

HOUSE BILL NO. HB0169

DUI amendments.

Sponsored by: Representative(s) Meuli, McMurtrey and
Warren and Senator(s) Boggs and Massie

A BILL

for

1 AN ACT relating to driving or operating motor vehicles
2 while under the influence of alcoholic liquor or controlled
3 substances; modifying the scope of DUI as specified;
4 providing for a defense under specified circumstances;
5 conforming related provisions; and providing for an
6 effective date.

7

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

9

10 **Section 1.** W.S. 31-5-233(c) (intro), (d) and by
11 creating a new subsection (m), 31-6-102(a) (i) (C), (d) (i) (B)
12 and (e) (i) (B), 31-6-103(b), 31-6-105(f) and 31-7-134(d) are
13 amended to read:

14

1 **31-5-233. Driving or having control of vehicle while**
2 **under influence of intoxicating liquor or controlled**
3 **substances; penalties.**

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

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

1 is an affirmative defense to an arrest for an offense under
2 subsection (m) of this section that the defendant consumed
3 a sufficient quantity of alcohol after the time of actual
4 operation or physical control of a motor vehicle and before
5 the administration of the evidentiary test to cause the
6 defendant's alcohol concentration to exceed eight one-
7 hundredths of one percent (0.08%) if notice of the evidence
8 is given to the prosecution pursuant to rule 12.1 of the
9 Wyoming Rules of Criminal Procedure.

10
11 (m) A person is in violation of subsection (b) of
12 this section if that person has an alcohol concentration of
13 eight one-hundredths of one percent (0.08%) or more as
14 measured within three (3) hours of the time of operation or
15 actual physical control of the vehicle.

16
17 **31-6-102. Test to determine alcoholic or controlled**
18 **substance content of blood; suspension of license.**

19
20 (a) If arrested for an offense as defined by W.S.
21 31-5-233:

22
23 (i) Any person who drives or is in actual
24 physical control of a motor vehicle upon a public street or

1 highway in this state is deemed to have given consent,
2 subject to the provisions of this act, to a chemical test
3 or tests of his blood, breath or urine for the purpose of
4 determining the alcohol concentration or controlled
5 substance content of his blood. The test or tests shall be:

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

23

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

9
10 (i) His probable cause to believe the arrested
11 person was driving or in actual physical control of a motor
12 vehicle:

13
14 (B) In violation of W.S. 31-5-233(b) or (m)
15 or any other law prohibiting driving under the influence as
16 defined by W.S. 31-5-233(a)(v); and

17
18 (e) If a person submits to chemical testing and the
19 test result indicates the person has an alcohol
20 concentration of eight one-hundredths of one percent
21 (0.08%) or more, the peace officer shall submit his signed
22 statement to the department. Based upon the statement the
23 department shall suspend the person's Wyoming driver's
24 license or his privilege to operate a motor vehicle in this

1 state for ninety (90) days. If a criminal conviction
2 results from the same incident on which a suspension under
3 this subsection is based, the suspension under W.S.
4 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall
5 be reduced by ninety (90) days. The statement submitted by
6 the officer shall contain:

7

8 (i) His probable cause to believe the arrested
9 person was driving or in actual physical control of a motor
10 vehicle:

11

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

15

16 **31-6-103. Application for hearing; stay of suspension**
17 **of license; scope of hearing.**

18

19 (b) The scope of a hearing for the purposes of this
20 act shall cover the issues of whether a peace officer had
21 probable cause to believe the arrested person had been
22 driving or was in actual physical control of a motor
23 vehicle upon a public street or highway in this state in
24 violation of W.S. 31-5-233(b) or (m) or any other law

1 prohibiting driving under the influence as defined by W.S.
2 31-5-233(a)(v), whether the person was placed under arrest,
3 whether he refused to submit to a test upon request of the
4 peace officer or if he submitted to a test whether the test
5 results indicated that the person had an alcohol
6 concentration of eight one-hundredths of one percent
7 (0.08%) or more, and whether, except for the persons
8 described in this act who are incapable of refusing, he had
9 been advised that his Wyoming driver's license or privilege
10 to operate a motor vehicle shall be suspended for the
11 period provided by W.S. 31-6-107 if he refused to submit to
12 a test and suspended for ninety (90) days and subject him
13 to criminal penalties if he submitted to the test and the
14 results indicate the person is under the influence of
15 alcohol. At the conclusion of the hearing, the hearing
16 examiner shall order that the suspension either be
17 rescinded or sustained. If the person submitted to a
18 chemical test, the hearing examiner has the same authority
19 to modify a license suspension under this act as he does
20 under W.S. 31-7-105.

21

22 **31-6-105. Method of performing chemical analysis;**
23 **persons permitted to draw blood; request by arrested person**

1 **for test; information made available; evidence of refusal**
2 **to take test.**

3
4 (f) If a person under arrest refuses to submit to a
5 chemical test under this act, evidence of the refusal is
6 admissible in any administrative, civil or criminal action
7 or proceeding arising out of acts alleged to have been
8 committed while the arrested person was driving or in
9 actual physical control of a motor vehicle in violation of
10 W.S. 31-5-233(b) or (m) or any other law prohibiting
11 driving under the influence as defined by W.S.
12 31-5-233(a) (v) .

13

14 **31-7-134. Driving while license cancelled, suspended**
15 **or revoked.**

16

17 (d) Notwithstanding any other provision of law, any
18 person under the age of twenty-one (21) years convicted of
19 driving or being in actual physical control of a vehicle in
20 this state with an alcohol concentration of between two
21 one-hundredths of one percent (0.02%) and the amount
22 specified in W.S. 31-5-233(b) (i) or (m) shall not be
23 punished by imprisonment of at least seven (7) days in jail

1 as otherwise provided by this section, but shall have his
2 license administratively suspended for thirty (30) days.

3

4 **Section 2.** This act is effective July 1, 2003.

5

6

(END)