

## HOUSE BILL NO. HB0029

DUI-elimination of right to refuse test.

Sponsored by: Representative(s) Gingery and Barbuto and  
Senator(s) Johnson

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

1           **31-5-234. Unlawful operation of vehicle by youthful**  
2 **driver with detectable alcohol concentration; penalty.**

3

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

12

13           **31-6-102. Test to determine alcoholic or controlled**  
14 **substance content of blood; suspension of license.**

15

16           (a) If arrested for an offense as defined by W.S.  
17 31-5-233:

18

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

21

22                           (B) If ~~a test is taken and~~ the results of  
23 the test indicate the person is under the influence of  
24 alcohol or a controlled substance, he may be subject to

1 criminal penalties, his Wyoming driver's license or his  
2 privilege to operate a motor vehicle shall be suspended for  
3 ninety (90) days and he may be required to drive only  
4 vehicles equipped with an ignition interlock device;

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

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

19  
20 (e) If ~~a person submits to chemical testing and~~ the  
21 test result indicates the person has an alcohol  
22 concentration of eight one-hundredths of one percent  
23 (0.08%) or more, the peace officer shall submit his signed  
24 statement to the department. Based upon the statement the

1 department shall suspend the person's Wyoming driver's  
2 license or his privilege to operate a motor vehicle in this  
3 state for ninety (90) days. If a criminal conviction  
4 results from the same incident on which a suspension under  
5 this subsection is based, the suspension under W.S.  
6 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall  
7 be reduced by ninety (90) days. The statement submitted by  
8 the officer shall contain:

9

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

12

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

1 license or privilege is suspended or revoked at the time  
2 the temporary license is issued. W.S. 31-7-138(d) and (e)  
3 apply to a license under this section. For purposes of this  
4 section, the peace officer acts as an agent for the  
5 department when providing notice of the suspension and  
6 notice of the opportunity for a hearing. W.S. 31-7-137  
7 applies to a notice under this act. Failure to demand a  
8 hearing within the twenty (20) day period is a waiver of  
9 the right of hearing, and the suspension shall commence  
10 upon expiration of the temporary license or upon expiration  
11 of any existing suspension or revocation if the person's  
12 license or privilege is suspended or revoked at the time  
13 the temporary license is issued. If a timely demand for  
14 hearing is made, the department shall forward the demand to  
15 the independent hearing examiner who shall schedule a  
16 hearing within forty-five (45) days after receipt of the  
17 request and provide the arrested person at least ten (10)  
18 days notice of the hearing. The hearing shall be conducted  
19 by the hearing examiner. If the hearing examiner fails to  
20 schedule the hearing within forty-five (45) days of the  
21 request, other than at the request of the licensee, the  
22 licensee, as his sole remedy, shall be given credit against  
23 any action upheld at the hearing for the time between the

1 expiration of the forty-five (45) day period and the date  
2 the hearing was first scheduled.

3

4 **31-6-103. Application for hearing; stay of suspension**  
5 **of license; scope of hearing.**

6

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

1 rescinded or sustained. If ~~the person submitted to a~~  
2 chemical test was administered, the hearing examiner has  
3 the same authority to modify a license suspension under  
4 this act as he does under W.S. 31-7-105.

5

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

10

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

19

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

1

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

4

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

7

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

15

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

22

23           (d) Any person dead, unconscious or otherwise in a  
24 condition rendering him incapable of ~~refusal to submit to~~

1 cooperating with the administration of the tests is deemed  
2 to have given his consent provided for in this section, and  
3 the tests may be administered subject to this section.

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

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

10

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

15

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

20

21 **31-7-105. Administrative hearings.**

22

23 (b) A hearing examiner designated by the office of  
24 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:

24

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~~

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

9

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) and 31-7-307(c)(i) are repealed.

13

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

15

16

(END)