

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 11, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2010 BUDGET SESSION

AN ACT relating to driving under the influence; amending the time in which a driver may not exceed the maximum blood alcohol level; making corresponding amendments for youthful driver's with detectable alcohol concentrations; amending the time in which chemical tests may be relevant; expanding the period for enhanced penalties for prior violations; expanding the period for license suspension and revocation as specified; adding definitions; and providing for an effective date.

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

Section 1. W.S. 31-5-233(a)(ii) by creating a new subparagraph (C), by creating new paragraphs (vii) and (viii), (b)(i), by creating a new paragraph (ii), by renumbering (ii) as (iii), (d) and (e), 31-5-234(b), 31-6-101(a)(ii) by creating a new subparagraph (C), 31-7-127(a)(ii)(intro) and 31-7-128(b)(ii)(intro) are amended to read:

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

(a) As used in this section:

(ii) "Controlled substance" includes:

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

(vii) "Alcohol" means any substance or 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.

(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 or being in actual physical control of the vehicle following a lawful arrest resulting from a valid traffic stop; or

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

(A) Is under the influence of alcohol;

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

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

(d) Subsection (c) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcohol, including tests obtained more than ~~three (3)~~ two (2) hours after the alleged violation. The fact that any person charged with a violation of subsection (b) of this section is or has been

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entitled to use the controlled substance under the laws of this state shall not constitute a defense against any charge under subsection (b) of this section.

(e) Except as otherwise provided, a person convicted of violating this section shall be ordered to or shall receive a substance abuse assessment conducted by a substance abuse provider certified by the department of health pursuant to W.S. 9-2-2701(c) at or before sentencing. The cost of the substance abuse assessment shall be assessed to and paid by the offender. Except as otherwise provided in this subsection or subsection (h) or (m) of this section, a person convicted of violating this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both. On a second offense resulting in a conviction within ~~five (5)~~ ten (10) years after a conviction for a violation of this section or other law prohibiting driving while under the influence, he shall be punished by imprisonment for not less than seven (7) days nor more than six (6) months, he shall be ordered to or shall receive a substance abuse assessment conducted by a substance abuse provider certified by the department of health pursuant to W.S. 9-2-2701(c) before sentencing and shall not be eligible for probation or suspension of sentence or release on any other basis until he has served at least seven (7) days in jail. In addition, the person may be fined not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00). On a third offense resulting in a conviction within ~~five (5)~~ ten (10) years after a conviction for a violation of this section or other law prohibiting driving while under the influence, he shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months, shall receive a substance abuse assessment pursuant to W.S. 7-13-1302 and shall not

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be eligible for probation or suspension of sentence or release on any other basis until he has served at least thirty (30) days in jail except that the court shall consider the substance abuse assessment and may order the person to undergo outpatient alcohol or substance abuse treatment during any mandatory period of incarceration. The minimum period of imprisonment for a third violation shall be mandatory, but the court, having considered the substance abuse assessment and the availability of public and private resources, may suspend up to fifteen (15) days of the mandatory period of imprisonment if, subsequent to the date of the current violation, the offender completes an inpatient treatment program approved by the court. In addition, the person may be fined not less than seven hundred fifty dollars (\$750.00) nor more than three thousand dollars (\$3,000.00). The judge may suspend part or all of the discretionary portion of an imprisonment sentence under this subsection and place the defendant on probation on condition that the defendant pursues and completes an alcohol education or treatment program as prescribed by the judge. Notwithstanding any other provision of law, the term of probation imposed by a judge under this section may exceed the maximum term of imprisonment established for the offense under this subsection provided the term of probation together with any extension thereof, shall not exceed three (3) years for up to and including a third conviction. On a fourth offense resulting in a conviction or subsequent conviction within ~~five (5) ten (10)~~ years for a violation of this section or other law prohibiting driving while under the influence, he shall be guilty of a felony and fined not more than ten thousand dollars (\$10,000.00), punished by imprisonment for not more than two (2) years, or both.

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

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(b) A person younger than twenty-one (21) years of age shall not operate or be in actual physical control of a vehicle in this state with an alcohol concentration of two one-hundredths of one percent (0.02%) or more nor operate or be in actual physical control of a vehicle in this state with an alcohol concentration of two one-hundredths of one percent (0.02%) or more as measured within two (2) hours after the time of driving or being in actual physical control following a lawful arrest resulting from a valid traffic stop.

31-6-101. Definitions.

(a) As used in this act:

(ii) "Controlled substance" includes:

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

31-7-127. Mandatory revocation of license for certain violations.

(a) The division shall revoke the license or nonresident operating privilege of any person, upon receipt of a record of conviction of the person of any of the following violations:

(ii) A conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, if the person has been previously convicted two (2) or more times under W.S. 31-5-233 or other law prohibiting driving while under the influence within the ~~five (5)~~ ten (10) year period preceding:

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31-7-128. Mandatory suspension of license or nonresident operating privilege for certain violations; suspension of registration.

(b) Upon receiving a record of a driver's conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, the division shall suspend the license or nonresident operating privilege for:

(ii) One (1) year, if the person has been previously convicted once under W.S. 31-5-233 or other law prohibiting driving while under the influence within the ~~five (5)~~ ten (10) year period preceding:

Section 2. This act is effective July 1, 2010.

(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