

HOUSE BILL NO. HB0141

Impaired driving prevention amendments.

Sponsored by: Representative(s) Gingery and Senator(s)
Johnson and Massie

A BILL

for

1 AN ACT relating to driving under the influence; amending
2 and creating definitions; eliminating the requirement that
3 "driving or in actual physical control of a motor vehicle"
4 shall apply only if it occurs upon a public street or
5 highway; amending the time for acceptable results from
6 tests of blood alcohol concentration; creating a crime for
7 failure to submit or complete a chemical test as specified;
8 creating a crime of aggravated driving under the influence;
9 amending penalties; repealing a provision relating to the
10 reduction or dismissal of charges; repealing evidentiary
11 presumptions relating to blood alcohol concentration;
12 clarifying factors relating to penalties for subsequent
13 convictions; requiring the use of an ignition interlock
14 system when specified conditions have occurred; eliminating
15 the voluntary ignition interlock program; and providing for
16 an effective date.

1

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

3

4 **Section 1.** W.S. 31-5-233(a)(ii) by creating a new
5 subparagraph (C), by creating new paragraphs (vii) through
6 (x), (b), (d) through (f), (m)(i) and (ii) and by creating
7 new subsections (n) through (p), 31-6-101(a)(ii) by
8 creating a new subparagraph (C), 31-6-102(a)(i)(intro),
9 (C), (ii) by creating a new subparagraph (E), (d)(i)(A),
10 (B), (e)(i)(A) and (B), 31-6-103(b), 31-6-105(f),
11 31-6-108(b) by creating a new paragraph (iv) and
12 31-7-402(a) and (c)(intro) are amended to read:

13

14 **31-5-233. Driving or having control of vehicle while**
15 **under influence of intoxicating liquor or controlled**
16 **substances; penalties.**

17

18 (a) As used in this section:

19

20 (ii) "Controlled substance" includes:

21

22 (C) Any drug or psychoactive substance, or
23 any combination of these substances, capable of impairing a
24 person's physical or mental faculties.

1

2

(vii) "Alcohol" means any substance or substances containing any form of alcohol;

4

5

(viii) "Chemical test" means a test which analyzes an individual's breath, blood, urine, saliva or other bodily fluids or tissues for evidence of drug or alcohol use;

9

10

(ix) "Chemical test refusal" means a refusal to take or failure to cooperate with or complete the chemical test;

13

14

(x) "Drive" or "driving" means to operate or be in actual physical control of a vehicle.

16

17

(b) No person shall drive ~~or have actual physical control of~~ any vehicle within this state if the person:

19

20

(i) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more; ~~or~~

22

1 (ii) Has an alcohol concentration of eight one-
2 hundredths of one percent (0.08%) or more, as measured
3 within two (2) hours after the time of driving; or

4
5 ~~(ii)~~ (iii) To a degree which renders ~~him~~ the
6 offender incapable of safely driving:

7
8 (A) Is under the influence of alcohol;

9
10 (B) Is under the influence of a controlled
11 substance; or

12
13 (C) Is under the influence of a combination
14 of any of the elements named in subparagraphs (A) and (B)
15 of this paragraph.

16
17 (d) ~~Subsection (c)~~ Subsections (b) and (o) of this
18 section shall not be construed as limiting the introduction
19 of any other competent evidence bearing upon the question
20 of whether the person was under the influence of alcohol,
21 including tests obtained more than ~~three (3)~~ two (2) hours
22 after the alleged violation. The fact that any person
23 charged with a violation of subsection (b) of this section
24 is or has been entitled to use the controlled substance

1 under the laws of this state shall not constitute a defense
2 against any charge under subsection (b) of this section.

3

4 (e) ~~Except as otherwise provided~~ The following
5 penalties and sanctions shall apply:

6

7 (i) A person convicted of violating subsection
8 (b) or (n) of this section, or other law prohibiting
9 driving while under the influence shall be punished as
10 follows:

11

12 (A) For a first conviction under this
13 subsection, the offender shall be guilty of a misdemeanor
14 punishable by imprisonment for not more than six (6)
15 months, a fine of not more than seven hundred fifty dollars
16 (\$750.00), or both. In addition, the offender shall be

17 ordered to or shall receive a substance abuse assessment
18 conducted by a substance abuse provider certified by the
19 department of health pursuant to W.S. 9-2-2701(c) at or
20 before sentencing. The cost of the substance abuse
21 assessment shall be assessed to and paid by the offender.

22 ~~Except as otherwise provided in this subsection or~~
23 ~~subsection (h) or (m) of this section, a person convicted~~
24 ~~of violating this section is guilty of a misdemeanor~~

1 ~~punishable by imprisonment for not more than six (6)~~
2 ~~months, a fine of not more than seven hundred fifty dollars~~
3 ~~(\$750.00), or both.~~

4
5 (B) ~~On~~ For a second offense resulting in a
6 conviction under this subsection within five (5) years
7 after an offense resulting in a conviction for a violation
8 of this section or other law prohibiting driving while
9 under the influence, ~~he~~ the offender shall be ~~punished~~
10 guilty of a misdemeanor punishable by imprisonment for not
11 less than seven (7) days nor more than ~~six (6) months~~ one
12 (1) year, ~~he~~ a fine of not less than two hundred dollars
13 (\$200.00) nor more than seven hundred fifty dollars
14 (\$750.00), or both. In addition, the offender shall be
15 ordered to or shall receive a substance abuse assessment
16 conducted by a substance abuse provider certified by the
17 department of health pursuant to W.S. 9-2-2701(c) before
18 sentencing. ~~and~~ The offender shall not be eligible for
19 probation or suspension of sentence or release on any other
20 basis until he has served at least seven (7) days in jail;
21 ~~In addition, the person may be fined not less than two~~
22 ~~hundred dollars (\$200.00) nor more than seven hundred fifty~~
23 ~~dollars (\$750.00).~~

24

1 (C) ~~On~~For a third offense resulting in a
2 conviction under this subsection within ~~five (5) ten (10)~~
3 years after an offense resulting in a conviction for a
4 violation of this section or other law prohibiting driving
5 while under the influence, ~~he~~the offender shall be
6 ~~punished~~guilty of a misdemeanor punishable by imprisonment
7 for not less than thirty (30) days nor more than ~~six (6)~~
8 ~~months~~one (1) year, shall be ordered to or shall receive a
9 substance abuse assessment pursuant to W.S. 7-13-1302. ~~and~~
10 The offender shall not be eligible for probation or
11 suspension of sentence or release on any other basis until
12 he has served at least thirty (30) days in jail except that
13 the court shall consider the substance abuse assessment and
14 may order the ~~person~~offender to undergo ~~outpatient~~ alcohol
15 or substance abuse treatment during any mandatory period of
16 incarceration. The minimum period of imprisonment for a
17 third violation shall be mandatory, but the court, having
18 considered the substance abuse assessment and the
19 availability of public and private resources, may suspend
20 up to fifteen (15) days of the mandatory period of
21 imprisonment if, subsequent to the date of the current
22 violation, the offender completes an inpatient treatment
23 program approved by the court. In addition, the ~~person~~
24 offender may be fined not less than seven hundred fifty

1 dollars (\$750.00) nor more than three thousand dollars
2 (\$3,000.00). The judge may suspend part or all of the
3 discretionary portion of an imprisonment sentence under
4 this ~~subsection~~subparagraph and place the ~~defendant~~
5 offender on probation on condition that the ~~defendant~~
6 offender pursues and completes an alcohol ~~education~~ or
7 substance abuse treatment program as prescribed by the
8 judge. Notwithstanding any other provision of law, the term
9 of probation imposed by a judge under this ~~section~~
10 subparagraph may exceed the maximum term of imprisonment
11 established for the offense under this ~~subsection~~
12 subparagraph provided the term of probation together with
13 any extension thereof, shall not exceed three (3) years;
14 ~~for up to and including a third conviction.~~

15
16 (D) ~~On~~For a fourth or subsequent offense
17 resulting in a conviction under this subsection within ~~five~~
18 ~~(5) years for a violation of this section or other law~~
19 ~~prohibiting driving while under the influence~~ his lifetime,
20 ~~he~~the offender shall be guilty of a felony and fined not
21 more than ten thousand dollars (\$10,000.00), punished by
22 imprisonment for not more than ~~two (2)~~ five years, or both.

23

1 (ii) Except as otherwise provided in this
2 subsection, a person convicted of violating subsection (o)
3 of this section shall be punished as follows:

4
5 (A) For a first offense under this
6 paragraph, the offender shall be guilty of a misdemeanor
7 punishable by imprisonment for not less than seven (7) days
8 nor more than one (1) year, a fine of not less than two
9 hundred dollars (\$200.00) nor more than seven hundred fifty
10 dollars (\$750.00), or both. In addition, the offender shall
11 be ordered to or shall receive a substance abuse assessment
12 conducted by a substance abuse provider certified by the
13 department of health pursuant to W.S. 9-2-2701(c) before
14 sentencing and shall not be eligible for probation or
15 suspension of sentence or release on any other basis until
16 he has served at least seven (7) days in jail;

17
18 (B) For a second offense resulting in a
19 conviction under this paragraph within ten (10) years after
20 an offense resulting in a conviction for a violation of
21 this section or other law prohibiting driving while under
22 the influence, the offender shall be guilty of a
23 misdemeanor punishable by imprisonment for not less than
24 thirty (30) days nor more than one (1) year. In addition,

1 the offender shall be ordered to or shall receive a
2 substance abuse assessment pursuant to W.S. 7-13-1302 and
3 shall not be eligible for probation or suspension of
4 sentence or release on any other basis until he has served
5 at least thirty (30) days in jail except that the court
6 shall consider the substance abuse assessment and may order
7 the person to undergo alcohol or substance abuse treatment
8 during any mandatory period of incarceration. The minimum
9 period of imprisonment for a second violation shall be
10 mandatory, but the court, having considered the substance
11 abuse assessment and the availability of public and private
12 resources, may suspend up to fifteen (15) days of the
13 mandatory period of imprisonment if, subsequent to the date
14 of the current violation, the offender completes an
15 inpatient treatment program approved by the court. In
16 addition, the offender shall be fined not less than seven
17 hundred fifty dollars (\$750.00) nor more than three
18 thousand dollars (\$3,000.00). The judge may suspend part or
19 all of the discretionary portion of an imprisonment
20 sentence under this subparagraph and place the offender on
21 probation on condition that the offender pursues and
22 completes an alcohol or substance abuse treatment program
23 as prescribed by the judge;

24

1 (C) For a third or subsequent offense
2 resulting in a conviction within his lifetime, the offender
3 shall be guilty of a felony and fined not more than ten
4 thousand dollars (\$10,000.00), punished by imprisonment for
5 not more than five (5) years, or both.

6
7 (iii) For purposes of calculating penalties
8 under this subsection, the time periods shall be based on
9 the dates that the charged offenses occurred, not on the
10 dates of conviction for those offenses.

11
12 (f) Any person convicted under this section or a
13 municipal ordinance which substantially conforms to the
14 provisions of this section shall, in addition to the
15 penalty imposed:7

16
17 (i) Have his driver's license suspended or
18 revoked pursuant to W.S. 31-7-127 or 31-7-128. The court
19 shall forward to the department a copy of the record
20 pertaining to disposition of the arrest or citation;7

21
22 (ii) For a conviction under subsection (n) or
23 (o) of this section, or a second or subsequent conviction

1 under subsection (b), obtain an ignition interlock
2 restricted license as provided in W.S. 31-7-402.

3
4 (m) Any person eighteen (18) years of age or older
5 who has a child passenger in the vehicle during a violation
6 of this section shall be punished upon conviction as
7 follows:

8
9 (i) For a first conviction under this
10 subsection, by imprisonment for not more than one (1) year,
11 a fine of not more than seven hundred fifty dollars
12 (\$750.00), or both. In addition, the offender shall be
13 ordered to or shall receive a substance abuse assessment
14 conducted by a substance abuse provider certified by the
15 department of health pursuant to W.S. 9-2-2701(c) at or
16 before sentencing. The cost of the substance abuse
17 assessment shall be assessed to and paid by the offender;

18
19 (ii) If previously convicted and sentenced under
20 this subsection, or any other law substantially conforming
21 to the provisions of this subsection, by imprisonment for
22 not more than five (5) years, a fine of not more than five
23 thousand dollars (\$5,000.00), or both.

24

1 (n) Any person arrested for an offense under this
2 section shall submit to a chemical test or tests of his
3 blood, breath or urine for the purpose of determining the
4 alcohol concentration or controlled substance content of
5 his blood at the direction of a peace officer in accordance
6 with the procedures specified in W.S. 31-6-105. Refusal to
7 submit to or failure to complete a chemical test or tests
8 required under this section is a criminal offense
9 punishable as provided in paragraph (e)(i) of this section.

10
11 (o) A person is guilty of aggravated driving under
12 the influence punishable as provided in paragraph (e)(ii)
13 of this section if the person drives any motor vehicle
14 within this state if the person has an alcohol
15 concentration of fifteen one-hundredths of one percent
16 (0.15%) or more, as measured within two (2) hours after the
17 time of driving.

18
19 (p) Notwithstanding any other provision of law, the
20 term of probation imposed by a judge under this section may
21 exceed the maximum term of imprisonment established for the
22 offense under this section provided the term of probation
23 together with any extension thereof, shall not exceed three
24 (3) years.

1

2 **31-6-101. Definitions.**

3

4 (a) As used in this act:

5

6 (ii) "Controlled substance" includes:

7

8 (C) Any drug or psychoactive substance, or
9 combination of these substances, capable of impairing a
10 person's physical or mental faculties.

11

12 **31-6-102. Test to determine alcoholic or controlled**
13 **substance content of blood; suspension of license.**

14

15 (a) If arrested for an offense as defined by W.S.
16 31-5-233:

17

18 (i) Any person who drives or is in actual
19 physical control of a motor vehicle ~~upon a public street or~~
20 ~~highway~~ in this state is deemed to have given consent,
21 subject to the provisions of this act, to a chemical test
22 or tests of his blood, breath or urine for the purpose of
23 determining the alcohol concentration or controlled
24 substance content of his blood. The test or tests shall be:

1

2 (C) Administered at the direction of a
3 peace officer who has probable cause to believe the person
4 was driving or in actual physical control of a motor
5 vehicle ~~upon a public street or highway~~ in this state in
6 violation of W.S. 31-5-233(b) or any other law prohibiting
7 driving under the influence as defined by W.S.
8 31-5-233(a)(v). The peace officer who requires a test for
9 alcohol concentration pursuant to this section may direct
10 that the test shall be of blood, breath or urine. However,
11 if the officer directs that the test be of the person's
12 blood or urine, the person may choose whether the test
13 shall be of blood or urine. The person shall not have the
14 option if the peace officer has probable cause to believe
15 there is impairment by a controlled substance which is not
16 subject to testing by a breath test in which case a blood
17 or urine test may be required, as directed by the peace
18 officer.

19

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

22

23 (E) His refusal to submit to or the failure
24 to complete all required chemical tests is a violation of

1 law that may result in the filing of charges under W.S.
2 31-5-233(n).

3

4 (d) If a person under arrest refuses upon the request
5 of a peace officer to submit to a chemical test designated
6 by the agency employing the peace officer as provided in
7 subsection (a) of this section, none shall be given except
8 in cases where serious bodily injury or death has resulted.
9 The peace officer shall submit his signed statement to the
10 department. The statement submitted by the officer shall
11 contain:

12

13 (i) His probable cause to believe the arrested
14 person was driving or in actual physical control of a motor
15 vehicle:

16

17 (A) ~~On a public street or highway~~ In this
18 state;

19

20 (B) In violation of W.S. ~~31-5-233(b)~~
21 31-5-233 or any other law prohibiting driving under the
22 influence as defined by W.S. 31-5-233(a)(v); and

23

1 (e) If a person submits to chemical testing and the
2 test result indicates the person has an alcohol
3 concentration of eight one-hundredths of one percent
4 (0.08%) or more, the peace officer shall submit his signed
5 statement to the department. Based upon the statement the
6 department shall suspend the person's Wyoming driver's
7 license or his privilege to operate a motor vehicle in this
8 state for ninety (90) days. If a criminal conviction
9 results from the same incident on which a suspension under
10 this subsection is based, the suspension under W.S.
11 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall
12 be reduced by ninety (90) days. The statement submitted by
13 the officer shall contain:

14

15 (i) His probable cause to believe the arrested
16 person was driving or in actual physical control of a motor
17 vehicle:

18

19 (A) ~~On a public street or highway~~ In this
20 state;

21

22 (B) In violation of W.S. ~~31-5-233(b)~~
23 31-5-233 or any other law prohibiting driving under the
24 influence as defined by W.S. 31-5-233(a)(v).

1

2

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

4

5 (b) The scope of a hearing for the purposes of this
6 act shall cover the issues of whether a peace officer had
7 probable cause to believe the arrested person had been
8 driving or was in actual physical control of a motor
9 vehicle ~~upon a public street or highway~~ in this state in
10 violation of W.S. ~~31-5-233(b)~~ 31-5-233 or any other law
11 prohibiting driving under the influence as defined by W.S.
12 31-5-233(a)(v), whether the person was placed under arrest,
13 whether he refused to submit to or complete a test upon
14 request of the peace officer or if he submitted to and
15 completed a test whether the test results indicated that
16 the person had an alcohol concentration of eight one-
17 hundredths of one percent (0.08%) or more, and whether,
18 except for the persons described in this act who are
19 incapable of refusing, he had been advised that his refusal
20 to submit to or the failure to complete all required
21 chemical tests is a violation of law that may result in the
22 filing of charges under W.S. 31-5-233(n), and his Wyoming
23 driver's license or privilege to operate a motor vehicle
24 shall be suspended for the period provided by W.S. 31-6-107

1 if he refused to submit to or complete a test and suspended
2 for ninety (90) days and subject him to criminal penalties
3 if he submitted to and completed the test and the results
4 indicate the person is under the influence of alcohol. At
5 the conclusion of the hearing, the hearing examiner shall
6 order that the suspension either be rescinded or sustained.
7 If the person submitted to and completed a chemical test,
8 the hearing examiner has the same authority to modify a
9 license suspension under this act as he does under W.S.
10 31-7-105.

11

12 **31-6-105. Method of performing chemical analysis;**
13 **persons permitted to draw blood; request by arrested person**
14 **for test; information made available; evidence of refusal**
15 **to take test.**

16

17 (f) If a person under arrest refuses to submit to or
18 complete a chemical test under this act, evidence of the
19 refusal or failure to complete the test is admissible in
20 any administrative, civil or criminal action or proceeding
21 arising out of acts alleged to have been committed while
22 the arrested person was driving or in actual physical
23 control of a motor vehicle in violation of W.S. ~~31-5-233(b)~~

1 31-5-233 or any other law prohibiting driving under the
2 influence as defined by W.S. 31-5-233(a)(v).

3

4 **31-6-108. Implied consent requirements for youthful**
5 **drivers.**

6

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

9

10 (iv) His refusal to submit to or the failure to
11 complete all required chemical tests is a violation of law
12 that may result in the filing of charges under W.S.
13 31-5-233(n).

14

15 **31-7-402. Issuance of ignition interlock restricted**
16 **license; eligibility.**

17

18 (a) A person whose driver's license has been
19 suspended pursuant to W.S. ~~31-6-107(a)(i)~~ 31-6-107(a) as a
20 result of a violation related to a refusal to submit to or
21 complete a test to determine the person's blood alcohol
22 concentration, or suspended pursuant to W.S.
23 31-7-128(b)(ii) or revoked pursuant to W.S. 31-7-127(a)(ii)
24 as a result of a violation related to operating a vehicle

1 under the influence of alcohol, ~~or a refusal to comply with~~
2 ~~a request to submit to a test to determine the person's~~
3 ~~blood alcohol concentration, and who has served at least~~
4 ~~forty five (45) days of the suspension period may~~ shall
5 apply to the department for an ignition interlock
6 restricted license for the balance of the suspension period
7 or one (1) year, whichever is greater.

8
9 (c) An ignition interlock restricted license issued
10 pursuant to subsection (a) ~~or (b)~~ of this section shall
11 entitle the licensee to drive upon the highways of this
12 state during the period his previously issued license is
13 otherwise suspended or revoked, subject to the following
14 conditions:

15

16 **Section 2.** W.S. 31-5-233(c) and (j) and 31-7-402(b)
17 are repealed.

18

19 **Section 3.** This act is effective July 1, 2009.

20

21

(END)