

2008

William Huckins v. Nannette Rolfe, bureau chief driver control bureau, driver license division, department of public safety, State of Utah : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jason Schatz; Petitioner/Appellee.

Brent A. Burnett; Attorney for Resondent.

Recommended Citation

Reply Brief, *Huckins v. Rolfe*, No. 20080108 (Utah Court of Appeals, 2008).
https://digitalcommons.law.byu.edu/byu_ca3/709

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

WILLIAM HUCKINS,	:	
Petitioner/Appellee,	:	
v.	:	Case No. 20080108-CA
NANNETTE ROLFE, Bureau Chief Driver	:	
Control Bureau, Driver License Division,	:	
Department of Public Safety, State of Utah	:	
Respondent/Appellant.	:	

REPLY BRIEF OF RESPONDENT/APPELLANT

Appeal from the Judgment of the Third Judicial District Court, Salt Lake County,
Judge Denise Lindberg

BRENT A. BURNETT (4003)
Assistant Attorney General
160 East 300 South, Fifth Floor
P. O. Box 140858
Salt Lake City, Utah 84114-0858
Telephone: (801) 366-0533
Attorney for Respondent/Appellant

JASON SCHATZ
57 West 200 South
American Plaza II, #200
Salt Lake City, Utah 84101
Petitioner/Appellee

^

**ORAL ARGUMENT AND PUBLISHED OPINION NOT
REQUESTED BY RESPONDENT/APPELLANT**

FILED
UTAH APPELLATE COURTS

JUL 22 2008

IN THE UTAH COURT OF APPEALS

WILLIAM HUCKINS,	:	
Petitioner/Appellee,	:	
v.	:	Case No. 20080108-CA
NANNETTE ROLFE, Bureau Chief Driver	:	
Control Bureau, Driver License Division,	:	
Department of Public Safety, State of Utah	:	
Respondent/Appellant.	:	

REPLY BRIEF OF RESPONDENT/APPELLANT

Appeal from the Judgment of the Third Judicial District Court, Salt Lake County,
Judge Denise Lindberg

BRENT A. BURNETT (4003)
Assistant Attorney General
160 East 300 South, Fifth Floor
P. O. Box 140858
Salt Lake City, Utah 84114-0858
Telephone: (801) 366-0533
Attorney for Respondent/Appellant

JASON SCHATZ
57 West 200 South
American Plaza II, #200
Salt Lake City, Utah 84101
Petitioner/Appellee

**ORAL ARGUMENT AND PUBLISHED OPINION NOT
REQUESTED BY RESPONDENT/APPELLANT**

LIST OF ALL PARTIES

To the best of Respondent’s/Appellant’s knowledge, all interested parties appear in the caption of this Brief.

<u>TABLE OF CONTENTS</u>	<u>Page</u>
SUMMARY OF ARGUMENT	1
ARGUMENT	2
THE DISTRICT COURT ERRED IN CONSTRUING SECTION 53-3-223(7)(b)(ii) AS APPLYING TO ALL STATUTES CONCERNING SUSPENSIONS OF DRIVERS’ LICENSES	2
CONCLUSION	10
CERTIFICATE OF SERVICE	10
Addendum A - Determinative Statutes	

TABLE OF AUTHORITIES

CASES

<u>Ajax Magnesium Corp. v. Utah State Tax Comm'n</u> , 796 P.2d 1256 (Utah 1990)	2
<u>First Security Mortgage Co. v. Salt Lake County</u> , 866 P.2d 1250 (Utah App 1993)	8
<u>Hall v. Dep't of Corr.</u> , 2001 UT 34, 24 P.3d 958	4-5
<u>Millett v. Clark Clinic Corp.</u> , 609 P.2d 934 (Utah 1980)	4
<u>Okland Constr. Co. v. Indus. Comm'n</u> , 520 P.2d 208 (Utah 1974)	8
<u>Sindt v. Retirement Bd.</u> , 2007 UT 16, 157 P.3d 797	5
<u>State v. Gallegos</u> , 2007 UT 81, 171 P.3d 426	2

STATUTES

Utah Code Ann. § 41-6a-502 (West Supp. 2007)	1-2, 4, 6
Utah Code Ann. § 41-6a-517 (West Supp. 2007)	2, 4, 6, 7
Utah Code Ann. § 41-6a-520 (West Supp. 2007)	6, 7
Utah Code Ann. § 41-6a-521 (West Supp. 2007)	1, 2, 5-6, 7
Utah Code Ann. § 53-3-223 (West Supp. 2007)	1-9

IN THE UTAH COURT OF APPEALS

WILLIAM HUCKINS,	:	
Petitioner/Appellee,	:	
v.	:	Case No. 20080108-CA
NANNETTE ROLFE,	:	
Respondent/Appellant.	:	

REPLY BRIEF OF RESPONDENT/APPELLANT

SUMMARY OF ARGUMENT

Huckins' driver's license was suspended for 18 months pursuant to Utah Code Ann. § 41-6a-521 (West Supp. 2007) (permitting suspension of a driver's license for refusal to submit to a chemical test to determine blood or breath alcohol level). Instead of considering the correct statute, Huckins urges this Court to apply Utah Code Ann. § 53-3-223 (West Supp. 2007) (permitting suspension of a driver's license for driving under the influence of alcohol or drugs). Huckins further compounds the error by asking this Court to read Subsection 53-3-223(7)(b)(ii) independent of the remainder of the statute. His interpretation of this subsection renders other provisions of the section meaningless and would make Section 41-6a-521 superfluous and inoperative.

Section 53-3-223 permits a license suspended for 90 days under Subsection (7)(a) to be reinstated if a criminal charge under either Utah Code Ann. § 41-6a-502 (West

Supp. 2007) or Utah Code Ann. § 41-6a-517 (West Supp. 2007) is dismissed or reduced. Subsection (7)(b) does not mandate such a reinstatement if the suspension was for one year. The district court erred in applying this subsection to the eighteen-month suspension under Section 41-6a-521. The legislature's recent clarification of the meaning of Subsection 7 also makes it clear that the district court erred; its interpretation of the statute should be reversed.

ARGUMENT

THE DISTRICT COURT ERRED IN CONSTRUING SECTION 53-3-223(7)(b)(ii) AS APPLYING TO ALL STATUTES CONCERNING SUSPENSIONS OF DRIVERS' LICENSES

Huckins asks this Court to interpret one sentence of Section 53-3-223 out of context and without considering the remainder of the statute. This is contrary to Utah's rules of statutory construction. "A principal rule of statutory construction is that the terms of a statute should not be interpreted in a piecemeal fashion, but as a whole." Ajax Magnesium Corp. v. Utah State Tax Comm'n, 796 P.2d 1256, 1258 (Utah 1990). A case cited by the petitioner is to the same effect:

"We read the plain language of a statute . . . as a whole and interpret its provisions in harmony with other provisions in the same statute." "We do so because a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent."

State v. Gallegos, 2007 UT 81, ¶12, 171 P.3d 426 (citations omitted).

But Huckins does not look to all of Section 53-3-223 to establish its meaning. He does not look to all of Subsection 7 to establish its meaning. Nor does he seek to

harmonize all of Subsection 7(b). Instead, he asks this Court to interpret Subsection 7(b)(ii) without considering its placement in the statute as a whole and how it relates to the remainder of the statute's provisions. Reading the statute as a whole makes it clear that Subsection 7(b)(ii), like all of Subsection 7(b), was meant to apply only to 90-day suspensions under Subsection 7(a). It was never meant to apply to all drivers' license suspension statutes wherever found in the Utah Code.

Section 53-3-223 provides for the suspension of a driver's license when either a chemical test shows, or a peace officer has reasonable grounds to believe, that a person is driving under the influence of alcohol, drugs, or a combination of both. Utah Code Ann. § 53-3-223(3) (West Supp. 2007). A first violation of this statute is punished by a 90-day suspension of the offender's driver's license and a one-year suspension for a second or subsequent violation. Utah Code Ann. § 53-3-223(7)(a). In certain limited circumstances, a license suspended for 90 days under this statute can be reinstated:

(b)(i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall reinstate a person's license prior to completion of the 90 day suspension period imposed under Subsection (7)(a)(i) if the person's charge for a violation of Section 41-6a-502 or 41-6a-517 is reduced or dismissed prior to completion of the suspension period.

(ii) The division shall immediately reinstate a person's license upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517.

(iii) The division shall reinstate a person's license no sooner than 60 days beginning on the 30th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517.

(iv) If a person's license is reinstated under this Subsection (7)(b), the person is required to pay the license reinstatement fees under Subsections 53-3-105(29) and (30).

Utah Code Ann. § 53-3-223(7)(b) (West Supp. 2007) (emphasis added).

The meaning of this statute is plain. Subsection 7(b)(i) permits a driver's license that was suspended for 90 days (as opposed to one year) to be reinstated if and only if a criminal charge under Sections 502 or 517 is either reduced or dismissed. Subsection 7(b)(ii) establishes the timing for the reinstatement of the license if the criminal charge was dismissed (immediately upon the division receiving written verification of the dismissal). Subsection 7(b)(iii) establishes the timing for the reinstatement of the license if the criminal charge was reduced (no sooner than 60 days after the suspension upon the division receiving written verification).

Subsection 7(b) only applies to 90-day suspensions under Subsection 7(a). It does not apply to one-year suspensions under the statute, let alone suspensions provided for by other statutes. Subsections 7(b)(ii) & (iii) are not independent provisions. They simply identify the timing for the reinstatement of licenses under Subsection 7(b)(I).

Huckins' interpretation renders Subsection 7(b)(i) meaningless. Its limited reinstatement of 90-day suspensions is swallowed up and made meaningless if Subsection 7(b)(ii) is read to grant a universal reinstatement of all suspensions under the same circumstances. This violates another rule of statutory instruction: "statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd." Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980). See also Hall v. Dep't of Corr., 2001 UT 34, ¶15, 24 P.3d 958 ("[W]e accordingly avoid interpretations

that will render portions of a statute superfluous or inoperative.”). The same point is made by a case relied upon by Huckins:

This court presumes “that the terms of a statute are used advisedly” by the legislature. “Therefore, effect should be given to each such word, phrase, clause, and sentence where reasonably possible.”

Sindt v. Retirement Bd., 2007 UT 16, ¶8, 157 P.3d 797 (citations omitted).

Nor is Subsection 7(b)(i) the only provision that Huckins' interpretation renders superfluous or inoperative. In order to make Subsection 7(b)(ii) applicable to all suspensions of driver's licenses, Huckins claims that Section 53-2-223 is universally applicable:

Although Utah's Implied Consent law can be found in U.C.A. § 41-6a-520, whether the driver submitted to a chemical test or whether he refused the chemical test, the request for an administrative hearing is always made pursuant to U.C.A. § 53-2-223(6)(a).

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

Brief of Appellee at 6 (emphasis added). But administrative hearings concerning a refusal to submit to a chemical test are governed by Utah Code Ann. § 41-6a-521 (West Supp. 2007), not Section 53-2-223:

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

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

(c) Upon request in a manner specified by the Driver License Division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

....

Section 41-6a-521(1).

Indeed, the title to Section 41-6a-521 is "Revocation hearing for refusal - Appeal."

If, as claimed by Huckins, Section 53-2-223 applies to revocation hearings for refusal to submit to a chemical test, then Section 41-6a-521 is made irrelevant and meaningless.

Huckins' interpretation is contrary to Utah's rules of statutory construction.

Comparing the two statutes makes it clear which applies to revocation hearings for refusal to submit to a chemical test under Utah Code Ann. § 41-6a-520 (West Supp. 2007). Section 53-2-223(3) permits suspension of a driver's license: "If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6a-502" But Section 41-6a-521(5)(b) authorizes the suspension of a driver's license if "the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests"

If a driver's license is suspended under Section 53-2-223, the suspension is for either 90 days or one year. Section 41-6a-521(5)(a) calls for a suspension of either eighteen months or twenty four months. Clearly Huckins' eighteen-month suspension was under Section 41-6a-521 and not Section 53-2-223.

While all of Section 41-6a-521 deals with suspension of a license for failure to submit to a chemical test under Section 41-6a-520, such a failure to submit is only mentioned once in Section 53-2-223. Subsection 53-2-223(6)(c) permits the division to consider "(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517; (ii) whether the person refused to submit to the test; and (iii) the test results, if any." These three factual questions are relevant to a determination of whether a person was driving under the influence. But Subsection 41-6a-521(3) sets out the issues to be considered in deciding if a license should be suspended for failure to submit to a chemical test:

- (3) The hearing shall be documented and shall cover the issues of:
 - (a) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231, or 53-3-232; and
 - (b) whether the person refused to submit to the test or tests under Section 41-6a-520.

Section 41-6a-521 adds three further statutes, not mentioned in Section 53-2-223, for which a refusal to submit to a chemical test can lead to a driver's license suspension. A review of the two statutes shows many other subsections that fulfill the same purposes. Section 41-6a-521 can only be made meaningful if Section 53-3-223 is interpreted as applying only to administrative proceedings to suspend a driver's license for driving under the influence of alcohol or drugs. Applying Section 53-2-223 to suspension proceedings for refusal to submit to testing leaves Section 41-6a-521 superfluous and inoperative.

Huckins also claims that clarifying amendments, such as those the legislature adopted to reject the district court's interpretation of Subsection 53-3-223(7)(b)(ii), should not be given retroactive effect:

U.C.A. § 68-3-3 specifically states that "No part of these revised statutes is retroactive, unless expressly so declared." Although S.B. 15 indicates that it "clarifies that certain license reinstatement provisions only apply to a certain 90 day suspension period imposed by the Driver License divisions [sic]", it make [sic] no mention of a retroactive application of the alleged "clarification" of the immediate reinstatement statute.

Brief of Appellee at 8.

Huckins fails to note that both this Court and the Utah Supreme Court have held that when the legislature adds a clarifying provision to a statute, it generally is given retroactive effect. First Sec. Mortgage Co. v. Salt Lake County, 866 P.2d 1250, 1251 n.3 (Utah App. 1993) (giving retroactive effect to an amendment that provided a definition for a term used in a tax statute). Giving retroactive effect to the clarifying amendment does not deprive a party of any rights.

It is true, as the employer Okland contends: that it is entitled to have its rights determined on the basis of the law as it existed at the time of the occurrence; and that a later statute or amendment should not be applied in a retroactive manner to deprive a party of his rights or impose greater liability upon him. FN2. But this principle has no application where the later statute or amendment deals only with clarification or amplification as to how the law should have been understood prior to its enactment.

FN2. This long established rule is enacted in our statutes, Sec. 68-3-3, U.C.A.1953; and see Industrial Commission v. Agee, 56 Utah 63, 189 P. 414, 58 Am.Jur., Workmens Comp., Sec. 73.

Okland Constr. Co. v. Indus. Comm'n, 520 P.2d 208, 210-11 (Utah 1974).

Neither the statute relied upon by Huckins nor the court decisions require an express declaration by the legislature that an amendment should be given retroactive affect. If the amendment is a clarification or amplification as to how the law should have been understood prior to its enactment, the amendment should be given retroactive effect. That is the case in the present action. The legislature's amendment both clarifies and amplifies how Subsection 7(b) should have been interpreted all along. The legislature expressly identified it as such. It was a response to the district court's decision in this action. It should be given retroactive affect and Subsection 7(b)(ii) should be interpreted in accord with the clarifying amendments passed by the legislature.

The district court erroneously interpreted Subsection 7(b)(ii) as applying to all statutes that authorize suspensions of drivers' licenses. The court did this even though Subsection 7(b)(i) clearly limited the reach of the statute to 90-day suspensions under Subsection 7(a). The legislature amended Subsection 7(b) for the express purpose of clarifying that Subsection 7(b) only applied to 90-day suspensions under Subsection 7(a).

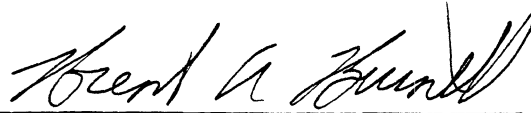
Huckins convinced the district court to apply the wrong statute. Then, Huckins convinced the district court to interpret Subsection 53-2-223(7)(b)(ii) out of context and in a manner that made Subsection 53-2-223(7)(b)(i) meaningless. This Court should reverse the district court's interpretation of this subsection and overrule that court's order reinstating the petitioner's driver's license. Because the district court granted the petitioner's motion before holding a trial de novo, this action should be remanded to the

district court for further proceedings, if any, based on other challenges that the petitioner may have to the suspension of his driver's license.

CONCLUSION

For the above stated reasons, respondent asks this Court to reverse the district court's judgment and remand this action for any necessary further proceedings.

Respectfully submitted this 22nd day of July, 2008.



BRENT A. BURNETT
Assistant Attorney General
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and exact copies of the foregoing Reply Brief of Respondent/Appellant, postage prepaid, to the following on this 22nd day of July, 2008:

JASON SCHATZ
Attorney at Law
57 West 200 South
American Plaza II, #200
Salt Lake City, Utah 84101
Attorney for Petitioner/Appellee



ADDENDUM “A”

41-6a-521. Revocation hearing for refusal -- Appeal. (West Supp. 2007)

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

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

(c) Upon request in a manner specified by the Driver License Division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(d) If the person does not make a request for a hearing before the Driver License Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest for a period of:

(i) 18 months unless Subsection (1)(d)(ii) applies; or

(ii) 24 months if the person has had a previous:

(A) license sanction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

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

(2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in the county in which the offense occurred.

(b) The Driver License Division may hold a hearing in some other county if the Driver License Division and the person both agree.

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

(a) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231, or 53-3-232; and

(b) whether the person refused to submit to the test or tests under Section 41-6a-520.

(4) (a) In connection with the hearing, the division or its authorized agent:

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

(ii) shall issue subpoenas for the attendance of necessary peace officers.

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

(5) (a) If after a hearing, the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the Driver License Division as required in the notice, the Driver License Division shall revoke the person's license or permit to operate a motor vehicle in Utah beginning on the date the hearing is held for a period of:

(i) 18 months unless Subsection (5)(a)(ii) applies; or

(ii) 24 months if the person has had a previous:

(A) license sanction for an offense that occurred within the previous ten years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or 53-3-232; or

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

(b) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(13), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

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

(6) (a) Any person whose license has been revoked by the Driver License Division under this section following an administrative hearing may seek judicial review.

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

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

Utah Code Ann. 53-3-223 (West Supp. 2007). Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.

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

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

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

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

(4) (a) When a peace officer gives notice on behalf of the division, the peace officer shall:

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

- (ii) issue a temporary license certificate effective for only 29 days from the date of arrest; and
 - (iii) supply to the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.
- (b) A citation issued by a peace officer may, if provided in a manner specified by the division, also serve as the temporary license certificate.
- (5) As a matter of procedure, a peace officer shall send to the division within ten calendar days after the day on which notice is provided:
- (a) the person's license certificate;
 - (b) a copy of the citation issued for the offense;
 - (c) a signed report in a manner specified by the division indicating the chemical test results, if any; and
 - (d) any other basis for the peace officer's determination that the person has violated Section 41-6a-502 or 41-6a-517.
- (6) (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the day on which notice is provided under Subsection (5).
- (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in the county in which the arrest occurred.
- (ii) The division may hold a hearing in some other county if the division and the person both agree.
- (c) The hearing shall be documented and shall cover the issues of:
- (i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;
 - (ii) whether the person refused to submit to the test; and
 - (iii) the test results, if any.
- (d) (i) In connection with a hearing the division or its authorized agent:
- (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or
 - (B) may issue subpoenas for the attendance of necessary peace officers.
- (ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78-46-28.
- (e) The division may designate one or more employees to conduct the hearing.
- (f) Any decision made after a hearing before any designated employee is as valid as if made by the division.
- (7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall suspend the person's license or permit to operate a motor vehicle for a period of:
- (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or
 - (ii) one year beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous ten years.

(b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall reinstate a person's license prior to completion of the 90 day suspension period imposed under Subsection (7)(a)(i) if the person's charge for a violation of Section 41-6a-502 or 41-6a-517 is reduced or dismissed prior to completion of the suspension period.

(ii) The division shall immediately reinstate a person's license upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517.

(iii) The division shall reinstate a person's license no sooner than 60 days beginning on the 30th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517.

(iv) If a person's license is reinstated under this Subsection (7)(b), the person is required to pay the license reinstatement fees under Subsections 53-3-105(29) and (30).

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(13) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

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