

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DUI AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

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



28 [41-6a-503](#), as last amended by Laws of Utah 2022, Chapters 116, 134 and 137
 29 [41-6a-518.2](#), as last amended by Laws of Utah 2022, Chapter 116
 30 [41-6a-520](#), as last amended by Laws of Utah 2022, Chapters 116, 134
 31 [41-6a-521.1](#), as enacted by Laws of Utah 2020, Chapter 177
 32 [41-6a-527](#), as last amended by Laws of Utah 2017, Chapter 181
 33 [41-6a-529](#), as last amended by Laws of Utah 2022, Chapter 116
 34 [53-3-218](#), as last amended by Laws of Utah 2022, Chapter 426
 35 [53-3-220](#), as last amended by Laws of Utah 2022, Chapter 116
 36 [53-3-227](#), as last amended by Laws of Utah 2008, Chapter 250
 37 [58-37f-201](#), as last amended by Laws of Utah 2022, Chapter 116
 38 [58-37f-703](#), as last amended by Laws of Utah 2016, Chapter 99
 39 [76-5-102.1](#), as enacted by Laws of Utah 2022, Chapter 116
 40 [76-5-207](#), as last amended by Laws of Utah 2022, Chapters 116, 181 and last amended
 41 by Coordination Clause, Laws of Utah 2022, Chapter 116
 42 [77-2a-3](#), as last amended by Laws of Utah 2022, Chapter 116

43 ENACTS:

44 [41-6a-520.1](#), Utah Code Annotated 1953

45

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

47 Section 1. Section [24-4-102](#) is amended to read:

48 **[24-4-102. Property subject to forfeiture.](#)**

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

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

52 (b) seized proceeds.

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

54 [76-10-1204](#), [76-10-1205](#), [76-10-1206](#), or [76-10-1222](#), an agency may not forfeit the property if

55 the forfeiture would constitute a prior restraint on the exercise of an affected party's rights

56 under the First Amendment to the Constitution of the United States or Utah Constitution,

57 Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's

58 rights under the First Amendment to the Constitution of the United States or Utah Constitution,

59 Article I, Section 15.

60 (3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502,
61 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1),
62 Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the
63 motor vehicle, unless:

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

66 (i) a felony driving under the influence violation under Section 41-6a-502 or

67 Subsection 76-5-102.1(2)(a);

68 (ii) a felony violation under Subsection 76-5-102.1(2)(b);

69 (iii) a violation under Section 76-5-207; or

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

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

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

77 (A) Section 41-6a-502;

78 (B) Section 41-6a-517;

79 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

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

81 (E) operating a motor vehicle with any amount of a controlled substance in an
82 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
83 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

84 (F) Section 76-5-102.1;

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

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

89 (ii) the denial, suspension, revocation, or disqualification described in Subsections

90 (3)(b)(i)(A) through (H):

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

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

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

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

99 **31A-22-303. Motor vehicle liability coverage.**

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

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

107 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
108 vehicles on which coverage is granted, insure the person named in the policy, insure any other
109 person using any named motor vehicle with the express or implied permission of the named
110 insured, and, except as provided in Section 31A-22-302.5, insure any person included in
111 Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of
112 the ownership, maintenance, or use of these motor vehicles within the United States and
113 Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not
114 less than the minimum limits specified under Section 31A-22-304; or

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

119 (iii) except as provided in Section 31A-22-302.5, insure persons related to the named
120 insured by blood, marriage, adoption, or guardianship who are residents of the named insured's

121 household, including those who usually make their home in the same household but
122 temporarily live elsewhere, to the same extent as the named insured;

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

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

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

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

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

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

138 (A) the minor resides in a foster home, as defined in Section 62A-2-101, with a foster
139 parent who is the named insured; and

140 (B) the foster parent has signed to be jointly and severally liable for compensatory
141 damages caused by the minor's operation of a motor vehicle in accordance with Section
142 53-3-211.

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

146 (2) (a) A policy containing motor vehicle liability coverage under Subsection
147 31A-22-302(1)(a) may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 (A) driving under the influence as described in Section [41-6a-502](#);

196 (B) impaired driving as described in Section [41-6a-502.5](#); or

197 (C) operating a vehicle with a measurable controlled substance in the individual's body
198 as described in Section [41-6a-517](#).

199 (ii) An individual's refusal to submit to a chemical test as described in ~~[Section]~~
200 Sections [41-6a-520](#) and [41-6a-520.1](#) is admissible evidence, but not conclusive, that the
201 individual is guilty of an offense described in Subsection (7)(b)(i).

202 (c) A reduction in coverage as described in Subsection (7)(a) applies to the following
203 individuals:

204 (i) the insured;

205 (ii) the spouse of the insured; or

206 (iii) if the individual has a separate policy as a secondary source of coverage, and:

207 (A) the individual is over the age of 21 and resides in the household of the insured; or

208 (B) the individual is a permissible user of the motor vehicle.

209 (d) A reduction in coverage as described in Subsection (7)(a) does not apply to an
210 individual under the age of 21 who is a relative of the insured and a resident of the insured's
211 household.

212 (8) (a) When a claim is brought exclusively by a named insured or a person described
213 in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual

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

215 (i) by submitting the claim to binding arbitration; or

216 (ii) through litigation.

217 (b) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),
218 the claimant may not elect to resolve the claim through binding arbitration under this section
219 without the written consent of both parties and the defendant's liability insurer.

220 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
221 binding arbitration under Subsection (8)(a)(i) shall be resolved by a panel of three arbitrators.

222 (ii) Unless otherwise agreed on in writing by the parties, each party shall select an
223 arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

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

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

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

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

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

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

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

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

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

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

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

250 (l) Nothing in this section is intended to limit any claim under any other portion of an
251 applicable insurance policy.

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

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

257 **41-6a-501. Definitions.**

258 (1) As used in this part:

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

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

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

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

264 (iv) the vehicle is lawfully parked; and

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

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

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

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

272 (B) an educational series; or

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

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

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

279 (d) "Drug" or "drugs" means:

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

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

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

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

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

289 (g) "Novice learner driver" means an individual who:

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

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

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

293 (h) "Screening" means a preliminary appraisal of a person:

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

295 (A) an assessment; or

296 (B) an educational series; and

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

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

300 (i) serious permanent disfigurement;

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

302 (iii) a substantial risk of death.

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

306 (k) "Substance abuse treatment program" means a state licensed substance abuse

307 program.

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

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

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

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

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

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

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

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

319 ~~[(F) Section [41-6a-512](#); and]~~

320 ~~[(H) Section [41-6a-528](#); or]~~

321 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
322 [41-6a-502.5](#);

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

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

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

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

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

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

335 (ix) refusal of a chemical test under Subsection ~~[[41-6a-520\(7\)](#)]~~ [41-6a-520.1\(1\)](#); or

336 (x) statutes or ordinances previously in effect in this state or in effect in any other state,
337 the United States, or any district, possession, or territory of the United States which would

338 constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
339 both-related reckless driving if committed in this state, including punishments administered
340 under 10 U.S.C. Sec. 815.

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

345 (i) enhancement of penalties under this [~~Chapter 6a, Part 5, Driving Under the~~
346 ~~Influence and Reckless Driving~~] part; and

347 (ii) expungement under [~~Title 77, Chapter 40, Expungement~~] Title 77, Chapter 40a,
348 Expungement.

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

352 (i) this part;

353 (ii) negligently operating a vehicle resulting in injury under Section 76-5-102.1; and

354 (iii) negligently operating a vehicle resulting in death under Section 76-5-207.

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

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

358 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**
359 **both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

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

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

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

368 (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of

369 operation or actual physical control.

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

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

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

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

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

377 or

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

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

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

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

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

384 (A) the current conviction; or

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

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

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

388 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-520.1](#), or a statute
389 previously in effect in this state that would constitute a violation of this section; or

390 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of
391 conviction is reduced under Section [76-3-402](#).

392 ~~[(2)]~~ (3) Alcohol concentration in the blood shall be based upon grams of alcohol per
393 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of
394 alcohol per 210 liters of breath.

395 ~~[(3)]~~ (4) A violation of this section includes a violation under a local ordinance similar
396 to this section adopted in compliance with Section [41-6a-510](#).

397 ~~[(4)]~~ (5) [Beginning on July 1, 2012, a] A court shall, monthly, send to the Division of
398 Professional Licensing, created in Section [58-1-103](#), a report containing the name, case
399 number, and, if known, the date of birth of each person convicted during the preceding month

400 of a violation of this section for whom there is evidence that the person was driving under the
401 influence, in whole or in part, of a prescribed controlled substance.

402 ~~[(5)]~~ (6) An offense described in this section is a strict liability offense.

403 ~~[(6)]~~ (7) A guilty or no contest plea to an offense described in this section may not be
404 held in abeyance.

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

407 Section 5. Section **41-6a-503** is amended to read:

408 **41-6a-503. Penalties for driving under the influence violations.**

409 (1) Except as otherwise provided in this section, a person who violates Section
410 [41-6a-502](#) or ~~[41-6a-520]~~ [41-6a-520.1](#) is guilty of an offense classified as a class B
411 misdemeanor.

412 (2) A person who violates Section [41-6a-502](#) or ~~[41-6a-520]~~ [41-6a-520.1](#) is guilty of
413 an offense classified as a class A misdemeanor if the person:

414 (a) had a passenger younger than 16 years old in the vehicle at the time of the offense;

415 (b) was 21 years old or older and had a passenger younger than 18 years old in the
416 vehicle at the time of the offense;

417 (c) at the time of the violation of Section [41-6a-502](#), also violated Section [41-6a-712](#) or
418 [41-6a-714](#); or

419 (d) has one prior conviction as defined in Subsection [41-6a-501](#)(2) within 10 years of:

420 (i) the current conviction under Section [41-6a-502](#) or ~~[41-6a-520]~~ [41-6a-520.1](#); or

421 (ii) the commission of the offense upon which the current conviction is based.

422 (3) A person who violates Section [41-6a-502](#) or ~~[41-6a-520]~~ [41-6a-520.1](#) is guilty of an
423 offense classified as a third degree felony if:

424 (a) the person has two or more prior convictions as defined in Subsection
425 [41-6a-501](#)(2), each of which is within 10 years of:

426 (i) the current conviction; or

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

428 (b) the current conviction is at any time after a conviction of:

429 (i) a violation of Section [76-5-207](#) ~~[that is committed after July 1, 2001]~~;

430 (ii) a felony violation of Section [41-6a-502](#), [76-5-102.1](#) or a statute previously in effect

431 in this state that would constitute a violation of Section 41-6a-502 [~~that is committed after July~~
432 ~~1, 2001~~]; or

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

435 (4) A person is guilty of a separate offense under Subsection (2)(a) for each passenger
436 in the vehicle at the time of the offense that is younger than 16 years old.

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

438 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
439 **interlock system.**

440 (1) As used in this section:

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

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

444 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
445 41-6a-518(8).

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

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

449 (B) within the last 18 months has been convicted of a violation under Section
450 41-6a-502, Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1;

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

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

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

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

459 (F) within the last three years has been convicted of a violation of Section 41-6a-502,
460 Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1 and was under the age of 21
461 at the time the offense was committed;

462 (G) within the last six years has been convicted of a felony violation of Section
463 41-6a-502, Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1 for an offense that
464 occurred after May 1, 2006; or

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

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

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

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

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

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

480 (3) For purposes of this section, a plea of guilty or no contest to a violation of Section
481 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
482 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
483 reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

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

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

492 (c) the interlock restricted driver had on the interlock restricted driver's person, or in

493 the vehicle, at the time of operation or physical control employer verification, as defined in
494 Subsection 41-6a-518(1); and

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

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

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

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

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

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

506 Section 7. Section 41-6a-520 is amended to read:

507 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**
508 **tests -- Refusal -- Warning, report.**

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

513 (i) having a blood or breath alcohol content statutorily prohibited under Section
514 41-6a-502, 41-6a-530, or 53-3-231;

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

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

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

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

524 of them are administered.

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

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

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

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

541 (i) has been placed under arrest;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

578 ~~[(9) As part of any sentence for a conviction of violating this section, the court shall~~
579 ~~impose the same sentencing as outlined for driving under the influence violations in Section~~
580 ~~[41-6a-505](#), based on whether this is a first, second, or subsequent conviction as defined by~~
581 ~~Subsection [41-6a-501](#)(2), with the following modifications:]~~

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

584 ~~[(b) any fine imposed shall be \$100 more than would be required under Section~~
585 ~~[41-6a-505](#); and]~~

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

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

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

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

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

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

597 Section 8. Section **41-6a-520.1** is enacted to read:

598 **41-6a-520.1. Refusing a chemical test.**

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

600 (a) a peace officer issues the warning required in Subsection [41-6a-520\(2\)\(a\)](#);

601 (b) a court issues a warrant to draw and test the blood; and

602 (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's
603 blood.

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

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

607 (i) has a passenger younger than 16 years old in the vehicle at the time the officer had
608 grounds to believe the actor was driving under the influence;

609 (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle
610 at the time the officer had grounds to believe the actor was driving under the influence;

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

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

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

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

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

- 617 (i) the actor has two or more prior convictions, each of which is within 10 years of:
618 (A) the current conviction; or
619 (B) the commission of the offense upon which the current conviction is based; or
620 (ii) the current conviction is at any time after a conviction of:
621 (A) a violation of Section [76-5-207](#);
622 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-502](#), or a statute
623 previously in effect in this state that would constitute a violation of this section; or
624 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of
625 conviction is reduced under Section [76-3-402](#).
- 626 (3) As part of any sentence for a conviction of violating this section, the court shall
627 impose the same sentencing as outlined for driving under the influence violations in Section
628 [41-6a-505](#), based on whether this is a first, second, or subsequent conviction, with the
629 following modifications:
- 630 (a) any jail sentence shall be 24 consecutive hours more than is required under Section
631 [41-6a-505](#);
- 632 (b) any fine imposed shall be \$100 more than is required under Section [41-6a-505](#); and
633 (c) the court shall order one or more of the following:
- 634 (i) the installation of an ignition interlock system as a condition of probation for the
635 individual, in accordance with Section [41-6a-518](#);
- 636 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
637 device as a condition of probation for the individual; or
- 638 (iii) the imposition of home confinement through the use of electronic monitoring, in
639 accordance with Section [41-6a-506](#).
- 640 (4) (a) The offense of refusing a chemical test under this section does not merge with
641 any violation of Section [32B-4-409](#), [41-6a-502](#), [41-6a-517](#), or [41-6a-530](#).
- 642 (b) In accordance with Subsection [77-2a-3](#)(8), a guilty or no contest plea to an offense
643 of refusal to submit to a chemical test under this section may not be held in abeyance.
- 644 (5) An actor is guilty of a separate offense under Subsection (1) for each passenger in
645 the vehicle that is younger than 16 years old at the time the officer had grounds to believe the
646 actor was driving under the influence.
- 647 Section 9. Section **41-6a-521.1** is amended to read:

648 **41-6a-521.1. Driver license denial or revocation for a criminal conviction for a**
649 **refusal to submit to a chemical test violation.**

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

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

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

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

656 (ii) the current refusal to submit to a chemical test violation under Subsection
657 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the
658 prior violation.

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

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

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

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

666 (ii) the current refusal to submit to a chemical test violation under Subsection
667 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the
668 prior violation; or

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

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

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

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

675 (B) the current refusal to submit to a chemical test violation under Subsection
676 [~~41-6a-520(7)~~] 41-6a-520.1(1) is committed within a period of 10 years from the date of the
677 prior violation.

678 (3) The Driver License Division shall suspend or revoke the license of a person as

679 ordered by the court under Subsection (5).

680 (4) The Driver License Division shall subtract from any revocation period the number
681 of days for which a license was previously revoked under Section [~~53-3-221~~] [41-6a-521](#) if the
682 previous revocation was based on the same occurrence upon which the record of conviction
683 under Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#) is based.

684 (5) (a) (i) In addition to any other penalties provided in this section, a court may order
685 the driver license of a person who is convicted of a violation of Subsection [~~41-6a-520(7)~~]
686 [41-6a-520.1\(1\)](#) to be revoked for an additional period of 90 days, 120 days, 180 days, one year,
687 or two years to remove from the highways those persons who have shown they are safety
688 hazards.

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

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

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

696 (i) complete all court ordered:

697 (A) screening;

698 (B) assessment;

699 (C) educational series;

700 (D) substance abuse treatment; and

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

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

703 (b) Upon receiving the notification described in Subsection (6)(a), the Driver License
704 Division shall suspend the person's driving privilege in accordance with Subsections
705 [53-3-221\(2\)](#) and (3).

706 Section 10. Section **41-6a-527** is amended to read:

707 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
708 **requirements -- Removal of vehicle by owner.**

709 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a

710 vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-520.1,
711 41-6a-530, 41-6a-606, 53-3-231, Subsections 53-3-227(3)(a)(i) through ~~[(vi);~~ (vii),
712 Subsection ~~[53-3-227(3)(a)(ix);~~ 53-3-227(3)(a)(x), or a local ordinance similar to Section
713 41-6a-502 which complies with Subsection 41-6a-510(1), the peace officer shall seize and
714 impound the vehicle in accordance with Section 41-6a-1406, except as provided under
715 Subsection (2).

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

718 (a) the registered owner:

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

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

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

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

724 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,
725 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-520.1, 41-6a-530, 53-3-231, or a local ordinance
726 similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if permitted to
727 operate the vehicle; and

728 (c) the vehicle itself is legally operable.

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

731 Section 11. Section 41-6a-529 is amended to read:

732 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

735 (a) within the last two years:

736 (i) has been convicted of:

737 (A) a misdemeanor violation of Section 41-6a-502 or 76-5-102.1;

738 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
739 41-6a-512;

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

741 (D) local ordinances similar to Section 41-6a-502 or 76-5-102.1, alcohol, any drug, or
742 a combination of both-related reckless driving, or impaired driving adopted in compliance with
743 Section 41-6a-510;

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

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

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

753 (b) within the last three years has been convicted of a violation of this section or
754 Section 41-6a-518.2;

755 (c) within the last five years:

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

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

761 (iii) has been convicted of a class A misdemeanor violation of Section 41-6a-502 or
762 76-5-102.1 committed on or after July 1, 2008;

763 (d) within the last 10 years:

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

767 (ii) has been convicted of a felony violation of refusal to submit to a chemical test
768 under Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1); or

769 (iii) has had the person's driving privilege revoked for refusal to submit to a chemical
770 test and the refusal is within 10 years after:

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

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

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

775 (i) a violation of Section 76-5-207 for an offense that occurred on or after July 1, 2005;

776 or

777 (ii) a felony violation of Section 41-6a-502 or 76-5-102.1 for an offense that occurred
778 on or after July 1, 2005;

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

780 (g) is a novice learner driver.

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

786 Section 12. Section 53-3-218 is amended to read:

787 **53-3-218. Court to report convictions and may recommend suspension of license**
788 **-- Severity of speeding violation defined.**

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

791 (2) (a) Except as provided in Subsection (2)(c), a court having jurisdiction over
792 offenses committed under this chapter or any other law of this state, or under any municipal
793 ordinance regulating driving motor vehicles on highways or driving motorboats on the water,
794 shall forward to the division within five days, an abstract of the court record of the conviction
795 or plea held in abeyance of any person in the court for a reportable traffic or motorboating
796 violation of any laws or ordinances, and may recommend the suspension of the license of the
797 person convicted.

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

802 (c) A court may not forward to the division an abstract of a court record of a conviction

803 for a violation described in Subsection 53-3-220(1)(c)(i) [~~or (ii)~~], unless the court found that
804 the person convicted of the violation was an operator of a motor vehicle at the time of the
805 violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

822 (h) the nature of the offense;

823 (i) whether the offense involved an accident;

824 (j) the driver's blood alcohol content, if applicable;

825 (k) if the offense involved a speeding violation:

826 (i) the posted speed limit;

827 (ii) the actual speed; and

828 (iii) whether the speeding violation occurred on a highway that is part of the interstate
829 system as defined in Section 72-1-102;

830 (l) the date of the hearing;

831 (m) the plea;

832 (n) the judgment or whether bail was forfeited; and

833 (o) the severity of the violation, which shall be graded by the court as "minimum,"

834 "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

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

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

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

845 Section 13. Section 53-3-220 is amended to read:

846 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
847 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
848 **Limited driving privileges.**

849 (1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter
850 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or
851 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
852 receiving a record of the person's conviction for:

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

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

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

864 (iv) perjury or the making of a false affidavit to the division under this chapter, Title

865 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
866 regulating driving on highways;

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

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

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

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

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

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

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

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

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

887 (xiv) operating or being in actual physical control of a motor vehicle while having any
888 measurable or detectable amount of alcohol in the person's body in violation of Section
889 [41-6a-530](#);

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

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

894 (xvii) refusal of a chemical test under Subsection [~~[41-6a-520\(7\)](#)~~] [41-6a-520.1\(1\)](#).

895 (b) The division shall immediately revoke the license of a person upon receiving a

896 record of an adjudication under Section 80-6-701 for:

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

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

901 (c) (i) Except when action is taken under Section 53-3-219 for the same offense, upon
902 receiving a record of conviction, the division shall immediately suspend for six months the
903 license of the convicted person if the person was convicted of violating any one of the
904 following offenses while the person was an operator of a motor vehicle, and the court finds that
905 a driver license suspension is likely to reduce recidivism and is in the interest of public safety:

906 [~~(i) any violation of:~~]

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

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

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

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

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

912 (F) [~~(i)~~] any criminal offense that prohibits[~~:~~]

913 [~~(A)~~] possession, distribution, manufacture, cultivation, sale, or transfer of any
914 substance that is prohibited under the acts described in [~~Subsection (1)(c)(i);~~] Subsections
915 (1)(c)(i)(A) through (E), or

916 [~~(B)~~] the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
917 transfer any substance that is prohibited under the acts described in [~~Subsection (1)(c)(i)~~]
918 Subsections (1)(c)(i) (A) through (E).

919 [~~(iii)~~] (ii) Notwithstanding the provisions in [~~this~~] Subsection (1)(c)(i), the division
920 shall reinstate a person's driving privilege before completion of the suspension period imposed
921 under [~~this~~] Subsection (1)(c)(i) if the reporting court notifies the Driver License Division, in a
922 manner specified by the division, that the defendant is participating in or has successfully
923 completed a drug court program as defined in Section 78A-5-201.

924 [~~(iv)~~] (iii) If a person's driving privilege is reinstated under Subsection [~~(1)(c)(iii);~~]
925 (1)(c)(ii), the person is required to pay the license reinstatement fees under Subsection
926 53-3-105(26).

927 ~~[(v)]~~ (iv) The court shall notify the division, in a manner specified by the division, if a
928 person fails to complete all requirements of the drug court program.

929 ~~[(vi)]~~ (v) Upon receiving the notification described in Subsection ~~[(1)(e)(v)]~~, (1)(c)(iv),
930 the division shall suspend the person's driving privilege for a period of six months from the
931 date of the notice, and no days shall be subtracted from the six-month suspension period for
932 which a driving privilege was previously suspended under ~~[this]~~ Subsection (1)(c)(i).

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

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

937 (B) a record of the conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

958 eligibility for a driver license; or

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

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

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

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

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

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

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

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

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

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

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

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

988 (i) those offenses referred to in Subsections (1)(a)(i), (ii), (iii), (xi), (xii), (xiii), (1)(b),

989 and (1)(c)(i); and

990 (ii) those offenses referred to in Subsection (2) when the original denial, suspension,
991 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,
992 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1),
993 Section 41-6a-520, 76-5-102.1, or 76-5-207, or a criminal prohibition that the person was
994 charged with violating as a result of a plea bargain after having been originally charged with
995 violating one or more of these sections or ordinances, unless:

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

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

1000 (I) to the physician's knowledge the person has not used any narcotic drug or other
1001 controlled substance except as prescribed by a licensed medical practitioner within the last
1002 three years; and

1003 (II) the physician is not aware of any physical, emotional, or mental impairment that
1004 would affect the person's ability to operate a motor vehicle safely; and

1005 (C) for a period of one year prior to the date of the request for a limited driving
1006 privilege:

1007 (I) the person has not been convicted of a violation of any motor vehicle law in which
1008 the person was involved as the operator of the vehicle;

1009 (II) the division has not received a report of an arrest for a violation of any motor
1010 vehicle law in which the person was involved as the operator of the vehicle; and

1011 (III) the division has not received a report of an accident in which the person was
1012 involved as an operator of a vehicle.

1013 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege
1014 authorized in this Subsection (4):

1015 (A) is limited to when undue hardship would result from a failure to grant the
1016 privilege; and

1017 (B) may be granted only once to any person during any single period of denial,
1018 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1019 or disqualification.

1020 (ii) The discretionary privilege authorized in Subsection [~~(4)(a)(ii)~~] (4)(b)(i):
1021 (A) is limited to when the limited privilege is necessary for the person to commute to
1022 school or work; and
1023 (B) may be granted only once to any person during any single period of denial,
1024 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1025 or disqualification.

1026 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform
1027 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or
1028 denied under this chapter.

1029 Section 14. Section **53-3-227** is amended to read:

1030 **53-3-227. Driving a motor vehicle prohibited while driving privilege denied,**
1031 **suspended, disqualified, or revoked -- Penalties.**

1032 (1) A person whose driving privilege has been denied, suspended, disqualified, or
1033 revoked under this chapter or under the laws of the state in which the person's driving privilege
1034 was granted and who drives any motor vehicle upon the highways of this state while that
1035 driving privilege is denied, suspended, disqualified, or revoked shall be punished as provided
1036 in this section.

1037 (2) A person convicted of a violation of Subsection (1), other than a violation specified
1038 in Subsection (3), is guilty of a class C misdemeanor.

1039 (3) (a) A person is guilty of a class B misdemeanor if the person's conviction under
1040 Subsection (1) is based on the person driving a motor vehicle while the person's driving
1041 privilege is suspended, disqualified, or revoked for:

- 1042 (i) a refusal to submit to a chemical test under Section [41-6a-520](#);
- 1043 (ii) a violation of Section [41-6a-520.1](#);
- 1044 [~~(ii)~~] (iii) a violation of Section [41-6a-502](#);
- 1045 [~~(iii)~~] (iv) a violation of a local ordinance that complies with the requirements of
1046 Section [41-6a-510](#);
- 1047 [~~(iv)~~] (v) a violation of Section [41-6a-517](#);
- 1048 [~~(v)~~] (vi) a violation of Section [76-5-207](#);
- 1049 [~~(vi)~~] (vii) a criminal action that the person plead guilty to as a result of a plea bargain
1050 after having been originally charged with violating one or more of the sections or ordinances

1051 under this Subsection (3);

1052 ~~[(vii)]~~ (viii) a revocation or suspension which has been extended under Subsection
1053 53-3-220(2);

1054 ~~[(viii)]~~ (ix) where disqualification is the result of driving a commercial motor vehicle
1055 while the person's CDL is disqualified, suspended, canceled, or revoked under Subsection
1056 53-3-414(1); or

1057 ~~[(ix)]~~ (x) a violation of Section 41-6a-530.

1058 (b) A person is guilty of a class B misdemeanor if the person's conviction under
1059 Subsection (1) is based on the person driving a motor vehicle while the person's driving
1060 privilege is suspended, disqualified, or revoked by any state, the United States, or any district,
1061 possession, or territory of the United States for violations corresponding to the violations listed
1062 in Subsection (3)(a).

1063 (c) A fine imposed under this Subsection (3) shall be at least the maximum fine for a
1064 class C misdemeanor under Section 76-3-301.

1065 Section 15. Section **58-37f-201** is amended to read:

1066 **58-37f-201. Controlled substance database -- Creation -- Purpose.**

1067 (1) There is created within the division a controlled substance database.

1068 (2) The division shall administer and direct the functioning of the database in
1069 accordance with this chapter.

1070 (3) The division may, under state procurement laws, contract with another state agency
1071 or a private entity to establish, operate, or maintain the database.

1072 (4) The division shall, in collaboration with the board, determine whether to operate
1073 the database within the division or contract with another entity to operate the database, based
1074 on an analysis of costs and benefits.

1075 (5) The purpose of the database is to contain:

1076 (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed
1077 controlled substances;

1078 (b) data reported to the division under Section 26-21-26 regarding poisoning or
1079 overdose;

1080 (c) data reported to the division under Subsection ~~[41-6a-502(4)]~~ 41-6a-502(5) or
1081 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed

1082 controlled substance or impaired driving; and

1083 (d) data reported to the division under Subsection [58-37-8\(1\)\(e\)](#) or [58-37-8\(2\)\(g\)](#)

1084 regarding certain violations of ~~[the]~~ [Chapter 37](#), Utah Controlled Substances Act.

1085 (6) The division shall maintain the database in an electronic file or by other means
1086 established by the division to facilitate use of the database for identification of:

1087 (a) prescribing practices and patterns of prescribing and dispensing controlled
1088 substances;

1089 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
1090 manner;

1091 (c) individuals receiving prescriptions for controlled substances from licensed
1092 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
1093 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
1094 that controlled substance;

1095 (d) individuals presenting forged or otherwise false or altered prescriptions for
1096 controlled substances to a pharmacy;

1097 (e) individuals admitted to a general acute hospital for poisoning or overdose involving
1098 a prescribed controlled substance; and

1099 (f) individuals convicted for:

1100 (i) driving under the influence of a prescribed controlled substance that renders the
1101 individual incapable of safely operating a vehicle;

1102 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or

1103 (iii) certain violations of ~~[the]~~ [Chapter 37](#), Utah Controlled Substances Act.

1104 Section 16. Section **58-37f-703** is amended to read:

1105 **58-37f-703. Entering certain convictions into the database and reporting them to**
1106 **practitioners.**

1107 (1) When the division receives a report from a court under Subsection [~~41-6a-502(4)~~]
1108 [41-6a-502\(5\)](#) or [41-6a-502.5\(5\)\(b\)](#) relating to a conviction for driving under the influence of, or
1109 while impaired by, a prescribed controlled substance, the division shall:

1110 (a) daily enter into the database the information supplied in the report, including the
1111 date on which the person was convicted;

1112 (b) attempt to identify, through the database, each practitioner who may have

1113 prescribed the controlled substance to the convicted person; and
1114 (c) provide each practitioner identified under Subsection (1)(b) with:
1115 (i) a copy of the information provided by the court; and
1116 (ii) the information obtained from the database that led the division to determine that
1117 the practitioner receiving the information may have prescribed the controlled substance to the
1118 convicted person.

1119 (2) It is the intent of the Legislature that the information provided under Subsection
1120 (1)(b) is provided for the purpose of assisting the practitioner in:

1121 (a) discussing the manner in which the controlled substance may impact the convicted
1122 person's driving;

1123 (b) advising the convicted person on measures that may be taken to avoid adverse
1124 impacts of the controlled substance on future driving; and

1125 (c) making decisions regarding future prescriptions written for the convicted person.

1126 (3) Beginning on July 1, 2010, the division shall, in accordance with Section
1127 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup
1128 and ongoing costs of the division for complying with the requirements of this section.

1129 Section 17. Section 76-5-102.1 is amended to read:

1130 **76-5-102.1. Negligently operating a vehicle resulting in injury.**

1131 (1) As used in this section:

1132 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1133 (b) "Drug" means the same as that term is defined in Section 76-5-207.

1134 (c) "Negligent" or "negligence" means the same as that term is defined in Section
1135 76-5-207.

1136 (d) "Vehicle" means the same as that term is defined in Section 41-6a-501.

1137 (2) An actor commits negligently operating a vehicle resulting in injury if the actor:

1138 (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and

1139 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
1140 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
1141 time of the test;

1142 (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and
1143 a drug to a degree that renders the actor incapable of safely operating a vehicle; or

1144 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
1145 operation; or

1146 (b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to
1147 another; and

1148 (ii) has in the actor's body any measurable amount of a controlled substance.

1149 (3) Except as provided in Subsection (4), a violation of Subsection (2) is:

1150 (a) (i) a class A misdemeanor; or

1151 (ii) a third degree felony if the bodily injury is serious bodily injury; and

1152 (b) a separate offense for each victim suffering bodily injury as a result of the actor's
1153 violation of this section, regardless of whether the injuries arise from the same episode of
1154 driving.

1155 (4) An actor is not guilty of negligently operating a vehicle resulting in injury under
1156 Subsection (2)(b) if:

1157 (a) the controlled substance was obtained under a valid prescription or order, directly
1158 from a practitioner while acting in the course of the practitioner's professional practice, or as
1159 otherwise authorized by Title 58, Occupations and Professions;

1160 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1161 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
1162 [58-37-4.2](#) if:

1163 (i) the actor is the subject of medical research conducted by a holder of a valid license
1164 to possess controlled substances under Section [58-37-6](#); and

1165 (ii) the substance was administered to the actor by the medical researcher.

1166 (5) (a) A judge imposing a sentence under this section may consider:

1167 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1168 (ii) the defendant's history;

1169 (iii) the facts of the case;

1170 (iv) aggravating and mitigating factors; or

1171 (v) any other relevant fact.

1172 (b) The judge may not impose a lesser sentence than would be required for a conviction
1173 based on the defendant's history under Section [41-6a-505](#).

1174 (c) The standards for chemical breath analysis under Section [41-6a-515](#) and the

1175 provisions for the admissibility of chemical test results under Section 41-6a-516 apply to
1176 determination and proof of blood alcohol content under this section.

1177 (d) A calculation of blood or breath alcohol concentration under this section shall be
1178 made in accordance with Subsection [~~41-6a-502(2)~~] 41-6a-502(3).

1179 (e) Except as provided in Subsection (4), the fact that an actor charged with violating
1180 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1181 (f) Evidence of a defendant's blood or breath alcohol content or drug content is
1182 admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution,
1183 or the Utah Constitution.

1184 (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense
1185 described in this section may not be held in abeyance.

1186 Section 18. Section 76-5-207 is amended to read:

1187 **76-5-207. Negligently operating a vehicle resulting in death -- Penalties --**
1188 **Evidence.**

1189 (1) (a) As used in this section:

1190 (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1191 (ii) "Criminally negligent" means the same as that term is described in Subsection
1192 76-2-103(4).

1193 (iii) "Drug" means:

1194 (A) a controlled substance;

1195 (B) a drug as defined in Section 58-37-2; or

1196 (C) a substance that, when knowingly, intentionally, or recklessly taken into the human
1197 body, can impair the ability of an individual to safely operate a vehicle.

1198 (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that
1199 degree of care that reasonable and prudent persons exercise under like or similar circumstances.

1200 (v) "Vehicle" means the same as that term is defined in Section 41-6a-501.

1201 (b) Terms defined in Section 76-1-101.5 apply to this section.

1202 (2) An actor commits negligently operating a vehicle resulting in death if the actor:

1203 (a) (i) operates a vehicle in a negligent or criminally negligent manner causing the
1204 death of another individual;

1205 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test

1206 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
1207 time of the test;

1208 (B) is under the influence of alcohol, any drug, or the combined influence of alcohol
1209 and any drug to a degree that renders the actor incapable of safely operating a vehicle; or

1210 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
1211 operation; or

1212 (b) (i) operates a vehicle in a criminally negligent manner causing death to another; and

1213 (ii) has in the actor's body any measurable amount of a controlled substance.

1214 (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty
1215 of:

1216 (a) a second degree felony; and

1217 (b) a separate offense for each victim suffering death as a result of the actor's violation
1218 of this section, regardless of whether the deaths arise from the same episode of driving.

1219 (4) An actor is not guilty of a violation of negligently operating a vehicle resulting in
1220 death under Subsection (2)(b) if:

1221 (a) the controlled substance was obtained under a valid prescription or order, directly
1222 from a practitioner while acting in the course of the practitioner's professional practice, or as
1223 otherwise authorized by Title 58, Occupations and Professions;

1224 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1225 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
1226 [58-37-4.2](#) if:

1227 (i) the actor is the subject of medical research conducted by a holder of a valid license
1228 to possess controlled substances under Section [58-37-6](#); and

1229 (ii) the substance was administered to the actor by the medical researcher.

1230 (5) (a) A judge imposing a sentence under this section may consider:

1231 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1232 (ii) the defendant's history;

1233 (iii) the facts of the case;

1234 (iv) aggravating and mitigating factors; or

1235 (v) any other relevant fact.

1236 (b) The judge may not impose a lesser sentence than would be required for a conviction

1237 based on the defendant's history under Section 41-6a-505.

1238 (c) The standards for chemical breath analysis as provided by Section 41-6a-515 and
1239 the provisions for the admissibility of chemical test results as provided by Section 41-6a-516
1240 apply to determination and proof of blood alcohol content under this section.

1241 (d) A calculation of blood or breath alcohol concentration under this section shall be
1242 made in accordance with Subsection [~~41-6a-502(2)~~] 41-6a-502(3).

1243 (e) Except as provided in Subsection (4), the fact that an actor charged with violating
1244 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1245 (f) Evidence of a defendant's blood or breath alcohol content or drug content is
1246 admissible except when prohibited by the Utah Rules of Evidence, the United States
1247 Constitution, or the Utah Constitution.

1248 (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense
1249 described in this section may not be held in abeyance.

1250 Section 19. Section 77-2a-3 is amended to read:

1251 **77-2a-3. Manner of entry of plea -- Powers of court.**

1252 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
1253 done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

1254 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
1255 agreement may be entered into without a personal appearance before a magistrate.

1256 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
1257 defendant has successfully completed the terms of the agreement:

1258 (a) reduce the degree of the offense and enter judgment of conviction and impose
1259 sentence for a lower degree of offense; or

1260 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

1261 (3) (a) Upon finding that a defendant has successfully completed the terms of a plea in
1262 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
1263 provided in the plea in abeyance agreement or as agreed to by all parties.

1264 (b) Upon sentencing a defendant for any lesser offense in accordance with a plea in
1265 abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of
1266 the offense.

1267 (4) The court may require the Department of Corrections to assist in the administration

1268 of the plea in abeyance agreement as if the defendant were on probation to the court under
1269 Section 77-18-105.

1270 (5) The terms of a plea in abeyance agreement may include:

1271 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
1272 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
1273 the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a
1274 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and
1275 which may not exceed in amount the maximum fine and surcharge which could have been
1276 imposed upon conviction and sentencing for the same offense;

1277 (b) an order that the defendant pay the costs of any remedial or rehabilitative program
1278 required by the terms of the agreement; and

1279 (c) an order that the defendant comply with any other conditions that could have been
1280 imposed as conditions of probation upon conviction and sentencing for the same offense.

1281 (6) (a) The terms of a plea in abeyance shall include an order for a specific amount of
1282 restitution that the defendant will pay, as agreed to by the defendant and the prosecuting
1283 attorney, unless the prosecuting attorney certifies that:

1284 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
1285 for Victims of Crime; and

1286 (ii) the defendant does not owe any restitution.

1287 (b) The court shall collect, receive, process, and distribute payments for restitution to
1288 the victim, unless otherwise provided by law or by the plea in abeyance agreement.

1289 (c) If the defendant does not successfully complete the terms of the plea in abeyance,
1290 the court shall enter an order for restitution, in accordance with [~~Title 77, Chapter 38b, Crime~~
1291 ~~Victims Restitution Act~~] Chapter 38b, Crime Victims Restitution Act, upon entering a sentence
1292 for the defendant.

1293 (7) (a) A court may not hold a plea in abeyance without the consent of both the
1294 prosecuting attorney and the defendant.

1295 (b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

1296 (8) No plea may be held in abeyance in any case involving:

1297 (a) a sexual offense against a victim who is under 14 years old; or

1298 (b) a driving under the influence violation under Section 41-6a-502, 41-6a-502.5,

1299 [41-6a-517](#), [41-6a-520](#), [41-6a-520.1](#), [41-6a-521.1](#), [76-5-102.1](#), or [76-5-207](#).