

HOUSE BILL NO. HB0155

Minors driving after consumption of alcohol.

Sponsored by: Representative(s) Simpson, Boswell,
Childers, Jones, McGraw, Rose and
Wasserburger and Senator(s) Mockler and
Scott

A BILL

for

1 AN ACT relating to minors driving vehicles with a
2 detectable alcohol concentration; providing a definition;
3 modifying and providing penalties; conforming provisions;
4 and providing for an effective date.

5

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

7

8 **Section 1.** W.S. 31-5-234(a)(i), by creating a new
9 paragraph (iv), (b) and by creating new subsections (e)
10 through (h), 31-6-108(b)(i), (ii), (e)(intro), (iii), (f),
11 (h)(i), (ii) and (n)(i), 31-7-128(h)(i)(A) and (B) and
12 31-7-134(c) and (d) are amended to read:

13

14 **31-5-234. Unlawful operation of vehicle by youthful**
15 **driver with detectable alcohol concentration; penalty.**

1

2 (a) As used in this section:

3

4 (i) "Alcohol concentration" means: ~~as defined by~~
5 ~~W.S. 31-5-233(a)(i);~~

6

7 (A) The number of grams of alcohol per one
8 hundred (100) milliliters of blood;

9

10 (B) The number of grams of alcohol per two
11 hundred ten (210) liters of breath; or

12

13 (C) The number of grams of alcohol per
14 seventy-five (75) milliliters of urine.

15

16 (iv) "Conviction" means as defined by W.S.
17 31-7-102(a)(xi).

18

19 (b) A person younger than twenty-one (21) years of
20 age shall not operate or be in actual physical control of a
21 vehicle in this state with an alcohol concentration of ~~two~~
22 ~~one-hundredths of one percent (0.02%)~~ four one-hundredths
23 of one percent (0.04%) or more.

24

1 (e) A person convicted of violating this section
2 shall be guilty of a misdemeanor punishable by a fine of
3 not more than seven hundred fifty dollars (\$750.00). A
4 person convicted of violating this section a second time
5 within one (1) year of the first conviction is guilty of a
6 misdemeanor punishable by imprisonment for not more than
7 six (6) months, a fine of not less than two hundred dollars
8 (\$200.00) nor more than seven hundred fifty dollars
9 (\$750.00) or both. A person convicted of a third or
10 subsequent conviction under this section within two (2)
11 years shall be guilty of a misdemeanor punishable by
12 imprisonment for not less than seven (7) days nor more than
13 six (6) months and shall not be eligible for probation or
14 suspension of sentence or release on any other basis until
15 he has served at least seven (7) days in jail except as
16 otherwise provided in this subsection. The court, after
17 consultation with the sheriff, may order the person to
18 undergo outpatient alcohol or substance abuse treatment
19 during any mandatory period of incarceration.
20 Notwithstanding the minimum period of imprisonment for a
21 third or subsequent violation, the court may suspend up to
22 five (5) days of the mandatory period of imprisonment if,
23 subsequent to the date of the current violation, the
24 offender completes an inpatient treatment program approved

1 by the court. In addition, the person may be fined not
2 less than three hundred dollars (\$300.00) nor more than
3 seven hundred fifty dollars (\$750.00). The judge may
4 suspend part or all of the discretionary portion of an
5 imprisonment sentence under this subsection and place the
6 defendant on probation on condition that the defendant
7 pursues and completes an alcohol education or treatment
8 program as prescribed by the judge. Notwithstanding any
9 other provision of law, the term of probation imposed by a
10 judge under this section may exceed the maximum term of
11 imprisonment established for the offense under this
12 subsection provided the term of probation together with any
13 extension thereof, shall in no case exceed three (3) years.

14

15 (f) A person convicted under this section or a
16 municipal ordinance which substantially conforms to the
17 provisions of this section shall, in addition to the
18 penalty imposed in subsection (e) of this section, have his
19 driver's license denied or suspended pursuant to W.S.
20 31-7-128(h). The court shall forward a copy of the
21 conviction to the department.

22

1 (g) The court may, upon pronouncement of any jail
2 sentence under subsection (e) of this section, provide in
3 the sentence that the defendant may be permitted, if he is
4 employed or enrolled in school and can continue his
5 employment or education, to continue such employment or
6 education for not more than the time necessary as certified
7 by his employer or school administrator, and the remaining
8 day, days or parts of days shall be spent in jail until the
9 sentence is served. He shall be allowed out of jail only
10 long enough to complete his actual hours of employment or
11 education and a reasonable time to travel to and from his
12 place of employment or school. Unless the defendant is
13 indigent, the court shall require him as a condition of
14 special treatment under this subsection to pay a reasonable
15 amount for room and board as determined by the sheriff.

16
17 (h) Chemical analysis of a person's blood, breath or
18 urine to determine alcohol concentration or controlled
19 substance content shall be performed in accordance with
20 W.S. 31-6-105(a).

21
22 **31-6-108. Implied consent requirements for youthful**
23 **drivers.**

1 (b) For tests required under this section, the person
2 shall be advised that:

3

4 (i) His failure to submit to all required
5 chemical tests shall result in the suspension or denial of
6 his Wyoming driver's license or his privilege to operate a
7 motor vehicle for a period of ~~forty-five (45)~~ ninety (90)
8 days without the right to apply for limited driving
9 privileges;

10

11 (ii) If a test is taken and the results indicate
12 an alcohol concentration of ~~two one-hundredths of one~~
13 ~~percent (0.02%)~~ four one-hundredths of one percent (0.04%)
14 or more, he may be subject to denial or suspension of his
15 driver's license for the period specified by W.S.
16 31-7-128(h);

17

18 (e) If the person refuses testing or submits to a
19 test which discloses an alcohol concentration of ~~two one-~~
20 ~~hundredths of one percent (0.02%)~~ four one-hundredths of
21 one percent (0.04%) or more, the peace officer shall submit
22 a signed statement to the department. The statement
23 submitted by the officer shall contain:

24

1 (iii) That the person refused to submit to a
2 test or submitted to a test which disclosed an alcohol
3 concentration of ~~two one-hundredths of one percent (0.02%)~~
4 four one-hundredths of one percent (0.04%) or more.

5
6 (f) If the person refuses testing or submits to a
7 test which discloses an alcohol concentration of ~~two one-~~
8 ~~hundredths of one percent (0.02%)~~ four one-hundredths of
9 one percent (0.04%) or more, the peace officer shall issue
10 the person a temporary license similar to but in lieu of
11 the license authorized under W.S. 31-7-138. This temporary
12 license shall be valid for thirty (30) days, shall not be
13 renewed, shall contain a notice that the person has twenty
14 (20) days from the date of issuance within which to request
15 a hearing from the department pursuant to W.S. 31-7-105 and
16 that failure to timely request a hearing will result in the
17 period of suspension or license denial automatically
18 commencing upon expiration of the temporary license or upon
19 expiration of any existing suspension or revocation if the
20 person's license or privilege is suspended or revoked at
21 the time the temporary license is issued. For purposes of
22 this section, the peace officer acts as an agent for the
23 department when providing notice of the suspension and
24 notice of the opportunity for a hearing. W.S. 31-7-137

1 applies to a notice under this act. Failure to demand a
2 hearing within the twenty (20) day period is a waiver of
3 the right of hearing, and the period of suspension or
4 denial shall commence upon expiration of the temporary
5 license or upon expiration of any existing suspension or
6 revocation if the person's license or privilege is
7 suspended or revoked at the time the temporary license is
8 issued. A temporary license issued under this subsection
9 shall afford no driving privilege to a person who is not
10 otherwise licensed to drive a motor vehicle.

11

12 (h) At the conclusion of the hearing, the hearing
13 examiner shall order whether or not the person's driver's
14 license shall be suspended or denied. The scope of the
15 hearing shall be limited to the issues of:

16

17 (i) Whether the peace officer had probable cause
18 to believe the person was driving or in actual physical
19 control of a vehicle with an alcohol concentration of ~~two~~
20 ~~one-hundredths of one percent (0.02%)~~ four one-hundredths
21 of one percent (0.04%) or more;

22

23 (ii) Whether the person refused to submit to a
24 test or if he submitted to a test, the results indicated

1 there was an alcohol concentration of ~~two one-hundredths of~~
2 ~~one percent (0.02%)~~ four one-hundredths of one percent
3 (0.04%) or more;

4
5 (n) Upon receipt of the statement provided for under
6 subsection (e) of this section indicating that the person
7 refused to submit to a test to determine the driver's
8 alcohol concentration, the department, subject to review as
9 provided in W.S. 31-7-105, shall suspend the person's
10 Wyoming driver's license or his privilege to operate a
11 motor vehicle in this state or shall deny issuance of a
12 driver's license to the person as follows:

13
14 (i) If the person has been issued a driver's
15 license, the period of suspension shall be ~~forty-five (45)~~
16 ninety (90) days without any right to limited driving
17 privileges pursuant to W.S. 31-7-105;

18
19 **31-7-128. Mandatory suspension of license or**
20 **nonresident operating privilege for certain violations;**
21 **suspension of registration.**

22

1 (h) Upon receiving a record of a driver's violation
2 of W.S. 31-5-234, the department shall suspend or deny the
3 license or nonresident driving privileges as follows:

4
5 (i) A person who has been issued a driver's
6 license shall be suspended:

7
8 (A) For a period of ~~thirty (30)~~ ninety (90)
9 days for a first offense;

10
11 (B) For a period of ~~sixty (60) days~~ six (6)
12 months if the person has previously violated W.S. 31-5-234
13 once, or has previously been convicted once under W.S.
14 31-5-233 or other law prohibiting driving while under the
15 influence within ~~three (3)~~ two (2) years; preceding:

16
17 (I) The date of the offense upon which the
18 conviction is based; or

19
20 (II) The date of conviction.

21
22 **31-7-134. Driving while license cancelled, suspended**
23 **or revoked.**

24

1 (c) A person convicted of a subsequent violation of
2 subsection (a) of this section for driving during the same
3 period of cancellation, suspension or revocation giving
4 rise to the previous conviction, or a person convicted of
5 driving during a period of cancellation, suspension or
6 revocation arising from a previous conviction under W.S.
7 31-5-229 or 31-5-233, is guilty of a misdemeanor and shall
8 be imprisoned for not less than seven (7) days nor more
9 than six (6) months and shall not be eligible for probation
10 or suspension of sentence or release on any other basis
11 until he has served at least seven (7) days in jail. In
12 addition, the person shall be fined not less than two
13 hundred dollars (\$200.00) nor more than seven hundred fifty
14 dollars (\$750.00). Notwithstanding any other provision of
15 law, any person under the age of twenty-one (21) years
16 convicted of being in control of a vehicle in this state
17 with an alcohol concentration of between ~~two one-hundredths~~
18 ~~of one percent (0.02%)~~ four one-hundredths of one percent
19 (0.04%) and the amount specified in W.S. 31-5-233(b)(i)
20 shall not be punished by imprisonment of at least seven (7)
21 days in jail as otherwise provided under this section, but
22 shall have his license administratively suspended for
23 thirty (30) days.

24

1 (d) Notwithstanding any other provision of law, any
2 person under the age of twenty-one (21) years convicted of
3 being in control of a vehicle in this state with an alcohol
4 concentration of between ~~two one-hundredths of one percent~~
5 ~~(0.02%)~~ four one-hundredths of one percent (0.04%) and the
6 amount specified in W.S. 31-5-233(b)(i) shall not be
7 punished by imprisonment of at least seven (7) days in jail
8 as otherwise provided by this section, but shall have his
9 license administratively suspended for thirty (30) days.

10
11 **Section 2.** W.S. 31-5-234(c) and 31-7-128(h)(i)(C) are
12 repealed.

13
14 **Section 3.** This act is effective July 1, 2002.

15
16 (END)