

HOUSE BILL NO. HB0038

Driving under the influence amendments.

Sponsored by: Representative(s) Gingery, Hammons and
Illoway and Senator(s) Massie and Sessions

A BILL

for

1 AN ACT relating to driving under the influence; expanding
2 the definition of controlled substances and otherwise
3 amending and creating definitions; amending the time for
4 acceptable results from tests of blood alcohol
5 concentration; creating a crime for failure to submit or
6 complete a chemical test as specified; creating a crime of
7 aggravated driving under the influence; amending penalties;
8 repealing a provision relating to the reduction or
9 dismissal of charges; repealing evidentiary presumptions
10 relating to blood alcohol concentration; clarifying factors
11 relating to penalties for subsequent convictions; and
12 providing for an effective date.

13

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

15

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

10
11 **31-5-233. Driving or having control of vehicle while**
12 **under influence of intoxicating liquor or controlled**
13 **substances; penalties.**

14
15 (a) As used in this section:

16
17 (ii) "Controlled substance" includes:

18
19 (C) Any drug or psychoactive substance, or
20 any combination of these substances, capable of impairing a
21 person's physical or mental faculties.

22
23 (vii) "Alcohol" means any substance or
24 substances containing any form of alcohol;

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(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;

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

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

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

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

(ii) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, as measured within two (2) hours after the time of driving following a lawful arrest resulting from a valid traffic stop; or

1 ~~(ii)~~(iii) To a degree which renders ~~him~~the
2 person incapable of safely driving:

3

4 (A) Is under the influence of alcohol;

5

6 (B) Is under the influence of a controlled
7 substance; or

8

9 (C) Is under the influence of a combination
10 of any of the elements named in subparagraphs (A) and (B)
11 of this paragraph.

12

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

23

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

3

4 (i) A person convicted of violating subsection
5 (b) or (n) of this section shall be punished as follows:

6

7 (A) For a first conviction punishable under
8 this paragraph, the offender shall be guilty of a
9 misdemeanor punishable by imprisonment for not more than
10 six (6) months, a fine of not more than seven hundred fifty
11 dollars (\$750.00), or both. In addition, the offender shall
12 be ordered to or shall receive a substance abuse assessment
13 conducted by a substance abuse provider certified by the
14 department of health pursuant to W.S. 9-2-2701(c) at or
15 before sentencing. The cost of the substance abuse
16 assessment shall be assessed to and paid by the offender.
17 ~~Except as otherwise provided in this subsection or~~
18 ~~subsection (h) or (m) of this section, a person convicted~~
19 ~~of violating this section is guilty of a misdemeanor~~
20 ~~punishable by imprisonment for not more than six (6)~~
21 ~~months, a fine of not more than seven hundred fifty dollars~~
22 ~~(\$750.00), or both.~~

23

1 (B) ~~On~~For a second offense resulting in a
2 conviction punishable under this paragraph within five (5)
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 seven (7) days nor more than ~~six (6)~~
8 ~~months~~ one (1) year, ~~he~~ a fine of not less than two hundred
9 dollars (\$200.00) nor more than seven hundred fifty dollars
10 (\$750.00), or both. In addition, the offender shall be
11 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~~ The offender shall not be eligible for
15 probation or suspension of sentence or release on any other
16 basis until he has served at least seven (7) days in jail;
17 ~~In addition, the person may be fined not less than two~~
18 ~~hundred dollars (\$200.00) nor more than seven hundred fifty~~
19 ~~dollars (\$750.00).~~

20
21 (C) ~~On~~For a third offense resulting in a
22 conviction punishable under this paragraph within ~~five (5)~~
23 ten (10) years after an offense resulting in a conviction
24 for a violation of this section, ~~or other law prohibiting~~

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

1 offender on probation on condition that the defendant
2 offender pursues and completes an alcohol education or
3 substance abuse treatment program as prescribed by the
4 judge. Notwithstanding any other provision of law, the term
5 of probation imposed by a judge under this section may
6 exceed the maximum term of imprisonment established for the
7 offense under this subsection provided the term of
8 probation together with any extension thereof, shall not
9 exceed three (3) years for up to and including a third
10 conviction. court;

11
12 (D) On ~~For~~ a fourth or subsequent offense
13 resulting in a conviction punishable under this paragraph
14 within five (5) fifteen (15) years, ~~for a violation of this~~
15 ~~section or other law prohibiting driving while under the~~
16 influence, he after an offense resulting in a conviction
17 for a violation of this section, the offender shall be
18 guilty of a felony and fined not more than ten thousand
19 dollars (\$10,000.00), punished by imprisonment for not more
20 than ~~two (2)~~ five (5) years, or both;

21
22 (E) For purposes of this paragraph, a prior
23 conviction of an offense under subsection (b), (h), (n) or
24 (o) of this section, or any offense from another

1 jurisdiction containing the same or similar elements, may
2 be used to determine prior convictions.

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4 (ii) Except as otherwise provided in this
5 subsection, a person convicted of violating subsection (o)
6 of this section shall be punished as follows:

7

8 (A) For a first offense punishable under
9 this paragraph, the offender shall be guilty of a
10 misdemeanor punishable by imprisonment for not less than
11 seven (7) days nor more than one (1) year, a fine of not
12 less than two hundred dollars (\$200.00) nor more than seven
13 hundred fifty dollars (\$750.00), or both. In addition, the
14 offender shall be ordered to or shall receive a substance
15 abuse assessment conducted by a substance abuse provider
16 certified by the department of health pursuant to W.S.
17 9-2-2701(c) before sentencing and shall not be eligible for
18 probation or suspension of sentence or release on any other
19 basis until he has served at least seven (7) days in jail;

20

21 (B) For a second offense resulting in a
22 conviction punishable under this paragraph within ten (10)
23 years, the offender shall be guilty of a misdemeanor
24 punishable by imprisonment for not less than thirty (30)

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

24

1 (C) For a third or subsequent offense
2 resulting in a conviction punishable under this paragraph
3 within fifteen (15) years, the offender shall be guilty of
4 a felony and fined not more than ten thousand dollars
5 (\$10,000.00), punished by imprisonment for not more than
6 five (5) years, or both;

7
8 (D) For purposes of this paragraph, a prior
9 conviction of an offense under subsection (b), (h), (n) or
10 (o) of this section, or any offense from another
11 jurisdiction containing the same or similar elements, may
12 be used to determine prior convictions.

13
14 (iii) For purposes of calculating penalties
15 under this subsection, the time periods shall be based on
16 the dates that the charged offenses occurred, not on the
17 dates of conviction for those offenses.

18
19 (f) Any person convicted under this section or other
20 law prohibiting driving while under the influence as
21 defined in W.S. 31-5-233(a)(v) shall, in addition to the
22 penalty imposed:

23

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

8
9 (iii) For a second conviction of any offense
10 under subsection (b), (h), (n) or (o) of this section,
11 operate only vehicles equipped with an ignition interlock
12 device, pursuant to W.S. 31-7-401 through 31-7-404, for a
13 period of one (1) year from the date of conviction;

14
15 (iv) For a third conviction of any offense under
16 subsection (b), (h), (n) or (o) of this section, operate
17 only vehicles equipped with an ignition interlock device,
18 pursuant to W.S. 31-7-401 through 31-7-404, for a period of
19 two (2) years from the date of conviction;

20
21 (v) For a fourth or subsequent conviction of any
22 offense under subsection (b), (h), (n) or (o) of this
23 section, operate only vehicles equipped with an ignition
24 interlock device, pursuant to W.S. 31-7-401 through

1 31-7-404, for the remainder of the offender's life, except
2 five (5) years from the date of conviction and every five
3 (5) years thereafter, the offender may apply to the court
4 for removal of the ignition interlock device required by
5 this paragraph. The court may, for good cause shown,
6 remove the ignition interlock device requirement if the
7 offender has not been subsequently convicted of driving a
8 motor vehicle in violation of this section or other law
9 prohibiting driving while under the influence as defined in
10 W.S. 31-5-233(a)(v).

11

12 (m) Any person eighteen (18) years of age or older
13 who has a child passenger in the vehicle during a violation
14 of this section shall be punished upon conviction as
15 follows:

16

17 (i) For a first conviction under this
18 subsection, by imprisonment for not more than one (1) year,
19 a fine of not more than seven hundred fifty dollars
20 (\$750.00), or both. In addition, the offender shall be
21 ordered to or shall receive a substance abuse assessment
22 conducted by a substance abuse provider certified by the
23 department of health pursuant to W.S. 9-2-2701(c) at or

1 before sentencing. The cost of the substance abuse
2 assessment shall be assessed to and paid by the offender;

3
4 (ii) If previously convicted and sentenced under
5 this subsection, or any other law substantially conforming
6 to the provisions of this subsection, by imprisonment for
7 not more than five (5) years, a fine of not more than five
8 thousand dollars (\$5,000.00), or both.

9
10 (n) Any person arrested for an offense under this
11 section shall submit to a chemical test or tests of his
12 blood, breath or urine for the purpose of determining the
13 alcohol concentration or controlled substance content of
14 his blood at the direction of a peace officer in accordance
15 with the procedures specified in W.S. 31-6-105. Refusal to
16 submit to or failure to complete a chemical test or tests
17 required under this section is a criminal offense
18 punishable as provided in paragraph (e)(i) of this section.

19
20 (o) A person is guilty of aggravated driving under
21 the influence punishable as provided in paragraph (e)(ii)
22 of this section if the person drives any motor vehicle
23 within this state and the person has an alcohol
24 concentration of fifteen one-hundredths of one percent

1 (0.15%) or more, as measured within two (2) hours after the
2 time of driving following a lawful arrest resulting from a
3 valid traffic stop.

4
5 (p) Notwithstanding any other provision of law, the
6 term of probation imposed by a court under this section may
7 exceed the maximum term of imprisonment established for the
8 offense under this section provided the term of probation
9 together with any extension thereof, shall not exceed three
10 (3) years.

11
12 **31-6-101. Definitions.**

13
14 (a) As used in this act:

15
16 (ii) "Controlled substance" includes:

17
18 (C) Any drug or psychoactive substance, or
19 combination of these substances, capable of impairing a
20 person's physical or mental faculties.

21
22 **31-6-102. Test to determine alcoholic or controlled**
23 **substance content of blood; suspension of license.**

1 (a) If arrested for an offense as defined by W.S.
2 31-5-233:

3

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

6

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

11

12 (d) If a person under arrest refuses upon the request
13 of a peace officer to submit to a chemical test designated
14 by the agency employing the peace officer as provided in
15 subsection (a) of this section, none shall be given except
16 in cases where serious bodily injury or death has resulted.
17 The peace officer shall submit his signed statement to the
18 department. The statement submitted by the officer shall
19 contain:

20

21 (i) His probable cause to believe the arrested
22 person was driving or in actual physical control of a motor
23 vehicle:

24

1 (B) In violation of W.S. ~~31-5-233(b)~~
2 31-5-233 or any other law prohibiting driving under the
3 influence as defined by W.S. 31-5-233(a)(v); and
4

5 (e) If a person submits to chemical testing and the
6 test result indicates the person has an alcohol
7 concentration of eight one-hundredths of one percent
8 (0.08%) or more, the peace officer shall submit his signed
9 statement to the department. Based upon the statement the
10 department shall suspend the person's Wyoming driver's
11 license or his privilege to operate a motor vehicle in this
12 state for ninety (90) days. If a criminal conviction
13 results from the same incident on which a suspension under
14 this subsection is based, the suspension under W.S.
15 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall
16 be reduced by ninety (90) days. The statement submitted by
17 the officer shall contain:
18

19 (i) His probable cause to believe the arrested
20 person was driving or in actual physical control of a motor
21 vehicle:
22

1 (B) In violation of W.S. ~~31-5-233(b)~~
2 31-5-233 or any other law prohibiting driving under the
3 influence as defined by W.S. 31-5-233(a)(v).

4

5 **31-6-103. Application for hearing; stay of suspension**
6 **of license; scope of hearing.**

7

8 (b) The scope of a hearing for the purposes of this
9 act shall cover the issues of whether a peace officer had
10 probable cause to believe the arrested person had been
11 driving or was in actual physical control of a motor
12 vehicle upon a public street or highway in this state in
13 violation of W.S. ~~31-5-233(b)~~ 31-5-233 or any other law
14 prohibiting driving under the influence as defined by W.S.
15 31-5-233(a)(v), whether the person was placed under arrest,
16 whether he refused to submit to or complete a test upon
17 request of the peace officer or if he submitted to and
18 completed a test whether the test results indicated that
19 the person had an alcohol concentration of eight one-
20 hundredths of one percent (0.08%) or more, and whether,
21 except for the persons described in this act who are
22 incapable of refusing, he had been given the advisements
23 required by W.S. 31-6-102(a)(ii). At the conclusion of the
24 hearing, the hearing examiner shall order that the

1 suspension either be rescinded or sustained. If the person
2 submitted to and completed a chemical test, the hearing
3 examiner has the same authority to modify a license
4 suspension under this act as he does under W.S. 31-7-105.

5

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

10

11 (f) If a person under arrest refuses to submit to or
12 complete a chemical test under this act, evidence of the
13 refusal or failure to complete the test is admissible in
14 any administrative, civil or criminal action or proceeding
15 arising out of acts alleged to have been committed while
16 the arrested person was driving or in actual physical
17 control of a motor vehicle in violation of W.S. ~~31-5-233(b)~~
18 31-5-233 or any other law prohibiting driving under the
19 influence as defined by W.S. 31-5-233(a)(v).

20

21 **31-6-108. Implied consent requirements for youthful**
22 **drivers.**

23

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

3

4 (iv) His refusal to submit to or the failure to
5 complete all required chemical tests is a violation of law
6 that may result in the filing of charges under W.S.
7 31-5-233(n).

8

9 **Section 2.** W.S. 31-5-233(c) and (j) is repealed.

10

11 **Section 3.** This act is effective July 1, 2010.

12

13

(END)