

HOUSE BILL NO. HB0029

DUI-elimination of right to refuse test.

Sponsored by: Representative(s) Gingery

A BILL

for

1 AN ACT relating to driving under the influence; eliminating
2 the driver's right to refuse to undergo a test to determine
3 the alcohol or controlled substance concentration in his
4 body as specified; conforming provisions; repealing
5 conflicting provisions; and providing for an effective
6 date.

7

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

9

10 **Section 1.** W.S. 31-5-234(d), 31-6-102(a)(ii)(B), (C),
11 (c), (e)(intro), (ii) and (f), 31-6-103(b), 31-6-105(b) and
12 (e), 31-6-108(b)(ii), (iii), (d), (f) and (h)(ii),
13 31-7-105(b)(i), 31-7-306(b), 31-7-307(c)(ii), (iii), (e)
14 and (j)(ii) and 31-7-402(a) and (b) are amended to read:

15

16 **31-5-234. Unlawful operation of vehicle by youthful**
17 **driver with detectable alcohol concentration; penalty.**

1

2 (d) When a peace officer has probable cause to
3 believe that a person may be violating or has violated
4 subsection (b) of this section, the peace officer may
5 ~~request~~require that the person submit to a chemical test
6 or tests to be administered in compliance with W.S.
7 31-6-108. Prosecution for a violation of this section is a
8 bar to prosecution under W.S. 12-6-101(b) or any similar
9 municipal ordinance.

10

11 **31-6-102. Test to determine alcoholic or controlled**
12 **substance content of blood; suspension of license.**

13

14 (a) If arrested for an offense as defined by W.S.
15 31-5-233:

16

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

19

20 (B) If ~~a test is taken and~~ the results of
21 the test indicate the person is under the influence of
22 alcohol or a controlled substance, he may be subject to
23 criminal penalties, his Wyoming driver's license or his
24 privilege to operate a motor vehicle shall be suspended for

1 ninety (90) days and he may be required to drive only
2 vehicles equipped with an ignition interlock device;

3

4 (C) After ~~submitting to~~ undergoing all
5 ~~required~~ chemical tests ~~requested~~ required by the peace
6 officer at a place and in a manner prescribed by and at the
7 expense of the agency employing the peace officer, the
8 arrested person may go to the nearest hospital or clinic
9 and secure any additional tests at his own expense;

10

11 (c) Any person dead, unconscious or otherwise in a
12 condition rendering him incapable of ~~refusal to submit to~~
13 cooperating with the administration of the tests is deemed
14 to have given his consent provided by subsection (a) of
15 this section and the tests may be administered subject to
16 the provisions of this act.

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 (ii) That a test was taken of the person;
9 ~~submitted to a test;~~ and

10

11 (f) In addition to the signed statement submitted
12 under subsection ~~(d) or~~ (e) of this section, the peace
13 officer shall issue the person a temporary license similar
14 to but in lieu of the license authorized under W.S.
15 31-7-138. This temporary license shall be valid for thirty
16 (30) days, shall not be renewed, shall contain a notice
17 that the person has twenty (20) days from the date of
18 issuance within which to request a hearing from the
19 department and that failure to timely request a hearing
20 will result in the suspension automatically commencing upon
21 expiration of the temporary license or upon expiration of
22 any existing suspension or revocation if the person's
23 license or privilege is suspended or revoked at the time
24 the temporary license is issued. W.S. 31-7-138(d) and (e)

1 apply to a license under this section. For purposes of this
2 section, the peace officer acts as an agent for the
3 department when providing notice of the suspension and
4 notice of the opportunity for a hearing. W.S. 31-7-137
5 applies to a notice under this act. Failure to demand a
6 hearing within the twenty (20) day period is a waiver of
7 the right of hearing, and the suspension shall commence
8 upon expiration of the temporary license or upon expiration
9 of any existing suspension or revocation if the person's
10 license or privilege is suspended or revoked at the time
11 the temporary license is issued. If a timely demand for
12 hearing is made, the department shall forward the demand to
13 the independent hearing examiner who shall schedule a
14 hearing within forty-five (45) days after receipt of the
15 request and provide the arrested person at least ten (10)
16 days notice of the hearing. The hearing shall be conducted
17 by the hearing examiner. If the hearing examiner fails to
18 schedule the hearing within forty-five (45) days of the
19 request, other than at the request of the licensee, the
20 licensee, as his sole remedy, shall be given credit against
21 any action upheld at the hearing for the time between the
22 expiration of the forty-five (45) day period and the date
23 the hearing was first scheduled.

24

1 **31-6-103. Application for hearing; stay of suspension**
2 **of license; scope of hearing.**

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

1 the same authority to modify a license suspension under
2 this act as he does under W.S. 31-7-105.

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

8
9 (b) When a person ~~submits to~~ undergoes a blood test
10 ~~at the request of~~ required by a peace officer under this
11 act, only a physician, registered nurse, qualified clinical
12 or laboratory technician or other person who routinely does
13 venipunctures at the direction of a physician may withdraw
14 blood for the purpose of determining the alcohol
15 concentration or controlled substance content therein. This
16 limitation does not apply to the taking of other specimens.

17
18 (e) Upon the request of a person who ~~submits to~~
19 undergoes a chemical test or tests ~~at the request of~~ as
20 required by a peace officer, full information concerning
21 the test or tests shall be made available to the person or
22 his attorney.

1 **31-6-108. Implied consent requirements for youthful**
2 **drivers.**

3
4 (b) For tests required under this section, the person
5 shall be advised that:

6
7 (ii) If ~~a test is taken and~~ the results of the
8 test indicate an alcohol concentration of two one-
9 hundredths of one percent (0.02%) or more, he may be
10 subject to denial or suspension of his driver's license for
11 the period specified by W.S. 31-7-128(h) and he may be
12 required to drive only vehicles equipped with an ignition
13 interlock device;

14
15 (iii) After ~~submitting to~~ all ~~required~~ chemical
16 tests ~~requested~~ required by the peace officer have been
17 administered at a place and in the manner prescribed by and
18 at the expense of the agency employing the peace officer,
19 the arrested person may go to the nearest hospital or
20 clinic and secure any additional tests at his own expense.

21
22 (d) Any person dead, unconscious or otherwise in a
23 condition rendering him incapable of ~~refusal to submit to~~
24 cooperating with the administration of the tests is deemed

1 to have given his consent provided for in this section, and
2 the tests may be administered subject to this section.

3
4 (f) If ~~the person refuses testing or submits to a~~
5 test ~~which~~ discloses an alcohol concentration of two one-
6 hundredths of one percent (0.02%) or more, the peace
7 officer shall issue the person a temporary license similar
8 to but in lieu of the license authorized under W.S.
9 31-7-138. This temporary license shall be valid for thirty
10 (30) days, shall not be renewed, shall contain a notice
11 that the person has twenty (20) days from the date of
12 issuance within which to request a hearing from the
13 department pursuant to W.S. 31-7-105 and that failure to
14 timely request a hearing will result in the period of
15 suspension or license denial automatically commencing upon
16 expiration of the temporary license or upon expiration of
17 any existing suspension or revocation if the person's
18 license or privilege is suspended or revoked at the time
19 the temporary license is issued. For purposes of this
20 section, the peace officer acts as an agent for the
21 department when providing notice of the suspension and
22 notice of the opportunity for a hearing. W.S. 31-7-137
23 applies to a notice under this act. Failure to demand a
24 hearing within the twenty (20) day period is a waiver of

1 the right of hearing, and the period of suspension or
2 denial shall commence upon expiration of the temporary
3 license or upon expiration of any existing suspension or
4 revocation if the person's license or privilege is
5 suspended or revoked at the time the temporary license is
6 issued. A temporary license issued under this subsection
7 shall afford no driving privilege to a person who is not
8 otherwise licensed to drive a motor vehicle.

9
10 (h) At the conclusion of the hearing, the hearing
11 examiner shall order whether or not the person's driver's
12 license shall be suspended or denied. The scope of the
13 hearing shall be limited to the issues of:

14
15 (ii) Whether the ~~person refused to submit to a~~
16 ~~test or if he submitted to a test, the~~ results of a test
17 indicated there was an alcohol concentration of two one-
18 hundredths of one percent (0.02%) or more;

19
20 **31-7-105. Administrative hearings.**

21
22 (b) A hearing examiner designated by the office of
23 administrative hearings created by W.S. 9-2-2201 shall sit

1 as the administrative hearing agency for the department to
2 hear all:

3
4 (i) Contested cases involving ~~implied consent~~
5 ~~refusals,~~ per se suspensions involving a question of law,
6 medical cancellations and denials, accident suspensions,
7 commercial drivers license disqualifications and any other
8 action as defined by department rule and regulation;

9
10 **31-7-306. Commercial drivers prohibited from**
11 **operating with any alcohol in system.**

12
13 (b) A person who drives, operates or is in physical
14 control of a commercial motor vehicle while having alcohol
15 in his system ~~or who refuses to take a test to determine~~
16 ~~his alcohol concentration~~ as provided by W.S. 31-7-307
17 shall be placed out-of-service for twenty-four (24) hours.

18
19 **31-7-307. Implied consent requirements for commercial**
20 **motor vehicle drivers.**

21
22 (c) For tests required under this section, the person
23 shall be advised that:

1 (ii) If ~~a test is taken and~~ the results of the
2 test indicate a blood alcohol concentration of four one-
3 hundredths of one percent (0.04%) or more, it shall result
4 in a disqualification for a period of not less than one (1)
5 year to life;

6
7 (iii) If ~~a test is taken and~~ the results of the
8 test indicate a blood alcohol concentration of less than
9 four one-hundredths of one percent (0.04%), he shall be
10 placed out-of-service for twenty-four (24) hours;

11
12 (e) Any person dead, unconscious or otherwise in a
13 condition rendering him incapable of ~~refusal to submit to~~
14 cooperating with the administration of the tests is deemed
15 to have given his consent provided for in this section, and
16 the tests may be administered subject to this section.

17
18 (j) At the conclusion of a hearing, the hearing
19 examiner shall order the disqualification be rescinded or
20 sustained. The scope of the hearing shall be limited to
21 the issues of:

22
23 (ii) Whether the ~~person refused to submit to a~~
24 ~~test or if he submitted to a test, the~~ results of a test

1 indicated there was at least four one-hundredths of one
2 percent (0.04%) of alcohol in the person's blood; and

3
4 **31-7-402. Issuance of ignition interlock restricted**
5 **license; eligibility.**
6

7 (a) A person whose driver's license has been
8 suspended pursuant to W.S. ~~31-6-107(a)(i) or~~
9 31-7-128(b)(ii) as a result of a violation related to
10 operating a vehicle under the influence of alcohol, ~~or a~~
11 ~~refusal to comply with a request to submit to a test to~~
12 ~~determine the person's blood alcohol concentration,~~ or
13 whose license is otherwise suspended and is required to
14 operate only vehicles equipped with an ignition interlock
15 device, and who has served at least forty-five (45) days of
16 the suspension period shall apply to the department for an
17 ignition interlock restricted license for the balance of
18 the suspension period or other period required by law.

19
20 (b) A person whose driver's license has been
21 ~~suspended pursuant to W.S. 31-6-107(a)(ii) or~~ revoked
22 pursuant to W.S. 31-7-127(a)(ii) as a result of a violation
23 related to operating a vehicle under the influence of
24 alcohol, ~~or a refusal to comply with a request to submit to~~

~~a test to determine the person's blood alcohol~~
~~concentration,~~ or whose license is otherwise suspended and
is required to operate only vehicles equipped with an
ignition interlock device, and who has served at least
forty-five (45) days of the suspension or revocation period
shall apply to the department for an ignition interlock
restricted license for the balance of the suspension or
revocation period or other period required by law.

10 **Section 2.** W.S. 31-6-102(a)(ii)(A) and (d),
11 31-6-105(f), 31-6-107, 31-6-108(b)(i), (e), (k), (n) and
12 (p), 31-7-105(f)(v)(H), 31-7-305(a)(v) and 31-7-307(c)(i),
13 (f), (g) and (m) are repealed.

15 **Section 3.** This act is effective July 1, 2011.

(END)