

HOUSE BILL NO. HB0183

Driving under the influence amendments.

Sponsored by: Representative(s) Gingery

A BILL

for

1 AN ACT relating to driving under the influence; creating a
2 crime for failure to submit or complete a chemical test as
3 specified; creating a crime of aggravated driving under the
4 influence; amending penalties; and providing for an
5 effective date.

6

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

8

9 **Section 1.** W.S. 31-5-233(d), (e), (f)(ii), by
10 creating a new paragraph (vi) and by creating new
11 subsections (n) and (o), 31-5-234(h), 31-6-102(a)(i)(C),
12 (ii)(A), (d)(i)(B) and (e)(i)(B), 31-6-103(b), 31-6-105(f)
13 and 31-6-108(b)(i) are amended to read:

14

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

1

2 (d) Subsection (c) of this section shall not be
3 construed as limiting the introduction of any other
4 competent evidence bearing upon the question of whether the
5 person was under the influence of alcohol, including tests
6 obtained more than two (2) hours after the alleged
7 violation. The fact that any person charged with a
8 violation of subsection (b), (n) or (o) of this section is
9 or has been entitled to use the controlled substance under
10 the laws of this state shall not constitute a defense
11 against any charge under subsection (b), (n) or (o) of this
12 section.

13

14 (e) Except as otherwise provided:7

15

16 (i) A person convicted of violating this section
17 shall be ordered to or shall receive a substance abuse
18 assessment conducted by a substance abuse provider
19 certified by the department of health pursuant to W.S.
20 9-2-2701(c) at or before sentencing. The cost of the
21 substance abuse assessment shall be assessed to and paid by
22 the offender. Except as otherwise provided in this
23 subsection or subsection (h) or (m) of this section, a
24 person convicted of violating this section is guilty of a

1 misdemeanor punishable by imprisonment for not more than
2 six (6) months, a fine of not more than seven hundred fifty
3 dollars (\$750.00), or both. On a second offense resulting
4 in a conviction within ten (10) years after a conviction
5 for a violation of this section or other law prohibiting
6 driving while under the influence, he shall be punished by
7 imprisonment for not less than seven (7) days nor more than
8 six (6) months, he shall be ordered to or shall receive a
9 substance abuse assessment conducted by a substance abuse
10 provider certified by the department of health pursuant to
11 W.S. 9-2-2701(c) before sentencing and shall not be
12 eligible for probation or suspension of sentence or release
13 on any other basis until he has served at least seven (7)
14 days in jail. In addition, the person may be fined not
15 less than two hundred dollars (\$200.00) nor more than seven
16 hundred fifty dollars (\$750.00). On a third offense
17 resulting in a conviction within ten (10) years after a
18 conviction for a violation of this section or other law
19 prohibiting driving while under the influence, he shall be
20 punished by imprisonment for not less than thirty (30) days
21 nor more than six (6) months, shall receive a substance
22 abuse assessment pursuant to W.S. 7-13-1302 and shall not
23 be eligible for probation or suspension of sentence or
24 release on any other basis until he has served at least

1 thirty (30) days in jail except that the court shall
2 consider the substance abuse assessment and may order the
3 person to undergo outpatient alcohol or substance abuse
4 treatment during any mandatory period of incarceration. The
5 minimum period of imprisonment for a third violation shall
6 be mandatory, but the court, having considered the
7 substance abuse assessment and the availability of public
8 and private resources, may suspend up to fifteen (15) days
9 of the mandatory period of imprisonment if, subsequent to
10 the date of the current violation, the offender completes
11 an inpatient treatment program approved by the court. In
12 addition, the person may be fined not less than seven
13 hundred fifty dollars (\$750.00) nor more than three
14 thousand dollars (\$3,000.00). The judge may suspend part or
15 all of the discretionary portion of an imprisonment
16 sentence under this subsection and place the defendant on
17 probation on condition that the defendant pursues and
18 completes an alcohol education or treatment program as
19 prescribed by the judge. Notwithstanding any other
20 provision of law, the term of probation imposed by a judge
21 under this section may exceed the maximum term of
22 imprisonment established for the offense under this
23 subsection provided the term of probation together with any
24 extension thereof, shall not exceed three (3) years for up

1 to and including a third conviction. On a fourth offense
2 resulting in a conviction or subsequent conviction within
3 ten (10) years for a violation of this section or other law
4 prohibiting driving while under the influence, he shall be
5 guilty of a felony and fined not more than ten thousand
6 dollars (\$10,000.00), punished by imprisonment for not more
7 than two (2) years, or both. For purposes of this
8 paragraph, a prior conviction of an offense under
9 subsection (b), (n) or (o) of this section, or any offense
10 from another jurisdiction containing the same or similar
11 elements, may be used to determine prior convictions; and

12
13 (ii) Except as otherwise provided in this
14 subsection, a person convicted of violating subsection (o)
15 of this section shall be punished as follows:

16
17 (A) For a first offense punishable under
18 this paragraph, the offender shall be guilty of a
19 misdemeanor punishable by imprisonment for not less than
20 seven (7) days nor more than one (1) year, a fine of not
21 less than two hundred dollars (\$200.00) nor more than seven
22 hundred fifty dollars (\$750.00), or both. In addition, the
23 offender shall be ordered to or shall receive a substance
24 abuse assessment conducted by a substance abuse provider

1 certified by the department of health pursuant to W.S.
2 9-2-2701(c) before sentencing and shall not be eligible for
3 probation or suspension of sentence or release on any other
4 basis until he has served at least seven (7) days in jail;

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

1 program approved by the court. In addition, the offender
2 shall be fined not less than seven hundred fifty dollars
3 (\$750.00) nor more than three thousand dollars (\$3,000.00).
4 The court may suspend part or all of the discretionary
5 portion of an imprisonment sentence under this subparagraph
6 and place the offender on probation on condition that the
7 offender pursues and completes an alcohol or substance
8 abuse treatment program as prescribed by the court;

9
10 (C) For a third or subsequent offense
11 resulting in a conviction punishable under this paragraph
12 within fifteen (15) years, the offender shall be guilty of
13 a felony and fined not more than ten thousand dollars
14 (\$10,000.00), punished by imprisonment for not more than
15 five (5) years, or both;

16
17 (D) For purposes of this paragraph, a prior
18 conviction of an offense under subsection (b), (n) or (o)
19 of this section, or any offense from another jurisdiction
20 containing the same or similar elements, may be used to
21 determine prior convictions.

22
23 (iii) For purposes of calculating penalties under
24 this subsection, the time periods shall be based on the

1 dates that the charged offenses occurred, not on the dates
2 of conviction for those offenses.

3

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

8

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

16

17 (vi) For purposes of this subsection, a prior
18 conviction of an offense under subsection (b), (n) or (o)
19 of this section, or any offense from another jurisdiction
20 containing the same or similar elements, may be used to
21 determine prior convictions.

22

23 (n) Any person arrested for an offense under this
24 section shall submit to a chemical test or tests of his

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

8
9 (o) A person is guilty of aggravated driving under the
10 influence punishable as provided in paragraph (e)(ii) of
11 this section if the person drives any motor vehicle within
12 this state and the person has an alcohol concentration of
13 fifteen one-hundredths of one percent (0.15%) or more, as
14 measured within two (2) hours after the time of driving
15 following a lawful arrest resulting from a valid traffic
16 stop.

17
18 **31-5-234. Unlawful operation of vehicle by youthful**
19 **driver with detectable alcohol concentration; penalty.**

20
21 (h) Any person arrested for an offense under this
22 section shall submit to a chemical test or tests of his
23 blood, breath or urine for the purpose of determining the
24 alcohol concentration or controlled substance content of

1 his blood at the direction of a peace officer. Chemical
2 analysis of a person's blood, breath or urine to determine
3 alcohol concentration or controlled substance content shall
4 be performed in accordance with W.S. 31-6-105(a). Refusal
5 to submit to or failure to complete a chemical test or
6 tests required under this subsection is a criminal offense
7 punishable as provided in paragraph (e) of this section.

8

9 **31-6-102. Test to determine alcoholic or controlled**
10 **substance content of blood; suspension of license.**

11

12 (a) If arrested for an offense as defined by W.S.
13 31-5-233:

14

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

22

23 (C) Administered at the direction of a
24 peace officer who has probable cause to believe the person

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

16

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

19

20 (A) His failure to submit to or complete
21 all required chemical tests requested by the peace officer
22 is a violation of law that may result in the filing of
23 charges under W.S. 31-5-233(n), shall result in the
24 suspension of his Wyoming driver's license or his privilege

1 to operate a motor vehicle for a period of six (6) months
2 for a first offense or eighteen (18) months for a second or
3 subsequent offense and he may be required to drive only
4 vehicles equipped with an ignition interlock device as
5 provided by W.S. 31-6-107;

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

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

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

22

23 **31-6-103. Application for hearing; stay of suspension**
24 **of license; scope of hearing.**

1

2 (b) The scope of a hearing for the purposes of this
3 act shall cover the issues of whether a peace officer had
4 probable cause to believe the arrested person had been
5 driving or was in actual physical control of a motor
6 vehicle upon a public street or highway in this state in
7 violation of W.S. ~~31-5-233(b)~~ 31-5-233 or any other law
8 prohibiting driving under the influence as defined by W.S.
9 31-5-233(a)(v), whether the person was placed under arrest,
10 whether he refused to submit to or complete a test upon
11 request of the peace officer or if he submitted to or
12 completed a test whether the test results indicated that
13 the person had an alcohol concentration of eight one-
14 hundredths of one percent (0.08%) or more, and whether,
15 except for the persons described in this act who are
16 incapable of refusing, he had been given the advisements
17 required by W.S. 31-6-102(a)(ii). At the conclusion of the
18 hearing, the hearing examiner shall order that the
19 suspension either be rescinded or sustained. If the person
20 submitted to or completed a chemical test, the hearing
21 examiner has the same authority to modify a license
22 suspension under this act as he does under W.S. 31-7-105.

23

1 **31-6-105. Method of performing chemical analysis;**
2 **persons permitted to draw blood; request by arrested person**
3 **for test; information made available; evidence of refusal**
4 **to take test.**

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

15
16 **31-6-108. Implied consent requirements for youthful**
17 **drivers.**

18
19 (b) For tests required under this section, the person
20 shall be advised that:

21
22 (i) His failure to submit to or complete all
23 required chemical tests is a violation of law that may
24 result in the filing of charges under W.S. 31-5-233(n),

1 shall result in the suspension or denial of his Wyoming
2 driver's license or his privilege to operate a motor
3 vehicle for a period of ninety (90) days without the right
4 to apply for limited driving privileges and he may be
5 required to drive only vehicles equipped with an ignition
6 interlock device;

7

8 **Section 2.** This act is effective July 1, 2011.

9

10

(END)