

ENROLLED ACT NO. 93, HOUSE OF REPRESENTATIVES

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2011 GENERAL SESSION

AN ACT relating to driving under the influence; eliminating the driver's right to refuse to undergo a test to determine the alcohol or controlled substance concentration in his body as specified; providing for issuance of a remotely communicated search warrant; conforming provisions; restricting use of test results as specified; repealing conflicting provisions; and providing for an effective date.

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

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

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

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

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

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

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

(B) If ~~a test is taken and~~ the results of the test indicate the person is under the influence of alcohol or a controlled substance, he may be subject to criminal penalties, his Wyoming driver's license or his privilege to operate a motor vehicle shall be suspended for ninety (90) days and he may be required to drive only vehicles equipped with an ignition interlock device;

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

(iii) The results from the test or tests under this act shall only be used for the purposes of determining the chemical concentration as provided by this section and shall not be used for any other purpose.

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

(d) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the agency employing the peace officer as provided in

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subsection (a) of this section, none shall be given except in cases where serious bodily injury or death has resulted or upon issuance of a search warrant. ~~The peace officer shall submit his signed statement to the department. The statement submitted by the officer shall contain:~~ A test of the agency's choice may be administered upon issuance of a warrant, including a remotely communicated search warrant, when reasonable under the circumstances and as provided in this subsection. A remotely communicated search warrant may be issued upon sworn or affirmed testimony of the peace officer who is not in the physical presence of a judicial officer, provided the judicial officer is satisfied that probable cause exists for the issuance of the warrant. All communication between the judicial officer and the peace officer or prosecuting attorney requesting the warrant may be remotely transmitted by voice, image, text or any combination thereof, or by other means and shall be recorded. The testimony and content of the warrant shall be recorded by writing or mechanical, magnetic, electronic, photographic storage or by other means. Upon approval, the judicial officer may direct a peace officer or the prosecuting attorney requesting a warrant from a remote location to sign the judicial officer's name on a warrant at a remote location. A remotely communicated search warrant shall be valid only for purposes specified in this subsection.

(e) If ~~a person submits to chemical testing and~~ the test result indicates the person has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, the peace officer shall submit his signed statement to the department. Based upon the statement the department shall suspend the person's Wyoming driver's license or his privilege to operate a motor vehicle in this state for ninety (90) days. If a criminal conviction results from the same incident on which a suspension under

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this subsection is based, the suspension under W.S. 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall be reduced by ninety (90) days. The statement submitted by the officer shall contain:

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

(f) In addition to the signed statement submitted under subsection ~~(d) or~~ (e) of this section, the peace officer shall issue the person a temporary license similar to but in lieu of the license authorized under W.S. 31-7-138. This temporary license shall be valid for thirty (30) days, shall not be renewed, shall contain a notice that the person has twenty (20) days from the date of issuance within which to request a hearing from the department and that failure to timely request a hearing will result in the suspension automatically commencing upon expiration of the temporary license or upon expiration of any existing suspension or revocation if the person's license or privilege is suspended or revoked at the time the temporary license is issued. W.S. 31-7-138(d) and (e) apply to a license under this section. For purposes of this section, the peace officer acts as an agent for the department when providing notice of the suspension and notice of the opportunity for a hearing. W.S. 31-7-137 applies to a notice under this act. Failure to demand a hearing within the twenty (20) day period is a waiver of the right of hearing, and the suspension shall commence upon expiration of the temporary license or upon expiration of any existing suspension or revocation if the person's license or privilege is suspended or revoked at the time the temporary license is issued. If a timely demand for hearing is made, the department shall forward the demand to the independent hearing examiner who shall schedule a hearing within forty-five (45) days after receipt of the

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request and provide the arrested person at least ten (10) days notice of the hearing. The hearing shall be conducted by the hearing examiner. If the hearing examiner fails to schedule the hearing within forty-five (45) days of the request, other than at the request of the licensee, the licensee, as his sole remedy, shall be given credit against any action upheld at the hearing for the time between the expiration of the forty-five (45) day period and the date the hearing was first scheduled.

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~~ was administered, whether the test results indicated that the person had an alcohol concentration of 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 cooperating with the administration of the test, he had been given the advisements required by W.S. 31-6-102(a)(ii). At the conclusion of the hearing, the hearing examiner shall order that the suspension either be rescinded or sustained. If ~~the person submitted to a~~ chemical test was administered, the hearing examiner has the same authority to modify a license suspension under this act as he does under W.S. 31-7-105.

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

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

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

31-6-108. Implied consent requirements for youthful drivers.

(a) If arrested for an offense as defined by W.S. 31-5-234:

(iii) The test or tests results shall only be used for the purposes of determining the chemical concentration as provided by this section and shall not be used for any other purpose.

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

(ii) If ~~a test is taken and~~ the results of the test indicate an alcohol concentration of two one-

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hundredths of one percent (0.02%) or more, he may be subject to denial or suspension of his driver's license for the period specified by W.S. 31-7-128(h) and he may be required to drive only vehicles equipped with an ignition interlock device;

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

(d) Any person dead, unconscious or otherwise in a condition rendering him incapable of ~~refusal to submit to cooperating with the administration of~~ the tests is deemed to have given his consent provided for in this section, and the tests may be administered subject to this section. A chemical test designated by the agency employing the peace officer may also be administered to a person who refuses to take a test upon issuance of a search warrant, including a remotely communicated search warrant, as provided in W.S. 31-6-102(d). A remotely communicated search warrant shall be valid only for purposes specified in this subsection.

(f) If ~~the person refuses testing or submits to~~ a test ~~which~~ discloses an alcohol concentration of two one-hundredths of one percent (0.02%) or more, the peace officer shall issue the person a temporary license similar to but in lieu of the license authorized under W.S. 31-7-138. This temporary license shall be valid for thirty (30) days, shall not be renewed, shall contain a notice that the person has twenty (20) days from the date of issuance within which to request a hearing from the department pursuant to W.S. 31-7-105 and that failure to timely request a hearing will result in the period of

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suspension or license denial automatically commencing upon expiration of the temporary license or upon expiration of any existing suspension or revocation if the person's license or privilege is suspended or revoked at the time the temporary license is issued. For purposes of this section, the peace officer acts as an agent for the department when providing notice of the suspension and notice of the opportunity for a hearing. W.S. 31-7-137 applies to a notice under this act. Failure to demand a hearing within the twenty (20) day period is a waiver of the right of hearing, and the period of suspension or denial shall commence upon expiration of the temporary license or upon expiration of any existing suspension or revocation if the person's license or privilege is suspended or revoked at the time the temporary license is issued. A temporary license issued under this subsection shall afford no driving privilege to a person who is not otherwise licensed to drive a motor vehicle.

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

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

31-7-105. Administrative hearings.

(b) A hearing examiner designated by the office of administrative hearings created by W.S. 9-2-2201 shall sit as the administrative hearing agency for the department to hear all:

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

31-7-306. Commercial drivers prohibited from operating with any alcohol in system.

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

31-7-307. Implied consent requirements for commercial motor vehicle drivers.

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

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

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

(e) Any person dead, unconscious or otherwise in a condition rendering him incapable of ~~refusal to submit to cooperating with the administration of~~ the tests is deemed to have given his consent provided for in this section, and

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the tests may be administered subject to this section. A chemical test designated by the agency employing the peace officer may also be administered to a person who refuses to take a test upon issuance of a search warrant, including a remotely communicated search warrant, as provided in W.S. 31-6-102(d). A remotely communicated search warrant shall be valid only for purposes specified in this subsection.

(f) If the person refuses testing or ~~submits to~~ is administered a test which discloses an alcohol concentration of four one-hundredths of one percent (0.04%) or more by weight of alcohol in the person's blood the peace officer shall submit a signed statement to the department. The statement submitted by the officer shall contain:

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

(ii) Whether the ~~person refused to submit to a test or if he submitted to a test, the~~ results of a test indicated there was at least four one-hundredths of one percent (0.04%) of alcohol in the person's blood; and

31-7-402. Issuance of ignition interlock restricted license; eligibility.

(a) A person whose driver's license has been suspended pursuant to W.S. ~~31-6-107(a)(i) or 31-7-128(b)(ii)~~ as a result of a violation related to operating a vehicle under the influence of 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

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operate only vehicles equipped with an ignition interlock device, and who has served at least forty-five (45) days of the suspension period shall apply to the department for an ignition interlock restricted license for the balance of the suspension period or other period required by law.

(b) A person whose driver's license has been ~~suspended pursuant to W.S. 31-6-107(a)(ii) or~~ revoked pursuant to W.S. 31-7-127(a)(ii) as a result of a violation related to operating a vehicle under the influence of 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.

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk