

ENROLLED ACT NO. 84, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to restricted drivers' licenses; modifying requirements and penalties relating to driving under the influence and the use of ignition interlock devices; specifying when ignition interlock devices are allowed and required; imposing penalties on those who assist others in defeating an ignition interlock device; requiring notice to drivers; authorizing an expenditure of funds; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 6-2-106 by creating a new subsection (d), 31-5-233(f), 31-5-234(f), 31-6-102(a)(ii)(A) and (B), 31-6-103(b), 31-6-107 by creating a new subsection (b), 31-6-108(b)(i), (ii) and by creating a new subsection (p), 31-7-401(a) and (b), 31-7-402(a), (b), (c)(intro), (ii) and by creating a new subsection (d), 31-7-403 by creating a new subsection (c) and 31-7-404 are amended to read:

6-2-106. Homicide by vehicle; aggravated homicide by vehicle; penalties.

(d) Any person convicted of aggravated homicide by vehicle for causing the death of another person while operating or driving a vehicle in violation of W.S. 31-5-233 shall not be issued an ignition interlock restricted license under W.S. 31-5-233 or 31-7-401 through 31-7-404.

31-5-233. Driving or having control of vehicle while under influence of intoxicating liquor or controlled substances; penalties.

(f) Any person convicted under this section or ~~a municipal ordinance which substantially conforms to the~~

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~~provisions of this section~~ other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v) shall, in addition to the penalty imposed:

(i) Have his driver's license suspended or revoked pursuant to W.S. 31-7-127 or 31-7-128. The court shall forward to the department a copy of the record pertaining to disposition of the arrest or citation;

(ii) For a first conviction where the conviction is based on the person having an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of six (6) months from the date of conviction;

(iii) For a second conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of one (1) year from the date of conviction;

(iv) For a third conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of two (2) years from the date of conviction;

(v) For a fourth or subsequent conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for the remainder of the offender's life, except five (5) years from the date of conviction and every five (5) years thereafter, the offender may apply to the court for removal of the ignition interlock device required by this paragraph. The court may, for good cause shown, remove the ignition interlock device requirement if the offender has not been subsequently convicted of driving a motor vehicle

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in violation of this section or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v).

31-5-234. Unlawful operation of vehicle by youthful driver with detectable alcohol concentration; penalty.

(f) A person convicted under this section or ~~a municipal ordinance which substantially conforms to the provisions of this section~~ other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v) shall, in addition to the penalty imposed in subsection (e) of this section:7

(i) Have his driver's license denied or suspended pursuant to W.S. 31-7-128(h). The court shall forward a copy of the conviction to the department;7

(ii) For a first conviction where the conviction is based on the person having an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of six (6) months from the date of conviction;

(iii) For a second conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of one (1) year from the date of conviction;

(iv) For a third conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of two (2) years from the date of conviction;

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(v) For a fourth or subsequent conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for the remainder of the offender's life, except five (5) years from the date of conviction and every five (5) years thereafter, the offender may apply to the court for removal of the ignition interlock device required by this paragraph. The court may, for good cause shown, remove the ignition interlock device requirement if the offender has not been subsequently convicted of driving a motor vehicle in violation of this section, W.S. 31-5-233 or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v).

31-6-102. Test to determine alcoholic or controlled substance content of blood; suspension of license.

(a) If arrested for an offense as defined by W.S. 31-5-233:

(ii) For tests required under this act, the arrested person shall be advised that:

(A) His failure to submit to all required chemical tests requested by the peace officer shall result in the suspension of his Wyoming driver's license or his privilege to operate a motor vehicle for a period of six (6) months for a first offense or eighteen (18) months for a second or subsequent offense and he may be required to drive only vehicles equipped with an ignition interlock device as provided by W.S. 31-6-107;

(B) If a test is taken and the results indicate the person is under the influence of alcohol or a controlled substance, he may be subject to criminal penalties, and ~~and~~ his Wyoming driver's license or his

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privilege to operate a motor vehicle shall be suspended for ninety (90) days and he may be required to drive only vehicles equipped with an ignition interlock device;

31-6-103. Application for hearing; stay of suspension of license; scope of hearing.

(b) The scope of a hearing for the purposes of this act shall cover the issues of whether a peace officer had probable cause to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon a public street or highway in this state in violation of W.S. 31-5-233(b) or any other law prohibiting driving under the influence as defined by W.S. 31-5-233(a)(v), whether the person was placed under arrest, whether he refused to submit to a test upon request of the peace officer or if he submitted to a test whether the test results indicated that the person had an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, and whether, except for the persons described in this act who are incapable of refusing, he had been ~~advised that his Wyoming driver's license or privilege to operate a motor vehicle shall be suspended for the period provided by W.S. 31-6-107 if he refused to submit to a test and suspended for ninety (90) days and subject him to criminal penalties if he submitted to the test and the results indicate the person is under the influence of alcohol~~ given the advisements required by W.S. 31-6-102(a)(ii). At the conclusion of the hearing, the hearing examiner shall order that the suspension either be rescinded or sustained. If the person submitted to a chemical test, the hearing examiner has the same authority to modify a license suspension under this act as he does under W.S. 31-7-105.

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31-6-107. Penalty for refusal to submit to chemical testing.

(b) A second or subsequent suspension pursuant to subsection (a) of this section shall be considered a second or subsequent conviction under W.S. 31-5-233 for the purposes of W.S. 31-5-233(f)(iii) through (v) and the ignition interlock device requirements of W.S. 31-5-233(f)(iii) through (v) shall apply to such suspension.

31-6-108. Implied consent requirements for youthful drivers.

(b) For tests required under this section, the person shall be advised that:

(i) His failure to submit to all required chemical tests shall result in the suspension or denial of his Wyoming driver's license or his privilege to operate a motor vehicle for a period of ninety (90) days without the right to apply for limited driving privileges and he may be required to drive only vehicles equipped with an ignition interlock device;

(ii) If a test is taken and the results indicate an alcohol concentration of two one-hundredths of one percent (0.02%) or more, he may be subject to denial or suspension of his driver's license for the period specified by W.S. 31-7-128(h) and he may be required to drive only vehicles equipped with an ignition interlock device;

(p) A second or subsequent suspension pursuant to subsection (n) of this section shall be considered a conviction under W.S. 31-5-233 for the purposes of W.S. 31-5-233(f)(iii) through (v) and the ignition interlock

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device requirements of W.S. 31-5-233(f)(iii) through (v) shall apply to such suspension.

31-7-401. Ignition interlock licenses; definitions; administration and enforcement.

(a) For purposes of this article:7

(i) "Ignition interlock device" means an alcohol breath screening device, ~~located inside the vehicle near the driver's seat and~~ connected to the engine's ignition system, that prevents the vehicle from starting when it detects an alcohol concentration over an established limit. The device shall contain a data logger which retains records of every instance in which the device prevented the engine from starting during the period between recalibrations;

(ii) "Ignition interlock service provider" means any person who installs, services, monitors, calibrates or repairs ignition interlock devices and who must be certified by the department to perform such work.

(b) The department shall prescribe reasonable rules and regulations for the certification of ignition interlock devices and ignition interlock service providers and for the calibration and maintenance of ignition interlock devices, which calibration and maintenance shall be the responsibility of an ignition interlock service provider. In addition to other matters necessary for the administration of this article, the rules and regulations shall:

(i) Prohibit any ignition interlocking device from being sold or installed in this state without the

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device and the ignition interlock service provider being certified by the department;

(ii) Require that each ignition interlock service provider provide a reasonable service where such devices may be obtained, repaired, replaced, serviced and calibrated;

(iii) Require that every ignition interlock service provider provide monthly reports for each ignition interlocking device data logger;

(iv) Require that ignition interlock service providers check, calibrate and service each ignition interlock device installed by that provider at least every sixty (60) days and adopt a reporting requirement should the provider find evidence of tampering;

(v) Require that each ignition interlock service provider retain all data logger records for three (3) years;

(vi) Require that each ignition interlock service provider complete certificates of installation and certificates of continuing calibration and servicing, which certificates shall be delivered to the department on a form determined by the department and within a time period set by the department;

(vii) Establish procedures under which indigent persons who are required to operate only vehicles equipped with an ignition interlock device may have one-half (1/2) the costs of obtaining and using such device paid from funds made available by the state. A person shall be considered indigent if they are able to produce evidence

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that they are eligible and qualified to participate in the federal food stamp program.

31-7-402. Issuance of ignition interlock restricted license; eligibility.

(a) A person whose driver's license has been suspended pursuant to W.S. 31-6-107(a)(i) or 31-7-128(b)(ii) as a result of a violation related to operating a vehicle under the influence of alcohol, or a refusal to comply with a request to submit to a test to determine the person's blood alcohol concentration, or whose license is otherwise suspended and is required to operate only vehicles equipped with an ignition interlock device, and who has served at least forty-five (45) days of the suspension period ~~may shall~~ apply to the department for an ignition interlock restricted license for the balance of the suspension period or ~~one (1) year, whichever is greater~~ other period required by law.

(b) A person whose driver's license has been suspended pursuant to W.S. 31-6-107(a)(ii) or revoked pursuant to W.S. 31-7-127(a)(ii) as a result of a violation related to operating a vehicle under the influence of alcohol, or a refusal to comply with a request to submit to a test to determine the person's blood alcohol concentration, or whose license is otherwise suspended and is required to operate only vehicles equipped with an ignition interlock device, and who has served at least forty-five (45) days of the suspension or revocation period ~~may shall~~ apply to the department for an ignition interlock restricted license for the balance of the suspension or revocation period or other period required by law.

(c) An ignition interlock restricted license issued pursuant to subsection (a) or (b) of this section shall

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entitle the licensee to drive upon the highways of this state during the period his previously issued license is otherwise suspended or revoked or for another period required by law, subject to the following conditions:

(ii) Ignition interlock devices shall be installed, at the applicant's—licensee's expense, by a certified ignition interlock installer—service provider on all motor vehicles driven by the applicant—licensee will drive, whether such vehicles are owned by the licensee or not, except that a licensee may operate an employer's vehicle without an ignition interlock device installed during normal business activities and not used by the licensee for nonbusiness purposes;

(d) No restricted license may be issued under this article until the department has received a certificate of installation from a certified ignition interlock service provider for every vehicle on which the device must be installed for that licensee under this article.

31-7-403. Suspension or revocation of ignition interlock license.

(c) Subject to the administrative hearing provisions of W.S. 31-7-105, the department may revoke a person's ignition interlock restricted license when the department is notified that:

(i) The licensee has been convicted of any violation of W.S. 31-7-404 or 31-5-233; or

(ii) The monthly reports from a licensee's ignition interlocking device data logger indicate that the licensee is habitually attempting to operate a vehicle while impaired.

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31-7-404. Driving without interlock device.

(a) No person licensed under this article shall drive any motor vehicle, without a functioning ~~approved~~ and certified ignition interlock device.

(b) No person ~~licensed under this article~~ shall remove or otherwise circumvent an installed ignition interlock device ~~during the period of the ignition interlock restricted license~~ nor blow or solicit another to blow into an ignition interlock device for the purpose of rendering an operable vehicle to a person whose driving privileges have been restricted under this article.

(c) A person ~~violating~~ holding a restricted license under this article who violates subsection (a) or (b) of this section is guilty of a misdemeanor and shall :

(i) For a first offense, be imprisoned for not less than seven (7) days nor more than six (6) months, and shall not be eligible for probation or suspension of sentence or release on any other basis until serving at least seven (7) days in jail. In addition, the person shall be fined not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00); ~~:- A person convicted of a~~

(ii) For a second or subsequent violation of subsection (a) or (b) of this section during the same license period is guilty of a misdemeanor and shall be imprisoned for not less than thirty (30) days nor more than six (6) months and shall not be eligible for probation, suspension of sentence or release on any other basis until serving at least thirty (30) days in jail. In addition, the person shall be fined not less than two hundred dollars

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(\$200.00) nor more than seven hundred fifty dollars (\$750.00); ~~and shall no longer be eligible for an ignition interlock restricted license.~~

(iii) Shall be considered to have been convicted under W.S. 31-5-233 for the purposes of the ignition interlock device requirements of W.S. 31-5-233(f)(ii) through (v).

(d) A person violating subsection (b) of this section who is not the restricted licensee is guilty of a misdemeanor and shall be punished by a fine of not more than seven hundred fifty dollars (\$750.00), or by imprisonment for not more than six (6) months, or both. Upon a subsequent violation of subsection (b) of this section, the violator shall no longer be eligible for an ignition interlock restricted license should that person ever apply and otherwise be eligible.

(e) The courts of this state shall forward to the department a copy of the record pertaining to the disposition of any arrest or citation for a violation of subsection (a) or (b) of this section within ten (10) days after such record becomes available.

(f) The provisions of subsection (b) of this section shall not apply to any person starting a vehicle when necessary in the interest of safety or for the repair of the device or vehicle nor shall they apply to any ignition interlock service provider while performing his duties as an ignition interlock service provider.

Section 2. W.S. 31-6-102(a)(ii)(D), 31-7-402(c)(iii) and (iv) and 31-7-405 are repealed.

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Section 3. The Wyoming department of transportation is authorized to expend from the highway fund not more than twenty-five thousand dollars (\$25,000.00). These funds shall be expended only to pay the costs for indigent persons to obtain and use ignition interlock devices pursuant to the rules and regulations required to be adopted under this act.

Section 4. This act shall apply only to persons who become eligible to file an application for a restricted drivers' license under W.S. 31-7-402, or are required to operate only vehicles equipped with an ignition interlock device, on or after July 1, 2009.

Section 5. This act is effective July 1, 2009.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk

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