

Representative Norman K Thurston proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE AND PUBLIC SAFETY

REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ reduces the blood alcohol content limit for driving under the influence;
- ▶ reduces the blood alcohol content limit in relation to certain criminal offenses;
- ▶ defines "novice learner driver";
- ▶ defines "novice licensed driver";
- ▶ modifies the definition of "alcohol restricted driver" to include a novice learner

driver and a novice licensed driver; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



26 34A-3-112, as renumbered and amended by Laws of Utah 1997, Chapter 375

27 41-6a-501, as last amended by Laws of Utah 2010, Chapter 283

28 41-6a-502, as last amended by Laws of Utah 2010, Chapter 109

29 41-6a-529, as last amended by Laws of Utah 2008, Chapter 226

30 76-5-207, as last amended by Laws of Utah 2009, Chapter 214

31 ENACTS:

32 41-6a-515.5, Utah Code Annotated 1953



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

35 Section 1. Section 34A-3-112 is amended to read:

36 **34A-3-112. Employee's willful misconduct.**

37 (1) Notwithstanding anything contained in this chapter, an employee or dependent of
38 any employee is not entitled to receive compensation for disability or death from an
39 occupational disease when the disability or death, wholly or in part, was caused by the
40 purposeful self-exposure of the employee.

41 (2) Except in cases resulting in death:

42 (a) Compensation provided for in this chapter shall be reduced 15% when the
43 occupational disease is caused by the willful failure of the employee:

44 (i) to use safety devices when provided by the employer; or

45 (ii) to obey any order or reasonable rule adopted by the employer for the safety of the
46 employee.

47 (b) Except when the employer permitted, encouraged, or had actual knowledge of the
48 conduct described in Subsections (2)(b)(i) through (iii), disability compensation may not be
49 awarded under this chapter to an employee when the major contributing cause of the
50 employee's disease is the employee's:

51 (i) use of illegal substances;

52 (ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or

53 (iii) intoxication from alcohol with a blood or breath alcohol concentration of ~~[-08]~~ .05
54 grams or greater as shown by a chemical test.

55 Section 2. Section 41-6a-501 is amended to read:

56 **41-6a-501. Definitions.**

57 (1) As used in this part:

58 (a) "Assessment" means an in-depth clinical interview with a licensed mental health
59 therapist:

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

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

62 (B) an educational series; or

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

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

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

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

69 (c) "Drug" or "drugs" means:

70 (i) a controlled substance as defined in Section [58-37-2](#);

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

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

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

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

79 (f) "Novice learner driver" means an individual who:

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

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

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

83 (g) "Novice licensed driver" means an individual who:

84 (i) has completed the requirements for issuance of a Utah driver license;

85 (ii) was issued a Utah driver license within the last two years; and

86 (iii) has not previously held a driver license in this state or another state.

87 ~~(f)~~ (h) "Screening" means a preliminary appraisal of a person:

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

89 (A) an assessment; or

90 (B) an educational series; and

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

92 accordance with Section 62A-15-105.

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

94 (i) serious permanent disfigurement;

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

96 (iii) a substantial risk of death.

97 ~~[(h)]~~ (j) "Substance abuse treatment" means treatment obtained at a substance abuse

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

99 with Section 62A-15-105.

100 ~~[(i)]~~ (k) "Substance abuse treatment program" means a state licensed substance abuse
101 program.

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

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

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

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

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

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

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

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

112 combination of both-related reckless driving under:

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

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

115 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
116 41-6a-502.5;

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

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

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

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

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

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

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

135 (i) enhancement of penalties under:

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

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

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

139 Section 3. Section 41-6a-502 is amended to read:

140 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**
 141 **both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

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

144 (a) has sufficient alcohol in the person's body that a subsequent chemical test shows
 145 that the person has a blood or breath alcohol concentration of [~~.08~~] .05 grams or greater at the
 146 time of the test;

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

149 (c) has a blood or breath alcohol concentration of [~~.08~~] .05 grams or greater at the time

150 of operation or actual physical control.

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

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

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

161 Section 4. Section 41-6a-515.5 is enacted to read:

162 **41-6a-515.5. Field sobriety test training.**

163 Each law enforcement agency shall ensure that each peace officer receives training on
164 the current standard field sobriety testing guidelines established by the National Highway
165 Traffic Safety Administration.

166 Section 5. Section 41-6a-529 is amended to read:

167 **41-6a-529. Definitions -- Alcohol restricted drivers.**

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

170 (a) within the last two years:

171 (i) has been convicted of:

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

173 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
174 41-6a-512;

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

176 (D) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
177 of both-related reckless driving, or impaired driving adopted in compliance with Section
178 41-6a-510;

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

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

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

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

190 (c) within the last five years:

191 (i) has had the person's driving privilege revoked for refusal to submit to a chemical
192 test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; or

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

195 (d) within the last 10 years:

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

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

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

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

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

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

207 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
208 1, 2005; [or]

209 (f) at the time of operation of a vehicle is under 21 years of age[:]; or

210 (g) is a novice learner driver or a novice licensed driver.

211 (2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to

212 a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77,
213 Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if
214 the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance
215 agreement.

216 Section 6. Section **76-5-207** is amended to read:

217 **76-5-207. Automobile homicide.**

218 (1) As used in this section:

219 (a) "Drug" or "drugs" means:

220 (i) a controlled substance as defined in Section [58-37-2](#);

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

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

224 (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile,
225 truck, van, motorcycle, train, engine, watercraft, or aircraft.

226 (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person
227 operates a motor vehicle in a negligent manner causing the death of another and:

228 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
229 person has a blood or breath alcohol concentration of [~~.08~~] .05 grams or greater at the time of
230 the test;

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

233 (iii) has a blood or breath alcohol concentration of [~~.08~~] .05 grams or greater at the
234 time of operation.

235 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is
236 subsequent to a conviction as defined in Subsection [41-6a-501\(2\)](#).

237 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to
238 exercise that degree of care that reasonable and prudent persons exercise under like or similar
239 circumstances.

240 (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the
241 person operates a motor vehicle in a criminally negligent manner causing the death of another
242 and:

243 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
244 person has a blood or breath alcohol concentration of [~~08~~] .05 grams or greater at the time of
245 the test;

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

248 (iii) has a blood or breath alcohol concentration of [~~08~~] .05 grams or greater at the
249 time of operation.

250 (b) As used in this Subsection (3), "criminally negligent" means criminal negligence as
251 defined by Subsection 76-2-103(4).

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

255 (5) Calculations of blood or breath alcohol concentration under this section shall be
256 made in accordance with Subsection 41-6a-502(1).

257 (6) The fact that a person charged with violating this section is or has been legally
258 entitled to use alcohol or a drug is not a defense.

259 (7) Evidence of a defendant's blood or breath alcohol content or drug content is
260 admissible except when prohibited by Rules of Evidence or the constitution.

261 (8) A person is guilty of a separate offense for each victim suffering bodily injury or
262 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
263 result of the person's violation of this section whether or not the injuries arise from the same
264 episode of driving.

265 Section 7. **Effective date.**

266 This bill takes effect on December 30, 2018.