

HOUSE BILL NO. HB0058

Driving under the influence-blood alcohol content.

Sponsored by: Representative(s) Warren, Iekel, Johnson,
W., McOmie and Watt and Senator(s) Erb,
Geis, Massie and Roberts

A BILL

for

1 AN ACT relating to alcohol related offenses; reducing the
2 blood-alcohol level for offenses of driving or having
3 control of a vehicle while under the influence of
4 intoxicating liquor and operating or being in control of
5 watercraft while under the influence of intoxicating
6 liquor; amending presumptions accordingly; amending
7 obsolete reference; and providing for an effective date.

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

10

11 **Section 1.** W.S. 31-5-233(b) (i) and (c) (ii),
12 31-6-102(e) (intro) and (iii), 31-6-103(b) and
13 41-13-206(c) (ii), (iii), (d) (ii) and (e) are amended to
14 read:

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

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

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8 (i) Has an alcohol concentration of ~~ten one~~
9 ~~hundredths of one percent (0.10%)~~ eight one-hundredths of
10 one percent (0.08%) or more; or

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12 (c) Upon the trial of any criminal action or
13 proceeding arising out of acts alleged to have been
14 committed by any person while driving or being in actual
15 physical control of a vehicle while under the influence of
16 alcohol, the amount of alcohol in the person's blood at the
17 time alleged as shown by chemical analysis of the person's
18 blood, urine, breath, or other bodily substance shall give
19 rise to the following presumptions:

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21 (ii) If there was at that time an alcohol
22 concentration of more than five one-hundredths of one
23 percent (0.05%) and less than ~~ten one-hundredths of one~~
24 ~~percent (0.10%)~~ eight one-hundredths of one percent

1 (0.08%), that fact shall not give rise to any presumption
2 that the person was or was not under the influence of
3 alcohol, but it may be considered with other competent
4 evidence in determining whether the person was under the
5 influence of alcohol to a degree which renders him
6 incapable of safely driving a motor vehicle.

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8 **31-6-102. Test to determine alcoholic or controlled**
9 **substance content of blood; suspension of license.**

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11 (e) If a person submits to chemical testing and the
12 test result indicates the person has an alcohol
13 concentration of ~~ten one-hundredths of one percent (0.10%)~~
14 eight one-hundredths of one percent (0.08%) or more, the
15 peace officer shall submit his signed statement to the
16 department. Based upon the statement the department shall
17 suspend the person's Wyoming driver's license or his
18 privilege to operate a motor vehicle in this state for
19 ninety (90) days. If a criminal conviction results from the
20 same incident on which a suspension under this subsection
21 is based, the suspension under W.S. 31-7-128(b) or
22 revocation under W.S. 31-7-127(a)(ii) shall be reduced by
23 ninety (90) days. The statement submitted by the officer
24 shall contain:

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(iii) The person had an alcohol concentration of ~~ten one-hundredths of one percent (0.10%)~~ eight one-hundredths of one percent (0.08%) or more.

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

(b) The scope of a hearing for the purposes of this act shall cover the issues of whether a peace officer had probable cause to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon a public street or highway in this state in violation of W.S. 31-5-233(b) or any other law prohibiting driving under the influence as defined by W.S. 31-5-233(a)(v), whether the person was placed under arrest, whether he refused to submit to a test upon request of the peace officer or if he submitted to a test whether the test results indicated that the person had an alcohol concentration of ~~ten one-hundredths of one percent (0.10%)~~ eight one-hundredths of one percent (0.08%) or more, and whether, except for the persons described in this act who are incapable of refusing, he had been advised that his Wyoming driver's license or privilege to operate a motor

1 vehicle shall be suspended for the period provided by W.S.
2 31-6-107 if he refused to submit to a test and suspended
3 for ninety (90) days and subject him to criminal penalties
4 if he submitted to the test and the results indicate the
5 person is under the influence of alcohol. At the conclusion
6 of the hearing, the hearing examiner shall order that the
7 suspension either be rescinded or sustained. If the person
8 submitted to a chemical test, the hearing examiner has the
9 same authority to modify a license suspension under this
10 act as he does under W.S. 31-7-105.

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12 **41-13-206. Operation of watercraft by intoxicated or**
13 **drugged person prohibited.**

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15 (c) No person shall operate or be in actual physical
16 control of a watercraft if the person:

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18 (ii) Has an alcohol concentration of ~~ten one~~
19 ~~hundredths of one percent (0.10%)~~ eight one-hundredths of
20 one percent (0.08%) or more; or

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22 (iii) Has an alcohol concentration of ~~ten one~~
23 ~~hundredths of one percent (0.10%)~~ eight one-hundredths of

1 one percent (0.08%) or more as measured within three (3)
2 hours of the time of operation or actual physical control.

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4 (d) In any criminal prosecution for a violation of
5 this section relating to operating or being in actual
6 physical control of a watercraft while under the influence
7 of alcohol, the amount of alcohol in the defendant's blood
8 at the time alleged as shown by chemical analysis of the
9 defendant's blood, urine, breath or other bodily substance
10 shall give rise to the following presumptions:

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12 (ii) If there was at that time an alcohol
13 concentration of more than five one-hundredths of one
14 percent (0.05%) and less than ~~ten one-hundredths of one~~
15 ~~percent (0.10%)~~ eight one-hundredths of one percent
16 (0.08%), that fact shall not give rise to any presumption
17 that the defendant was or was not under the influence of
18 alcohol, but it may be considered with other competent
19 evidence in determining the guilt or innocence of the
20 defendant.

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22 (e) Nothing in subsection (d) of this section shall
23 be construed as limiting the introduction of any other
24 competent evidence bearing upon the question of whether or

1 not the defendant was under the influence of alcohol,
2 including tests obtained more than three (3) hours after
3 the alleged violation. The fact that any person charged
4 with a violation of subsection (c) of this section is or
5 has been entitled to use the controlled substance under the
6 laws of this state shall not constitute a defense against
7 any charge under this section. It is an affirmative defense
8 to a violation of paragraph (c)(iii) of this section that
9 the defendant consumed a sufficient quantity of alcohol
10 after the time of actual operation or physical control of a
11 watercraft and before the administration of the evidentiary
12 test to cause the defendant's alcohol concentration to
13 exceed ~~ten one-hundredths of one percent (0.10%)~~ eight one-
14 hundredths of one percent (0.08%) but evidence of the
15 consumption may not be admitted unless notice is given to
16 the prosecution pursuant to Rule ~~16.1~~ 12.1 of the Wyoming
17 Rules of Criminal Procedure.

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19 **Section 2.** This act is effective July 1, 2002.

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(END)