

SENATE FILE NO. SF0005

Driving under the influence amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to motor vehicles; creating a new crime for
2 refusal to submit to a chemical test following issuance of
3 a warrant; providing a penalty amending driver's license
4 suspension periods; providing for rulemaking; repealing a
5 provision; making conforming amendments; and providing for
6 an effective date.

7

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

9

10 **Section 1.** W.S. 31-6-109 is created to read:

11

12 **31-6-109. Refusal following issuance of a warrant;**
13 **penalties.**

14

15 (a) A person lawfully under arrest who refuses to
16 submit to a chemical test following issuance of a search

1 warrant pursuant to W.S. 31-6-102(d) is guilty of contempt
2 of court and in addition to any jail sentence authorized by
3 law may be fined not more than:

4

5 (i) Seven hundred fifty dollars (\$750.00) for a
6 first offense;

7

8 (ii) One thousand five hundred dollars
9 (\$1,500.00) for a second offense within ten (10) years of
10 the date of conviction;

11

12 (iii) Three thousand dollars (\$3,000.00) for a
13 third or subsequent offense within ten (10) years of the
14 date of conviction.

15

16 **Section 2.** W.S. 31-5-233(f)(iv) and (v),
17 31-6-101(a)(v), 31-6-102(d), (e)(intro), (ii) and (iii),
18 31-6-103(b), 31-7-105(f)(iii)(A), 31-7-128 by creating a
19 new subsection (o) and 31-7-134(c) are amended to read:

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21 **31-5-233. Driving or having control of vehicle while**
22 **under influence of intoxicating liquor or controlled**
23 **substances; penalties.**

1

2 (f) Any person convicted under this section or other
3 law prohibiting driving while under the influence as
4 defined in W.S. 31-5-233(a)(v), or whose prosecution under
5 this section is deferred under W.S. 7-13-301, shall, in
6 addition to the penalty imposed:

7

8 (iv) Except as provided in subsection (n) of
9 this section, for a third conviction, operate only vehicles
10 equipped with an ignition interlock device, pursuant to
11 W.S. 31-7-401 through 31-7-404, for a period of ~~two (2)~~
12 three (3) years;

13

14 (v) For a fourth or subsequent conviction,
15 operate only vehicles equipped with an ignition interlock
16 device, pursuant to W.S. 31-7-401 through 31-7-404, for the
17 remainder of the offender's life, except five (5) years
18 from the date of conviction and every five (5) years
19 thereafter, the offender may apply to the court for removal
20 of the ignition interlock device required by this paragraph
21 and shall provide notice to the department. The court may,
22 for good cause shown, remove the ignition interlock device
23 requirement if the offender has not been subsequently

1 convicted of driving a motor vehicle in violation of this
2 section or other law prohibiting driving while under the
3 influence as defined in W.S. 31-5-233(a)(v). The department
4 may promulgate rules for the administration of this
5 paragraph.

6

7 **31-6-101. Definitions.**

8

9 (a) As used in this act:

10

11 (v) "This act" means W.S. 31-6-101 through
12 ~~31-6-108~~ 31-6-109.

13

14 **31-6-102. Test to determine alcoholic or controlled**
15 **substance content of blood; suspension of license.**

16

17 (d) If a person under arrest refuses upon the request
18 of a peace officer to submit to a chemical test designated
19 by the agency employing the peace officer as provided in
20 subsection (a) of this section, none shall be given except
21 in cases where serious bodily injury or death has resulted
22 or upon issuance of a search warrant. A test of the
23 agency's choice may be administered upon issuance of a

1 warrant, including a remotely communicated search warrant,
2 when reasonable under the circumstances and as provided in
3 this subsection. A remotely communicated search warrant
4 may be issued upon sworn or affirmed testimony of the peace
5 officer who is not in the physical presence of a judicial
6 officer, provided the judicial officer is satisfied that
7 probable cause exists for the issuance of the warrant. All
8 communication between the judicial officer and the peace
9 officer or prosecuting attorney requesting the warrant may
10 be remotely transmitted by voice, image, text or any
11 combination thereof, or by other means and shall be
12 recorded. The testimony and content of the warrant shall
13 be recorded by writing or mechanical, magnetic, electronic,
14 photographic storage or by other means. Upon approval, the
15 judicial officer may direct a peace officer or the
16 prosecuting attorney requesting a warrant from a remote
17 location to sign the judicial officer's name on a warrant
18 at a remote location. A remotely communicated search
19 warrant shall be valid only for purposes specified in this
20 subsection. If a person under arrest refuses to submit to a
21 chemical test following the issuance of a search warrant
22 pursuant to this subsection, he shall be advised of the
23 penalties outlined in W.S. 31-6-109 and 31-7-128(o).

1

2 (e) If the test result indicates the person has an
3 alcohol concentration of eight one-hundredths of one
4 percent (0.08%) or more, or the person refuses to submit to
5 a chemical test following the issuance of a search warrant
6 pursuant to subsection (d) of this section, the peace
7 officer shall submit his signed statement to the
8 department. Based upon the statement the department shall
9 suspend the person's Wyoming driver's license or his
10 privilege to operate a motor vehicle in this state for
11 ninety (90) days. If a criminal conviction results from the
12 same incident on which a suspension under this subsection
13 is based, the suspension under W.S. 31-7-128(b) or
14 revocation under W.S. 31-7-127(a)(ii) shall be reduced by
15 ninety (90) days. The statement submitted by the officer
16 shall contain:

17

18 (ii) That a test was taken of the person or the
19 person refused to submit to a chemical test following the
20 issuance of a search warrant pursuant to subsection (d) of
21 this section; and

22

1 (iii) The person had an alcohol concentration of
2 eight one-hundredths of one percent (0.08%) or more or the
3 person refused to submit to a chemical test following the
4 issuance of a search warrant pursuant to subsection (d) of
5 this section.

6
7 **31-6-103. Application for hearing; stay of suspension**
8 **of license; scope of hearing.**

9
10 (b) The scope of a hearing for the purposes of this
11 act shall cover the issues of whether a peace officer had
12 probable cause to believe the arrested person had been
13 driving or was in actual physical control of a motor
14 vehicle upon a public street or highway in this state in
15 violation of W.S. 31-5-233(b) or any other law prohibiting
16 driving under the influence as defined by W.S.
17 31-5-233(a)(v), whether the person was placed under arrest,
18 or if a test was administered, whether the test results
19 indicated that the person had an alcohol concentration of
20 eight one-hundredths of one percent (0.08%) or more,
21 whether the person refused to submit to a chemical test
22 following the issuance of a warrant pursuant to W.S.
23 31-6-102(d), and whether, except for the persons described

1 in this act who are incapable of cooperating with the
2 administration of the test, he had been given the
3 advisements required by W.S. 31-6-102(a)(ii) and (d). At
4 the conclusion of the hearing, the hearing examiner shall
5 order that the suspension either be rescinded or sustained.
6 If a chemical test was administered, the hearing examiner
7 has the same authority to modify a license suspension under
8 this act as he does under W.S. 31-7-105.

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10 **31-7-105. Administrative hearings.**

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12 (f) Upon receipt of a timely request, the department
13 shall conduct a review of its records and issue an order
14 granting or denying limited driving privileges. The
15 discretion to continue or modify any order of suspension or
16 denial to allow driving privileges is limited as follows:

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18 (iii) It may be extended to a person convicted
19 under W.S. 31-5-233 or other law prohibiting driving while
20 under the influence, or a person whose driver's license has
21 been suspended or denied for a violation of W.S. 31-5-234,
22 only if:

23

1 (A) Within the ~~five (5)~~ ten (10) year
2 period preceding the date of the most recent offense, the
3 person has not been convicted under W.S. 31-5-233 or other
4 law prohibiting driving while under the influence; and

5

6 **31-7-128. Mandatory suspension of license or**
7 **nonresident operating privilege for certain violations;**
8 **suspension of registration.**

9

10 (o) Upon receipt of the statement provided for under
11 W.S. 31-6-102(e) asserting the person refused to submit to
12 a chemical test following the issuance of a search warrant
13 pursuant to W.S. 31-6-102(d), the department, subject to
14 review as provided in W.S. 31-6-103 and 31-6-104, shall
15 suspend the person's Wyoming driver's license or his
16 privilege to operate a motor vehicle in this state as
17 follows:

18

19 (i) Ninety (90) days, for the first refusal;

20

21 (ii) Six (6) months, if the person has
22 previously been suspended under this subsection within the

1 last ten (10) years and that suspension was uncontested or
2 upheld following an administrative hearing;

3
4 (iii) One (1) year, if the person has previously
5 been suspended two (2) or more times under this subsection
6 within the last ten (10) years and the previous suspensions
7 were uncontested or upheld following an administrative
8 hearing.

9
10 **31-7-134. Driving while license cancelled, suspended**
11 **or revoked.**

12
13 (c) A person convicted of a subsequent violation of
14 subsection (a) of this section for driving during the same
15 period of cancellation, suspension or revocation giving
16 rise to the previous conviction, or a person convicted of
17 driving during a period of cancellation, suspension or
18 revocation arising from a previous conviction under W.S.
19 31-5-229 or 31-5-233, is guilty of a misdemeanor and shall
20 be imprisoned for not less than seven (7) days nor more
21 than six (6) months and shall not be eligible for probation
22 or suspension of sentence or release on any other basis
23 until he has served at least seven (7) days in jail. In

1 addition, the person shall be fined not less than two
2 hundred dollars (\$200.00) nor more than seven hundred fifty
3 dollars (\$750.00). ~~Notwithstanding any other provision of~~
4 ~~law, any person under the age of twenty one (21) years~~
5 ~~convicted of being in control of a vehicle in this state~~
6 ~~with an alcohol concentration of between two one hundredths~~
7 ~~of one percent (0.02%) and the amount specified in W.S.~~
8 ~~31-5-233(b)(i) shall not be punished by imprisonment of at~~
9 ~~least seven (7) days in jail as otherwise provided under~~
10 ~~this section, but shall have his license administratively~~
11 ~~suspended for thirty (30) days.~~

12

13 **Section 3.** W.S. 31-7-134(d) is repealed.

14

15 **Section 4.** This act is effective July 1, 2021.

16

17

(END)