

HOUSE BILL NO. HB0258

DUI-testing.

Sponsored by: Representative(s) Esquibel, K., Gingery,
Slater and White and Senator(s) Mockler

A BILL

for

1 AN ACT relating to motor vehicles; amending testing
2 requirements for driving while under the influence of
3 alcohol as specified; providing an affirmative defense in
4 specified circumstances; specifying requirements for the
5 burden of proof in those circumstances; and providing for
6 an effective date.

7

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

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10 **Section 1.** W.S. 31-5-233(b)(i), by creating a new
11 paragraph (ii), by renumbering (ii) as (iii), (c)(intro)
12 and (d) is 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.**

1

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

4

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

7

8 (ii) Has an alcohol concentration of eight one-
9 hundredths of one percent (0.08%) or more as measured
10 within two (2) hours of the time of operation or actual
11 physical control of a motor vehicle; or

12

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

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16 (A) Is under the influence of alcohol;

17

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

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

24

1 (c) Upon the trial of any criminal action or
2 proceeding arising out of acts alleged to have been
3 committed by any person while driving or being in actual
4 physical control of a vehicle while under the influence of
5 alcohol, the ~~amount of alcohol in the~~ person's ~~blood~~
6 alcohol concentration at the time alleged as shown by
7 chemical analysis of the person's blood, urine, breath, or
8 other bodily substance shall give rise to the following
9 presumptions:

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11 (d) Subsection (c) of this section shall not be
12 construed as limiting the introduction of any other
13 competent evidence bearing upon the question of whether the
14 person was under the influence of alcohol, including tests
15 obtained more than ~~three (3)~~ two (2) hours after the
16 alleged violation. The fact that any person charged with a
17 violation of subsection (b) of this section is or has been
18 entitled to use the controlled substance under the laws of
19 this state shall not constitute a defense against any
20 charge under subsection (b) of this section. It is an
21 affirmative defense to a violation of paragraph (b)(i) or
22 (iii) of this section that the defendant consumed a
23 sufficient quantity of alcohol after the time of actual
24 operation or physical control of a motor vehicle and before

1 the administration of the evidentiary test to cause the
2 defendant's alcohol concentration to exceed eight one-
3 hundredths of one percent (0.08%) but evidence of the
4 consumption may not be admitted unless notice is given to
5 the prosecution pursuant to Rule 12.1 of the Wyoming Rules
6 of Criminal Procedure.

7

8 **Section 2.** This act is effective July 1, 2007.

9

10 (END)