

HOUSE BILL NO. HB0061

Motor vehicle fatalities-mandatory tests.

Sponsored by: Representative(s) Wasserburger, Edwards and
Nicholas and Senator(s) Massie and Peck

A BILL

for

1 AN ACT relating to motor vehicles; providing for the
2 mandatory testing of operators of motor vehicles involved
3 in accidents causing a death or serious bodily injury;
4 specifying conditions; conforming a definition; and
5 providing for an effective date.

6

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

8

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

10

11 **31-6-109. Testing of motor vehicle operator involved**
12 **in accident resulting in death or serious bodily injury.**

13

14 (a) The operator of a motor vehicle involved in an
15 accident that results in a death or serious bodily injury
16 as defined in W.S. 6-1-104(a)(x) is deemed to have given
17 consent, subject to the provisions of this section, to a

1 test or tests of his blood, breath or urine for the purpose
2 of determining the alcohol concentration or controlled
3 substance content of his blood. Notwithstanding W.S.
4 31-6-102(a)(i), the operator of any motor vehicle involved
5 in an accident that results in a death or serious bodily
6 injury shall be tested for the purpose of determining the
7 alcohol content or controlled substance content of his
8 blood.

9

10 (b) If the investigating peace officer has probable
11 cause to believe that a person is the operator of a motor
12 vehicle involved in an accident that has resulted in death
13 or serious bodily injury, the officer shall request the
14 person to submit to the test required by this section and
15 may direct that the test shall be of the person's blood,
16 breath or urine provided that:

17

18 (i) If the officer directs that the test be of
19 the person's blood or urine, the person may choose whether
20 the test shall be of blood or urine;

21

22 (ii) The person has the option stated in
23 paragraph (i) of this subsection unless the peace officer
24 has probable cause to believe there is impairment by a

1 controlled substance which is not subject to testing by a
2 blood or breath test in which case a urine test may be
3 required;

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5 (iii) Any blood withdrawal required by this
6 section shall be administered by a qualified person and
7 shall be administered as soon as practicable after the
8 accident;

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10 (iv) No blood may be withdrawn until, in the
11 opinion of medical personnel on the scene, the withdrawal
12 can be administered without interfering with or endangering
13 the well-being of the person;

14

15 (v) The approximate time of the accident and the
16 time of the testing of a motor vehicle operator's blood,
17 breath or urine shall be recorded by the investigating
18 peace officer.

19

20 (c) No person may legally refuse to submit to a test
21 of his blood, breath or urine required under the provisions
22 of this section. Any person refusing to submit to the test
23 shall surrender his driver's license to the peace officer
24 at the scene of the accident and shall not be eligible for

1 limited driving privileges under subsection (g) of this
2 section. The peace officer shall submit his signed
3 statement to the department that the person refused to
4 submit to the required testing. Based upon the officer's
5 statement, the department shall suspend the person's
6 Wyoming driver's license or his privilege to operate a
7 motor vehicle in this state for six (6) months. The
8 statement submitted by the officer shall contain:

9

10 (i) His probable cause to believe the person was
11 driving or in actual physical control of a motor vehicle on
12 a public street or highway in this state and that the
13 person was involved in an accident that resulted in the
14 death or serious bodily injury to another person;

15

16 (ii) That the person refused to submit to a test
17 upon the request of the peace officer.

18

19 (d) Results of tests obtained at the person's expense
20 shall be made available to the officer and the person.
21 Disclosure of the test results by the person administering
22 the test is not a violation of the doctor-patient
23 relationship.

24

1 (e) The results of the test administered pursuant to
2 this section may be used as evidence in any court or
3 administrative hearing without the consent of the person
4 tested. Evidence of a refusal to submit to a test under
5 this section is admissible in any administrative, civil or
6 criminal action or proceeding arising out of acts alleged
7 to have been committed by the operator of a motor vehicle
8 who has been requested to submit to a test pursuant to this
9 section.

10
11 (f) If a person submits to testing and the test
12 result indicates the person has an alcohol concentration of
13 ten one-hundredths of one percent (0.10%) or more, the
14 peace officer shall submit a signed statement to the
15 department. Based upon the statement, the department shall
16 suspend the person's Wyoming driver's license or his
17 privilege to operate a motor vehicle in this state for
18 ninety (90) days. If a criminal conviction results from the
19 same incident on which a suspension under this subsection
20 is based, the suspension under W.S. 31-7-128(b) or
21 revocation under W.S. 31-7-127(a)(ii) shall be reduced by
22 ninety (90) days. The statement submitted by the officer
23 shall contain:

24

1 (i) His probable cause to believe the arrested
2 person was driving or in actual physical control of a motor
3 vehicle on a public street or highway in this state and
4 that the person was involved in an accident that resulted
5 in the death or serious bodily injury of another person;

6

7 (ii) That the person submitted to a test; and

8

9 (iii) The person had an alcohol concentration of
10 ten one-hundredths of one percent (0.10%) or more.

11

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

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

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2 (h) For the purposes of this section, a signed
3 statement submitted by the peace officer under this section
4 shall be deemed a sworn statement and shall be subject to
5 penalties for perjury.

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7 (j) Nothing in this section shall preclude the
8 operator of a motor vehicle from being tested under W.S.
9 31-6-102 or 31-6-108.

10

11 **Section 2.** W.S. 31-6-101(a)(v) is amended to read:

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13 **31-6-101. Definitions.**

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15 (a) As used in this act:

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17 (v) "This act" means W.S. 31-6-101 through
18 ~~31-6-107~~ 31-6-109.

19

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

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22

(END)