

2008

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

Utah Supreme Court

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Jason Schatz; Petitioner/Appellee.

Brent A. Burnett; Attorney for Respondent.

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## Recommended Citation

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**IN THE UTAH COURT OF APPEALS**

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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.		

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**BRIEF OF RESPONDENT - APPELLANT**

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

---

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

FILED  
UTAH APPELLATE COURTS  
APR 25 2008

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## LIST OF ALL PARTIES

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

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## IN THE UTAH COURT OF APPEALS

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NANNETTE ROLFE,	:	
Respondent/Appellant.	:	

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### BRIEF OF RESPONDENT - APPELLANT

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#### STATEMENT OF JURISDICTION

This action comes within the original jurisdiction of this Court under Utah Code Ann. § 78A-4-103(2)(a) (Westlaw, 2008 Laws of Utah, Chapter 3).

#### STATEMENT OF THE ISSUE

Petitioner had his driving license suspended for 18 months because of his refusal to submit to a chemical test to determine if he had been driving under the influence. See Utah Code Ann. §§ 41-6a-520 and -521(5)(a)(i) (West Supp. 2007). An unrelated law, Utah Code Ann. § 53-3-223(7)(a) (West Supp. 2007), permits a driver's license to be suspended for 90 days if it is determined administratively that an individual was driving under the influence of alcohol or drugs. On a subsequent violation the suspension is for one year. Subsection (7)(b) permits, in certain circumstances, the reinstatement of a license that had been suspended for 90 days pursuant to subsection (7)(a). Contrary to its

plain language, the district court interpreted subsection (7)(b) as applying to all suspensions, not just to 90-day suspensions pursuant to subsection (7)(a). Did the trial court err in interpreting section 53-3-223(7) in a manner contrary to the plain language of the statute?

**ISSUE PRESERVED BELOW.** This issue was raised by the petitioner's oral motion to the district court. The respondent, in opposition to that motion, raised the arguments contained in this brief. R. 43 at 1-9.

**STANDARD OF REVIEW:** The district court was called upon to review the decision reached in an informal administrative proceeding by trial de novo. On appeal this Court reviews the district court's conclusions of law for correction of error. Kirk v. Div. of Occupational and Prof'l Licensing, 815 P.2d 242, 243 (Utah App. 1991). "In matters of pure statutory interpretation, an appellate court reviews a trial court's ruling for correctness and gives no deference to its legal conclusions." Stephens v. Bonneville Travel, Inc., 935 P.2d 518, 519 (Utah 1997).

#### **DETERMINATIVE STATUTES AND RULES**

All such provisions are set forth verbatim in Appendix A to this brief.

#### **STATEMENT OF THE CASE**

On August 15, 2008, William Huckins' driver's license was suspended for a period of eighteen months because of his refusal to submit to a chemical test to determine if he had been driving a motor vehicle while under the influence of alcohol. R. 4. On August

22, 2008, Huckins filed a petition for judicial review of the informal administrative proceeding that resulted in the suspension of his license. R. 1-5.

A bench trial was set for December 10, 2007. R. 29. At the trial, Huckins made an oral motion that his driver's license be reinstated based upon his interpretation of Utah Code Ann. § 53-3-223(7)(b)(ii) (West Supp. 2007). R. 43 at 1-4. Respondent Nannette Rolfe argued that this statute did not apply to an eighteen-month suspension for refusing to submit to a chemical test. R. 43 at 4-9. The district court ruled in favor of the petitioner and entered Findings and Conclusions of Law and Order to Reinstate Driving Privileges on January 2, 2008. R. 31-33. Respondent filed her notice of appeal on January 30, 2008. R. 35-36.

### **STATEMENT OF RELEVANT FACTS**

William Huckins was asked by a peace officer to submit to a chemical test to determine his blood alcohol level. After being warned of the consequences of refusing the test, Huckins refused to submit to the chemical test. R. 4. An informal administrative proceeding was held and resulted in an eighteen-month suspension of Huckin's driver's license based on his refusal to submit to the test. Id.

### **SUMMARY OF ARGUMENT**

Huckins' driver's license was suspended for 18 months pursuant to Utah Code Ann. § 41-6a-521 (West Supp. 2007). The reason for this suspension was Huckins refusal to submit to a chemical test. The district court, finding Utah Code Ann. § 53-3-



223(7)(b) (West Supp. 2007) to be applicable to all suspensions of drivers' licenses and not just those done pursuant to subsection 7, ordered Huckins' driver's license reinstated.

Section 53-3-223(7)(a) authorizes the administrative suspension of a driver's license if: 1) the driver submits to a chemical test and the test results indicate a blood or breath alcohol or drug content in violation of two specific sections of the Utah Code;<sup>1</sup> or 2) if a peace officer has reasonable grounds to believe that a person is in violation of Section 41-6a-502. Utah Code Ann. § 53-3-223(3) (West Supp. 2007). The first suspension under this statute is for 90 days, and a subsequent suspension is for one year.

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.

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<sup>1</sup> Utah Code Ann. §§ 41-6a-502, -517 (West Supp. 2007).

## ARGUMENT

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

Having been given the statutory warning, Huckins was asked to take a chemical test pursuant to Utah Code Ann. § 41-6a-520 (West Supp. 2007). The petitioner refused to take the test. This refusal led to an eighteen-month suspension of the petitioner's driver's license. R. 4; Utah Code Ann. § 41-6a-521(d)(i) (West Supp. 2007). The district court erroneously ordered the respondent to reinstate Huckins' driver's license. The district court's decision was based on its interpretation of a subsection of a separate statute<sup>2</sup> as applying to all suspensions of drivers' licenses under all Utah statutes, instead of only applying to certain suspensions provided for by the subsection in question. R. 32.

The primary goal of courts in interpreting a statute is to give effect to the legislature's intent as evidenced by the plain language of the statute. State v. Burns, 2000 UT 56, ¶25, 4 P.3d 795 ("We need look beyond the plain language only if we find some ambiguity."). There has been no claim that the statutes in question are ambiguous. The district court erroneously interpreted Utah Code Ann. 53-3-223(7)(b)(ii) (West Supp. 2007) contrary to its plain language.

Section 53-3-223 provides for the suspension of a driver's license when either a chemical test shows that a person was driving in violation of state law, or a peace officer

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<sup>2</sup> Utah Code Ann. § 53-3-223(7)(b)(ii) (West Supp. 2007).

has reasonable grounds to believe that a person is driving in violation of Utah Code Ann. 41-6a-502 (West Supp. 2007) (driving under the influence of alcohol, drugs, or a combination of both):

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.

Utah Code Ann. § 53-3-223(3) (West Supp. 2007). Section 517 makes it illegal to drive with any measurable amount of a controlled substance in one's body. Utah Code Ann. § 41-6a-517 (West Supp. 2007).

Section 223 mandates a 90-day suspension for the first violation of this statute 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).

The meaning of this statute is plain and unambiguous. Subsection 7(b)(i) permits a driver's license that was suspended for 90 days (as opposed to one year) to be reinstated 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). And subsection 7(b)(iv) requires the person having his or her license reinstated to pay the necessary license reinstatement fees.

The statute's language is plain and unambiguous. 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 suspended pursuant to Subsection 7(a). And yet the district court interpreted subsection 7(b)(ii) to apply to all drivers' license suspensions, under all statutes. R. 32. In doing so, the district court interpreted this subsection out of context with the remaining parts of Section 53-3-223.

The district court's decision 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). The district court erred when it interpreted Subsection 7(b)(ii) without considering its placement in the statute as a whole and how it related 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.

Indeed, the district court's 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, as did the district court, to grant a universal reinstatement of all suspensions under the same circumstances. In so interpreting subsection 7(b)(ii), the district court failed to follow another rule of statutory instruction; "statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and that 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 ("we accordingly avoid interpretations that will render portions of a statute superfluous or inoperative.").

The legislature has clarified the meaning of this subsection by adopting clarifying amendments that became effective on March 17, 2008. Utah Code Ann. § 53-3-223

(Westlaw, 2008 Laws of Utah, Chapter 226). These changes were made by Senate Bill 15 Fourth Substitute during the 2008 Session of Utah's Legislature. A copy of Senate Bill 15 Fourth Substitute is attached as Addendum B. The legislature stated that the bill "clarifies that certain license reinstatement provisions only apply to a certain 90 day suspension period imposed by the Driver License Division." Addendum B, \*1.

The amended Subsection 7(b) does indeed clarify the intent of the legislature. While the operative language of the subsection is unchanged, the subsection as it now reads clarifies that it applies only to 90-day suspensions under Subsection 7(a).

(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):

(A) immediately upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period; or

(B) 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, if the written verification is received prior to completion of the suspension period.

(ii) 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).

(iii) The driver license reinstatements authorized under this Subsection (7)(b) only apply to a 90 day suspension period imposed under Subsection (7)(a)(i).

Addendum B, \*\*16-17.

Former subsections 7(b)(ii) & (iii) are now subsections of Subsection 7(b)(i). This amendment clarifies that these are not independent provisions. They were always intended to be read as applying only to Subsection 7(b)(i)'s limited authority to reinstate

Subsection 7(a)'s 90-day suspensions in certain circumstances. This interpretation of Subsection 7(b) is reinforced by the new Subsection 7(b)(iii) that expressly so limits the reach of the subsection.

Though the clarifying amendments took effect after the district court's decision, they should still be applied in this matter. 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. 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.

Okland Constr. Co. v. Indus. Comm'n, 520 P.2d 208, 210-11 (Utah 1974) (footnote omitted). The legislature's amendment both clarifies and amplifies how Subsection 7(b) should have been interpreted all along.

In deciding whether to give retroactive effect to the amendments to Subsection 7(b), the Court does not need to determine if the amendments are procedural or substantive in nature. In Kofoed v. Industrial Commission, 872 P.2d 484 (Utah App. 1994), this Court explained that there are two separate exceptions to the rule giving only prospective effect to statutory amendments.

However, two exceptions to this general rule allow a subsequently amended statute to be applied retroactively to the time of the injury. The first exception deals with procedural amendments and is not applicable in this case. The second exception allows for retroactive application of a statutory amendment if the amendment was enacted to clarify or amplify how the earlier law should have been understood. This exception carries a rebuttable presumption that amendments not expressly characterized as clarifications are intended to change existing legal rights and liabilities.

Id. at 485-86 (citations omitted).

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). 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.



**RESPONDENT DOES NOT DESIRE ORAL  
ARGUMENT OR A PUBLISHED OPINION**

Respondent-appellant does not request oral argument and a published opinion in this matter. The question raised in this appeal deals with the interpretation of a statute that has already been amended by the legislature to clarify its meaning. The legislature has already rejected the district court's interpretation of the statute. Respondent does desire to participate in oral argument if such is held by the Court.

Respectfully submitted this 25<sup>th</sup> day of April, 2008.

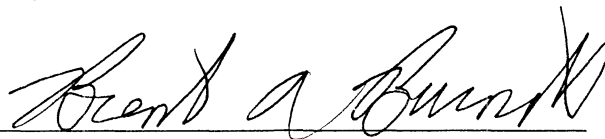


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**CERTIFICATE OF SERVICE**

I hereby certify that I mailed two true and exact copies of the foregoing Brief of Respondent - Appellant, postage prepaid, to the following on this 25<sup>th</sup> day of April, 2008:

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# **ADDENDUM “A”**

**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.

# **ADDENDUM “B”**

## S.B. 15 Fourth Substitute

### Driving Under the Influence Amendments -- Walker, C.

House Floor Sponsor: Ray, P.

Drafting Attorney: Shannon C. Halverson  
Fiscal Analyst: Gary Ricks

Effective Date: 17 March 2008 Session Law Chapter: 226

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## S.B. 15 Enrolled

1

### DRIVING UNDER THE INFLUENCE

2

### AMENDMENTS

3

2008 GENERAL SESSION

4

STATE OF UTAH

5

**Chief Sponsor: Carlene M. Walker**

6

House Sponsor: Paul Ray

7

### 8 **LONG TITLE**

#### 9 **General Description:**

10     This bill amends provisions relating to driving under the influence.

#### 11 **Highlighted Provisions:**

12     This bill:

13       . amends definitions;

14       . enacts an impaired driving plea;

15       . provides that a plea to a driving under the influence violation for an offense  
16 committed on or after July 1, 2008 may be entered as an impaired driving conviction  
17 in certain circumstances;

18       . provides that an impaired driving violation is a class B misdemeanor;

19       . provides requirements for a court entering a conviction of impaired driving in

certain

20 circumstances;

21       . requires the court to notify the Driver License Division of an impaired driving  
22 conviction;

23       . provides sentencing requirements for impaired driving convictions;

24       . provides that certain plea requirements when the prosecution agrees to a plea of  
25 guilty or no contest to an alcohol or drug-related reckless charge in satisfaction or  
26 substitute of an original charge of driving under the influence only apply to an  
27 offense committed before July 1, 2008;

28       . clarifies that certain license reinstatement provisions only apply to a certain 90 day  
29 suspension period imposed by the Driver License Division;

30 increases the administrative impound fee for a driving under the influence violation  
31 impound; and  
32 . makes technical changes.  
33 **Monies Appropriated in this Bill:**  
34 This bill appropriates:  
35 . as an ongoing appropriation subject to future budget constraints, \$660,000 from the  
36 General Fund for fiscal year 2008-09 to the Department of Public Safety, Utah  
37 Highway Patrol; and  
38 . as an ongoing appropriation subject to future budget constraints, \$660,000 from the  
39 General Fund for fiscal year 2008-09 to the Department of Public Safety, Liquor  
40 Law Enforcement Program.  
41 **Other Special Clauses:**  
42 This bill provides an effective date.  
43 **Utah Code Sections Affected:**  
44 AMENDS:  
45 41-6a-501, as enacted by Laws of Utah 2005, Chapter 2  
46 41-6a-510, as renumbered and amended by Laws of Utah 2005, Chapter 2  
47 41-6a-512, as enacted by Laws of Utah 2005, Chapter 2  
48 41-6a-518.2, as enacted by Laws of Utah 2006, Chapter 341  
49 41-6a-529, as last amended by Laws of Utah 2007, Chapter 261  
50 41-6a-1406, as last amended by Laws of Utah 2005, Chapter 56 and renumbered and  
51 amended by Laws of Utah 2005, Chapter 2  
52 53-3-220, as last amended by Laws of Utah 2007, Chapter 261  
53 53-3-223, as last amended by Laws of Utah 2007, Chapter 261  
54 76-5-207, as last amended by Laws of Utah 2006, Chapter 341  
55 76-10-528, as last amended by Laws of Utah 2005, Chapter 2  
56 ENACTS:  
57 41-6a-502.5, Utah Code Annotated 1953

58

59 *Be it enacted by the Legislature of the state of Utah:*  
60 Section 1. Section 41-6a-501 is amended to read:  
61 **41-6a-501. Definitions.**  
62 (1) As used in this part:  
63 (a) "Assessment" means an in-depth clinical interview with a licensed mental health  
64 therapist:  
65 (i) used to determine if a person is in need of:  
66 (A) substance abuse treatment that is obtained at a substance abuse program;  
67 (B) an educational series; or  
68 (C) a combination of Subsections (1)(a)(i)(A) and (B); and  
69 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance  
70 with Section 62A-15-105 .  
71 (b) "Drug" or "drugs" means:  
72 (i) a controlled substance as defined in Section 58-37-2 ;  
73 (ii) a drug as defined in Section 58-17b-102 ; or  
74 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the  
75 human body, can impair the ability of a person to safely operate a motor vehicle.



76       ~~[(b)]~~ (c) "Educational series" means an educational series obtained at a substance abuse  
77       program that is approved by the Board of Substance Abuse and Mental Health in  
accordance

78       with Section 62A-15-105 .

79       ~~[(e)]~~ (d) "Negligence" means simple negligence, the failure to exercise that degree of  
80       care that an ordinarily reasonable and prudent person exercises under like or similar  
81       circumstances.

82       ~~[(f)]~~ (e) "Screening" means a preliminary appraisal of a person:

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

84       (A) an assessment; or

85       (B) an educational series; and

86

(ii) that is approved by the Board of Substance Abuse and Mental Health in accordance

87       with Section 62A-15-105 .

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

89       (i) serious permanent disfigurement;

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

91       (iii) a substantial risk of death.

92       ~~[(h)]~~ (g) "Substance abuse treatment" means treatment obtained at a substance abuse

93       program that is approved by the Board of Substance Abuse and Mental Health in  
accordance

94       with Section 62A-15-105 .

95       ~~[(i)]~~ (h) "Substance abuse treatment program" means a state licensed substance abuse  
96       program.

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

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

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

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

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

103       (a) "Conviction" means any conviction for a violation of:

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

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

106       combination of both-related reckless driving under ~~[Sections]~~;

107       (I) Section 41-6a-512 ; and

108       (II) Section 41-6a-528 ; or

109       (B) for an offense committed on or after July 1, 2008, impaired driving under Section

110       41-6a-502.5 ;

111       (iii) driving with any measurable controlled substance that is taken illegally in the  
body

112       under Section 41-6a-517 ;

113       (iv) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a

114

combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5

115       adopted in compliance with Section 41-6a-510 ;

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

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

118 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of  
 119 conviction is reduced under Section 76-3-402 ; or  
 120 (viii) statutes or ordinances previously in effect in this state or in effect in any other  
 121 state, the United States, or any district, possession, or territory of the United States which  
 122 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination  
 of  
 123 both-related reckless driving if committed in this state, including punishments  
 administered  
 124 under 10 U.S.C. Sec. 815.  
 125 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)  
 126 through (viii) which plea ~~is~~ was held in abeyance under Title 77, Chapter 2a, Pleas in  
 127 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has  
 been  
 128 subsequently reduced or dismissed in accordance with the plea in abeyance agreement,  
 for  
 129 purposes of:  
 130 (i) enhancement of penalties under:  
 131 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and  
 132 (B) automobile homicide under Section 76-5-207 ; and  
 133 (ii) expungement under Section 77-18-12 .  
 134 Section 2. Section **41-6a-502.5** is enacted to read:  
 135 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**  
 136 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of  
 137 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of  
 138 impaired driving under this section if:  
 139 (a) the defendant completes court ordered probation requirements; or  
 140 (b) (i) the prosecutor agrees as part of a negotiated plea; and  
 141 (ii) the court finds the plea to be in the interest of justice.  
  
 142  
 143 (2) A conviction entered under this section is a class B misdemeanor.  
 144 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of  
 plea. probation under Subsection (1)(a), the court shall enter the conviction at the time of the  
 145 (u) If the defendant fails to appear before the court and establish successful  
 completion of the court ordered probation requirements under Subsection (1)(a), the court shall  
 146 enter an  
 147 amended conviction of Section 41-6a-502.  
 148 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of  
 149 conviction.  
 150 (b) The court may enter a conviction of impaired driving immediately under  
 Subsection (1)(b).  
 151 (4) For purposes of Section 76-3-402 , the entry of a plea to a class B misdemeanor  
 152 violation of Section 41-6a-502 as impaired driving under this section is a reduction of  
 one degree.  
 154 (5) The court shall notify the Driver License Division of each conviction entered  
 under

156 this section.  
157 (6) (a) The provisions in Subsections 41-6a-505 (1), (2), and (3) that require a  
158 sentencing court to order a convicted person to participate in a screening, an  
assessment, or an  
159 educational series, or obtain substance abuse treatment or do a combination of those  
things,  
160 apply to a conviction entered under this section.  
161 (b) The court shall render the same order regarding screening, assessment, an  
162 educational series, or substance abuse treatment in connection with a first, second, or  
163 subsequent conviction under this section as the court would render in connection with  
applying  
164 respectively, the first, second, or subsequent conviction requirements of Subsection  
165 41-6a-505 (1), (2), or (3).  
166 Section 3. Section 41-6a-510 is amended to read:  
167 **41-6a-510. Local DUI and related ordinances and reckless driving and impaired**  
168 **driving ordinances -- Consistent with code.**  
169 (1) An ordinance adopted by a local authority that governs the following matters shall

170  
be consistent with the provisions in this code which govern the following matters:  
171 (a) a person's operating or being in actual physical control of a motor vehicle while  
172 having alcohol in the blood or while under the influence of alcohol or any drug or the  
combined  
173 influence of alcohol and any drug; or  
174 (b) in relation to any of the matters described in Subsection (1)(a), the use of:  
175 (i) a chemical test or chemical tests;  
176 (ii) evidentiary presumptions;  
177 (iii) penalties; or  
178 (iv) any combination of the matters described in Subsection (1).  
179 (2) An ordinance adopted by a local authority that governs reckless driving, impaired  
180 driving, or operating a vehicle in willful or wanton disregard for the safety of persons or  
181 property shall be consistent with the provisions of this code which govern those matters.  
182 Section 4. Section 41-6a-512 is amended to read:  
183 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**  
184 (1) (a) The prosecution shall state for the record a factual basis for a plea, including  
185 whether or not there had been consumption of alcohol, drugs, or a combination of both,  
by the  
186 defendant in connection with the violation when the prosecution agrees to a plea of  
guilty or no  
187 contest to a charge of a violation of the following in satisfaction of, or as a substitute for,  
an  
188 original charge of a violation of Section 41-6a-502 for an offense committed before July  
1,  
189 2008:  
190 (i) reckless driving under Section 41-6a-528 ; or  
191 (ii) an ordinance enacted under Section 41-6a-510 .  
192 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows  
193 whether there was consumption of alcohol, drugs, or a combination of both, by the  
defendant,  
194 in connection with the violation.

195 (2) The court shall advise the defendant before accepting the plea offered under this  
196 section of the consequences of a violation of Section 41-6a-528 .  
197 (3) The court shall notify the Driver License Division of each conviction of Section

198  
41-6a-528 entered under this section.

199 (4) (a) The provisions in Subsections 41-6a-505 (1), (2), and (3) that require a  
200 sentencing court to order a convicted person to participate in a screening, an assessment,

or an

201 educational series or obtain substance abuse treatment or do a combination of those

things,

202 apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

203 (b) The court shall render the same order regarding screening, assessment, an  
204 educational series, or substance abuse treatment in connection with a first, second, or  
205 subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would

render

206 in connection with applying respectively, the first, second, or subsequent conviction  
207 requirements of Subsections 41-6a-505 (1), (2), and (3).

208 Section 5. Section **41-6a-518.2** is amended to read:

209 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without**

ignition

210 **interlock system.**

211 (1) As used in this section:

212 (a) "ignition interlock system" means a constant monitoring device or any similar

device

213 that:

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

215 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection  
216 41-6a-518 (8); and

217 (b) (i) "interlock restricted driver" means a person who:

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

220 (B) (I) within the last three years has been convicted of an offense that occurred after  
221 May 1, 2006 which would be a conviction as defined under Section 41-6a-501 ; and

222 (II) the ~~[conviction]~~ offense described under Subsection (1)(b)(i)(B)(I) is committed  
223 within ten years ~~[of one or more prior convictions]~~ from the date that one or more prior  
224 offenses was committed if the prior offense resulted in a conviction as defined in

Subsection

225 41-6a-501 (2);

226

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

227 (D) within the last three years has had the person's driving privilege revoked for

refusal

228 to submit to a chemical test under Section 41-6a-520 , which refusal occurred after May

1,

229 2006;

230 (E) within the last three years has been convicted of a violation of Section 41-6a-502  
231 and was under the age of 21 at the time the offense was committed;

232       ~~[(F)]~~ (F) within the last six years has been convicted of a felony violation of Section  
 233       41-6a-502 for an offense that occurred after May 1, 2006; or  
 234       ~~[(F)]~~ (G) within the last ten years has been convicted of automobile homicide under  
 235       Section 76-5-207 for an offense that occurred after May 1, 2006; and  
 236       (ii) "interlock restricted driver" does not include a person if:  
 237       (A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction  
 under  
 238       Section 41-6a-517 ; and  
 239       (B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are  
 240       convictions under Section 41-6a-517 .  
 241       (2) For purposes of this section, a plea of guilty or no contest to a violation of Section  
 242       41-6a-502 which plea ~~is~~ was held in abeyance under Title 77, Chapter 2a, Pleas in  
 Abeyance,  
 243       prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been  
 subsequently  
 244       reduced or dismissed in accordance with the plea in abeyance agreement.  
 245       (3) An interlock restricted driver that operates or is in actual physical control of a  
 246       vehicle in this state without an ignition interlock system is guilty of a class B  
 misdemeanor.  
 247       (4) (a) It is an affirmative defense to a charge of a violation of Subsection (3) if:  
 248       (i) an interlock restricted driver:  
 249       (A) operated or was in actual physical control of a vehicle owned by the interlock  
 250       restricted driver's employer;  
 251       (B) had given written notice to the employer of the interlock restricted driver's  
 interlock  
 252       restricted status prior to the operation or actual physical control under Subsection (4)(a)  
 (i); and  
 253       (C) had on the interlock restricted driver's person or in the vehicle at the time of  
  
 254  
 operation or physical control proof of having given notice to the interlock restricted driver's  
 255       employer; and  
 256       (ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the  
 257       scope of the interlock restricted driver's employment.  
 258       (b) The affirmative defense under Subsection (4)(a) does not apply to:  
 259       (i) an employer-owned motor vehicle that is made available to an interlock restricted  
 260       driver for personal use; or  
 261       (ii) a motor vehicle owned by a business entity that is all or partly owned or controlled  
 262       by the interlock restricted driver.  
 263       Section 6. Section **41-6a-529** is amended to read:  
 264       **41-6a-529. Definitions -- Alcohol restricted drivers.**  
 265       (1) As used in this section and Section 41-6a-530 , "alcohol restricted driver" means a  
 266       person who:  
 267       (a) within the last two years:  
 268       (i) has been convicted of:  
 269       (A) a misdemeanor violation of Section 41-6a-502 ;  
 270       (B) alcohol, any drug, or a combination of both-related reckless driving under Section  
 271       41-6a-512 ;  
 272       (C) impaired driving under Section 41-6a-502.5 ;  
 273       ~~[(D)]~~ (D) local ordinances similar to Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a

274 combination of both-related reckless driving, *or impaired driving* adopted in compliance  
 with  
 275 Section 41-6a-510 ;  
 276 ~~[(D)]~~ *(E)* a violation described in Subsections (1)(a)(i)(A) through ~~[(E)]~~ *(D)*, which  
 277 judgment of conviction is reduced under Section 76-3-402 ; or  
 278 ~~[(E)]~~ *(F)* statutes or ordinances previously in effect in this state or in effect in any  
 other  
 279 state, the United States, or any district, possession, or territory of the United States which  
 280 would constitute a violation of Section 41-6a-502 ~~[or]~~, alcohol, any drug, or a  
 combination of  
 281 both-related reckless driving, *or impaired driving* if committed in this state, including  
  
 282  
 punishments administered under 10 U.S.C. Sec. 815; or  
 283 (ii) has had the person's driving privilege suspended under Section 53-3-223 for an  
 284 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;  
 285 (b) within the last three years has been convicted of a violation of this section or  
 286 Section 41-6a-518.2 ;  
 287 (c) within the last five years:  
 288 (i) has had the person's driving privilege revoked for refusal to submit to a chemical  
 test  
 289 under Section 41-6a-520 , which refusal occurred on or after July 1, 2005; or  
 290 (ii) ~~[(A)]~~ has been convicted of ~~[an offense described in Subsection (1)(a)(i); and]~~ *a*  
 291 *class A misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008;*  
 292 ~~[(B) at the time of operation or actual physical control of a vehicle the person:]~~  
 293 ~~[(I) is 21 years of age or older; and]~~  
 294 ~~[(II) has a passenger under 16 years of age in the vehicle;]~~  
 295 (d) within the last ten years:  
 296 (i) has been convicted of an offense described in Subsection (1)(a)(i) which  
 [conviction]  
 297 *offense was committed* within ten years of ~~[a prior conviction for an]~~ *the commission of a*  
 prior  
 298 offense described in Subsection (1)(a)(i) *for which the person was convicted;* or  
 299 (ii) has had the person's driving privilege revoked for refusal to submit to a chemical  
 300 test and the refusal is within ten years after:  
 301 (A) a prior refusal to submit to a chemical test under Section 41-6a-520 ; or  
 302 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not  
 303 based on the same arrest as the refusal; ~~[or]~~  
 304 (e) at any time has been convicted of:  
 305 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or  
 after  
 306 July 1, 2005; or  
 307 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after  
 July  
 308 1, 2005~~[-];~~ *or*  
 309 *(f) at the time of operation of a vehicle is under 21 years of age.*

310  
 (2) For purposes of this section and Section 41-6a-530 , a plea of guilty or no contest to

311 a violation described in Subsection (1)(a)(i) which plea [~~is~~] was held in abeyance under  
 Title 77,  
 312 Chapter 2a, Pleas in Abeyance, *prior to July 1, 2008*, is the equivalent of a conviction,  
 even if  
 313 the charge has been subsequently reduced or dismissed in accordance with the plea in  
 abeyance  
 314 agreement.  
 315 Section 7. Section **41-6a-1406** is amended to read:  
 316 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**  
 317 **requirements -- Administrative impound fee -- Refunds -- Possessory lien --**  
**Rulemaking.**  
 318 (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under  
 319 Section 41-1a-1101 , 41-6a-527 , 41-6a-1405 , 41-6a-1408 , or 73-18-20.1 by an order of  
 a peace  
 320 officer or by an order of a person acting on behalf of a law enforcement agency or  
 highway  
 321 authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be  
 at the  
 322 expense of the owner.  
 323 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or  
 324 impounded to:  
 325 (a) a state impound yard; or  
 326 (b) if none, a garage, docking area, or other place of safety.  
 327 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be  
 328 removed by a tow truck motor carrier that meets standards established:  
 329 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and  
 330 (b) by the department under Subsection (10).  
 331 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a  
 report  
 332 of the removal shall be sent to the Motor Vehicle Division by:  
 333 (i) the peace officer or agency by whom the peace officer is employed; and  
 334 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck  
 335 operator is employed.  
 336 (b) The report shall be in a form specified by the Motor Vehicle Division and shall  
 337 include:  
  
 338  
 (i) the operator's name, if known;  
 339 (ii) a description of the vehicle, vessel, or outboard motor;  
 340 (iii) the vehicle identification number or vessel or outboard motor identification  
 number;  
 341 (iv) the license number or other identification number issued by a state agency;  
 342 (v) the date, time, and place of impoundment;  
 343 (vi) the reason for removal or impoundment;  
 344 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or  
 345 outboard motor; and  
 346 (viii) the place where the vehicle, vessel, or outboard motor is stored.  
 347 (c) Until the tow truck operator or tow truck motor carrier reports the removal as  
 348 required under this Subsection (4), a tow truck motor carrier or impound yard may not:  
 349 (i) collect any fee associated with the removal; and

350 (ii) begin charging storage fees.  
351 (5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the  
352 registered owner of the vehicle, vessel, or outboard motor and any lien holder in the  
manner  
353 prescribed by Section 41-1a-114 .  
354 (b) The notice shall:  
355 (i) state the date, time, and place of removal, the name, if applicable, of the person  
356 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for  
removal,  
357 and the place where the vehicle, vessel, or outboard motor is stored;  
358 (ii) state that the registered owner is responsible for payment of towing, impound, and  
359 storage fees charged against the vehicle, vessel, or outboard motor;  
360 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the  
361 conditions that must be satisfied before the vehicle, vessel, or outboard motor is  
released; and  
362 (iv) inform the registered owner and lienholder of the division's intent to sell the  
vehicle,  
363 vessel, or outboard motor, if within 30 days from the date of the removal or  
impoundment  
364 under this section, the owner, lien holder, or the owner's agent fails to make a claim for  
release  
365 of the vehicle, vessel, or outboard motor.

366  
(c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor  
367 Vehicle Division shall make a reasonable effort to notify the registered owner and any  
lien  
368 holder of the removal and the place where the vehicle, vessel, or outboard motor is  
stored.  
369 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where  
370 the vehicle, vessel, or outboard motor is stored.  
371 (6) (a) The vehicle, vessel, or outboard motor shall be released after the registered  
372 owner, lien holder, or the owner's agent:  
373 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of  
374 the State Tax Commission;  
375 (ii) presents identification sufficient to prove ownership of the impounded vehicle,  
376 vessel, or outboard motor;  
377 (iii) completes the registration, if needed, and pays the appropriate fees;  
378 (iv) if the impoundment was made under Section 41-6a-527 , pays an administrative  
379 impound fee of [~~\$230~~] \$330; and  
380 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard  
381 motor is stored.  
382 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under  
Subsection  
383 (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;  
384 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall  
be  
385 deposited in the Department of Public Safety Restricted Account created in Section 53-  
3-106 ;  
386 and



387 (iii) the remainder of the administrative impound fee assessed under Subsection  
 388 (6)(a)(iv) shall be deposited in the General Fund.  
 389 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be  
 waived  
 390 or refunded by the State Tax Commission if the registered owner, lien holder, or owner's  
 agent  
 391 presents written evidence to the State Tax Commission that:  
 392 (i) the Driver License Division determined that the arrested person's driver license  
 393 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a  
 letter  
  
 394  
 or other report from the Driver License Division presented within 30 days of the final  
 395 notification from the Driver License Division; or  
 396 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the  
 397 stolen vehicle report presented within 30 days of the impoundment.  
 398 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered  
 399 owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be  
 sold in  
 400 accordance with that section and the proceeds, if any, shall be disposed of as provided  
 under  
 401 Section 41-1a-1104 .  
 402 (b) The date of impoundment is considered the date of seizure for computing the time  
 403 period provided under Section 41-1a-1103 .  
 404 (8) The registered owner who pays all fees and charges incurred in the impoundment  
 of  
 405 the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and  
 charges,  
 406 together with damages, court costs, and attorney fees, against the operator of the vehicle,  
 407 vessel, or outboard motor whose actions caused the removal or impoundment.  
 408 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle,  
 vessel,  
 409 or outboard motor.  
 410 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
 411 the department shall make rules setting the performance standards for towing companies  
 to be  
 412 used by the department.  
 413 (11) (a) The Motor Vehicle Division may specify that a report required under  
 414 Subsection (4) be submitted in electronic form utilizing a database for submission,  
 storage, and  
 415 retrieval of the information.  
 416 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the  
 417 administrator of the database may adopt a schedule of fees assessed for utilizing the  
 database.  
 418 (ii) The fees under this Subsection (11)(b) shall:  
 419 (A) be reasonable and fair; and  
 420 (B) reflect the cost of administering the database.  
 421 Section 8. Section 53-3-220 is amended to read:

422

**53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**

423 **disqualification of license -- Offense requiring an extension of period -- Hearing --**  
424 **Limited driving privileges.**

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

Chapter

426 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the

division

427 shall deny, suspend, or disqualify the license of a person upon receiving a record of the

person's

428 conviction for any of the following offenses:

429 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or

430 automobile homicide under Section 76-5-207 ;

431 (ii) driving or being in actual physical control of a motor vehicle while under the

432 influence of alcohol, any drug, or combination of them to a degree that renders the

person

433 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as

prohibited in

434 an ordinance that complies with the requirements of Subsection 41-6a-510 (1);

435 (iii) driving or being in actual physical control of a motor vehicle while having a

blood

436 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an

ordinance that

437 complies with the requirements of Subsection 41-6a-510 (1);

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

41,

439 Motor Vehicles, or any other law of this state requiring the registration of motor vehicles

or

440 regulating driving on highways;

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

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

443 (vii) failure to stop and render aid as required under the laws of this state if a motor

444 vehicle accident results in the death or personal injury of another;

445 (viii) two charges of reckless driving, *impaired driving, or any combination of*

*reckless*

446 *driving and impaired driving* committed within a period of 12 months; but if upon a first

447 conviction of reckless driving *or impaired driving* the judge or justice recommends

suspension

448 of the convicted person's license, the division may after a hearing suspend the license for

a

449 period of three months;

450

(ix) failure to bring a motor vehicle to a stop at the command of a peace officer as

451 required in Section 41-6a-210 ;

452 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that

453 requires disqualification;

454 (xi) discharging or allowing the discharge of a firearm from a vehicle in violation of

455 Subsection 76-10-508 (2);

456 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or

457 incendiary device from a vehicle in violation of Subsection 76-10-306 (4)(b);  
458 (xiii) operating or being in actual physical control of a motor vehicle while having any  
459 measurable controlled substance or metabolite of a controlled substance in the person's  
body in  
460 violation of Section 41-6a-517 ;  
461 (xiv) until July 30, 2015, operating or being in actual physical control of a motor  
vehicle  
462 while having any alcohol in the person's body in violation of Section 53-3-232 ;  
463 (xv) operating or being in actual physical control of a motor vehicle while having any  
464 measurable or detectable amount of alcohol in the person's body in violation of Section  
465 41-6a-530 ;  
466 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in  
467 violation of Section 41-6a-606 ; and  
468 (xvii) operating or being in actual physical control of a motor vehicle in this state  
469 without an ignition interlock system in violation of Section 41-6a-518.2 .  
470 (b) The division shall immediately revoke the license of a person upon receiving a  
471 record of an adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996, for any  
of the  
472 following offenses:  
473 (i) discharging or allowing the discharge of a firearm from a vehicle in violation of  
474 Subsection 76-10-508 (2); and  
475 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or  
476 incendiary device from a vehicle in violation of Subsection 76-10-306 (4)(b).  
477 (c) Except when action is taken under Section 53-3-219 for the same offense, the  
  
478  
division shall immediately suspend for six months the license of a person upon receiving a  
479 record of conviction for any of the following offenses:  
480 (i) any violation of:  
481 (A) Title 58, Chapter 37, Utah Controlled Substances Act;  
482 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
483 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;  
484 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or  
485 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or  
486 (ii) any criminal offense that prohibits:  
487 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any  
substance  
488 that is prohibited under the acts described in Subsection (1)(c)(i), or  
489 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or  
490 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).  
491 (2) The division shall extend the period of the first denial, suspension, revocation, or  
492 disqualification for an additional like period, to a maximum of one year for each  
subsequent  
493 occurrence, upon receiving:  
494 (a) a record of the conviction of any person on a charge of driving a motor vehicle  
495 while the person's license is denied, suspended, revoked, or disqualified;  
496 (b) a record of a conviction of the person for any violation of the motor vehicle law in  
497 which the person was involved as a driver;  
498 (c) a report of an arrest of the person for any violation of the motor vehicle law in  
499 which the person was involved as a driver; or

500 (d) a report of an accident in which the person was involved as a driver.  
 501 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is  
 502 driving while the person's license is denied, suspended, disqualified, or revoked, the  
 person is  
 503 entitled to a hearing regarding the extension of the time of denial, suspension,  
 disqualification,  
 504 or revocation originally imposed under Section 53-3-221 .  
 505 (4) (a) The division may extend to a person the limited privilege of driving a motor  
  
 506 vehicle to and from the person's place of employment or within other specified limits on  
 507 recommendation of the trial judge in any case where a person is convicted of any of the  
 offenses  
 508 referred to in Subsections (1) and (2) except:  
 509 (i) automobile homicide under Subsection (1)(a)(i);  
 510 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)  
 (xiii),  
 511 (1)(b), and (1)(c); and  
 512 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
 513 revocation, or disqualification was imposed because of a violation of Section 41-6a-502 ,  
 514 41-6a-517 , a local ordinance which complies with the requirements of Subsection 41-  
 6a-510 (1),  
 515 Section 41-6a-520 , or Section 76-5-207 , or a criminal prohibition that the person was  
 charged  
 516 with violating as a result of a plea bargain after having been originally charged with  
 violating  
 517 one or more of these sections or ordinances.  
 518 (b) This discretionary privilege is limited to when undue hardship would result from a  
 519 failure to grant the privilege and may be granted only once to any individual during any  
 single  
 520 period of denial, suspension, revocation, or disqualification, or extension of that denial,  
 521 suspension, revocation, or disqualification.  
 522 (c) A limited CDL may not be granted to an individual disqualified under Part 4,  
 523 Uniform Commercial Driver License Act, or whose license has been revoked,  
 suspended,  
 524 cancelled, or denied under this chapter.  
 525 Section 9. Section 53-3-223 is amended to read:  
 526 **53-3-223. Chemical test for driving under the influence -- Temporary license --**  
 527 **Hearing and decision -- Suspension and fee -- Judicial review.**  
 528 (1) (a) If a peace officer has reasonable grounds to believe that a person may be  
 529 violating or has violated Section 41-6a-502 , prohibiting the operation of a vehicle with a  
 certain  
 530 blood or breath alcohol concentration and driving under the influence of any drug,  
 alcohol, or  
 531 combination of a drug and alcohol or while having any measurable controlled substance  
 or  
 532 metabolite of a controlled substance in the person's body in violation of Section 41-6a-  
 517 , the  
 533 peace officer may, in connection with arresting the person, request that the person  
 submit to a

534

chemical test or tests to be administered in compliance with the standards under Section

535 41-6a-520 .

536 (b) In this section, a reference to Section 41-6a-502 includes any similar local ordinance

537 adopted in compliance with Subsection 41-6a-510 (1).

538 (2) The peace officer shall advise a person prior to the person's submission to a  
539 chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517  
shall,

540 and the existence of a blood alcohol content sufficient to render the person incapable of  
safely  
541 driving a motor vehicle may, result in suspension or revocation of the person's license to  
drive a  
542 motor vehicle.

543 (3) If the person submits to a chemical test and the test results indicate a blood or  
544 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517 , or if a peace

officer  
545 makes a determination, based on reasonable grounds, that the person is otherwise in

violation of  
546 Section 41-6a-502 , a peace officer shall, on behalf of the division and within 24 hours of

arrest,  
547 give notice of the division's intention to suspend the person's license to drive a motor  
vehicle.

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

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

551 (ii) issue a temporary license certificate effective for only 29 days from the date of  
552 arrest; and

553 (iii) supply to the driver, in a manner specified by the division, basic information  
554 regarding how to obtain a prompt hearing before the division.

555 (b) A citation issued by a peace officer may, if provided in a manner specified by the  
556 division, also serve as the temporary license certificate.

557 (5) As a matter of procedure, a peace officer shall send to the division within ten  
558 calendar days after the day on which notice is provided:

559 (a) the person's license certificate;

560 (b) a copy of the citation issued for the offense;

561 (c) a signed report in a manner specified by the division indicating the chemical test

562

results, if any; and

563 (d) any other basis for the peace officer's determination that the person has violated  
564 Section 41-6a-502 or 41-6a-517 .

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

the person and  
569 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before  
570 division in the county in which the arrest occurred.  
571 (ii) The division may hold a hearing in some other county if the division and the  
572 both agree.  
573 (c) The hearing shall be documented and shall cover the issues of:  
574 (i) whether a peace officer had reasonable grounds to believe the person was driving a  
575 motor vehicle in violation of Section 41-6a-502 or 41-6a-517 ;  
576 (ii) whether the person refused to submit to the test; and  
577 (iii) the test results, if any.  
578 (d) (i) In connection with a hearing the division or its authorized agent:  
579 (A) may administer oaths and may issue subpoenas for the attendance of witnesses  
580 the production of relevant books and papers; or  
581 (B) may issue subpoenas for the attendance of necessary peace officers.  
582 (ii) The division shall pay witness fees and mileage from the Transportation Fund in  
583 accordance with the rates established in Section 78-46-28 .  
584 (e) The division may designate one or more employees to conduct the hearing.  
585 (f) Any decision made after a hearing before any designated employee is as valid as if  
586 made by the division.  
587 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable  
588 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

590  
hearing is not requested under this section, the division shall suspend the person's license or  
591 permit to operate a motor vehicle for a period of:  
592 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or  
593 (ii) one year beginning on the 30th day after the date of arrest for a second or  
594 subsequent suspension for an offense that occurred within the previous ten years.  
595 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall  
reinstate  
596 a person's license prior to completion of the 90 day suspension period imposed under  
597 Subsection (7)(a)(i) ~~[if the person's charge for a violation of Section 41-6a-502 or 41-6a-~~  
517 ~~is~~  
598 ~~reduced or dismissed];~~  
599 (A) immediately upon receiving written verification of the person's dismissal of a  
charge  
600 for a violation of Section 41-6a-502 or 41-6a-517 , if the written verification is received  
prior to  
601 completion of the suspension period~~[-]; or~~  
602 ~~[(ii) The division shall immediately reinstate a person's license upon receiving written~~  
603 ~~verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or~~  
604 ~~41-6a-517-].~~  
605 ~~[(iii) The division shall reinstate a person's license no sooner than 60 days beginning~~  
on  
606 the 30th day after the date of arrest upon receiving written verification of the person's

reduction

607 ~~of a charge for a violation of Section 41-6a-502 or 41-6a-517.]~~

608 *(B) no sooner than 60 days beginning on the 30th day after the date of arrest upon*

609 *receiving written verification of the person's reduction of a charge for a violation of*

Section

610 *41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the*

611 *suspension period.*

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

614 *(iii) The driver license reinstatements authorized under this Subsection (7)(b) only*

apply

615 *to a 90 day suspension period imposed under Subsection (7)(a)(i).*

616 (8) (a) The division shall assess against a person, in addition to any fee imposed under

617 Subsection 53-3-205 (13) for driving under the influence, a fee under Section 53-3-105

to cover

618

administrative costs, which shall be paid before the person's driving privilege is reinstated. This

619 fee shall be cancelled if the person obtains an unappealed division hearing or court

decision that

620 the suspension was not proper.

621 (b) A person whose license has been suspended by the division under this section

622 following an administrative hearing may file a petition within 30 days after the

suspension for a

623 hearing on the matter which, if held, is governed by Section 53-3-224 .

624 Section 10. Section ~~76-5-207~~ is amended to read:

625 **76-5-207. Automobile homicide.**

626 (1) As used in this section ~~["motor"]~~:

627 *(a) "Drug" or "drugs" means:*

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

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

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

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

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

636 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the  
637 person has a blood or breath alcohol concentration of .08 grams or greater at the time of

the

638 test;

639 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol

and

640 any drug to a degree that renders the person incapable of safely operating a vehicle; or

641 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of  
642 operation.

643 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is  
644 subsequent to a conviction as defined in Subsection 41-6a-501 (2).

645 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to

646 exercise that degree of care that reasonable and prudent persons exercise under like or similar  
647 circumstances.

648 (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the  
person  
649 operates a motor vehicle in a criminally negligent manner causing the death of another  
and:  
650 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the  
651 person has a blood or breath alcohol concentration of .08 grams or greater at the time of  
the  
652 test;  
653 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol  
and  
654 any drug to a degree that renders the person incapable of safely operating a vehicle; or  
655 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of  
656 operation.  
657 (b) As used in this Subsection (3), "criminally negligent" means criminal negligence  
as  
658 defined by Subsection 76-2-103 (4).

659 (4) The standards for chemical breath analysis as provided by Section 41-6a-515 and  
660 the provisions for the admissibility of chemical test results as provided by Section 41-6a-  
516  
661 apply to determination and proof of blood alcohol content under this section.  
662 (5) Calculations of blood or breath alcohol concentration under this section shall be  
663 made in accordance with Subsection 41-6a-502 (1).  
664 (6) The fact that a person charged with violating this section is or has been legally  
665 entitled to use alcohol or a drug is not a defense.  
666 (7) Evidence of a defendant's blood or breath alcohol content or drug content is  
667 admissible except when prohibited by Rules of Evidence or the constitution.  
668 Section 11. Section 76-10-528 is amended to read:  
669 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**  
670 **drugs unlawful.**

671 (1) Any person who carries a dangerous weapon while under the influence of alcohol  
or  
672 a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor.  
Under  
673 the influence means the same level of influence or blood or breath alcohol concentration  
as

674 provided in Subsections 41-6a-502 (1)(a)(~~(i)~~) through (~~(iii)~~)(c).

675 (2) It is not a defense to prosecution under this section that the person:

676 (a) is licensed in the pursuit of wildlife of any kind; or

677 (b) has a valid permit to carry a concealed firearm.

678 Section 12. **Appropriation.**

679 (1) As an ongoing appropriation subject to future budget constraints, there is  
680 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the

Department of

681 Public Safety, Utah Highway Patrol to be used for additional Driving Under the



Influence Law

682 Enforcement Officers.

683 (2) As an ongoing appropriation subject to future budget constraints, there is

684 appropriated from the General Fund for fiscal year 2008-09, \$660,000 to the

Department of

685 Public Safety, Liquor Law Enforcement Program to be used for additional Liquor Law

686 Enforcement Officers.

687 **Section 13. Effective date.**

688 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2008.

689 (2) If approved by two-thirds of all members elected to each house, the amendments to

690 Sections 53-3-223 and 76-10-528 take effect upon approval by the governor, or the day

691 following the constitutional time limit of Utah Constitution, Article VII, Section 8,

without the

692 governor's signature, or in the case of a veto, the date of veto override.

[Bill Documents][Bills Directory]

# ADDENDUM “C”

JASON SCHATZ (# 9969)  
Schatz, Anderson & Uday, LLC  
ATTORNEY FOR PETITIONER  
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Salt Lake City, Utah 84101  
Telephone: (801) 579-0600  
Facsimile: (801) 579-0606

**FILED DISTRICT COURT**  
**Third Judicial District**  
**JAN - 2 2008**  
**SALT LAKE COUNTY**  
By [Signature] Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM HUCKINS,	:	FINDINGS AND CONCLUSIONS
	:	OF LAW AND ORDER TO REINSTATE
Petitioner,	:	DRIVING PRIVILEGES
vs.	:	
NANNETTE ROLFE, Bureau Chief	:	CASE NO. 070912140
Driver Control Bureau, Driver License	:	
Division, Department of Public Safety,	:	JUDGE DENISE LINDBERG
State of Utah,	:	
Respondent.	:	

---

The above-entitled matter came before the court for a Trial De Novo on December 10, 2007, the Honorable Denise Lindberg presiding. Petitioner appeared with his counsel of record, Jason Schatz. Respondent's counsel, Rebecca D. Waldron, Assistant Attorney General, was present.

Prior to proceeding on the Trial de Novo the Petitioner moved the Court for an Order requiring the Drivers License Division to immediately reinstate the Petitioner's driving privileges pursuant to U.C.A. § 53-3-223(7)(b)(ii), on the grounds that no criminal case was ever filed charging the Petitioner for Driving Under the Influence as a result of his arrest on July 18,

2007. The court heard argument from both parties regarding the Petitioner's motion. The court, being fully advised in the premises, now enters the following findings and conclusions of law and order.

### FINDINGS AND CONCLUSIONS OF LAW

1. At the Petitioner's request an administrative hearing was conducted with regard to his arrest for Driving Under the Influence of Alcohol on July 18, 2007. Following the hearing the Petitioner's license was revoked for a period of 18 months based on the Petitioner's refusal to submit to a chemical test.
2. Based on the language of U.C.A. § 53-3-223(6), the court concludes that the provisions of U.C.A. § 53-3-223(7) apply to all suspensions and revocations imposed by the Drivers License Division including revocations as a result of the drivers refusal to submit to a chemical test.
3. Based on the plain language of U.C.A. § 53-3-223(7)(b)(ii), the court concludes that U.C.A. § 53-3-223(7)(b)(ii) requirement for immediate reinstatement upon showing proof of dismissal of the criminal charge is applicable to all suspensions and revocations imposed by the Drivers License Division including revocations as a result of the drivers refusal to submit to a chemical test in violation of U.C.A. 41-6a-520.
4. The determination by the Salt Lake City Attorney's office not to charge the Petitioner with the criminal charge of DUI as a result of the Petitioner's arrest on July 18, 2007, is the equivalent of a dismissal.

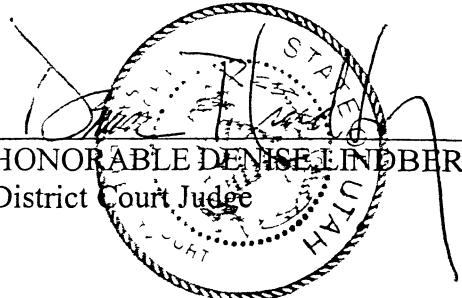
ORDER

IT IS HEREBY ORDERED:


1. Pursuant to U.C.A. § 53-3-223(7)(b)(ii) the Petitioner's driver's license shall be reinstated effective immediately upon showing proof that no criminal charge was filed based on the Petitioner's arrest for Driving Under the Influence on July 18, 2007.

DATED this 2 day of January, 2007.

BY THE COURT:

  
HONORABLE DENISE LINDBERG  
District Court Judge

Approved as to form:

  
Rebecca D. Waldron  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_\_, day of \_\_\_\_\_, 2007, I personally mailed a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order to the following:

Jason Schatz  
Attorney for Petitioner  
57 W. 200 S., # 200  
Salt Lake City, UT 84101

Rebecca Waldron  
Assistant Attorney General  
Utah Attorney General's Office  
236 State Capitol Building  
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