemical test  
1096 under Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#); or  
1097 (iii) has had the person's driving privilege revoked for refusal to submit to a chemical  
1098 test and the refusal is within 10 years after:  
1099 (A) a prior refusal to submit to a chemical test under Section [41-6a-520](#); or  
1100 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not  
1101 based on the same arrest as the refusal;  
1102 (e) at any time has been convicted of:  
1103 (i) a violation of Section [76-5-207](#) for an offense that occurred on or after July 1, 2005;  
1104 or  
1105 (ii) a felony violation of Section [41-6a-502](#) or [76-5-102.1](#) for an offense that occurred  
1106 on or after July 1, 2005;  
1107 (f) at the time of operation of a vehicle is under 21 years old; or  
1108 (g) is a novice learner driver.  
1109 (2) For purposes of this section and Section [41-6a-530](#), a plea of guilty or no contest to  
1110 a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77,  
1111 Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if  
1112 the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance  
1113 agreement.

1114 Section 13. Section **53-3-218** is amended to read:

1115 **53-3-218. Court to report convictions and may recommend suspension of license**  
1116 **-- Severity of speeding violation defined.**

1117 (1) As used in this section, "conviction" means conviction by the court of first  
1118 impression or final administrative determination in an administrative traffic proceeding.

1119 (2) (a) Except as provided in Subsection (2)(c), a court having jurisdiction over  
1120 offenses committed under this chapter or any other law of this state, or under any municipal  
1121 ordinance regulating driving motor vehicles on highways or driving motorboats on the water,



1122 shall forward to the division within five days, an abstract of the court record of the conviction  
1123 or plea held in abeyance of any person in the court for a reportable traffic or motorboating  
1124 violation of any laws or ordinances, and may recommend the suspension of the license of the  
1125 person convicted.

1126 (b) When the division receives a court record of a conviction or plea in abeyance for a  
1127 motorboat violation, the division may only take action against a person's driver license if the  
1128 motorboat violation is for a violation of Title 41, Chapter 6a, Part 5, Driving Under the  
1129 Influence and Reckless Driving.

1130 (c) A court may not forward to the division an abstract of a court record of a conviction  
1131 for a violation described in Subsection 53-3-220(1)(c)(i) [~~or (ii)~~], unless the court found that  
1132 the person convicted of the violation was an operator of a motor vehicle at the time of the  
1133 violation.

1134 (3) (a) A court may not order the division to suspend a person's driver license based  
1135 solely on the person's failure to pay a penalty accounts receivable.

1136 (b) The court may notify the division, and the division may, prior to sentencing,  
1137 suspend the driver license of a person who fails to appear if the person is charged with:

1138 (i) an offense of any level that is a moving traffic violation;

1139 (ii) an offense described in Title 41, Chapter 12a, Part 3, Owner's or Operator's  
1140 Security Requirement; or

1141 (iii) an offense described in Subsection 53-3-220(1)(a) or (b).

1142 (4) The abstract shall be made in the form prescribed by the division and shall include:

1143 (a) the name, date of birth, and address of the party charged;

1144 (b) the license certificate number of the party charged, if any;

1145 (c) the registration number of the motor vehicle or motorboat involved;

1146 (d) whether the motor vehicle was a commercial motor vehicle;

1147 (e) whether the motor vehicle carried hazardous materials;

1148 (f) whether the motor vehicle carried 16 or more occupants;

1149 (g) whether the driver presented a commercial driver license;

- 1150 (h) the nature of the offense;
- 1151 (i) whether the offense involved an accident;
- 1152 (j) the driver's blood alcohol content, if applicable;
- 1153 (k) if the offense involved a speeding violation:
- 1154 (i) the posted speed limit;
- 1155 (ii) the actual speed; and
- 1156 (iii) whether the speeding violation occurred on a highway that is part of the interstate
- 1157 system as defined in Section [72-1-102](#);

- 1158 (l) the date of the hearing;
- 1159 (m) the plea;
- 1160 (n) the judgment or whether bail was forfeited; and
- 1161 (o) the severity of the violation, which shall be graded by the court as "minimum,"
- 1162 "intermediate," or "maximum" as established in accordance with Subsection [53-3-221](#)(4).

1163 (5) When a convicted person secures a judgment of acquittal or reversal in any  
1164 appellate court after conviction in the court of first impression, the division shall reinstate the  
1165 convicted person's license immediately upon receipt of a certified copy of the judgment of  
1166 acquittal or reversal.

1167 (6) Upon a conviction for a violation of the prohibition on using a wireless  
1168 communication device while operating a moving motor vehicle under Section [41-6a-1716](#), a  
1169 judge may order a suspension of the convicted person's license for a period of three months.

1170 (7) Upon a conviction for a violation of careless driving under Section [41-6a-1715](#) that  
1171 causes or results in the death of another person, a judge may order a revocation of the convicted  
1172 person's license for a period of one year.

1173 Section 14. Section [53-3-220](#) is amended to read:

1174 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**  
1175 **disqualification of license -- Offense requiring an extension of period -- Hearing --**  
1176 **Limited driving privileges.**

1177 (1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter

1178 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or  
1179 disqualification, the division shall deny, suspend, or disqualify the license of a person upon  
1180 receiving a record of the person's conviction for:

1181 (i) manslaughter or negligent homicide resulting from driving a motor vehicle,  
1182 negligently operating a vehicle resulting in death under Section 76-5-207, or automobile  
1183 homicide involving using a handheld wireless communication device while driving under  
1184 Section 76-5-207.5;

1185 (ii) driving or being in actual physical control of a motor vehicle while under the  
1186 influence of alcohol, any drug, or combination of them to a degree that renders the person  
1187 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited  
1188 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

1189 (iii) driving or being in actual physical control of a motor vehicle while having a blood  
1190 or breath alcohol content as prohibited in Section 41-6a-502 or as prohibited in an ordinance  
1191 that complies with the requirements of Subsection 41-6a-510(1);

1192 (iv) perjury or the making of a false affidavit to the division under this chapter, Title  
1193 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or  
1194 regulating driving on highways;

1195 (v) any felony under the motor vehicle laws of this state;

1196 (vi) any other felony in which a motor vehicle is used to facilitate the offense;

1197 (vii) failure to stop and render aid as required under the laws of this state if a motor  
1198 vehicle accident results in the death or personal injury of another;

1199 (viii) two charges of reckless driving, impaired driving, or any combination of reckless  
1200 driving and impaired driving committed within a period of 12 months; but if upon a first  
1201 conviction of reckless driving or impaired driving the judge or justice recommends suspension  
1202 of the convicted person's license, the division may after a hearing suspend the license for a  
1203 period of three months;

1204 (ix) failure to bring a motor vehicle to a stop at the command of a law enforcement  
1205 officer as required in Section 41-6a-210;

- 1206 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that  
1207 requires disqualification;
- 1208 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
1209 allowing the discharge of a firearm from a vehicle;
- 1210 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or  
1211 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);
- 1212 (xiii) operating or being in actual physical control of a motor vehicle while having any  
1213 measurable controlled substance or metabolite of a controlled substance in the person's body in  
1214 violation of Section 41-6a-517;
- 1215 (xiv) operating or being in actual physical control of a motor vehicle while having any  
1216 measurable or detectable amount of alcohol in the person's body in violation of Section  
1217 41-6a-530;
- 1218 (xv) engaging in a motor vehicle speed contest or exhibition of speed on a highway in  
1219 violation of Section 41-6a-606;
- 1220 (xvi) operating or being in actual physical control of a motor vehicle in this state  
1221 without an ignition interlock system in violation of Section 41-6a-518.2; or
- 1222 (xvii) refusal of a chemical test under Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1).
- 1223 (b) The division shall immediately revoke the license of a person upon receiving a  
1224 record of an adjudication under Section 80-6-701 for:
- 1225 (i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
1226 allowing the discharge of a firearm from a vehicle; or
- 1227 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or  
1228 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).
- 1229 (c) (i) Except when action is taken under Section 53-3-219 for the same offense, upon  
1230 receiving a record of conviction, the division shall immediately suspend for six months the  
1231 license of the convicted person if the person was convicted of violating any one of the  
1232 following offenses while the person was an operator of a motor vehicle, and the court finds that  
1233 a driver license suspension is likely to reduce recidivism and is in the interest of public safety:

1234 ~~[(i) any violation of:]~~  
 1235 (A) Title 58, Chapter 37, Utah Controlled Substances Act;  
 1236 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
 1237 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;  
 1238 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; ~~[or]~~  
 1239 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or  
 1240 ~~[(ii)]~~ (F) any criminal offense that prohibits~~[(A)]~~ possession, distribution,  
 1241 manufacture, cultivation, sale, or transfer of any substance that is prohibited under the acts  
 1242 described in ~~[Subsection (1)(c)(i), or (B)]~~ Subsections (1)(c)(i)(A) through (E), or the attempt  
 1243 or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance that  
 1244 is prohibited under the acts described in ~~[Subsection (1)(c)(i)]~~ Subsections (1)(c)(i)(A) through  
 1245 (E).  
 1246 ~~[(iii)]~~ (ii) Notwithstanding the provisions in ~~[this]~~ Subsection (1)(c)(i), the division  
 1247 shall reinstate a person's driving privilege before completion of the suspension period imposed  
 1248 under ~~[this]~~ Subsection (1)(c)(i) if the reporting court notifies the Driver License Division, in a  
 1249 manner specified by the division, that the defendant is participating in or has successfully  
 1250 completed a drug court program as defined in Section [78A-5-201](#).  
 1251 ~~[(iv)]~~ (iii) If a person's driving privilege is reinstated under Subsection ~~[(1)(c)(iii)]~~,  
 1252 (1)(c)(ii), the person is required to pay the license reinstatement fees under Subsection  
 1253 [53-3-105\(26\)](#).  
 1254 ~~[(v)]~~ (iv) The court shall notify the division, in a manner specified by the division, if a  
 1255 person fails to complete all requirements of the drug court program.  
 1256 ~~[(vi)]~~ (v) Upon receiving the notification described in Subsection ~~[(1)(c)(v)]~~, (1)(c)(iv),  
 1257 the division shall suspend the person's driving privilege for a period of six months from the  
 1258 date of the notice, and no days shall be subtracted from the six-month suspension period for  
 1259 which a driving privilege was previously suspended under ~~[this]~~ Subsection (1)(c)(i).  
 1260 (d) (i) The division shall immediately suspend a person's driver license for conviction  
 1261 of the offense of theft of motor vehicle fuel under Section [76-6-404.7](#) if the division receives:

1262 (A) an order from the sentencing court requiring that the person's driver license be  
1263 suspended; and

1264 (B) a record of the conviction.

1265 (ii) An order of suspension under this section is at the discretion of the sentencing  
1266 court, and may not be for more than 90 days for each offense.

1267 (e) (i) The division shall immediately suspend for one year the license of a person upon  
1268 receiving a record of:

1269 (A) conviction for the first time for a violation under Section 32B-4-411; or

1270 (B) an adjudication under Section 80-6-701 for a violation under Section 32B-4-411.

1271 (ii) The division shall immediately suspend for a period of two years the license of a  
1272 person upon receiving a record of:

1273 (A) (I) conviction for a second or subsequent violation under Section 32B-4-411; and

1274 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior  
1275 conviction for a violation under Section 32B-4-411; or

1276 (B) (I) a second or subsequent adjudication under Section 80-6-701 for a violation  
1277 under Section 32B-4-411; and

1278 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior  
1279 adjudication under Section 80-6-701 for a violation under Section 32B-4-411.

1280 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

1281 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

1282 (I) impose a suspension for one year beginning on the date of conviction; or

1283 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
1284 that begins on the date of conviction and continues for one year beginning on the date of  
1285 eligibility for a driver license; or

1286 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

1287 (I) impose a suspension for a period of two years; or

1288 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
1289 that begins on the date of conviction and continues for two years beginning on the date of

1290 eligibility for a driver license.

1291 (iv) Upon receipt of the first order suspending a person's driving privileges under  
1292 Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(i) if  
1293 ordered by the court in accordance with Subsection 32B-4-411(3)(a).

1294 (v) Upon receipt of the second or subsequent order suspending a person's driving  
1295 privileges under Section 32B-4-411, the division shall reduce the suspension period under  
1296 Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

1297 (2) The division shall extend the period of the first denial, suspension, revocation, or  
1298 disqualification for an additional like period, to a maximum of one year for each subsequent  
1299 occurrence, upon receiving:

1300 (a) a record of the conviction of any person on a charge of driving a motor vehicle  
1301 while the person's license is denied, suspended, revoked, or disqualified;

1302 (b) a record of a conviction of the person for any violation of the motor vehicle law in  
1303 which the person was involved as a driver;

1304 (c) a report of an arrest of the person for any violation of the motor vehicle law in  
1305 which the person was involved as a driver; or

1306 (d) a report of an accident in which the person was involved as a driver.

1307 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is  
1308 driving while the person's license is denied, suspended, disqualified, or revoked, the person is  
1309 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,  
1310 or revocation originally imposed under Section 53-3-221.

1311 (4) (a) The division may extend to a person the limited privilege of driving a motor  
1312 vehicle to and from the person's place of employment or within other specified limits on  
1313 recommendation of the judge in any case where a person is convicted of any of the offenses  
1314 referred to in Subsections (1) and (2) except:

1315 (i) those offenses referred to in Subsections (1)(a)(i), (ii), (iii), (xi), (xii), (xiii), (1)(b),  
1316 and (1)(c)(i); and

1317 (ii) those offenses referred to in Subsection (2) when the original denial, suspension,

1318 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
1319 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1),  
1320 Section 41-6a-520, 41-6a-520.1, 76-5-102.1, or 76-5-207, or a criminal prohibition that the  
1321 person was charged with violating as a result of a plea bargain after having been originally  
1322 charged with violating one or more of these sections or ordinances, unless:

1323 (A) the person has had the period of the first denial, suspension, revocation, or  
1324 disqualification extended for a period of at least three years;

1325 (B) the division receives written verification from the person's primary care physician  
1326 that:

1327 (I) to the physician's knowledge the person has not used any narcotic drug or other  
1328 controlled substance except as prescribed by a licensed medical practitioner within the last  
1329 three years; and

1330 (II) the physician is not aware of any physical, emotional, or mental impairment that  
1331 would affect the person's ability to operate a motor vehicle safely; and

1332 (C) for a period of one year prior to the date of the request for a limited driving  
1333 privilege:

1334 (I) the person has not been convicted of a violation of any motor vehicle law in which  
1335 the person was involved as the operator of the vehicle;

1336 (II) the division has not received a report of an arrest for a violation of any motor  
1337 vehicle law in which the person was involved as the operator of the vehicle; and

1338 (III) the division has not received a report of an accident in which the person was  
1339 involved as an operator of a vehicle.

1340 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege  
1341 authorized in this Subsection (4):

1342 (A) is limited to when undue hardship would result from a failure to grant the  
1343 privilege; and

1344 (B) may be granted only once to any person during any single period of denial,  
1345 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,



1346 or disqualification.

1347 (ii) The discretionary privilege authorized in Subsection (4)(a)(ii):

1348 (A) is limited to when the limited privilege is necessary for the person to commute to  
1349 school or work; and

1350 (B) may be granted only once to any person during any single period of denial,  
1351 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,  
1352 or disqualification.

1353 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform  
1354 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or  
1355 denied under this chapter.

1356 Section 15. Section **53-3-227** is amended to read:

1357 **53-3-227. Driving a motor vehicle prohibited while driving privilege denied,**  
1358 **suspended, disqualified, or revoked -- Penalties.**

1359 (1) A person whose driving privilege has been denied, suspended, disqualified, or  
1360 revoked under this chapter or under the laws of the state in which the person's driving privilege  
1361 was granted and who drives any motor vehicle upon the highways of this state while that  
1362 driving privilege is denied, suspended, disqualified, or revoked shall be punished as provided  
1363 in this section.

1364 (2) A person convicted of a violation of Subsection (1), other than a violation specified  
1365 in Subsection (3), is guilty of a class C misdemeanor.

1366 (3) (a) A person is guilty of a class B misdemeanor if the person's conviction under  
1367 Subsection (1) is based on the person driving a motor vehicle while the person's driving  
1368 privilege is suspended, disqualified, or revoked for:

1369 (i) a refusal to submit to a chemical test under Section [41-6a-520](#);

1370 (ii) a violation of Section [41-6a-520.1](#);

1371 [~~(ii)~~] (iii) a violation of Section [41-6a-502](#);

1372 [~~(iii)~~] (iv) a violation of a local ordinance that complies with the requirements of  
1373 Section [41-6a-510](#);

- 1374            [~~(iv)~~] (v) a violation of Section [41-6a-517](#);
- 1375            [~~(v)~~] (vi) a violation of Section [76-5-207](#);
- 1376            [~~(vi)~~] (vii) a criminal action that the person plead guilty to as a result of a plea bargain  
1377 after having been originally charged with violating one or more of the sections or ordinances  
1378 under this Subsection (3);
- 1379            [~~(vii)~~] (viii) a revocation or suspension [which has been extended under Subsection  
1380 [53-3-220](#)(2);
- 1381            [~~(viii)~~] (ix) where disqualification is the result of driving a commercial motor vehicle  
1382 while the person's CDL is disqualified, suspended, canceled, or revoked under Subsection  
1383 [53-3-414](#)(1); or
- 1384            [~~(ix)~~] (x) a violation of Section [41-6a-530](#).
- 1385            (b) A person is guilty of a class B misdemeanor if the person's conviction under  
1386 Subsection (1) is based on the person driving a motor vehicle while the person's driving  
1387 privilege is suspended, disqualified, or revoked by any state, the United States, or any district,  
1388 possession, or territory of the United States for violations corresponding to the violations listed  
1389 in Subsection (3)(a).
- 1390            (c) A fine imposed under this Subsection (3) shall be at least the maximum fine for a  
1391 class C misdemeanor under Section [76-3-301](#).
- 1392            Section 16. Section [58-37f-201](#) is amended to read:
- 1393            **58-37f-201. Controlled substance database -- Creation -- Purpose.**
- 1394            (1) There is created within the division a controlled substance database.
- 1395            (2) The division shall administer and direct the functioning of the database in  
1396 accordance with this chapter.
- 1397            (3) The division may, under state procurement laws, contract with another state agency  
1398 or a private entity to establish, operate, or maintain the database.
- 1399            (4) The division shall, in collaboration with the board, determine whether to operate  
1400 the database within the division or contract with another entity to operate the database, based  
1401 on an analysis of costs and benefits.

- 1402 (5) The purpose of the database is to contain:
- 1403 (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed
- 1404 controlled substances;
- 1405 (b) data reported to the division under Section 26-21-26 regarding poisoning or
- 1406 overdose;
- 1407 (c) data reported to the division under Subsection [~~41-6a-502(4)~~] 41-6a-502(5) or
- 1408 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed
- 1409 controlled substance or impaired driving; and
- 1410 (d) data reported to the division under Subsection 58-37-8(1)(e) or 58-37-8(2)(g)
- 1411 regarding certain violations of [~~the~~] Chapter 37, Utah Controlled Substances Act.
- 1412 (6) The division shall maintain the database in an electronic file or by other means
- 1413 established by the division to facilitate use of the database for identification of:
- 1414 (a) prescribing practices and patterns of prescribing and dispensing controlled
- 1415 substances;
- 1416 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
- 1417 manner;
- 1418 (c) individuals receiving prescriptions for controlled substances from licensed
- 1419 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
- 1420 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
- 1421 that controlled substance;
- 1422 (d) individuals presenting forged or otherwise false or altered prescriptions for
- 1423 controlled substances to a pharmacy;
- 1424 (e) individuals admitted to a general acute hospital for poisoning or overdose involving
- 1425 a prescribed controlled substance; and
- 1426 (f) individuals convicted for:
- 1427 (i) driving under the influence of a prescribed controlled substance that renders the
- 1428 individual incapable of safely operating a vehicle;
- 1429 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or

1430 (iii) certain violations of [~~the~~] Chapter 37, Utah Controlled Substances Act.

1431 Section 17. Section **58-37f-703** is amended to read:

1432 **58-37f-703. Entering certain convictions into the database and reporting them to**  
1433 **practitioners.**

1434 (1) When the division receives a report from a court under Subsection [~~41-6a-502(4)~~]  
1435 41-6a-502(5) or 41-6a-502.5(5)(b) relating to a conviction for driving under the influence of, or  
1436 while impaired by, a prescribed controlled substance, the division shall:

1437 (a) daily enter into the database the information supplied in the report, including the  
1438 date on which the person was convicted;

1439 (b) attempt to identify, through the database, each practitioner who may have  
1440 prescribed the controlled substance to the convicted person; and

1441 (c) provide each practitioner identified under Subsection (1)(b) with:

1442 (i) a copy of the information provided by the court; and

1443 (ii) the information obtained from the database that led the division to determine that  
1444 the practitioner receiving the information may have prescribed the controlled substance to the  
1445 convicted person.

1446 (2) It is the intent of the Legislature that the information provided under Subsection  
1447 (1)(b) is provided for the purpose of assisting the practitioner in:

1448 (a) discussing the manner in which the controlled substance may impact the convicted  
1449 person's driving;

1450 (b) advising the convicted person on measures that may be taken to avoid adverse  
1451 impacts of the controlled substance on future driving; and

1452 (c) making decisions regarding future prescriptions written for the convicted person.

1453 (3) Beginning on July 1, 2010, the division shall, in accordance with Section  
1454 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup  
1455 and ongoing costs of the division for complying with the requirements of this section.

1456 Section 18. Section **76-5-102.1** is amended to read:

1457 **76-5-102.1. Negligently operating a vehicle resulting in injury.**

- 1458 (1) As used in this section:
- 1459 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 1460 (b) "Drug" means the same as that term is defined in Section 76-5-207.
- 1461 (c) "Negligent" or "negligence" means the same as that term is defined in Section
- 1462 76-5-207.
- 1463 (d) "Vehicle" means the same as that term is defined in Section 41-6a-501.
- 1464 (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
- 1465 (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and
- 1466 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
- 1467 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
- 1468 time of the test;
- 1469 (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and
- 1470 a drug to a degree that renders the actor incapable of safely operating a vehicle; or
- 1471 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
- 1472 operation; or
- 1473 (b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to
- 1474 another; and
- 1475 (ii) has in the actor's body any measurable amount of a controlled substance.
- 1476 (3) Except as provided in Subsection (4), a violation of Subsection (2) is:
- 1477 (a) (i) a class A misdemeanor; or
- 1478 (ii) a third degree felony if the bodily injury is serious bodily injury; and
- 1479 (b) a separate offense for each victim suffering bodily injury as a result of the actor's
- 1480 violation of this section, regardless of whether the injuries arise from the same episode of
- 1481 driving.
- 1482 (4) An actor is not guilty of negligently operating a vehicle resulting in injury under
- 1483 Subsection (2)(b) if:
- 1484 (a) the controlled substance was obtained under a valid prescription or order, directly
- 1485 from a practitioner while acting in the course of the practitioner's professional practice, or as

1486 otherwise authorized by Title 58, Occupations and Professions;

1487 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1488 (c) the actor possessed, in the actor's body, a controlled substance listed in Section

1489 [58-37-4.2](#) if:

1490 (i) the actor is the subject of medical research conducted by a holder of a valid license

1491 to possess controlled substances under Section [58-37-6](#); and

1492 (ii) the substance was administered to the actor by the medical researcher.

1493 (5) (a) A judge imposing a sentence under this section may consider:

1494 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1495 (ii) the defendant's history;

1496 (iii) the facts of the case;

1497 (iv) aggravating and mitigating factors; or

1498 (v) any other relevant fact.

1499 (b) The judge may not impose a lesser sentence than would be required for a conviction

1500 based on the defendant's history under Section [41-6a-505](#).

1501 (c) The standards for chemical breath analysis under Section [41-6a-515](#) and the  
1502 provisions for the admissibility of chemical test results under Section [41-6a-516](#) apply to  
1503 determination and proof of blood alcohol content under this section.

1504 (d) A calculation of blood or breath alcohol concentration under this section shall be  
1505 made in accordance with Subsection [~~[41-6a-502\(2\)](#)~~] [41-6a-502\(3\)](#).

1506 (e) Except as provided in Subsection (4), the fact that an actor charged with violating  
1507 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1508 (f) Evidence of a defendant's blood or breath alcohol content or drug content is  
1509 admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution,  
1510 or the Utah Constitution.

1511 (g) In accordance with Subsection [77-2a-3\(8\)](#), a guilty or no contest plea to an offense  
1512 described in this section may not be held in abeyance.

1513 Section 19. Section **76-5-207** is amended to read:

1514           **76-5-207. Negligently operating a vehicle resulting in death -- Penalties --**  
1515 **Evidence.**  
1516           (1) (a) As used in this section:  
1517           (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.  
1518           (ii) "Criminally negligent" means the same as that term is described in Subsection  
1519 76-2-103(4).  
1520           (iii) "Drug" means:  
1521           (A) a controlled substance;  
1522           (B) a drug as defined in Section 58-37-2; or  
1523           (C) a substance that, when knowingly, intentionally, or recklessly taken into the human  
1524 body, can impair the ability of an individual to safely operate a vehicle.  
1525           (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that  
1526 degree of care that reasonable and prudent persons exercise under like or similar circumstances.  
1527           (v) "Vehicle" means the same as that term is defined in Section 41-6a-501.  
1528           (b) Terms defined in Section 76-1-101.5 apply to this section.  
1529           (2) An actor commits negligently operating a vehicle resulting in death if the actor:  
1530           (a) (i) operates a vehicle in a negligent or criminally negligent manner causing the  
1531 death of another individual;  
1532           (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test  
1533 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the  
1534 time of the test;  
1535           (B) is under the influence of alcohol, any drug, or the combined influence of alcohol  
1536 and any drug to a degree that renders the actor incapable of safely operating a vehicle; or  
1537           (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of  
1538 operation; or  
1539           (b) (i) operates a vehicle in a criminally negligent manner causing death to another; and  
1540           (ii) has in the actor's body any measurable amount of a controlled substance.  
1541           (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty

1542 of:

1543 (a) a second degree felony; and

1544 (b) a separate offense for each victim suffering death as a result of the actor's violation  
1545 of this section, regardless of whether the deaths arise from the same episode of driving.

1546 (4) An actor is not guilty of a violation of negligently operating a vehicle resulting in  
1547 death under Subsection (2)(b) if:

1548 (a) the controlled substance was obtained under a valid prescription or order, directly  
1549 from a practitioner while acting in the course of the practitioner's professional practice, or as  
1550 otherwise authorized by Title 58, Occupations and Professions;

1551 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1552 (c) the actor possessed, in the actor's body, a controlled substance listed in Section  
1553 [58-37-4.2](#) if:

1554 (i) the actor is the subject of medical research conducted by a holder of a valid license  
1555 to possess controlled substances under Section [58-37-6](#); and

1556 (ii) the substance was administered to the actor by the medical researcher.

1557 (5) (a) A judge imposing a sentence under this section may consider:

1558 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1559 (ii) the defendant's history;

1560 (iii) the facts of the case;

1561 (iv) aggravating and mitigating factors; or

1562 (v) any other relevant fact.

1563 (b) The judge may not impose a lesser sentence than would be required for a conviction  
1564 based on the defendant's history under Section [41-6a-505](#).

1565 (c) The standards for chemical breath analysis as provided by Section [41-6a-515](#) and  
1566 the provisions for the admissibility of chemical test results as provided by Section [41-6a-516](#)  
1567 apply to determination and proof of blood alcohol content under this section.

1568 (d) A calculation of blood or breath alcohol concentration under this section shall be  
1569 made in accordance with Subsection [~~[41-6a-502\(2\)](#)~~] [41-6a-502\(3\)](#).



1570 (e) Except as provided in Subsection (4), the fact that an actor charged with violating  
1571 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1572 (f) Evidence of a defendant's blood or breath alcohol content or drug content is  
1573 admissible except when prohibited by the Utah Rules of Evidence, the United States  
1574 Constitution, or the Utah Constitution.

1575 (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense  
1576 described in this section may not be held in abeyance.

1577 Section 20. Section 77-2a-3 is amended to read:

1578 **77-2a-3. Manner of entry of plea -- Powers of court.**

1579 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be  
1580 done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

1581 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance  
1582 agreement may be entered into without a personal appearance before a magistrate.

1583 (2) A plea in abeyance agreement may provide that the court may, upon finding that the  
1584 defendant has successfully completed the terms of the agreement:

1585 (a) reduce the degree of the offense and enter judgment of conviction and impose  
1586 sentence for a lower degree of offense; or

1587 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

1588 (3) (a) Upon finding that a defendant has successfully completed the terms of a plea in  
1589 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as  
1590 provided in the plea in abeyance agreement or as agreed to by all parties.

1591 (b) Upon sentencing a defendant for any lesser offense in accordance with a plea in  
1592 abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of  
1593 the offense.

1594 (4) The court may require the Department of Corrections to assist in the administration  
1595 of the plea in abeyance agreement as if the defendant were on probation to the court under  
1596 Section 77-18-105.

1597 (5) The terms of a plea in abeyance agreement may include:

1598 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a  
1599 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in  
1600 the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a  
1601 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and  
1602 which may not exceed in amount the maximum fine and surcharge which could have been  
1603 imposed upon conviction and sentencing for the same offense;

1604 (b) an order that the defendant pay the costs of any remedial or rehabilitative program  
1605 required by the terms of the agreement; and

1606 (c) an order that the defendant comply with any other conditions that could have been  
1607 imposed as conditions of probation upon conviction and sentencing for the same offense.

1608 (6) (a) The terms of a plea in abeyance shall include an order for a specific amount of  
1609 restitution that the defendant will pay, as agreed to by the defendant and the prosecuting  
1610 attorney, unless the prosecuting attorney certifies that:

1611 (i) the prosecuting attorney has consulted with all victims, including the Utah Office  
1612 for Victims of Crime; and

1613 (ii) the defendant does not owe any restitution.

1614 (b) The court shall collect, receive, process, and distribute payments for restitution to  
1615 the victim, unless otherwise provided by law or by the plea in abeyance agreement.

1616 (c) If the defendant does not successfully complete the terms of the plea in abeyance,  
1617 the court shall enter an order for restitution, in accordance with [~~Title 77, Chapter 38b, Crime~~  
1618 ~~Victims Restitution Act~~] Chapter 38b, Crime Victims Restitution Act, upon entering a sentence  
1619 for the defendant.

1620 (7) (a) A court may not hold a plea in abeyance without the consent of both the  
1621 prosecuting attorney and the defendant.

1622 (b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

1623 (8) No plea may be held in abeyance in any case involving:

1624 (a) a sexual offense against a victim who is under 14 years old; or

1625 (b) a driving under the influence violation under Section 41-6a-502, 41-6a-502.5,

1626 [41-6a-517](#), [41-6a-520](#), [41-6a-520.1](#), [41-6a-521.1](#), [76-5-102.1](#), or [76-5-207](#).

1627 Section 21. **Repealer.**

1628 This bill repeals:

1629 Section [41-6a-503](#), **Penalties for driving under the influence violations.**