

1987

# Michael G. Jensen v. Fred C. Schwendiman : Brief of Respondent

Utah Court of Appeals

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BRIEF

PLAINT  
:U

IN THE UTAH COURT OF APPEALS

10

CKET NO.

**870272-CA**

MICHAEL G. JENSEN,

:

Plaintiff-Appellant,

:

-v-

:

Case No. 870272-CA

FRED C. SCHWENDIMAN, Chief,  
Drivers License Services, State  
of Utah,

:

:

Defendant-Respondent.

# 146

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER REVOKING THE PLAINTIFF-  
APPELLANT'S DRIVING PRIVILEGES IN THE THIRD  
JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE  
COUNTY, STATE OF UTAH, THE HONORABLE RAYMOND S.  
UNO, PRESIDING.

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IN THE UTAH COURT OF APPEALS

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MICHAEL G. JENSEN,	:	
Plaintiff-Appellant,	:	
-v-	:	Case No. 870272-CA
FRED C. SCHWENDIMAN, Chief,	:	
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IN THE UTAH COURT OF APPEALS

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Plaintiff-Appellant, :  
-v- : Case No. 870272-CA  
FRED C. SCHWENDIMAN, Chief, :  
Driver License Services, State :  
of Utah, :  
Defendant-Respondent. :

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BRIEF OF RESPONDENT

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JURISDICTION AND NATURE OF THE PROCEEDINGS

This appeal is from a driver license revocation after a de novo review in the Third District Court of Utah. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 41-6-44.10 and Utah Code Ann. § 78-2a-3(2)(a).

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Despite sworn testimony of a refusal, is a DUI Report and a statement of appellant's refusal to submit to a chemical test a required element in an Implied Consent case?
2. Did the trial court abuse its discretion in admitting into evidence the out-of-court statements of the vehicle passenger?
3. Was the admission of the vehicle passenger's statements harmless error?

### CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

There are no constitutional issues raised. The arguments revolve around the Implied Consent Statute, Utah Code Ann. § 41-6-44.10 and its application to the District Court's trial de novo and the application of Rule 803 of the Utah Rules of Evidence to that trial.

### STATEMENT OF THE CASE

The appellant appeals from a bench verdict in a trial de novo in the Third Judicial District Court of Utah. On June 1, 1987 the appellant was before the Honorable Raymond S. Uno to determine the status of his revoked driver's license resulting from a DUI arrest and refusal to submit to a blood alcohol content test.

The Court found that the arresting officer, Dave Aylor, had good cause to stop the appellant and arrest him for driving while intoxicated; that the appellant was in actual physical control of a vehicle which he admitted that he owned and had driven to a parking lot adjacent to a public highway; that the appellant was properly requested to submit to a blood alcohol content test and warned of the consequences of refusal according to Utah Code Ann. § 41-6-44.10; that the appellant refused to submit to a chemical test; and that the DUI Report concerning the arrest and refusal met the statutory requirements.

The Court accordingly revoked the appellant's driving privileges pursuant to Utah Code Ann. § 41-6-44.10 for one year.

### STATEMENT OF FACTS

On April 7, 1987 at approximately 2:15 in the morning Officer Douglas Shoup and Officer Lawrence Stocking's immediate



attention was called to a red pickup by gun shots in its vicinity. As the Officers turned to the direction of the noise, they saw the red truck turning across a physical median divider causing a lot of dust, on First Avenue and State Street in Salt Lake City (T. 25, 34). The vehicle quickly went northbound on State Street "under hard acceleration" (T. 25). Both Officers pursued the vehicle in separate patrol cars as it went northbound on State Street then east on 200 North observing two people in it (T. 25, 26, 35). One momentarily lost sight of the vehicle after it had turned onto 200 North, but subsequently saw the vehicle in the White Chapel parking Lot on Third north and East Capitol Boulevard (T. 26, 36). Officer Shoup specifically testified that on passing his location he saw that there were two occupants in the red truck (T. 26). Another Officer, David Hendricks, responding to a broadcast of possible shots fired and a "high speed chase" went to the scene of the stopped red pickup. Upon seeing the vehicle unoccupied he backed onto 300 North. As he did he saw "a male white individual running eastbound across East Capitol Drive and Down into the Memory Grove Area" (T. 19). Officer Hendricks described the individual he saw to Officer Dave Aylor who also had responded to the radio broadcast (T. 20). Officer Aylor then went down into the wooded area of the grove and in the bushes he located and apprehended the individual described to him (T. 8). Officer Hendricks then identified the apprehended person as the one he saw crossing East Capitol Drive (T. 21). He was specifically identified as Michael Jensen, the appellant.

Just prior to the appellants capture, Officer Shoup was flagged down by a local resident and informed that another individual was hiding under the bushes on the northeast corner of Hillside Avenue and East Capitol Boulevard. The individual was apprehended and identified, at the scene as Steven Pandle (T. 28-30). He was immediately questioned and his responses, although objected to by the appellant, were admitted at trial (T. 31). Mr. Pandle told Officer Miek that he had been picked up just moments before the incident occurred and that he believed the driver was the owner of the truck (T. 31), a "white dude" (T. 32).

Officer Aylor took the appellant to the red pickup and asked the appellant if the truck was his. He affirmatively responded "yes." The Officer then asked "How did it get there?" And the appellant affirmed the he had "parked it there" meaning the same thing that he had "driven" it there (T. 8, 16). "Long after" the admission to driving, at the station when being again requested to take a breath test, he said he was not driving (T. 18).

Officer Aylor detected an odor of alcohol on the appellant. The possibility of him being intoxicated was discussed. Because the entire incident was pretty irrational and it was Officer Aylor's opinion that the appellant had been drinking and that he was intoxicated to the point where he wouldn't be able to drive safely. Officer Aylor placed the appellant under arrest for operating a motor vehicle while under the influence of alcohol (T. 9, 11). He testified that he

requested the appellant to submit to a blood alcohol content test and read him all the admonitions on the DUI Report "word for word" (T. 11). The appellant was transported to the police station and again requested to submit to a breath test. The appellant refused. Officer Aylor read the admonitions from the report again to the appellant, the appellant again refused to take the test (T. 12, 18).

Officer Aylor then recorded on his report that the appellant refused to submit to a breath test, swore to its contents before a notary public and submitted it to the Driver's License Division (T. 13-14).

#### SUMMARY OF THE ARGUMENT

The trial court's broad discretion in determining the admissibility and weight of evidence should not be overturned. There was a proper use of discretion in this case. Since the appellant has not made a clear showing of prejudicial error of substance, the trier of facts decision should be upheld.

The police officer's testimony of the passengers' contemporaneous statements to him are admissible hearsay under the "excited utterance" exception to hearsay (Rule 803(2) of the Utah Rules of Evidence). They are part of the total event and circumstances and merely corroborate the appellant's own admissions. Even so, a startling event with little or no time for reflection or fabrication generates trustworthy hearsay.

There is additionally substantial sworn evidence in the record showing the petitioner to be the driver or that he had been actual physical control of the vehicle. Therefore the

admission of any corroborative hearsay statements, not the sole basis for the court's decision, is harmless error.

Since appellant failed to make a timely objection to the admission of the DUI Report into evidence and sworn testimony about it when it was offered, the report was properly admitted in this civil case.

The DUI Report Form contains clear and precise information that the appellant refused to submit to a blood alcohol test and this information was sworn to. Neither statute nor case law bases the jurisdiction of the Driver's License Division or the District Court on the information contained in a sworn DUI Report. The agency's jurisdiction is granted solely by the Motor Vehicle Code as is the District Court's jurisdiction granted by the Implied Consent statute, the petition, and the constitution. Therefore this case was properly decided by the District Court.

#### ARGUMENT

##### POINT I

THE DUI SWORN REPORT CONTAINS A CLEAR  
STATEMENT OF APPELLANT'S REFUSAL TO  
SUBMIT TO A CHEMICAL TEST.

The appellant claims that the DUI Report in this case was not properly sworn to and contains no refusal information, and consequently, void and inadmissible and the Division or Court has no ability to make a decision. This point should not be considered on review since the objection to the DUI Report Form was not made in a timely manner. (The respondent contends that the Court has jurisdiction and the report is not a required

element of proof). Under the current Utah Rules of Evidence an objection to the admissibility of evidence must be made in a timely fashion. Those rules specifically state that "error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and in case the ruling is one admitting evidence, a timely objection or motion to strike appears on record, stating the specific ground of objection." Utah Rules of Evidence 103(a)(i) (emphasis added). Most courts have held an objection must be made at the earliest point possible to be timely. This position is clearly stated in United States v. Jimenez, 618 F.Supp. 799, 802 (D.C. N.Y. 1985).

An objection or motion to strike is untimely if not "'made as soon as the ground of it is known or reasonably should have been known to the objector.'" 21 C. Wright and K. Graham, Federal Practice and Procedure: Evidence § 5037, quoted in U.S. v. Cheek, 582 F.2d 668, 676 (2d Cir. 1978). While the objection cannot be waived if the facts upon which it is based are unknown, the objection must be made as soon as those facts are revealed. See DiPaola v. Riddle, 581 F.2d 1111, 1113 (4th Cir. 1978), cert. denied, 440 U.S. 908, 99 S.Ct. 1215, 59 L.Ed.2d 455 (1979).

The facts in this specific case reveal that the appellant made absolutely no objection to the admission of the DUI Report into evidence when it was offered. In fact, it was specifically not objected to (T. 42). The report was admitted during the questioning of Eugene Berner, a witness for the defense from Utah Driver's License Division. Plaintiff-Appellant agreed to its admission and only seemed to object later at closing argument (T. 44). The record also clearly shows that the

appellant had knowledge of his basis of objection prior to the admission of the report into evidence. He meticulously cross-examined Mr. Berner about the report, and specifically concerning its content on refusals to blood alcohol tests (T. 40-42). This questioning proceeded the agreement and admission of the report. Surely this demonstrates that the appellant was aware of a belated objection basis or, at the very least, should have recognized it.

The principle question then is what constitutes a timely objection. Recognized earlier was the fact that an objection to the admission of evidence must be "made as soon as the ground of it is known, or reasonably should have been known to the objector." (Id. at 802). The United States Court of Appeals, Second Circuit, in United States v. Kanovsky, 618 F.2d 229 (2nd Cir. 1980) held that an objection to a witness's testimony was not made in a timely manner and constituted a waiver when made after the witness was excused. In an other case the Second Circuit stated that delays in objecting to the admission of a document into evidence for "tactical reasons" resulted in waiver. Once the "cats out of the bag" counsel must object promptly. United States v. Jimenez, 789 F.2d 1678, 170 (2nd Cir. 1986). Failure to object to a witness's in court identification until after cross-examination by the objector also constitutes an untimely objection and waiver. See People v. Willis, 708 P.2d 125 (Colo. App. 1985).

The reasoning of those federal cases has been recognized by the Supreme Court of Utah in State v. Gray, 717

P.2d 1313, 1317 (Utah 1986). The Court said that "since the advisory committee generally sought to achieve uniformity between Utah's Rules of Evidence and the Federal Rules of Evidence, this Court looks to the interpretation of the Federal Rules by the Federal Courts to aid in interpreting the Utah Rules."

The appellant's decision to wait until closing argument to object to the DUI Report Form was therefore untimely under the Utah Rules of Evidence. The report would also be admissible in this civil case under Utah Rules of Evidence 803(8)(B) as a public record and Utah Rules of Evidence 803(6) as a business record testified to by the driver's license "custodian or other qualified witness." Also Kehl v. Schwendiman, 735 P.2d 413, 417 (Ut. App. 1987).

The DUI Report itself provides clear and sworn statements and information that a refusal to a blood alcohol test occurred. There were also substantial grounds to believe that the appellant was driving while under the influence. (See Exhibit D-1 in Addendum).

Utah Code Ann. § 41-6-44.10(2)(a) merely requires a report of a peace officer's "belief that the person had refused and procedurally notify the Driver's License Division." The DUI Report Form itself clearly reports that the appellant refused to take the requested test thereby relieving the Driver's License Division from any guess work concerning the matter (See Addendum No. 1). So found the trial court (T. 46-47).

Section X of the DUI Report titled "Chemical Tests" provides uncontrovertable evidence that an informed and voluntary

refusal took place. The form contains the pre-typed statement "I hereby request that you submit to a chemical test to determine the alcohol (drug) content of your blood. I hereby request that you take a breath<sup>1</sup> test." Following this statement comes the admonition concerning the civil driver's license law which peace officer Dave Aylor testified under oath having read to the appellant (T. 11). Next, under this section comes the pre-typed question of, "What is your response to my request that you submit to a chemical test?" In the space provided immediately following the question, Officer Aylor wrote the appellant's response of "I'd rather not." Immediately following this is another pre-typed question asking, "Did subject submit to a chemical test?" Officer Ayler's hand written response was "No." Then under other facts the information is; "at the station A/P refused." As Mr. Berner testified, there were also no test results on the report. There is certainly enough information on this report to conclusively establish that a refusal took place. Respondent submits this is difficult to imagine how a trier of fact could reasonably interpret any other meaning than that there was an actual refusal of the chemical test being reported.

Officer Aylor affirmatively testified that he properly swore to the truthfulness of the contents of the entire DUI Report in this case (T. 13-14). This is also evidenced by the last page of the DUI Report (See Addendum No. 1). Also Officer Aylor testified that he affirmatively swore to the veracity of

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<sup>1</sup> "Breath" was written in by the arresting officer as his choice of the type of test to be given.



the contents of the report, Section X and its statements of refusal. There was obvious testimony and admissible documentation of the specifically submitted "a sworn report of refusal" in compliance with Utah Code Ann. § 41-6-44.10(2). Also see Colman v. Schwendiman, 680 P.2d 29 (Utah 1984)<sup>2</sup>

The Utah statutes specifically grant the Driver's License Division and the District Court respective jurisdiction to issue, revoke, and review driver's license matters through the Motor Vehicle Code. See Utah Code Ann. § 41-2 and 41-6-44.10. In Helsten v. Schwendiman, 668 P.2d 509, 512 (Utah 1983) the Court refused to treat the jurisdictional argument and only required that the report be "sworn" because the Implied Consent Statute required it at the time.

Since the Driver's License Division's jurisdiction to issue and revoke licenses is granted specifically by the Motor Vehicle Statute and the Implied Consent Statute and since there was a sworn DUI Report of a refusal, and since the trial court has specific statutory jurisdiction, this Court should affirm the trial court's decision.

#### POINT II

THE TRIAL COURT'S DISCRETION TO ADMIT  
THE PASSENGER'S EXCITED STATEMENTS  
INTO EVIDENCE SHOULD BE UPHELD ON  
APPEAL.

In the trial court's de novo trial on the appellant's driver's license revocation, the court allowed Officer Douglas W.

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<sup>2</sup> Effective April 28, 1987, the statute was amended to require a signed not sworn report. Utah Code Ann. § 41-6-44.10(2)(a)(iii).

Shoup to testify to the excited out-of-court statements made by Steven Pandle who had been riding in the car. The primary statement objected to by the appellant was his identification of the appellant as the driver of the automobile. Officer Shoup, testifying about the event, said that he heard Mr. Pandle state that he believed the driver was the owner of the truck and also identified the driver that picked him up as "a white dude" (T. 31-32).

Decisions about the admissibility of evidence are left to the sound discretion of the trial court, especially with no prejudice or jury. State v. Anderson, 561 P.2d 1061 (Utah 1977). The Utah Supreme Court addressing this discretion of the trial court in the criminal case of State v. Gray, saying that "this court will not disturb the ruling of the trial court on questions of admissibility of evidence unless it clearly appears that the lower court was in error." The Gray decision went even further and stated that "this court may affirm the trial court's decision to admit evidence on any proper grounds, even though the trial court assigned another reason for its ruling." State v. Gray, supra at 1316 (emphasis added). Therefore it logically seems that this reviewing court must affirm the trial court's findings on the admissibility of evidence "on any proper grounds."

There are proper grounds for the admission of the statements into evidence. The statements in question are admissible Hearsay under Rule 803(2) of the Utah Rules of Evidence. The rule provides that "a statement relating to a startling event or condition made while the declarant was under

the stress of excitement caused by the event or condition" is an "excited utterance" and a recognized exception to the general Hearsay Rule. An "excited utterance" to be trustworthy must be (1) a startling event or condition and (2) a spontaneous declaration produced by the event or condition. The passenger had just been involved in a vehicular and on foot chase with police officers which culminated in his hiding and apprehension in the bushes (T. 26-28). This is the type of event that the rule is intended for. The exclamation was immediate and contemporaneous with no chance to fabricate. Since the declarant's statements were made while still under the stress of the chase and capture, it logically falls within the exception. As the Utah Supreme Court has said in State v. Kaytso, 684 P.2d 63 (Utah 1984):

The crucial question in all cases is whether the statement was made while the declarant was still under the influence of the event to the extent that his statement could not be the result of fabrication; intervening actions, or the exercise of choice of judgment.

Citing Johnston v. Obbs, 457 P.2d 194 (Wash. 1969), applying this logic to all parties, adult or juvenile.

It is evident that the passenger and driver were still under the influence of the flight and capture. The DUI Report shows that it was 2:30 in the morning. The testimony was that the vehicular chase began at approximately 2:15 in the morning (T. 34). The record also shows that Mr. Pandle was apprehended prior to the appellant (T. 27) who also admitted he was the driver. Since Mr. Pandle gave his statements prior to the

appellant's arrest at 2:30 a.m., the excited utterances were within 15 minutes after the chase began. Therefore the trial court acted properly in weighing the utterances of both parties caught at the time.

The "excited utterance" exception to the Hearsay Rule provided proper and logical grounds for the admission of Mr. Pandle's declarations into evidence at the trial court. Even without his statements there was still substantial evidence before the trial court to require that the decision be sustained.

### POINT III

THE ADMISSION OF THE PASSENGER'S  
STATEMENTS WOULD BE NON-PREJUDICIAL  
HARMLESS ERROR.

The disposition of civil cases on review for errors alleged in the admissibility of evidence are governed by two rules in the State of Utah. Both set forth the grounds for determining reversible versus harmless error. Rule 103(a) of the Utah Rules of Evidence states that "error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" (emphasis added). Regarding harmless error, Rule 61 of the Utah Rules of Civil Procedure states:

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. (Emphasis added.)

These rules make it very clear that errors resulting in anything less than a substantial impairment in a litigant's right will not provide grounds for reversal.

The Supreme Court of Utah in Joseph v. W.H. Groves Latter-Day Saints Hospital, 10 Utah 2d 94, 348 P.2d 935, 938 (Utah 1960) elaborated on Rule 61 of the Utah Rules of Civil Procedure stating:

What the parties are entitled to and the law seeks to afford is an opportunity for one claiming a grievance which would justify legal redress to present it to a court or jury and to have a fair trial. When this is done, and the verdict and judgment are entered, all presumptions are in favor of their validity. The burden is upon the appellant not only to show that there was error, but that it was prejudicial to the extent that there is reasonable likelihood that in its absence there would have been a different result. (Emphasis added.)

For other cases involving these presumptions and the appellant's burden on appeal, see Batt v. State, 28 Utah 2d 417, 503 P.2d 855 (Utah 1972), Hall v. Blackham, 18 Utah 2d 164, 417 P.2d 664 (Utah 1966), Redevelopment Agency of Salt Lake City v. Mitsui Investment Inc., 522 P.2d 1370 (Utah 1974), Redevelopment Agency of Salt Lake City v. Barrutia, 526 P.2d 47 (Utah 1974), and State v. Urias, 609 P.2d 1326 (Utah 1980).

The foregoing case law specifically requires that the appellant not only show that a substantial error was committed but that without it the disfavorable result would not have been rendered.

The appellant, in this case, has claimed error in the admission of Mr. Pandle's statements at trial, but has not showed

how it substantially prejudiced his rights, or, how the decision would have been different absent it. The language in Joseph, cited above, says there must be an affirmative showing that the case would have come out differently had the alleged error not been allowed.

The statutory issue before the trial court was simply, did the peace officer have grounds to believe the appellant "had been" in actual "physical control" of the vehicle. See Cavaness v. Cox, 598 P.2d 349 (Utah 1979). The fact that none of the police officers involved in this case actually observed the appellant operating the vehicle does not automatically preclude the court from finding him to be the driver especially in light of his admissions to driving. See Layton City v. Noon, 736 P.2d 1035 (Utah App. 1987) and Utah Code Ann. § 41-6-44(8).

The court had substantial evidence, excluding Mr. Pandle's statements, to find the appellant as the driver of the vehicle. First, the appellant was hiding in the bushes late at night. Then the appellant's admissible admissions show that he was the operator. See Ballard v. Cox, 595 P.2d 1302 (Utah 1979). When asked if the truck involved in the incident was his, the appellant replied "Yes" (T. 8), and when asked how it got to its parked position the appellant stated "he had parked it there" (T. 16). The same vehicle was the exact automobile that the officers had been pursuing just moments earlier (T. 26, 36). The appellant never contradicted his initial admissions until later at the station after again being notified that he was under arrest for driving under the influence of alcohol. Only then he said that he was not driving (T. 17).

There can be an inference that a registered owner of a vehicle is the operator in a civil case. The New York Court of Appeals used such an inference to establish that the petitioner was the driver of an automobile involved in a speeding violation. In People v. Keller, 194 N.Y.S.2d 370 (N.Y. 1959) the court stated:

The fact that a driver of a vehicle received a summons personally and appeared in court to answer the summons, plus the fact that that person was the owner of the registered vehicle involved, creates an irresistible inference that such person drove the vehicle at the time in question. People v. Rubin, 284 N.Y. 392, 396, 397, 31 N.E.2d 501, 502. (Emphasis added.)

The fact that Jensen's name was on the truck registration, along with the total circumstances and his own admission seems to provide an "irresistible inference" that appellant had recently been the driver.

The record reflects the presence of substantial evidence supporting the court's finding that the appellant was the driver. The officers by chance caught Mr. Pandle first and got his statement. Then the trial court heard admissible testimony of the appellant's admissions against interest. Ballard v. Cox, id. State v. Gardunio, 652 P.2d 1342 (Utah 1982) is a case similar to the one at bar. There the appellant sought to reverse a criminal verdict on the grounds that inadmissible hearsay testimony was the only evidence tying him to the charged crime. In the case there were also two sources of evidence connecting the appellant to the crime; a police officer's recantation to the jury of what someone else told him and an eye

witness account. Addressing the possible prejudicial effect of the officer's hearsay statements, the court said:

A verdict will be reversed by reason of an erroneous admission of evidence only where such evidence "probably had a substantial influence in bringing about the verdict." Defendant contends that the only testimony that connected him with the crime was inadmissible hearsay testimony. This is simply not true. As set forth supra, Alice Hinojosa's testimony clearly tied defendant to the crime. Since her testimony was adduced before that of the officer, the admission of his hearsay testimony was not prejudicial. (Emphasis added.)

State v. Gardunio, 652 P.2d 1342, 1344 (Utah 1982). Since substantial evidence was introduced at trial, i.e. the appellant's own admissions, given prior to the passenger's excited utterances conveyed by Officer Shoup; under the holding of Gardunio, the alleged error in the case at bar would be harmless.

Any error that may have been made by the trial court in the admission of Mr. Pandle's statements is not grounds for reversal since the appellant failed to show that he was substantially prejudiced by them, and since substantial evidence weight by a trial judge shows that the case would not have come out differently had they been excluded.

#### CONCLUSION

Does an innocent non-driver of a vehicle run from police officers and hide in the bushes early in the morning? The trial court said "no." Since there was evidence of substance to sustain that logical finding and conclusion, it should be sustained by this Court. Especially in light of the fact that



only technicalities and no testimony of substance were offered in rebuttal.

DATED this 21 day of January, 1988.

DAVID L. WILKINSON  
Attorney General

A handwritten signature in cursive script, appearing to read "Bruce M. Hale".

BRUCE M. HALE  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Randall Gaither, 321 South 600 East, Salt Lake City, Utah 84102, this 21 day of January, 1988.

A handwritten signature in cursive script, appearing to read "Bruce M. Hale", written over a horizontal line.

## **ADDENDUM**

**ADDENDUM 1**

(DUI REPORT FORM)

## EXHIBIT D-1

## DUI REPORT FORM

## I. CASE IDENTIFICATION:

Date 4-7-84 Day THUR Accident yes Case # 87-28592 Time Prepared 0315  
 Subject's Name MIKE G. JENSEN Address 1089 2ND AVE 84103  
 Place of Employment MAIN ST. SECURITY Address 50 50 MAIN #400-  
 Home Telephone Number 363 6858 Work Telephone Number \_\_\_\_\_  
 D.O.B. 7-17-60 Driver License # 5650315 B- Time of Arrest 0230  
 Place of Arrest 46th East Capital (Memory garage) Charges \_\_\_\_\_  
 Arresting Officer W. Taylor Assisting Officers Hendricks Hawk Shing  
 Arresting Agency SLCPD TRAUS

## II. VEHICLE:

Year 1986 Color Red Make Chrysler Model —  
 License # and state AK 1638 Disposition Impounded  
 Registered Owner Gianget Jensen Int. Address 2263 cotton wood cir.

## III. WITNESSES: (If passengers, indicate specifically)

Name	Address	Tele. #	Age/DOB
1. Sgt. Stocking SLCPD.			
2. D. Hendricks SLCPD.			
3. D. Shupe SLCPD.			
4.			
5.			

1. Sgt. Stocking SLCPD.
2. D. Hendricks SLCPD.
3. D. Shupe SLCPD.
- 4.
- 5.

## IV. ACTUAL PHYSICAL CONTROL:

The facts establishing the subject's actual physical control of a motor vehicle are: \_\_\_\_\_

## V. DRIVING PATTERN:

Subject's location when first observed \_\_\_\_\_ Time: \_\_\_\_\_

The facts observed regarding driving pattern: \_\_\_\_\_

H+R see car pursued by Sgt. Stocking

## VI. PRE-ARREST STATEMENTS OF SUBJECT:

I parked the

## VII. PHYSICAL CHARACTERISTICS:

Odor of alcoholic beverage moderately strong

Speech OK

Balance OK

Signs or complaints of injury or illness Asthma

Other physical characteristics \_\_\_\_\_

VIII. FIELD SOBERING TESTS

1. \_\_\_\_\_
2. None
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

DRIVERS' LICENSE DIVISION

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DEPT. OF PUBLIC SAFETY

Were tests demonstrated by officer? \_\_\_\_\_ Subject's ability to follow instructions \_\_\_\_\_

IX. SEARCHES

- A. Vehicle:  
 Was subject's vehicle searched? \_\_\_\_\_ Where? \_\_\_\_\_  
 When? \_\_\_\_\_ Evidence \_\_\_\_\_  
 Person who performed the search \_\_\_\_\_
- B. Subject:  
 Was subject's person searched? \_\_\_\_\_ Where? \_\_\_\_\_  
 When? \_\_\_\_\_ Evidence Found \_\_\_\_\_  
 Person who performed the search \_\_\_\_\_

X. CHEMICAL TESTS:

Mr. or Mrs. Jensen, do you understand that you are under arrest for driving under the influence of alcohol (drugs)? Response, (if any) ELUENT DRIVING

I hereby request that you submit to a chemical test to determine the alcohol (drug) content of your blood. I request that you take a Breath test.  
 (blood-breath-urine)

- ☒ The following admonition was given by me to the subject before the chemical test was administered:

Results indicating .08% or more by weight of alcohol in your blood shall, and the existence of a blood alcohol content or presence of drugs sufficient to render you incapable of safely driving a vehicle can, result in suspension or revocation of your license or privilege to operate a motor vehicle.

What is your response to my request that you submit to a chemical test? Response: I'd Rather Not

Did subject submit to a chemical test? NO Type of test Breath  
 Test Administered by \_\_\_\_\_ Where? \_\_\_\_\_  
 Time: \_\_\_\_\_ Results \_\_\_\_\_ Was subject notified of results? \_\_\_\_\_

Serial No. of test machine: \_\_\_\_\_

(If the subject refuses the test, read the following)

- ☒ The following admonition was given by me to the subject:

If you refuse the test, it will not be given, however I must warn you that if you refuse, your license or permit to drive a motor vehicle can be revoked for one year with no provision for a limited driver's license. After you have taken this test, you will be permitted to have a physician of your own choice administer a test at your own expense, in addition to the one I have requested you to submit to, so long as it does not delay the results available to you the results



The following admonition was given by me to the subject:

Your right to remain silent and your right to counsel do not apply to the implied consent law which is civil in nature and separate from the criminal charges. Your right to remain silent does not give you the right to refuse to take the test. You do not have the right to have counsel during the test procedure. Unless you submit to the test I am requesting, I will consider that you have refused to take the test. I warn you that if you refuse to take the test, your driver's license can be revoked for one year with no provision for a limited license.

*NO!*

XI. CONSTITUTIONAL RIGHTS:

Was subject advised of the following rights? \_\_\_\_\_ When? \_\_\_\_\_  
By Whom? \_\_\_\_\_ Where? \_\_\_\_\_

- \_\_\_\_\_ 1. You have the right to remain silent.
- \_\_\_\_\_ 2. Anything you say can and will be used against you in a court of law.
- \_\_\_\_\_ 3. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
- \_\_\_\_\_ 4. If you decide to answer questions now without having counsel present, you may stop answering questions at any time. Also, you may request counsel at any time during questioning.

Were the following waiver questions asked? \_\_\_\_\_

- \_\_\_\_\_ 1. Do you understand each of these rights I have explained to you?  
Response \_\_\_\_\_
- \_\_\_\_\_ 2. Having these rights in mind, do you wish to talk to us now?  
Response \_\_\_\_\_

INTERVIEW:

Were you operating a vehicle? \_\_\_\_\_  
Where were you going? \_\_\_\_\_  
What street or highway were you on? \_\_\_\_\_  
Direction of travel? \_\_\_\_\_  
Where did you start from? \_\_\_\_\_  
When? \_\_\_\_\_ What time is it now? \_\_\_\_\_  
What is today's date? \_\_\_\_\_ Date of week? \_\_\_\_\_  
(Actual time \_\_\_\_\_ Date \_\_\_\_\_ Day \_\_\_\_\_)  
What city or county are you in now? \_\_\_\_\_  
What were you doing during the last three hours? \_\_\_\_\_

Have you been drinking? \_\_\_\_\_  
What? \_\_\_\_\_ How much? \_\_\_\_\_  
Where? \_\_\_\_\_  
When did you have your first drink? \_\_\_\_\_ Last drink? \_\_\_\_\_  
Are you under the influence of an alcoholic beverage (drugs) now? \_\_\_\_\_

Are you taking tranquilizers, pills, medicines or drugs of any kind? \_\_\_\_\_  
(What kind? get sample) \_\_\_\_\_  
When did you have the last dose? \_\_\_\_\_  
Are you ill? \_\_\_\_\_  
(If subject was in an accident, ask these questions:)  
Were you involved in an accident today? \_\_\_\_\_  
Have you had any alcoholic beverages or drugs since the accident? \_\_\_\_\_

AII.

OTHER OCCURRENCES OR FACTS:

*P/O Found A/P hiding in bushes in member's grove -  
P/O Took A/P back to his vehicle - A/P said the  
truck was his and he parked it there - A/P  
said he would take P/O to the station & P/O refused -  
Officer Hendrick saw A/P Run across Road and down  
into the grove about 10 min before A/P was found.*

XIII. ATTACHED DOCUMENTS

I have attached the following documents to this report:

1. ☒ Copy of citation/temporary license
2. ☒ Subject's Utah driver's license or driver's permit.
3. ☒ Traffic accident report.
4. ☐ Other documents (specify) \_\_\_\_\_

XIV.

Date 4-7-87 Time 0345 Report was completed.

I certify and swear under oath that I am a sworn Utah Peace Officer and that the information contained above in this report form and attached documents is true and correct to my knowledge and belief and that this report form was prepared in the regular course of my duties. It is my belief the subject was in violation of section 41-6-44 U.C.A. at the date, time, and place specified in this report.

*[Signature]*  
Signature of Peace Officer

Law Enforcement Agency: SLCPO

Date: 4-7-87 Time: 0345

STATE OF UTAH  
COUNTY OF Salt Lake SS.

Subscribed and sworn to under oath before me this 7 day of April, 19 87

*Wanema J. Thomas*  
NOTARY PUBLIC

Residing at: 450 S 300 E

My Commission Expires:

*July 1, 1987*

The original of this form must be sent within five (5) days of the arrest of the subject to:

Officer of Driver License Services  
4501 South 2700 West  
Salt Lake City, Utah 84119

DRIVER'S LICENSE DIVISION  
APR - 8 1987  
DEPT. OF PUBLIC SAFETY

ENDORISING SIGNATURE OF THE CHIEF OF POLICE,  
EQUIVALENT, OR PERSON AUTHORIZED BY HIM:

*[Signature]*

**ADDENDUM 2**

**(UTAH CODE ANN. § 41-6-44 (1986))**



- 41-6-44.9. Admissibility of chemical test results in actions for driving under the influence or with a prohibited blood alcohol content - Weight.
- 41-6-44.8. Municipal attorneys authorized to prosecute for driving while license suspended or revoked.
- 41-6-44.10. Implied consent to chemical tests for alcohol or drug - Refusal to allow - Warning, report, revocation of license - Court action on revocation - Person incapable of refusal - Results of test available - Who may give test - Evidence.
- 41-6-44.20. Drinking alcoholic beverage and open containers in motor vehicle prohibited - Definitions - Exceptions - Penalty for violation.
- 41-6-44.30. Seizure and impoundment of vehicles by category I peace officers.
- 41-6-45. Reckless driving - Penalty.

#### 41-6-43. Local ordinances to be consistent with code.

(1) An ordinance adopted by a local authority that governs a person's driving or being in actual physical control of a motor vehicle while having alcohol in the blood or while under the influence of alcohol or any drug or the combined influence of alcohol and any drug, or that governs, in relation to any of those matters, the use of a chemical test or chemical tests, or evidentiary presumptions, or penalties or that governs any combination of those matters, shall be consistent with the provisions in this code which govern those matters.

(2) An ordinance adopted by a local authority that governs reckless driving, or driving a vehicle in willful or wanton disregard for the safety of persons or property shall be consistent with the provisions of this code which govern those matters. 1983

#### 41-6-43.10. Repealed. 1986

- 41-6-44. Driving under the influence of alcohol or drug or with high blood alcohol content - Criminal punishment - Arrest without warrant - Suspension or revocation of license.

(1) It is unlawful and punishable as provided in this section for any person with a blood alcohol content of .08% or greater by weight, or who is under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree which renders the person incapable of safely driving a vehicle, to drive or be in actual physical control of a vehicle within this state. The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug does not constitute a defense against any charge of violating this section.

(2) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(3)(a) Every person who is convicted the first time of a violation of Subsection (1) is guilty of a class B misdemeanor; imprisonment shall be for not fewer than 60 days. But if the person has inflicted a bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner, he is guilty of a class A misdemeanor; any imprisonment in the county jail shall be for not more than one year.

(b) For the purposes of this section, the standard of negligence is that of simple negligence, the failure to exercise that degree of care which an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(4) In addition to the penalties provided in Subsection (3), the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours nor more than 240 hours, with

emphasis on serving in the drunk tank of the jail, or require the person to work in a community-service work program for not less than 24 hours nor more than 50 hours and, in addition to the jail sentence or the work in the community-service work program, order the person to participate in an assessment and educational series at a licensed alcohol rehabilitation facility.

(5)(a) Upon a second conviction within five years after a first conviction under this section or under a local ordinance similar to this section adopted in compliance with Subsection 41-6-43(1), the court shall, in addition to the penalties provided for in Subsection (3), impose a mandatory jail sentence of not less than 240 consecutive hours nor more than 720 hours, with emphasis on serving in the drunk tank of the jail, or require the person to work in a community-service work program for not less than 80 hours nor more than 240 hours and, in addition to the jail sentence or the work in the community-service work program, order the person to participate in an assessment and educational series at a licensed alcohol rehabilitation facility. The court may, in its discretion, order the person to obtain treatment at an alcohol rehabilitation facility.

(b) Upon a subsequent conviction within five years after a second conviction under this section or under a local ordinance similar to this section adopted in compliance with Subsection 41-6-43(1), the court shall, in addition to the penalties provided for in Subsection (3), impose a mandatory jail sentence of not less than 720 nor more than 2,160 hours with emphasis on serving in the drunk tank of the jail, or require the person to work in a community-service work project for not less than 240 nor more than 720 hours and, in addition to the jail sentence or work in the community-service work program, order the person to obtain treatment at an alcohol rehabilitation facility.

(c) No portion of any sentence imposed under Subsection (3) may be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation of this section or a local ordinance similar to this section adopted in compliance with Subsection 41-6-43(1) may not be terminated and the department may not reinstate any license suspended or revoked as a result of the conviction, if it is a second or subsequent conviction within five years, until the convicted person has furnished evidence satisfactory to the department that all fines and fees, including fees for restitution and rehabilitation costs, assessed against the person, have been paid.

(6)(a) The provisions in Subsections (4) and (5) that require a sentencing court to order a convicted person to participate in an assessment and educational series at a licensed alcohol rehabilitation facility, obtain, in the discretion of the court, treatment at an alcohol rehabilitation facility, or obtain, mandatorily, treatment at an alcohol rehabilitation facility, or do any combination of those things, apply to a conviction for a violation of Section 41-6-45 that qualifies as a prior offense under Subsection (7), so as to require the court to render the same order regarding education or treatment at an alcohol rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-45 that qualifies as a prior offense under Subsection (7), as he would render in connection with applying respectively, the first, second, or

**ADDENDUM 3**

( UTAH CODE ANN. § 41-6-44.10 (1987) )

privilege is reinstated, to cover administrative costs. The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was not proper.

(c) Any person whose license has been revoked by the division under this section may file a petition within 30 days for a hearing in the matter in the district court in the county in which the person resides. The court shall set the matter for trial upon ten days' written notice to the division and, examine the facts of the case, and determine whether the petitioner's license is subject to revocation under this chapter.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

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

(5)(a) Only a physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30 (19), acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30 (19) who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer. The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer. The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

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

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol or any drug or combination of alcohol and any drug.

41-6-44.10 (Effective January 1, 1988). Implied consent to chemical tests for alcohol or drug - Number of tests - Refusal - Warning, report - Hearing, revocation of license - Appeal - Person incapable of refusal - Results of test available - Who may give test - Evidence.

(1)(a) A person operating a motor vehicle in this

state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

(b) The peace officer determines which of the tests are administered and how many of them are administered. If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered. The failure or inability of a peace officer to arrange for any specific test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2)(a) If the person has been placed under arrest, and has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to the chemical test or any one or all of the tests requested, the person shall be warned by a peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of his license to operate a motor vehicle. Following this warning, unless the person immediately requests that the chemical test or tests as offered by a peace officer be administered, no test may be given. A peace officer shall serve on the person, on behalf of the division, immediate notice of the division's intention to revoke the person's privilege or license to operate a motor vehicle. If the officer serves the immediate notice on behalf of the division he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only 30 days; and

(iii) supply to the operator, on a form approved by the division, basic information regarding how to obtain a hearing before the division. A citation issued by a peace officer may, if approved as to form by the division, serve also as the temporary license. The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited or while under the influence of alcohol or any drug or combination of alcohol and any drug under Section 41-6-44 and that the person had refused to submit to a chemical test or tests under Subsection (1).

(b) A person who has been notified of the division's intention to revoke his license under this section is entitled to a hearing. A request for the hearing shall be made in writing, and within ten

days after the date of the arrest. Within 20 days after receiving a written request, the division shall notify the person of his opportunity to be heard as early as practicable. If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in Utah shall be revoked for a period of one year beginning on the 31st day after the date of arrest. If a hearing is requested by the person and conducted by the division, and the division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the division as required in the notice, the division shall revoke his license or permit to operate a motor vehicle in Utah for one year, beginning on the date the hearing is held. The division shall also assess against the person, in addition to any fee imposed under Subsection 41-2-112 (6), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

(c)(i) Any person whose license has been revoked by the division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

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

(5)(a) Only a physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30 (19), acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30 (19) who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

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

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

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

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney

or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol or any drug or combination of alcohol and any drug.

**41-6-44.20 Drinking alcoholic beverage and open containers in motor vehicle prohibited - Definitions - Exceptions.**

(1) A person may not drink any alcoholic beverage while operating a motor vehicle or while a passenger in a motor vehicle, whether the vehicle is moving, stopped, or parked on any highway.

(2) A person may not keep, carry, possess, transport, or allow another to keep, carry, possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on any highway, any container which contains any alcoholic beverage if the container has been opened, its seal broken, or the contents of the container partially consumed.

(3) In this section:

(a) "Alcoholic beverage" has the meaning given in Section 32A-1-5.

(b) "Passenger compartment" means the area of the vehicle normally occupied by the operator and passengers and includes areas accessible to them while traveling, such as a utility or glove compartment, but does not include a separate front or rear trunk compartment or other area of the vehicle not accessible to the operator or passengers while inside the vehicle.

(4) Subsections (1) and (2) do not apply to passengers in the living quarters of a motor home or camper.

(5) Subsection (2) does not apply to passengers traveling in any licensed taxicab or bus.

**41-6-44.30. Seizure and impoundment of vehicles by category I peace officers.**

The legislature finds that it is contrary to the safety of the public to leave vehicles unattended on public roads.

(1) If a category I peace officer arrests or cites the driver of a vehicle for violating Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44, which complies with Subsection 41-6-43(1), the officer shall seize and impound the vehicle except as provided under Subsection (2).

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

(a) requests to remove the vehicle from the scene;

(b) presents to the officer a valid driver's license and sufficient identification to prove ownership of the vehicle;

(c) complies with all restrictions of his driver's license; and

(d) would not, in the judgment of the officer, be in violation of Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44, which complies with Subsection 41-6-43(1), if permitted to operate the vehicle, and if the vehicle itself is legally operable.

(3) Any officer who impounds a vehicle under this section shall remove, or cause the vehicle to be

**ADDENDUM 4**

(UTAH OPERATORS' LICENSE ACT)  
(UTAH CODE ANN. § 41-2 et seq.)

require the transferee to record the mileage on the application and shall print the mileage on the new certificate of title. 1986

**41-1-172. Repair or replacement of odometer - Notice affixed to vehicle.**

Nothing in Sections 41-1-169 through 41-1-174 prevents the repair or replacement of an odometer, provided the mileage indicated on it remains the same as before the repair or replacement. Where the odometer is incapable of registering the same mileage as before the repair or replacement, the odometer shall be adjusted to zero and a notice in writing shall be affixed by the owner to the left door frame of the vehicle specifying the mileage prior to repair or replacement of the odometer and the date it was repaired or replaced. 1986

**41-1-173. Violations - Misdemeanor - Felony.**

(1) It is a class A misdemeanor for any person to:

(a) fail to give an odometer mileage disclosure statement to the transferee as required by Section 41-1-169;

(b) operate, or cause to be operated, a motor vehicle knowing that the odometer is disconnected or nonfunctional, except while moving the motor vehicle to a place of repair;

(c) offer for sale, sell, use, or install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register mileage other than the true mileage driven as registered by the odometer within the manufacturer's designed tolerance;

(d) fail to adjust an odometer or affix a notice as required by Section 41-1-172 regarding the adjustment;

(e) remove, alter, or cause to be removed or altered any notice of adjustment affixed to a motor vehicle as required by Section 41-1-172; or

(f) fail to record the mileage on the certificate of title at the time of transfer.

(2) It is a third degree felony for any person, with intent to defraud, to:

(a) disconnect, turn back, or reset, or cause to be disconnected, turned back, or reset, the odometer of any motor vehicle with the intent to reduce the true number of miles or kilometers indicated on it;

(b) knowingly sell, transfer, or exchange, or cause to be sold, transferred, or exchanged, any motor vehicle on which the odometer has been disconnected, turned back, or reset; or

(c) give or cause to be given a false odometer mileage disclosure statement as required by Section 41-1-169. 1986

**41-1-174. Severability.**

If any provision of Sections 41-1-167 through 41-1-173, or the application of any provision of those sections to any person or circumstance is held invalid, the remaining provisions of those sections shall be given effect without the invalid provision or application. 1986

## Chapter 2. Operators' License Act

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**41-2-1. Definitions.**

The following words and phrases when used in this act shall, for the purpose of this act, have the meaning respectively ascribed to them in this section

except in those instances where the context clearly indicates a different meaning:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Farm Tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(d) "Person" means every natural person, firm, copartnership, association or corporation.

(e) "Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event of mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

(f) "Operator" means a person who is in actual physical control of a motor vehicle upon a highway.

(g) "Nonresident" means every person who is not a resident of this state and who has not sojourned or engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months.

(h) "Street or Highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(i) "Department" means the division of drivers' licenses and accident records of the department of public safety.

(j) "School Bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(k) "Suspension" means that the licensee's privilege to drive a vehicle is temporarily withdrawn.

(l) "Revocation" means that the licensee's privilege to drive a vehicle is terminated. A new license may be obtained only as permitted by law.

(m) "Cancellation" means that a license which was issued through error or fraud or for which necessary consent has been withdrawn is terminated. A new license may be obtained only as permitted by law.

(n) "License" means the privilege to operate a motor vehicle over the highways of this state.

(o) "License Certificate" means the evidence of the privilege to operate a motor vehicle over the highways of this state.

(p) "Motorcycle" means every motor vehicle, except farm tractors, designed to travel on not more than three wheels in contact with the ground.

(q) "Common carrier" means any person who holds himself out to the public as willing to transport the property of others or persons from place to place by motor vehicle for compensation.

(r) "Contract carrier" means any person engaged in the transportation of property or persons

by motor vehicle for compensation, including the transportation of persons or property under a continuing agreement with a person or persons.

(s) "Private carrier" means any person or company not included in the terms "common carrier" or "contract carrier" which transports property, by motor vehicle, of which the person or company is the bona fide owner, lessee, or bailee and when the transportation of such property is for the purpose of its sale, lease, or bailment or furtherance of any commercial enterprise, or who transports persons not for compensation.

(t) "Class A license" means the class of license issued for vehicles with a gross vehicle weight of 27,000 pounds or less when the vehicle is not operated as a contract carrier, common carrier, hazardous materials carrier or school bus.

#### 41-2-2. Operators must be licensed.

A person, except one expressly exempted under Section 41-2-3, Section 41-2-4, Section 41-2-7, or Subsection 41-2-13(4), shall not drive a motor vehicle upon a highway in this state unless the person upon application has been licensed as an operator by the department under the provisions of this chapter.

#### 41-2-3. Persons not required to obtain license -

##### Regulations - Owner-operators.

(a) No person shall be required to obtain an operator's license for the purpose of driving or operating a road roller, road machinery, or any farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highways.

(b) Every person in the service of the army, navy, or marine corps of the United States and when furnished with a driver's permit and when operating an official motor vehicle in such service shall be exempt from license under this act.

(c) The commissioner may adopt such regulations concerning exemptions from operator licensing requirements as are necessary to carry out the intent of this section.

(d) An owner-operator shall be issued a license of a class that permits operation of any vehicle which the owner-operator was previously allowed to operate under chauffeur provisions, and, upon application for the license within one year of the effective date of this act of the 1983 general session and upon proof of ownership of a company or enterprise to which the operation of the vehicle is related and upon payment of appropriate fees, shall be exempted from all examinations.

#### 41-2-4. Nonresidents - When exempt from

##### license - Effect of Driver's License Compact.

(1) A nonresident who is at least 16 years of age and who has in his immediate possession a valid operator's license certificate issued to him in his home state or country may operate a motor vehicle in this state only as a class A operator.

(2) A nonresident who is at least 18 years of age and who has in his immediate possession a valid operator's license certificate issued to him in his home state or country may operate a motor vehicle in this state as an operator in the class or classes identified on the home state license certificate, except such persons as referred to by subsection (4) herein.

(3) Any nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as a class A operator for a period of not more than 60 days in any calendar year, if the

motor vehicle so operated is duly registered in the home state or country of such nonresident.

(4) Paragraph (3) of Article V of the Drivers' License Compact (41-17-3) is intended to prevent a person having more than one license conferring upon him a valid and effective privilege to drive a vehicle of a particular class or classes in this state. In order to implement this principle the department shall not require the surrender of a license issued by another state which is a party to the compact, if such surrender would deprive the licensee of any privilege to drive for which the application is made and for which the department proposes to issue. Nothing in this act shall be construed to prevent the department from denying an application for an operator's license on account of violation of the laws, ordinances, rules or regulations of this state or any other state. 1983

**41-2-5. Persons to whom license shall not be issued.**

(1) An operator's license shall not be granted to any person under the age of 16 years. An operator's license shall not be granted to any person who has not completed a course in driver training approved by the commissioner of public safety, but this prohibition shall not apply to persons who have been issued such licenses before the effective date of this act nor to persons 16 years of age or older making application for license who have been issued a valid operator's license in another state or country.

(2) The department shall not issue an operator's license certificate to any person whose license has been suspended during the period of such suspension. The department shall not again grant a license nor issue a license certificate to any person whose privilege has been revoked, except as provided in section 41-2-21.

(3) The department shall not grant an operator's license to any person who it has determined is an habitual drunkard, is a habitual user of narcotic drugs, or is a habitual user of any other drug to a degree which renders him incapable of safely driving a motor vehicle.

(4) No operator's license shall be granted to any person who has previously been adjudged mentally incompetent and who has not at the time of application been restored to competency by the methods provided by law.

(5) The department shall not grant an operator's license to any person when in the opinion of the department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be granted to any person who is unable to understand highway warning or direction signs in the English language.

(6) No operator's license shall be granted to any person who is required by this act to take an examination, unless such person shall have successfully passed such examination. 1983

**41-2-6. Examination of applicants - Class of license - Age and experience requirements to operate school bus or carrier - Misdemeanor to operate unauthorized class of vehicle - Waiver of driving examination by employer certification.**

(a) The department shall appropriately examine each applicant according to the class of operator's license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling

public. Upon issuing an operator's license the department shall indicate on the license certificate the class of license so issued.

(b) No person who is under the age of 21 years shall drive any school bus transporting school children or nursery school children or any motor vehicle when in use as a contract or common carrier of persons or property, nor in any event, until he has been licensed as an operator for one or more of such purposes and the license certificate so indicates. The department shall not grant an operator's license for any such purpose unless the applicant has had at least one year of driving experience prior thereto. It shall be a misdemeanor for any person to drive a vehicle under any classification of license unless he is licensed under that classification.

(c) At the discretion of the commissioner and under standards established by the department, persons who are employed as drivers may submit an employer's certification in lieu of the driving segment of the examination. The department shall maintain necessary records and take appropriate actions to certify companies desiring to qualify under the waiver program. 1983

**41-2-7. Instruction permits - Restricted**

**Instruction permits.**

(a) The department upon receiving from any person more than 16 years old, an application for a license may, in its discretion, after such person has successfully passed all parts of the examination not involving the actual operation of a motor vehicle, issue a temporary instruction permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of six months from the date of the application when accompanied by a licensed operator who is actually occupying the seat beside the driver and there is no other person in the vehicle. Nothing herein contained shall prohibit the occupancy of a vehicle by more than one student in the vehicle when being driven as provided in paragraph (b) of this section.

(b) The department upon receiving proper application may, in its discretion, issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is enrolled in a high school driver education program which includes practice driving provided said program is approved by the state department of education even though the applicant has not reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle only on a designated highway or within a designated area and only when an approved instructor is occupying a seat beside the permittee. 1983

**41-2-8. Application for license - Fees -**

**Contents - Proof.**

(1) Application for an original operator's or chauffeur's license shall be made upon a department form by any person who does not hold a valid Utah operator's or chauffeur's license certificate and who wishes to be licensed to drive in the state. An original application shall be accompanied by a fee of \$10.00, except that such an application for a provisional license under section 41-2-9.5 shall be accompanied by a fee of \$15, which application and fee in either case shall entitle the applicant to no more than three attempts to pass the examination within six months of the date of the application, to an instruction permit if needed, and, when the exa



mination is passed, to an original license, which shall expire on the birth date of the applicant in the fourth year following the year of issuance of the license. Under no condition shall there be any refund of the fee paid.

(2) The department may charge a reasonable service charge not to exceed \$8 for the processing of all checks which are returned to the department without payment, and it shall not issue the operator's license until the payment and service charge is received.

(3) When an applicant applies for an operator's license in another class all previous license certificates shall be surrendered before the new license is issued.

(4) Every original application shall state under oath the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has heretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and such other information as the department shall require.

(5) The department shall require acceptable proof of the name, date and place of birth of every applicant, which proof shall consist of at least one of the following:

- (a) Current driver's license;
- (b) Birth certificate;
- (c) Selective Service registration; or
- (d) Other proof such as church records, family Bible notations, school records or other evidence deemed acceptable by the department.

(6) Whenever an application is received from a person previously licensed in another state, the department shall request a copy of the operator's record from such other state. When received, the operator's record shall become part of the operator's record in this state with the same force and effect as though entered on the operator's record in this state in the original instance.

(7) Application for reinstatement of the driving privilege after the suspension or revocation of a previous license shall be accompanied by an additional fee of \$25.

**41-2-9. Department may impose restrictions -**

**Violation of restrictions.**

(a) The department upon issuing an operator's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may either grant a special restricted license or may set forth such restrictions upon the usual license certificate.

(c) The department may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this act.

(d) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license granted to him.

**41-2-9.5. Provisional license for persons under twenty-one - Separate point system - Suspension.**

(1) The department may issue to a person under 21 years of age only a provisional driver's, or, if applicable, provisional chauffeur's license. The department shall promulgate rules establishing a separate point system, and procedure for administration of it by the department, for persons issued provisional licenses which will facilitate counseling or penalization, or both, earlier than would be the case with persons 21 years of age or older. As a function of the system to be established, a single moving violation shall be followed immediately by a warning letter from the department to the violator, a second moving violation within three years shall result in a hearing, pursuant to which the person's driving privilege may be placed on probation, and a third moving violation within that three-year period shall result in cancellation of probation and a 30-day suspension of the driving privilege. Provision shall be made for the extension of the suspension period for further violation within a three-year period.

(2) Failure to appear for a hearing is cause for suspension of the driving privilege.

**41-2-10. Application of minors - Liability of person signing application.**

(1) The application of any person under the age of eighteen years for an instruction permit or operator's license shall be signed and verified before a person authorized to administer oaths by the father, mother or guardian of the applicant, or, in the event there is no father, mother, or guardian having custody of such minor, then by some responsible person who is willing to assume the obligation imposed under this act upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct (except as otherwise provided in the next succeeding subsection).

(3) In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if not the owner of a motor vehicle, then with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the department may accept the application of such minor when signed by one parent or the guardian of such minor, and while such proof is maintained such parent or guardian shall not be subject to the liability imposed under the preceding subsection of this section.

(4) Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this act by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

(5) The department upon receipt of satisfactory

evidence of the death of the person or persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified is made as required by this act. This provision shall not apply in the event the minor has attained the age of eighteen years. 1967

**41-2-11 Examination of applicant's physical and mental fitness to operate motor vehicle.**

(1) The department shall examine every applicant for an operator's license, including a test of the applicant's eyesight by the department or by the applicant furnishing to the department a certificate from a person engaged in the practice of medicine and surgery and the treatment of human ailments, or in the practice of optometry as defined under Chapters 12 and 16, respectively, of Title 58, showing his vision corrected or uncorrected, to be 20/40 or better, and of his ability to read and understand highway signs regulating, warning and directing traffic, his knowledge of the traffic laws of this state and such further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways, and as to whether any facts exist which would bar the issuance of a license under section 41-2-5. Such test shall also include an actual demonstration of the applicant's ability to exercise ordinary and responsible control in the operation of a motor vehicle.

(2) Except as provided in subsection 41-2-16(3), upon application for renewal of any operator's license the department shall cause each applicant to be re-examined as upon application for an original license as provided above, although the department may, in proper cases, waive that portion of the test designed to demonstrate the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. 1963

**41-2-11.5 Motorcycle operators - Licensing requirements - Examination - Temporary instruction permit - Violation constitutes misdemeanor.**

(1) The department shall require any person who operates a motorcycle upon a street or highway which is required to be registered and licensed as a motor vehicle in this state, to possess a valid operator license, except as otherwise provided in subsection (2) of this section. In addition, such person shall pass an examination administered by the department on motorcycle operation and demonstrate the physical qualifications necessary to operate a motorcycle consistent with the safety of such operator and the safety of other persons and their property. The department in its discretion may, after such person has successfully passed all parts of the motorcycle examination not involving the actual operation of a motorcycle, issue a temporary instruction permit entitling the applicant to operate a motorcycle during daylight hours off freeways and heavily traveled streets, roads and highways for a period of two months, provided, the temporary permit is in the immediate possession of the applicant and that the applicant does not carry a passenger on the motorcycle at any time. Upon passing the examination on motorcycle operation, the department shall indicate on the operator license certificate that the licensee is qualified to operate a motorcycle.

(2) The department shall issue to an applicant who is not the holder of an operator license but who has otherwise qualified in accordance with this

section, unless such applicant's driving privilege has been suspended or revoked for cause, a license authorizing the applicant to operate a motorcycle but no other motor vehicle.

(3) An original application for either a motorcycle validation on a driver's license or a motorcycle license shall be accompanied by a fee of \$8. Applications for renewal of such licenses shall be accompanied by a fee of \$5 except that renewal applications by persons 65 years of age and over shall be accompanied by a fee of \$3.

(4) All provisions of Chapter 2, Title 41, pertaining to the issuance of an operator license shall apply to the issuance of a motorcycle license under this section, including but not limited to fees, requirements for driver training and the renewal of licenses.

(5) It is a class C misdemeanor for a person to operate a motorcycle in this state without being duly licensed. 1983

**41-2-12. Records to be filed - Suitable indices kept.**

(1) The department shall file every application for a license received by it in alphabetical order and shall maintain suitable indices containing:

- (a) All applications denied and on each thereof note the reason of such denial,
- (b) All applications granted, and
- (c) The name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved where a conviction has resulted shall be readily ascertainable and available for the consideration by the department upon any application for renewal of license and at other suitable times.

(3) Any peace officer shall have the authority to make notations of traffic violations of which he is a witness and shall forward a record of all such notations to the department to be copied on the application of the licensee. 1969

**41-2-12.1 Fee for making report.**

The Drivers' License Division of the Department of Public Safety shall collect a fee determined by the department pursuant to Subsection 63-38-3(2) for searching the drivers' license files and making a report when requested by any person or company for a report on the driving record of any person licensed as an operator in the state. 1984

**41-2-12.2. Fees deposited in transportation fund - Expenses of tax commission - Budget.**

All fees collected under this act shall be transmitted monthly to the state treasurer for deposit in the transportation fund. The expenses of the state tax commission in carrying out the provisions of this act shall be provided for by legislative appropriation from this fund. The commission shall prepare and submit to the governor, to be included in his budget to the legislature, a budget of the requirements for carrying out the provisions of this act for the fiscal year next following the convening of the legislature. 1977

**41-2-12.3 No fee for reports made to governmental agencies.**

Provided further, that no charge shall be made for reports furnished to municipal, county, state or federal agencies 1957

**41-2-13 Licenses issued to operators - Contents**

- Anatomical gifts indication - Temporary licenses - Minor's licenses and permits.

(1) The department shall issue to every person privileged to drive as an operator, a license certificate indicating the type or general class of vehicle the licensee may drive. No person shall drive any class of motor vehicle unless licensed in that class.

(2) Every such license certificate shall bear thereon (a) the social security number and/or the distinguishing number assigned to the licensee, (b) the name, age and residence address of the licensee, a brief description of the licensee for the purpose of identification, and (c) a photograph of the licensee and a photograph or other facsimile of the licensee's signature. The license shall be of an impervious material, resistant to wear, damage and alteration. The size, form and color of said license shall be as prescribed by the commissioner of public safety and the commissioner may prescribe the issuance of a special type limited license as authorized in subsection 41-2-18(d). In addition, the commissioner may in his discretion authorize the issuance of renewed or duplicate driver licenses without pictures in instances where the applicants are not then living within the boundaries of the State of Utah.

(3)(a) With every operator's license issued or renewed on and after July 1, 1981, the division shall, upon the request of the licensee, provide a sticker which can be affixed to the back of the license and which will indicate the licensee's intent to make an anatomical gift pursuant to the requirements of the anatomical gift act in Chapter 26 of Title 26. The statement must be signed in the presence of at least one witness who shall sign the statement in the presence of the licensee.

(b) The division or any of its employees shall not be liable for any loss, detriment, or injury, directly or indirectly, which results from false or inaccurate information contained in the sticker issued to and signed by the licensee.

(4) The department, upon determining after an examination that an applicant is mentally and physically qualified to be granted a license, may issue to such a person a receipt for the fee which shall serve as a temporary license certificate allowing him to operate a motor vehicle while the department is completing its investigation and determining all of the facts bearing upon whether he is entitled to be licensed. Such receipt must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license certificate has been issued or for good cause the privilege has been refused. The department shall indicate on such receipts a date after which it ceases to be valid as a license certificate.

(5) The department will, when issuing to any person under 21 years of age, issue to all such persons who have qualified, an instruction permit or a temporary permit which is plainly printed with the word "minor," or an operator's license of a special color not used for issue to persons 21 years of age and over.

(6) The department shall issue such temporary licenses, of the same nature except as to duration as the licenses which they temporarily replace, as are necessary to implement applicable provisions of section 41-2-19.6 1983

**41-2-13.1. Change of address - Duty of licensee to notify department.**

Whenever any person after applying for or receiving an operator's license shall move from the address named in such application or in the license issued to him such person shall within 10 days thereafter notify the department in writing of his new address and of the number of any license then held by him. 1983

**41-2-14. Duplicate license certificate - Fee.**

In the event that an operator's license certificate issued under the provisions of this act shall be lost, stolen, or destroyed, the person to whom the same was issued may obtain a duplicate thereof upon furnishing proof satisfactory to the department that such license certificate has been lost, stolen or destroyed and upon payment of a fee of \$5. In the event that the department is advised that an operator's license certificate has been lost, stolen or destroyed, the same shall forthwith be void. 1983

**41-2-15. License to be carried when driving -**

**Production in court.**

The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display the same upon demand of a justice of peace, a peace officer or a field deputy or inspector of the department. It shall be a defense to any charge under this subsection that the person so charged produce in court an operator's license theretofore issued to such person and valid at the time of his arrest. 1983

**41-2-16. Expiration dates of licenses - Renewal**

**- Fees for renewal - Extension without examination - Files, forms and clerical help - Licensees in armed forces.**

(1) Every operator's license renewed after June 30, 1967 shall expire on the licensee's birth date in the fourth year following the year of issuance of such license, and no new license shall be issued to any person after the expiration of his license until he has again passed the examinations specified in subsection 41-2-11(1) and has paid the required fee. Any operator's license granted without specific expiration date, heretofore designated as good-until-revoked license, shall expire on the date last stamped by the department upon such license and may be renewed as any other operator's license referred to in this chapter for the applicable period of time set forth above.

(2) The holder of a valid license may secure a renewal thereof by making application at any time within six months before such license expires, by passing the examination specified in subsection 41-2-11(2) and by paying a fee of \$10, except for those 65 years of age and over who shall pay a fee of \$3.00. Upon the payment of such fee and the passing of such examinations, the department shall issue a new license to such holder.

The commissioner may allow the holder of a valid operator's license to renew said license more than six months prior to its expiration date, provided, the applicant furnishes proof that such applicant will be absent from the state during the six-month period prior to the expiration of the license.

(3) At the discretion of the commissioner and under standards established by the department, operators' licenses expiring after July 1, 1960, may be extended for four years without examination for licensees whose driving records for the four years immediately preceding the determination of eligibility for extension show driving violation penalty

points not exceeding 50, no suspensions or revocations, and no outstanding warrants for traffic violations, except that a person 65 years of age or older must take and pass the eye examination specified in subsection 41-2-11(1). No extension shall be granted to any person who is identified by the department as having a medical impairment which may represent a hazard to public safety. The department shall charge \$10 per extension for each person under 65 years of age and \$3.00 per extension for each person 65 or over. During the period of the extension, or prior thereto, the department shall notify each licensee granted an extension under this subsection of changes to the traffic code.

(4) The department shall establish the necessary files, application blanks, license certificate blanks, and clerical help to put into effect the provisions of this act.

(5) Utah operators' licenses held by persons ordered to active duty in any of the armed forces of the United States shall be honored as valid until 90 days after the person has been discharged or has left the service, unless such license is suspended or revoked for cause by the department.

(6) All operators' licenses in effect as of the effective date of this act unless expressly otherwise provided herein, shall continue in force and effect for the period for which such license was issued. 1993

#### 41-2-17. Court to report convictions and may recommend suspension of license.

(a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's license certificates then held by the person so convicted and the court shall thereupon forward the same together with the record of such conviction to the department.

(b) Every court having jurisdiction over offenses committed under this act or any other act of this state or under any city ordinance regulating the operation of motor vehicles on highways, shall within 10 days forward to the department an abstract of the court record of the conviction of any person in said court for a moving traffic violation of any said laws or ordinances, and may recommend the suspension of the operator's license of the person so convicted.

Said abstract shall be made upon a form approved and furnished by the department and shall include the name and address of the party charged, the number of his operator's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail was forfeited, and the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum." In respect to a conviction or bond forfeiture for speeding, the severity of violation shall be graded as "minimum" for exceeding the posted speed limit by up to 9 miles per hour; as "intermediate" for exceeding the posted speed limit by from 10 to 19 miles per hour; and as "maximum" for exceeding the posted speed limit by 20 or more miles per hour.

(c) For the purposes of this act the term "conviction" shall mean conviction by the court of first impression. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Where a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the department shall reinstate his operator's license and return his license certificate immediately upon receipt of a certified copy of said judgment of acquittal or reversal. 1993

#### 41-2-18. Mandatory revocation or suspension of license - Extension of period - Hearing - Limited driving privileges - Instructional programs.

(a) Except as hereinafter provided, the department shall forthwith revoke or, in those cases in which suspension is in this code specifically provided for, suspend the license of any person upon receiving a record of the conviction of such person of any of the following crimes:

(1) Manslaughter resulting from the operation of a motor vehicle or automobile homicide as provided for in section 76-3-207.

(2) Driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or combination thereof to a degree which renders the person incapable of safely driving a vehicle as prohibited in section 41-6-44 or as prohibited in an ordinance that complies with the requirements of subsection 41-6-43(1).

(3) Driving or being in actual physical control of a vehicle with a blood alcohol content of .08% or higher as prohibited in section 41-6-44 or as prohibited in an ordinance that complies with the requirements of subsection 41-6-43(1).

(4) Perjury or the making of a false affidavit to the department under this act or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(5) Any crime punishable as a felony under which the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used.

(6) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

(7) Two charges of reckless driving committed within a period of twelve months; provided, however, that if, upon a first conviction of reckless driving, the judge or justice shall recommend suspension of the convicted person's license, the department may, after a hearing suspend the said license for a period of three months.

(8) Failure to bring a vehicle to a stop at the command of a police officer as prescribed in section 41-6-13.5.

(b) The department shall extend the period of the first suspension for an additional like period, or, if the privilege is revoked, it shall refuse to act upon the application of that person whose privilege is revoked for a new license for an additional year after the person would otherwise have been entitled to apply for a new license, upon receiving

(1) A record of the conviction of any person upon a charge of operating a motor vehicle while the privilege of such person is suspended or revoked, or

(2) A report of an accident in which such person was involved as a driver, or

(3) A record of an arrest or conviction of such person for any violation of the motor vehicle law in which such person was involved as a driver.

(c) When the department receives information that a person is driving while his license is suspen-

ended or revoked, based upon other than (1) and (3) of the foregoing subsection, such person shall be entitled to a hearing in connection with the extension of such suspension of time as is provided for in case of suspensions in section 41-2-19.

(d) On recommendation of the trial judge in any case where a person is convicted of any of the crimes referred to in subsections (a) and (b) of this section except automobile homicide as identified in subsection (a)(1), and those crimes referred to in subsections (a)(2) and (a)(3) and those crimes referred to in subsections (b)(1), (b)(2) and (b)(3) in cases in which the original suspension or revocation was imposed because of a violation of section 41-6-44, a local ordinance which complies with the requirements of section 41-6-43, section 41-6-44 10, section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of those sections or ordinances, the department may at its discretion extend to such person the limited privilege of driving a vehicle to and from his place of employment or within other proper limits, provided, however, that this discretion shall be limited to cases where undue hardship would result from a failure to extend such privilege, and providing further that this extension of privilege shall be extended only once to any individual during any single period of suspension or revocation or extension of that suspension or revocation.

(e) Where the license revocation or suspension is based on a conviction for driving under the influence of alcohol or any drug or combination thereof, or driving a vehicle with a blood alcohol content of .08% or higher the recommendation of the trial judge shall state that he has ordered the convicted person to participate in a program or programs dealing with the interrelationship of alcohol or narcotics or drugs, or any combination of them, and driving as are provided for in section 41-6-44. The trial judge has discretion to determine which programs, sponsored either by the state or private groups and approved by the department of social services, shall be used.

**41-2-19 Suspension or revocation by department**  
- Grounds - Point system - Procedure -  
Return of license.

(1) The department may immediately suspend the license of any person without hearing and without receiving a record of the person's conviction of crime whenever the department has reason to believe that

(a) the person has committed any offenses for the conviction of which mandatory revocation of license is provided in Section 41-2-18,

(b) the person has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage,

(c) the person is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the highways,

(d) the person is an habitual negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws of this state,

(e) the person has permitted an unlawful or fraudulent use of the license,

(f) the person has committed a violation under Part VII, Chapter 12a, Title 41, regarding vehicle security;

(g) the person has been convicted with a frequency of serious offenses against traffic regulations governing the movement of vehicles to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways. To aid the department in applying the standard provided in this subsection, the department shall establish and administer a point system as provided in this section.

(i) The department shall assign a number of points to each type of moving traffic violation as a measure of its seriousness.

(ii) The assigning of points shall be based upon actual relationships between types of moving traffic violations and motor vehicle traffic accidents.

(iii) Every person convicted of a moving traffic violation shall have assessed against his driving record the number of points which the department has assigned to the type of violation of which the person has been convicted, except that the number of points assessed shall be decreased by 10% if on the abstract of the court record of the conviction the court has graded the severity of violation as "minimum," and shall be increased by 10% if on the abstract the court has graded the severity of violation as "maximum", except, that a separate procedure for assessing points for speeding offenses shall be established by the department based upon the severity of the offense and that consideration be made for assessment of no points on minimum speeding violations except for school zones.

(iv) Points assessed against a person's driving record shall be deleted in respect to a violation occurring previous to a time limit set by the department, which time limit may not exceed three years. The department may also delete points to reward violation-free driving for periods of time set by the department.

(v) By publication in two newspapers having general circulation throughout the state, the department shall give notice of the number of points it has assigned to each type of moving traffic violation, the time limit set by the department for the deletion of points, and the point level at which the department will generally take suspension action under the provisions of this subsection, and the department may at no time make a change in any of the above particulars without first giving notice in the same manner.

(h) the person has failed to comply with the terms stated on a traffic citation issued in this state, except this provision does not apply to highway weight limit violations or violations of law governing the transportation of hazardous materials. This provision applies to parking and standing violations only if a court has issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy the terms of the citation. This provision may not be exercised unless notice of the pending suspension of the driving privilege has been mailed at least ten days previously to the person at the address provided to the Office of Driver's License Services. No report authorized by Section 41-2-12.1 may contain any evidence of a suspension that occurred as a result of failure to comply with the terms stated on a traffic citation.

(2) Upon suspending the license of any person as authorized in this section, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed 20 days after receipt of the request in the county

where the licensee resides, unless the department and the licensee agree that the hearing may be held in another county. The hearing shall be documented and the department or its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. One or more members of the department may conduct the hearing, and any decision made after a hearing before any number of the members of the department is as valid as if made after a hearing before the full membership of the department. After the hearing the department shall either rescind its order of suspension, or for good cause shown, may extend the suspension of the license or revoke the license.

If a person, (a) whose license has been suspended following re-examination, (b) who is incompetent to drive, (c) who is afflicted with mental or physical infirmities which might make him dangerous on the highways, or (d) who may not have the necessary knowledge or skill to operate a motor vehicle safely, fails to demonstrate within a year of the suspension that he is qualified to drive, the department shall change the suspension to a revocation, which is considered to have been effective on the date the suspension began. The new license may be applied for by that person as provided in Section 41-2-21.

(3) The department is authorized to suspend or revoke the license of any resident of this state upon receiving notice of the conviction of that person in another state of an offense committed there which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. The department is also authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state to forward a certified copy of the record to the motor vehicle administrator in the state where the person convicted is a resident.

(4) The department is authorized to suspend or revoke the license of any nonresident to operate a motor vehicle in this state for any cause for which the license of a resident operator may be suspended or revoked, and any nonresident who operates a motor vehicle upon a highway when his license has been suspended or revoked by the department is guilty of a misdemeanor.

(5) The department may not suspend the license of any person for a period of more than one year, except as provided in Subsection 41-2-18(b) and Section 41-12a-412. The department may suspend the license of a person under Subsection (1)(g) until he shows satisfactory evidence of compliance with the terms of the traffic citation. Upon suspending or revoking a license it shall require that all license certificates held by the person be surrendered to the department. At the end of the period of suspension the certificate surrendered shall be returned to the licensee. In the case of suspension under Subsection (1)(g) the licensee shall pay an additional fee of \$25 to the department for the return of the license, as provided in Subsection 41-2-8(7).

(6) The department may immediately suspend the license of any person without hearing and without receiving a record of conviction of the person of crime whenever the department has reason to believe that the person's license was issued by the department through error or fraud or that the necessary consent for the license has been withdrawn or is terminated. The procedure upon suspension is the

same as is provided by Subsection (2), except that after hearing the department shall either rescind its order of suspension or cancel the license.

(7) The department, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to an examination. Upon the conclusion of the examination the department shall take action as may be appropriate and may suspend or revoke the license of the person or permit him to retain the license, or may issue a license subject to restriction as permitted under Section 41-2-9. Refusal or neglect of the licensee to submit to an examination is grounds for suspension or revocation of his license.

(8) No report authorized by Section 41-2-12.1 may contain any evidence of a conviction for speeding on an interstate system in this state if the conviction was for a speed of less than 71 miles per hour and did not result in an accident, unless authorized in writing by the individual whose report is being requested.

(9) The department may suspend the license of a person when the department has been notified by a court that the person has outstanding against him an unpaid fine or an uncompleted restitution requirement or an outstanding warrant levied by order of a court, and the suspension shall remain in effect until the department is notified by the court that the order has been satisfied. No report authorized by Section 41-2-12.1 may contain any evidence of the suspension.

(10) This section applies to all fines, warrants, or restitution requirements as described in Subsection (9) which are outstanding on or after the effective date of this act.

(11) The department may immediately suspend the license of a person if it has reason to believe that the person is the owner of a motor vehicle for which a security is required under Chapter 12a, Title 41, and has operated the vehicle or permitted it to be operated within this state without the security being in effect. The provisions of Sections 41-12a-411 and 41-12a-412 regarding the surrender of license plates and registration of motor vehicles and the requirement of proof of financial responsibility apply to persons whose driving privileges are suspended under this subsection. If the department exercises the right of immediate suspension granted under this subsection, the notice and hearing provisions of Subsection (2) apply. A person whose license suspension has been sustained or whose license has been revoked by the department under this subsection may file a petition within 30 days after the sustaining of the suspension or the revocation for a hearing in the matter which, if held, shall be governed by the provisions of Section 41-2-20.

#### 41-2-19.5. Purpose of revocation or suspension for driving under the influence.

The legislature finds and declares that a primary purpose of the provisions in this code that relate to suspension or revocation of a person's license or privilege to operate a motor vehicle for driving with a blood alcohol content above a certain level or while under the influence of alcohol or any drug, or combination of alcohol and any drug, or for refusing to take a chemical test provided for in section 41-6-44 10, is safely protecting persons on roads and highways by quickly removing from those roads and highways persons who have shown they are

safety hazards by driving with a blood alcohol content above a certain level or while under the influence of alcohol or any drug or combination of alcohol and any drug or by refusing to take a chemical test that complies with the requirements of section 41-6-44.10. (1963)

**41-2-19.6. Chemical test - Grounds and procedure for officer's request - Taking license - Report to department - Procedure by department - Suspension.**

(1) When a peace officer has reasonable grounds to believe that a person may be violating or has violated section 41-6-44 the peace officer may, in connection with his arrest of the person, request the person to submit to a chemical test to be administered in compliance with the standards set forth in section 41-6-44.10.

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that results indicating .08% or more by weight of alcohol in the blood shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a vehicle can, result in suspension or revocation of the person's license or privilege to operate a motor vehicle.

(3) If the person submits to that chemical test and the results indicate a blood alcohol content of .08% or more, or if the officer makes a determination, based on reasonable grounds to believe that the determination is correct, that the person is otherwise in violation of section 41-6-44, the officer directing administration of the test or making the determination shall serve on the person, on behalf of the department, immediate notice of the department's intention to suspend the person's privilege or license to drive. If the officer serves that immediate notice on behalf of the department he shall take the Utah driver license or certificate or permit, if any, of the driver, issue a temporary license effective for only 30 days, and supply to the driver, on a form to be approved by the department, basic information regarding how to obtain a prompt hearing before the department. A citation issued by the officer may, if approved as to form by the department, serve also as the temporary license.

(4) The peace officer serving the notice shall send to the department within five days after the date of arrest and service of the notice the person's license along with a copy of the citation issued regarding the offense, and a sworn report indicating the chemical test results, if any, and any other basis for the officer's determination that the person has violated section 41-6-44, and the officer's belief regarding the person's violation of section 41-6-44. Each such report shall be on a form approved by the department and shall be endorsed by the police chief or his equivalent or by a person authorized by him, other than the officer serving the notice.

(5) Upon written request of a person who has been issued a 30-day license, the department shall grant to the person an opportunity to be heard within 30 days after the date of arrest and issuance of the 30-day license, but the request must be made within 10 days of the date of the arrest and issuance of the 30-day license. A hearing, if held, shall be before the department in the county in which the arrest occurred, unless the department and the person agree that the hearing may be held in some other county. The hearing shall be documented and its scope shall cover the issues of whether a peace officer had reasonable grounds to believe the

person to have been operating a motor vehicle in violation of section 41-6-44, whether the person refused to submit to the test, and the test results, if any. In connection with a hearing the department or its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. One or more members of the department may conduct the hearing, and any decision made after a hearing before any number of the members of the department shall be as valid as if made after a hearing before the full membership of the department. After the hearing, the department shall order, either that the person's license or privilege to drive be suspended or that it not be suspended. A first suspension, whether ordered or not challenged under this subsection, shall be for a period of 90 days, beginning on the 31st day after the date of the arrest. A second or subsequent suspension under this subsection shall be for a period of 120 days, beginning on the 31st day after the date of arrest. The department shall assess against a person, in addition to any fee imposed under subsection 41-2-8(7), a fee of \$25, which must be paid before the person's driving privilege is reinstated, to cover administrative costs, and which fee shall be canceled if the person obtains an unappealed department-hearing or court decision that the suspension was not proper. A person whose license has been suspended by the department under this subsection may file a petition within 30 days after the suspension for a hearing in the matter which, if held, shall be governed by the provisions of section 41-2-20. (1963)

**41-2-20. Judicial review of license cancellation, revocation or suspension - Scope of review.**

Any person denied a license or whose license has been canceled, suspended or revoked by the department except where such cancellation or revocation is mandatory under the provisions of this act unless the suspension occurred pursuant to section 41-2-19.6 shall have the right to file a petition within thirty days thereafter for a hearing in the matter in a court of record in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon ten days' written notice to the department. The court's jurisdiction is limited to a review of the record to determine whether or not the department's decision was arbitrary or capricious. (1963)

**41-2-21. New license after revocation.**

(1) Any person whose license has been revoked under this act shall not be entitled to apply for or receive any new license until the expiration of one year from the date such former license was revoked or longer as provided in sections 41-2-18 and 41-2-19. Licenses which have been revoked may not be renewed, but application for a new license must be filed as provided in section 41-2-8, and a license so issued shall be subject to all of the provisions of an original license. The department shall not grant the license until an investigation of the character, abilities and habits of the driver has been made to indicate whether it will be safe to again grant him the privilege of using the highways.

(2) Any resident or nonresident whose operator's license to operate a motor vehicle in this state has been suspended or revoked as provided in this act shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new

license is obtained when and as permitted under this act 1983

**41-2-22. Owner liable for negligence of minor.**

Every owner of a motor vehicle causing or knowingly permitting a minor under the age of eighteen years to drive such vehicle upon a highway, and any person who gives or furnishes a motor vehicle to such minor, shall be jointly and severally liable with such minor for any damages caused by the negligence of such minor in driving such vehicle. 1983

**41-2-23. Violation of license provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause or permit to be displayed or to have in possession any operator's license knowing the same to be fictitious or to have been canceled, revoked, suspended or altered,

(2) To lend to, or knowingly permit the use of, by one not entitled thereto, any operator's license issued to the person so lending or permitting the use thereof,

(3) To display or to represent as one's own any operator's license not issued to the person so displaying the same,

(4) To fail or refuse to surrender to the department upon demand, any operator's license which has been suspended, canceled or revoked as provided by law,

(5) To use a false or fictitious name or give a false or fictitious address in any application for an operator's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application. 1983

**41-2-23.5. Confiscation of licenses, plates, and registration cards - Contracts with law enforcement agencies for pick-up orders - Additional fee to cover costs.**

(1) The department is hereby authorized to enter into contractual agreements with constables or other law enforcement agencies for the purpose of facilitating confiscation of operator's and chauffeur's licenses, license or registration plates, and registration cards when a person fails or refuses to surrender any of those documents to the department upon demand

(2) The department shall assess against a person making an application referred to in subsection 41-2-8(7), in addition to any fee imposed under subsection 41-2-8(7), a fee of \$25, which must be paid before the person's driving privilege is reinstated, to cover the costs required to serve orders related to the purposes of subsection (1). 1983

**41-2-24. Making false affidavit perjury.**

Any person who shall make any false affidavit or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this act to be sworn to or affirmed, shall be guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable 1983

**41-2-25. Unlawful to permit unlicensed minor to drive.**

It shall be unlawful for any person to cause or knowingly permit any minor under the age of eighteen years to drive a motor vehicle upon a highway as an operator, unless such minor shall have first obtained a license to so drive a motor vehicle under the provisions of this act. 1983

**41-2-26. Unlawful to employ operator not properly licensed.**

No person shall employ any person to operate any motor vehicle who is not properly licensed as provided in this act. 1983

**41-2-27. Unlawful to permit violation of act -**

**Renting vehicles.**

(a) No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven by any person who has no legal right to do so or in violation of any of the provisions of this act.

(b) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder, or in the case of a nonresident then duly licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that an operator be licensed.

(c) No person shall rent a motor vehicle to another until he has inspected the operator's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(d) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the department. 1983

**41-2-28. Unlawful to drive while license suspended or revoked.**

A person whose operator's license has been suspended or revoked, as provided in this act, and who drives any motor vehicle upon the highways of this state while that license is suspended or revoked, is guilty of a crime, and upon conviction shall be punished as provided for in section 41-2-30. 1983

**41-2-29. Violation of act - Penalty.**

(a) It is a class B misdemeanor for any person to violate any of the provisions of this act unless the violation is by this act or other law of this state declared to be a violation other than a class B misdemeanor.

(b) Unless another penalty is provided for in this act or elsewhere in the laws of this state, every person convicted of a class B misdemeanor for the violation of any provision of this act shall be punished by a fine of not more than the maximum fine for a class B misdemeanor under Section 76-3-301 or by imprisonment of not more than six months, or by both the fine and imprisonment. 1986

**41-2-30. Penalty for driving while license suspended or revoked.**

(1) A person convicted of a violation of Section 41-2-28, other than a violation specified in Subsection (2), is guilty of a class B misdemeanor

(2) A person whose conviction under Section 41-2-28 is based on his driving while his operator's or chauffeur's license is suspended or revoked for a refusal to submit to a chemical test as set forth in Section 41-6-44 10, a violation of Section 41-6-44, a local ordinance which complies with the requirements of Section 41-6-43, Section 76-3-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of those sections or ordinances is guilty of a class A misdemeanor, a fine imposed shall be



in an amount not less than the maximum fine for a class B misdemeanor under Section 76-3-301. 1965

41-2-31. Uniformity of interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. 1953

41-2-32. Short title.

This act may be cited as the Uniform Operators' License Act. 1963

41-2-33 through 41-2-38. Repealed. 1979

41-2-39. Impaired persons - Licensing -

Examination - Information confidential.

(1) For the purpose of this section and section 41-2-40, "impaired person" means a person who is afflicted with or suffering from a mental, emotional or non-stable physical impairment or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while operating the same upon the highways. An impaired person is not intended to include a person having a non-progressive or stable physical impairment which is objectively observable and which may be evaluated by a functional driving examination.

(2) When the department has reason to believe that an applicant for an operator's license may be an impaired person, the department may, at its discretion, require the applicant to complete one or both of the following:

(a) A physical examination by a physician or surgeon duly licensed to practice medicine in this state and the submittal by the examining physician or surgeon of a signed medical report indicating the results of the physical examination. The format of the report shall be devised by the department with the advice of the department's driver license medical advisory board and shall be designed to elicit the necessary medical information to determine whether it would be a hazard to public safety to permit the applicant to operate a motor vehicle upon the highways.

(b) Follow-up medical review by a physician or surgeon and completion of the above described report at intervals established by the department under standards recommended by the driver license medical advisory board.

(3) The department may issue a restricted license to any impaired person who is otherwise qualified to obtain a license. The license shall continue in force only as long as the licensee complies with the requirements set forth by the department. In no event shall the license be valid beyond the date of expiration shown on the license. On such date the license is subject to renewal pursuant to the conditions of this section. Any physical, mental or emotional impairment of the applicant which, in the opinion of the department, does not affect the applicant's ability to exercise reasonable and ordinary control at all times in operating a motor vehicle upon the highway shall not prevent the issuance of a license to the applicant.

(4) When an examination is required as provided above, the department is not bound by the recommendation of the examining physician but shall give fair consideration to the recommendation in exercising its discretion in acting upon the application, the criterion being whether, upon all the evidence, it is safe to permit the applicant to operate a vehicle. In deciding whether to issue or deny a license, the department may be guided by the opinion of experts in the fields of diagnosing and

treating mental, physical or emotional disabilities and may take into consideration any other factors which bear on the issue of public safety.

(5) Information relating to physical, mental or emotional impairment shall be confidential. 1963

41-2-40. Driver license medical advisory board -

Membership - Recommendations - Actions regarding impaired persons - Duty to report impairments - Immunity from damages.

(1) The commissioner of public safety is hereby empowered to create a driver license medical advisory board, hereafter referred to as the board. The membership of the board shall be composed of three regular members appointed by the executive director of the state department of health and assisted by expert panel members nominated by them as the need arises and approved by the executive director of the state department of health. The regular members of the board shall serve as its executive committee and shall be empowered to act for the full board. They shall be assisted by expert panel members in recommending medical standards in the areas of the panel members' special competence for determining the physical, mental and emotional capabilities of applicants for driver licenses and holders of such licenses. In reviewing individual cases, a panel, acting with the authority of the board, shall consist of at least two members of which at least one shall be a regular board member. The director of the driver license division or his designate shall serve as secretary to the board and its panels. Members of the executive committee and expert panel members nominated by them shall be physicians duly licensed to practice medicine in all of its branches and shall receive per diem of \$25 and expenses for each meeting of the board or one of its panels to be paid as an operating expense by the driver license division. The board shall be convened and shall meet from time to time when called by the director of the driver license division.

(2) The board shall recommend written guidelines for determining the physical, mental and emotional capabilities of applicants for driver licenses and for holders of such licenses. The guidelines shall be applicable to all individuals who hold current Utah operator or chauffeur licenses and for all individuals who hold learner permits and are participating in driving activities in all forms of driver education. The guidelines shall be published by the driver license division, shall be subject to the Utah Administrative Rule-making Act, and shall be subject to public hearings at least annually.

(3) When the department has reason to believe that an applicant or licensee is an impaired person, it may:

(a) Act upon the matter based upon the published guidelines;

(b) Convene a panel to consider the matter. The panel shall submit written findings and a recommendation. The department shall consider the recommendation along with other evidence in determining whether a license should be suspended, revoked, denied or restricted.

(4) When the department has acted under subsection (3) to suspend, revoke, deny, or restrict the driving privilege, without the convening of a panel, the affected applicant or licensee may, within 10 days of receiving notice of the action, request in writing a review of the department's action by a panel. The panel shall review the matters and make written findings and conclusions pursuant to which the department shall affirm or modify its previous

**action.**

(5) Actions of the department shall be subject to judicial review in the manner provided in the operator's license act. The guidelines, standards, findings, conclusions and recommendations of the board or of a panel shall be admissible as evidence in any judicial review.

(6) Members of the board and its panels shall incur no liability for recommendations, findings, conclusions or for other acts performed incidental to membership on the board or a panel.

(7) The department shall provide forms for the use of physicians in depicting the medical history of any physical, mental or emotional impairment affecting the applicant's or licensee's ability to operate a motor vehicle.

(8)(a) Individuals who apply for or hold an operator's license or individuals holding a chauffeur's license previously issued under this act and who have, or develop, or suspect that they have developed a physical, mental or emotional impairment which may affect driving safety are responsible for reporting this to the department or its agent. In the event of uncertainty, the individual shall be expected to seek competent medical evaluation and advice as to the significance of the impairment as it relates to driving safety, and to refrain from driving until such clarification has been accomplished.

(b) Physicians who care for patients with physical, mental or emotional impairments which may affect their driving safety, whether defined by published guidelines or not, are responsible for making available to their patients without reservation their recommendations and appropriate information related to driving safety and responsibilities.

(c) Any physician or other person who becomes aware of a physical, mental or emotional impairment which appears to present an imminent threat to driving safety and reports this information to the department in good faith shall have immunity from any damages claimed as a result of so doing.

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### Chapter 3. Dealers, Salesmen, Manufacturers, Transporters and Wreckers

## 41-3-1. Repealed.

41-3-2. Sale by dealer - Certificate of title or origin delivered to department or vendee - Violation as misdemeanor - Notice to department.

41-3-3. Violation of chapter as misdemeanor - Action by violator prohibited.

## 41-3-4. Terms defined.

41-3-5. Partial invalidity - Saving clause.

41-3-6. Licensing motor vehicle dealers, salesmen, manufacturers, transporters, dismantlers, distributors, representatives, crushers and remanufacturers - Motorcycle and small trailer dealers - Violation as misdemeanor.

## 41-3-7. Definitions.

41-3-8. Administrator's powers and duties - Grounds for denial or revocation of license.

41-3-9. Advisory board - Creation and composition - Appointment, terms, compensation and expenses of members - Meetings - Quorum - Powers and duties - Officers' election and duties - Voting.

41-3-10. Copies of records and papers - Admissibility in evidence.

41-3-11. Attorney general - Duty to render opinions and to represent or appear for administrator or advisory board.

41-3-12. Licenses - Classes and scope.

41-3-13. Fees.

41-3-14. Disposition of fees - Budget.

41-3-15. Duration of license - Expiration date - Renewal.

41-3-16. Bonds required of dealers and crushers - Filing, amount, and form - Maximum liability - Action against surety.

41-3-17. Bond required of salesman - Filing, amount, and form - Maximum liability - Action against surety.

41-3-18. Right of action against dealer, salesman, crusher or surety on bond.

41-3-19. Licenses - Form - Seal - Custody of salesman's license - Display of salesman and dealer licenses - Licensee's pocket card.

41-3-20. Licenses - Principal place of business as prerequisite - Change of location - Notification - Issuance of new license - Relinquishment on loss of place of business - Reissuance.

41-3-21. New motor vehicle dealer's license - Change, addition or loss of franchise - Notification - Relinquishment of license and re-licensing as used motor vehicle dealer - Continuance in business to dispose of stock.

41-3-22. Salesman's license - Relinquishment upon loss or change of employment - Effect - Notice to salesman.

41-3-23. Prohibited acts or omissions.

41-3-24. Procedure as to denial of application for or revocation or suspension of license.

41-3-25. Hearings - Administrator's powers - Oaths - Evidence - Witnesses - Production of books and records - Subpoenas - Right to - Depositions - Witness fees and mileage - Information obtained as basis for criminal prosecution.

41-3-26. Administrator's findings, determination and order - Appeal - Bond - Original action in district court - Effect as supersedeas.

41-3-27. Violations as misdemeanors.

41-3-28. Temporary permits for purchasers of vehicles - Penalty for use after expiration.

41-3-29. Temporary permits - Cancellation of dealers' privilege to issue.

41-3-30. Special plates - Dealers - Dismantlers - Manufacturers - Remanufacturers - Transporters - Restrictions on use.

41-3-31. Special plates - Display.

41-3-32. Special plates - Application.

41-3-33. Special plates - Issuance.

41-3-34. Special plates - Permit to use dealer plate to demonstrate loaded vehicle.

41-3-35. Special plates - Expiration.

41-3-36. Special plates - Record to be kept by users - Reporting lost or stolen plates.

41-3-37. Special plates - Suspension or revocation - Grounds.

## 41-3-1. Repealed.

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41-3-2. Sale by dealer - Certificate of title or origin delivered to department or vendee - Violation as misdemeanor - Notice to department.

(1) Every motor vehicle dealer licensed under Section 41-3-6, upon the sale and delivery of any new or used motor vehicle for which a temporary permit is issued under Section 41-3-28 shall, within 30 days, submit a certificate of title or manufacturer's certificate of origin for that motor vehicle, endorsed according to law, to the motor vehicle department, accompanied by all documents required to obtain a new certificate of title and registration in the new owner's name. If no temporary permit is issued, the certificate of title or manufacturer's certificate of origin shall be delivered to the vendee, endorsed according to law, within 48 hours. A violation of this subsection is a class A misdemeanor.

(2) Every dealer licensed under Section 41-3-6, upon the sale and delivery of a motor vehicle for which a temporary permit is issued under Section 41-