

## State DUI Laws: Wyoming

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: No**

**Felony Conviction for Repeat Offenses: Yes**

### Wyoming Statutes

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

(a) As used in this section:

(i) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred (100) milliliters of blood;

(B) The number of grams of alcohol per two hundred ten (210) liters of breath; or

(C) The number of grams of alcohol per seventy-five (75) milliliters of urine.

(ii) "Controlled substance" includes:

(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv);

(B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely.

(iii) "Conviction" means as defined in W.S. 31-7-102(a)(xi);

(iv) "Driver's license" means as defined in W.S. 31-7-102(a)(xxv) and includes nonresident operating privileges as defined in W.S. 31-7-102(a)(xxx);

(v) "Other law prohibiting driving while under the influence" means a statute of another state, the United States or a territory or district of the United States or an ordinance of a governmental entity of this or another state or of an Indian tribe which prohibits driving while under the influence of intoxicating liquor, alcohol, controlled substances or drugs.

(b) No person shall drive or have actual physical control of any vehicle within this state if the person:

- (i) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more; or
- (ii) To a degree which renders him incapable of safely driving:
- (A) Is under the influence of alcohol;
- (B) Is under the influence of a controlled substance; or
- (C) Is under the influence of a combination of any of the elements named in subparagraphs (A) and (B) of this paragraph.
- (c) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or being in actual physical control of a vehicle while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:
- (i) If there was at that time an alcohol concentration of five one-hundredths of one percent (0.05%) or less, it shall be presumed that the person was not under the influence of alcohol;
- (ii) If there was at that time an alcohol concentration of more than five one-hundredths of one percent (0.05%) and less than eight one-hundredths of one percent (0.08%), that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but it may be considered with other competent evidence in determining whether the person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.
- (d) Subsection (c) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcohol, including tests obtained more than three (3) hours after the alleged violation. The fact that any person charged with a violation of subsection (b) of this section is or has been entitled to use the controlled substance under the laws of this state shall not constitute a defense against any charge under subsection (b) of this section.
- (e) Except as otherwise provided in this subsection or subsection (h) of this section, a person convicted of violating this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both. On a second conviction within five (5) years after a conviction for a violation of this section or other law prohibiting driving while under the influence, he shall be punished by imprisonment for not less than seven (7) days nor more than six (6) months and shall not be eligible for probation or suspension of sentence or release on any other basis until he has served at least seven (7) days in jail. In addition, the person may be fined not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00). On a third conviction within five (5) years after a conviction for a violation of this section or other law prohibiting driving while under the influence, he shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months, shall receive a substance abuse assessment pursuant to W.S. 7-13-1302 and shall not be eligible for probation or suspension of sentence or release on any other basis until he has served at least thirty (30) days in jail except that the court shall consider the substance abuse assessment and may order the person to undergo outpatient alcohol or substance abuse treatment during any mandatory period of incarceration. The minimum period of imprisonment for a third violation shall be mandatory, but the court, having considered the substance abuse assessment and the availability of public and private resources, may suspend up to fifteen (15) days of the mandatory period of imprisonment if, subsequent to the date of

the current violation, the offender completes an inpatient treatment program approved by the court. In addition, the person may be fined not less than seven hundred fifty dollars (\$750.00) nor more than three thousand dollars (\$3,000.00). The judge may suspend part or all of the discretionary portion of an imprisonment sentence under this subsection and place the defendant on probation on condition that the defendant pursues and completes an alcohol education or treatment program as prescribed by the judge. Notwithstanding any other provision of law, the term of probation imposed by a judge under this section may exceed the maximum term of imprisonment established for the offense under this subsection provided the term of probation together with any extension thereof, shall not exceed three (3) years for up to and including a third conviction. On a fourth or subsequent conviction within five (5) years for a violation of this section or other law prohibiting driving while under the influence, he shall be guilty of a felony and fined not more than ten thousand dollars (\$10,000.00), punished by imprisonment for not more than two (2) years, or both.

(f) Any person convicted under this section or a municipal ordinance which substantially conforms to the provisions of this section shall, in addition to the penalty imposed, have his driver's license suspended or revoked pursuant to W.S. 31-7-127 or 31-7-128. The court shall forward to the department a copy of the record pertaining to disposition of the arrest or citation.

(g) The court may, upon pronouncement of any jail sentence under subsection (e) of this section, provide in the sentence that the defendant may be permitted, if he is employed or enrolled in school and can continue his employment or education, to continue such employment or education for not more than the time necessary as certified by his employer or school administrator, and the remaining day, days or parts of days shall be spent in jail until the sentence is served. He shall be allowed out of jail only long enough to complete his actual hours of employment or education and a reasonable time to travel to and from his place of employment or school. Unless the defendant is indigent, the court shall require him as a condition of special treatment under this subsection to pay a reasonable amount for room and board as determined by the sheriff.

(h) As used in this subsection, "serious bodily injury" means bodily injury which creates a reasonable likelihood of death or which causes miscarriage or serious permanent disfigurement or protracted loss or impairment of any bodily member or organ. Whoever causes serious bodily injury to another person resulting from the violation of this section shall be punished upon conviction as follows:

(i) If not subject to the penalty under paragraph (ii) of this subsection, by a fine of not less than two thousand dollars (\$2,000.00) nor more than five thousand dollars (\$5,000.00), imprisonment for not less than six (6) months nor more than one (1) year, or both;

(ii) If previously convicted and sentenced under this subsection, or any other law substantially conforming to the provisions of this subsection, by imprisonment for not more than twenty (20) years; and

(iii) Any person convicted under this subsection shall have his driver's license revoked as provided in W.S. 31-7-127.

(j) Any person charged under this section or a municipal ordinance which substantially conforms to the provisions of this section shall be prosecuted under this section or the ordinance and not under a reduced charge or dismissed unless the prosecuting attorney in open court moves or files a statement to reduce the charge or dismiss, with supporting facts, stating that there is insufficient evidence to sustain the charge.

(k) Chemical analysis of a person's blood, breath or urine to determine alcohol concentration or controlled substance content shall be performed in accordance with W.S. 31-6-105(a).

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

(a) As used in this section:

(i) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred (100) milliliters of blood;

(B) The number of grams of alcohol per two hundred ten (210) liters of breath; or

(C) The number of grams of alcohol per seventy-five (75) milliliters of urine.

(ii) "Driver's license" means as defined by W.S. 31-7-102(a)(xxv) and includes nonresident operating privileges as defined by W.S. 31-7-102(a)(xxx);

(iii) "Peace officer" means as defined by W.S. 7-2-101(a)(iv)(A), (B) and (G);

(iv) "Conviction" means as defined by W.S. 31-7-102(a)(xi).

(b) A person younger than twenty-one (21) years of age shall not operate or be in actual physical control of a vehicle in this state with an alcohol concentration of two one-hundredths of one percent (0.02%) or more.

(c) Repealed by Laws 2002, ch. 93, § 2.

(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 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.

(e) A person convicted of violating this section shall be guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00). A person convicted of violating this section a second time within one (1) year of the first conviction is guilty of a misdemeanor punishable by imprisonment for not more than one (1) month, a fine of not more than seven hundred fifty dollars (\$750.00), or both. A person convicted of a third or subsequent conviction under this section within two (2) years shall be guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both. The court may order the person to undergo a substance abuse assessment and complete any recommended treatment for any conviction under this section as a condition of probation. Notwithstanding any other provision of law, the term of probation imposed by a judge under this section may exceed the maximum term of imprisonment established for the offense under this subsection provided the term of probation together with any extension thereof, shall in no case exceed three (3) years.

(f) A person convicted under this section or a municipal ordinance which substantially conforms to the provisions of this section shall, in addition to the penalty imposed in subsection (e) of this section, have his driver's license denied or suspended pursuant to W.S. 31-7-128(h). The court shall forward a copy of the conviction to the department.

(g) The court may, upon pronouncement of any jail sentence under subsection (e) of this section, provide in the sentence

that the defendant may be permitted, if he is employed or enrolled in school and can continue his employment or education, to continue such employment or education for not more than the time necessary as certified by his employer or school administrator, and the remaining day, days or parts of days shall be spent in jail until the sentence is served. He shall be allowed out of jail only long enough to complete his actual hours of employment or education and a reasonable time to travel to and from his place of employment or school. Unless the defendant is indigent, the court shall require him as a condition of special treatment under this subsection to pay a reasonable amount for room and board as determined by the sheriff.

(h) Chemical analysis of a person's blood, breath or urine to determine alcohol concentration or controlled substance content shall be performed in accordance with W.S. 31-6-105(a).

**§ 31-5-235. Consumption and possession of alcoholic beverages in opened containers by operator of vehicle prohibited; definitions; penalty.**

(a) As used in this section, "alcoholic beverage" means alcoholic liquor or malt beverage as defined in W.S. 12-1-101(a)(i), (vii) and (x).

(b) No person shall consume or possess any alcoholic beverage while operating a motor vehicle on a public street or public highway unless the beverage is in the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed.

(c) Any person violating the provisions of this section shall:

(i) For a first conviction or a subsequent conviction not occurring within one (1) year after the first conviction, be punished by a fine of not more than two hundred dollars (\$200.00);

(ii) For a second conviction within one (1) year after the first conviction, be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for not more than thirty (30) days, or both;

(iii) For a third or subsequent conviction within one (1) year after the first conviction, be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than six (6) months, or both.

**§ 31-6-101. Definitions.**

(a) As used in this act:

(i) "Alcohol concentration" means as defined in W.S. 31-5-233(a)(i);

(ii) "Controlled substance" includes:

(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv);

(B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely.

(iii) "Department" means the department of transportation;

(iv) "Peace officer" means as defined in W.S. 7-2-101;

(v) "This act" means W.S. 31-6-101 through 31-6-107 [§§ 31-6-101 through 31-6-108].

(b) The definitions provided by W.S. 31-5-102(a) apply in this act.

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

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

(i) Any person who drives or is in actual physical control of a motor vehicle upon a public street or highway in this state is deemed to have given consent, subject to the provisions of this act, to a chemical test or tests of his blood, breath or urine for the purpose of determining the alcohol concentration or controlled substance content of his blood. The test or tests shall be:

(A) Incidental to a lawful arrest;

(B) Given as promptly as possible after the arrest;

(C) Administered at the direction of a peace officer who has probable cause to believe the person was driving or 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). The peace officer who requires a test pursuant to this section may direct that the test shall be of blood, breath or urine. However, if the officer directs that the test be of the person's blood or urine, the person may choose whether the test shall be of blood or urine. The person has this option unless the peace officer has probable cause to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test in which case a urine test may be required.

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

(A) His failure to submit to all required chemical tests requested by the peace officer shall result in the suspension of his Wyoming driver's license or his privilege to operate a motor vehicle for a period of six (6) months for a first offense or eighteen (18) months for a second or subsequent offense as provided by W.S. 31-6-107;

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

(C) After submitting to all required chemical tests requested 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;

(D) If he refuses to take all required tests, he shall not be eligible for limited driving privileges.

(b) Results of tests obtained at the arrested person's expense shall be made available to the arresting officer and the arrested person. Disclosure of the test results by the person administering the test is not a violation of the doctor-patient

relationship.

(c) Any person dead, unconscious or otherwise in a condition rendering him incapable of refusal to submit to 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 subsection (a) of this section, none shall be given except in cases where serious bodily injury or death has resulted. The peace officer shall submit his signed statement to the department. The statement submitted by the officer shall contain:

(i) His probable cause to believe the arrested person was driving or in actual physical control of a motor vehicle:

(A) On a public street or highway in this state;

(B) 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); and

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

(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 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:

(i) His probable cause to believe the arrested person was driving or in actual physical control of a motor vehicle:

(A) On a public street or highway in this state;

(B) 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).

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

(iii) The person had an alcohol concentration of eight one-hundredths of one percent (0.08%) or more.

(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 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.

(g) For the purposes of this section, the signed statement submitted by the peace officer shall be deemed a sworn statement and shall be subject to penalties for perjury.

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

(a) A timely request for a hearing shall stay the suspension until the order following the hearing is entered and all appellate review of the matter is completed, provided the stay of suspension is effective only so long as there is no suspension for a similar violation during the hearing and appeal period.

(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 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, he had been advised that his Wyoming driver's license or privilege to operate a motor vehicle shall be suspended for the period provided by W.S. 31-6-107 if he refused to submit to a test and suspended for ninety (90) days and subject him to criminal penalties if he submitted to the test and the results indicate the person is under the influence of alcohol. 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, the hearing examiner has the same authority to modify a license suspension under this act as he does under W.S. 31-7-105.

(c) Prehearing discovery, available to any interested party is limited to access to the notice of suspension, signed statement and any accompanying documentation submitted by the arresting officer. Other types of discovery available under other law are not available in a hearing under this section.

**§ 31-6-104. Right to petition for subsequent hearing; suspension applies to all licenses held; persons not required to take test.**

(a) If the suspension is sustained after a hearing, the person whose Wyoming driver's license or privilege to operate a motor vehicle has been suspended under this act may file a petition within thirty (30) days thereafter for a review of the record in the matter in the district court in the county in which the person resides, or in the case of suspension of a nonresident's operating privilege, then in Laramie county or the county where the offense is alleged to have occurred. The district court shall immediately set the matter for determination upon thirty (30) days written notice to the department.

(b) A suspension under this act applies to all driver's licenses held by the person and all driver's licenses shall be surrendered to the department. The department shall physically retain the license or licenses during the period of suspension except as provided in W.S. 31-7-138(f).

(c) Any person who furnishes proof that he is afflicted with hemophilia is exempt from the blood test required by this act. Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a physician is exempt from the blood test required by this act.

**§ 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.**

(a) Chemical analysis of the person's blood, breath or urine to be considered valid under this section, shall be performed according to methods approved by the department of health and by an individual possessing a valid permit to conduct the analysis. Permits shall be issued by the department of health for this purpose. The department of health may promulgate and approve satisfactory methods in order to ascertain the qualifications of individuals permitted to conduct the analysis and shall issue to qualified individuals permits which are subject to termination or revocation by the department of health.

(b) When a person submits to a blood test at the request of 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.

(c) A person arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or a controlled substance to a degree which renders him incapable of safely driving the vehicle, may request the peace officer to have a chemical test or tests made of the arrested person's blood, breath or urine for the purpose of determining the alcohol or controlled substance content of the arrested person's blood. If the tests are available they shall be performed in or near the locality where the arrest was made as promptly as possible after the arrest.

(d) The person tested may, at his own expense, have any qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test or tests taken at the direction of a peace officer.

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

(f) If a person under arrest refuses to submit to a chemical test under this act, evidence of the refusal is admissible in any administrative, civil or criminal action or proceeding arising out of acts alleged to have been committed while the arrested person was driving or in actual physical control of a motor vehicle 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).

**§ 31-6-106. No liability incurred by persons requested to administer test.**

No physician, registered nurse, qualified clinical or laboratory technician or other person who routinely does venipunctures at the direction of a physician or facility in which the blood is drawn shall incur any civil or criminal liability as a result of the proper administration of a blood test when requested in writing by a peace officer or any other person to administer the test.

**§ 31-6-107. Penalty for refusal to submit to chemical testing.**

(a) Upon receipt of the statement provided for under W.S. 31-6-102(d), the department, subject to review as provided in this act, shall suspend the person's Wyoming driver's license or his privilege to operate a motor vehicle in this state as follows:

- (i) Except as otherwise provided in paragraph (ii) of this subsection, the period of suspension shall be six (6) months;
- (ii) The period of suspension shall be one (1) year and six (6) months, if:

(A) The person has previously been convicted under W.S. 31-5-233 or other law prohibiting driving while under the influence as defined by W.S. 31-5-233(a)(v); or

(B) The person's license or privilege to operate a motor vehicle has previously been suspended or revoked for refusal to submit to a chemical test of his blood, breath or urine for the purpose of determining the alcohol concentration or controlled substance content of his blood.

(iii) Suspension pursuant to this section shall not take effect if within ten (10) days of arraignment on the charge corresponding to the suspension, the person enters a plea of guilty to driving while under the influence.

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

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

(i) A person under twenty-one (21) years of age who drives or is in actual physical control of a motor vehicle within this state is deemed to have given consent, subject to the provisions of this section, to a chemical test or tests of his blood, breath or urine for the purpose of determining alcohol concentration in his blood;

(ii) The test or tests shall be administered at the direction of a peace officer, who has probable cause to believe that the driver was driving or in actual physical control of a motor vehicle in this state in violation of W.S. 31-5-234(b). The peace officer who requires a test pursuant to this section may direct that the test shall be of blood, breath or urine. However, if the officer directs that the test be of the person's blood or urine, the person may choose whether the test shall be of blood or urine.

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

(i) His failure to submit to all required chemical tests shall result in the suspension or denial of his Wyoming driver's license or his privilege to operate a motor vehicle for a period of ninety (90) days without the right to apply for limited driving privileges;

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

(iii) After submitting to all required chemical tests requested by the peace officer 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.

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

(d) Any person dead, unconscious or otherwise in a condition rendering him incapable of refusal to submit to the tests is deemed to have given his consent provided for in this section, and the tests may be administered subject to this section.

(e) 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 submit a signed statement to the department. The statement submitted by the officer shall contain:

(i) His probable cause to believe the person was driving or in actual physical control of a vehicle:

(A) In this state;

(B) In violation of W.S. 31-5-234(b).

(ii) That a test was requested pursuant to this section; and

(iii) That the person refused to submit to a test or submitted to a test which disclosed an alcohol concentration of two one-hundredths of one percent (0.02%) or more.

(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 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.

(g) A timely request for a hearing shall stay the period of suspension or denial until the order following the hearing is entered and all appellate review of the matter is completed, provided the stay is effective only so long as there is no license suspension or denial for a similar violation during the hearing and appeal period.

(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:

(i) Whether the peace officer had probable cause to believe the person was driving or in actual physical control of a vehicle with an alcohol concentration of two one-hundredths of one percent (0.02%) or more;

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

(iii) Whether the person had been given the advisement required in subsection (b) of this section; and

(iv) Whether the person has shown good cause as to why his license should not be suspended or denied, regardless of the findings in paragraphs (i) through (iii) of this subsection.

(j) Prehearing discovery available to any party is limited to access to the signed statement and any accompanying documentation submitted by the peace officer. Other types of discovery available under other laws are not available under this section.

(k) If a person under arrest refuses to submit to a chemical test under this section, evidence of the refusal is admissible in any administrative, civil or criminal action or proceeding arising from acts alleged to have been committed while driving or in actual physical control of a vehicle.

(m) W.S. 31-6-102(g), 31-6-104(c), 31-6-105(a), (b) and (e) and 31-6-106 apply to this section.

(n) Upon receipt of the statement provided for under subsection (e) of this section indicating that the person refused to submit to a test to determine the driver's alcohol concentration, the department, subject to review as provided in W.S. 31-7-105, shall suspend the person's Wyoming driver's license or his privilege to operate a motor vehicle in this state or shall deny issuance of a driver's license to the person as follows:

(i) If the person has been issued a driver's license, the period of suspension shall be ninety (90) days without any right to limited driving privileges pursuant to W.S. 31-7-105;

(ii) If the person has not been issued a driver's license, he shall not operate a vehicle and the department shall not issue the person a driver's license or learner's permit for the time specified in paragraph (n)(i) of this section.

(o) Records of convictions or license suspensions under this section shall not be made a part of the abstracts or records kept by the department of transportation pursuant to W.S. 31-5-1214 or 31-7-120. Any records maintained by the department for administration of this section shall be maintained separately and shall not be available for public inspection except for inspection by any law enforcement officer or agency to enforce the provisions of this section. Any driver's license suspension or related records under this section shall not be the basis for any increase in insurance premiums or the cancellation of any insurance policy for a minor or his parents affected by this section.

### **§ 31-7-102. Definitions.**

(a) As used in this act:

(i) "Alcohol" means any substance containing any form of alcohol, including but not limited to, ethanol, methanol, propanol and isopropanol;

(ii) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred (100) milliliters of blood;

(B) The number of grams of alcohol per two hundred ten (210) liters of breath; or

(C) The number of grams of alcohol per seventy-five (75) milliliters of urine.

(iii) "Bus" means every motor vehicle designed to transport sixteen (16) or more passengers, including the driver;

(iv) "Cancellation" means the annulment or termination by formal action of the division of a person's license because of some error or defect in the license or because the licensee is no longer entitled to the license;

(v) "Commerce" means:

(A) Trade, traffic and transportation within the jurisdiction of the United States between a place in a state and a place outside of the state, including a place outside the United States; and

(B) Trade, traffic and transportation in the United States which affects any trade, traffic and transportation in subparagraph (A) of this paragraph.

(vi) "Commercial driver's license" means a license issued in accordance with the requirements of this act to an individual which authorizes the individual to drive a class of commercial motor vehicle;

(vii) "Commercial driver license information system" is the information system established pursuant to the Commercial Motor Vehicle Safety Act of 1986, 49 (APP) U.S.C. § 2706 [49 U.S.C. § 31106], to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers;

(viii) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property if the motor vehicle:

(A) Has a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds;

(B) Is designed to transport sixteen (16) or more passengers, including the driver; or

(C) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act [49 U.S.C. § 5101 et seq.] and which require the motor vehicle to be placarded under the Hazardous Material Regulations (49 CFR Part 172, Subpart F).

(ix) "Commission" means the transportation commission of Wyoming or any authorized employee of the commission charged with the administration of this act;

(x) "Controlled substance" includes:

(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv);

(B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely.

(xi) "Conviction" means a final conviction and shall include:

(A) An unvacated adjudication of guilt or a determination of a violation in a court of original jurisdiction or an administrative proceeding;

(B) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court;

(C) A plea of guilty or nolo contendere accepted by the court;

(D) The payment of a fine or court cost; or

(E) Violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated.

(xii) "Department" means the department of transportation;

(xiii) "Disqualification" means a prohibition against driving a commercial motor vehicle;

(xiv) "Division" means the division within the department which is designated to administer this act;

(xv) "Drive" means to function as a driver in any place open to the general public for purpose of vehicular traffic;

(xvi) "Driver" means as defined by W.S. 31-5-102(a);

(xvii) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer;

(xviii) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle;

(xix) "Endorsement" means an authorization placed upon an individual's driver's license to permit the individual to operate certain types of motor vehicles;

(xx) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one (1) year;

(xxi) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon;

(xxii) "Gross vehicle weight rating (GVWR)" means the weight specified by the manufacturer as the maximum loaded weight of a single vehicle;

(xxiii) "Hazardous materials" means as defined in the Hazardous Materials Transportation Act, 49 App. U.S.C. § 1803 (49 U.S.C. § 5102);

(xxiv) "Impaired person" means a person who is afflicted with or suffering from a mental, emotional, physical impairment or disease that may impair the person's ability to safely operate a motor vehicle;

(xxv) "License", "driver's license", "commercial driver's license" or "instruction permit" means any license or permit secured by a person from the division, in accordance with this act which grants the privilege to drive or operate a motor vehicle on the public highways, streets and roads of this state;

(xxvi) "License fee" means the fee imposed by this act;

(xxvii) "Motor vehicle" means every vehicle which is self-propelled and designed for normal use on the highways;

(xxviii) "Motorcycle" means as defined by W.S. 31-5-102(a);

(xxix) "Nonresident" means a person who is not a resident of this state;

(xxx) "Nonresident operating privilege" is the privilege conferred upon a nonresident by the laws of this state pertaining to the driving by the person of a motor vehicle or the use of a vehicle in this state;

(xxxi) "Other law prohibiting driving while under the influence" means a statute of another state, the United States, a territory or district of the United States or an ordinance of a governmental entity of this or another state or of an Indian tribe which prohibits driving while under the influence of intoxicating liquor, alcohol, controlled substances or drugs;

(xxxii) "Out-of-service" means a temporary prohibition against driving a commercial motor vehicle;

(xxxiii) "Owner" means as defined by W.S. 31-5-102(a);

(xxxiv) "Pedestrian vehicle" means as defined by W.S. 31-5-102(a);

(xxxv) "Registration" means the registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(xxxvi) "Representative vehicle" means a motor vehicle which represents the type and class of motor vehicle that the driver applicant operates or expects to operate;

(xxxvii) "Resident" means as defined in W.S. 31-1-101(a)(xxi)(A);

(xxxviii) "Restriction" means a restriction placed on an individual's license to indicate the driver's eligibility to operate a motor vehicle;

(xxxix) "Revocation" means the termination by formal action of the division of a person's license or privilege to drive a motor vehicle on the public highways;

(xl) "School bus" means every motor vehicle that is owned by or leased to or registered to a public school district and is used to transport children to or from school or in connection with school activities and is designed for and capable of carrying sixteen (16) or more passengers, but not including buses operated by common carriers in transportation of school children or buses owned by a community college or the University of Wyoming;

(xli) "Serious traffic violation" means:

(A) Excessive speeding, as defined by rule and regulation of the United States secretary of transportation involving any single offense for any speed of fifteen (15) miles per hour or more above the posted speed limit;

(B) Reckless driving as defined by W.S. 31-5-229;

(C) Repealed by Laws 2004, ch. 11, § 2.

(D) Erratic lane changes;

(E) Following the vehicle ahead too closely;

(F) A violation of state or local law relating to motor vehicle traffic control, arising in connection with a fatal accident;

(G) Driving a commercial vehicle without obtaining a commercial driver's license;

(H) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual shall not be guilty of a violation of this subparagraph if the individual provides proof prior to or at a court or administrative hearing establishing that the individual held a valid commercial driver's license on the date of the citation;  
or

(J) Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

(xlii) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico;

(xliii) "State of domicile" means the state where a person has his true, fixed and permanent home and principal residence and to which he has the intention of returning whenever he is absent;

(xliv) "Suspension" means the temporary withdrawal for a specified period by formal action of the division of a person's license or privilege to drive a motor vehicle on the public highways;

(xlv) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the chassis of the vehicle. Such vehicles include, but are not limited to, cargo tanks and portable tanks. However, this definition does not include tanks having a rated capacity under one thousand (1,000) gallons;

(xlvi) "Vehicle" means as defined in W.S. 31-5-102(a)(lviii);

(xlvii) "This act" means W.S. 31-7-101 through 31-7-313.

### **§ 31-7-103. Administration and enforcement.**

The administration of this act shall be exercised by the department which may prescribe forms and reasonable rules and regulations in conformity with this act. The department shall keep records of all monies received and disbursed. The records shall be open to examination by the director of the state department of audit or his designee and the audit division of the legislative service office. The highway patrol and all peace officers of any county or municipality shall aid in the enforcement of this act.

### **§ 31-7-104. Disposition of fees.**

Except as provided in this section, the license fees levied and collected under this act are payable to the department and shall be transmitted to the state treasurer to be credited to the highway fund. The fees collected under W.S. 31-7-113(a)(x) shall be transmitted to the state treasurer to be credited to the motorcycle safety education account created by W.S. 31-5-1506.

### **§ 31-7-105. Administrative hearings.**

(a) Repealed by Laws 1992, ch. 30, § 3.

(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:

(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;

(ii) Appeals from the record review of the department.

(c) Any order of a hearing examiner may be appealed to the district court. The person whose license or driving privilege is affected may file a petition for a review of the record in the district court in the county where the person resides or in the case of a nonresident in Laramie county or the county where the offense is alleged to have occurred. The person shall have thirty (30) days from the date of the written order in which to file the petition for review. The district court shall immediately set the matter for determination upon thirty (30) days written notice to the department.

(d) Before suspending, revoking, canceling or denying the license or driving privilege of any person under this act or disqualifying a person from driving a commercial motor vehicle pursuant to W.S. 31-7-305 and 31-7-307, the department shall immediately advise the licensee in writing:

(i) Of his right to request a hearing;

(ii) If the request for hearing is only to receive limited driving privileges, that the request shall be for a record review

conducted by the department. The request for a record review under this paragraph shall be accompanied by a fee of fifteen dollars (\$15.00);

(iii) If the request for hearing is for any purpose other than specified under paragraph (d)(ii) of this section, that the request shall be for a hearing before a hearing examiner within the office of administrative hearings. The request for a hearing before the office of administrative hearings under this paragraph shall be accompanied by a fee of twenty-five dollars (\$25.00).

(e) The licensee has twenty (20) days from the date the department denies the license or gives the notice of intent to suspend, revoke or cancel the license or disqualify the licensee from driving a commercial motor vehicle within which to request a hearing or the opportunity for a hearing is waived. If the request for a hearing is timely and the request is for a contested case, the department shall forward the request and certified record to the hearing examiner who shall schedule a hearing within forty-five (45) days after receipt of the certified record at a time and place specified by the hearing examiner. The hearing examiner shall provide the licensee notice of the hearing at least ten (10) days in advance of the hearing. 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. The hearing examiner may administer oaths, subpoena and compel the attendance of witnesses or the production of relevant books, papers and other evidence reasonably necessary to resolve the matters under consideration in accordance with W.S. 16-3-101 through 16-3-115 and may require reexamination of the licensee. The hearing examiner shall issue subpoenas upon his own motion or upon the request of any party to the proceedings in compliance with the Wyoming Rules of Civil Procedure. Upon hearing, the hearing examiner shall either rescind or uphold the action or upon a showing of good cause, may continue or modify a suspension of the license.

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

(i) It shall be extended only in cases where failure to do so would cause an undue hardship;

(ii) Except as provided in paragraph (iv) of this subsection, it shall be extended only once to any person in a five (5) year period;

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

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

(B) The person agrees to pursue and completes an alcohol education or treatment program as the department prescribes.

(iv) A person whose driving privileges have been suspended for nonpayment of child support may be granted limited driving privileges for a period not to exceed one hundred twenty (120) days upon receipt of the notice required under W.S. 20-6-111(n)(iii). A person granted limited driving privileges under this paragraph shall not be granted an extension of such privileges for twelve (12) months after the limited driving privileges expire unless the person has subsequently

made full payment on his child support obligation in arrears, or is in full compliance with a payment plan approved by the department of family services;

(v) It shall not be granted in cases of:

(A) Revocation;

(B) A conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence if there has been another conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence within the five (5) year period preceding the date of the offense upon which the conviction at issue is based;

(C) A cancellation;

(D) A suspension under the Motor Vehicle Safety-Responsibility Act or W.S. 31-6-102;

(E) A denial under W.S. 31-7-108(b);

(F) A disqualification from driving a commercial motor vehicle under W.S. 31-7-305 and 31-7-307;

(G) A licensee under nineteen (19) years of age who has had his license suspended under W.S. 31-7-128(f) unless at least one-third (1/3) of the total license suspension period has elapsed and the licensee has complied with or is complying with all requirements or conditions imposed by the court resulting from the conviction;

(H) A suspension or denial of a driver's license for violation of W.S. 31-5-234 if the person refused to submit to the required chemical tests under W.S. 31-6-108.

**§ 31-7-127. Mandatory revocation of license for certain violations.**

(a) The division shall revoke the license or nonresident operating privilege of any person, upon receipt of a record of conviction of the person of any of the following violations:

(i) Any felony which is the direct result of the manner in which a motor vehicle is driven;

(ii) A conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, if the person has been previously convicted two (2) or more times under W.S. 31-5-233 or other law prohibiting driving while under the influence within the five (5) year period preceding:

(A) The date of the offense upon which the conviction is based; or

(B) The date of the conviction at issue.

(iii) A conviction under W.S. 31-5-229, a similar local ordinance or a similar statute or ordinance in another jurisdiction, if the person has been previously convicted two (2) or more times under W.S. 31-5-229, a similar local ordinance or a similar statute or ordinance in another jurisdiction within a five (5) year period preceding:

(A) The date of the offense upon which the conviction is based; or

(B) The date of the conviction at issue.

(iv) Failure to stop and render aid when involved in a motor vehicle accident resulting in personal injury or death, as required by W.S. 31-5-1101, a similar local ordinance or a similar statute or ordinance in another jurisdiction;

(v) Perjury or the making of a false affidavit or statement under oath to the division under any statute relating to the ownership or operation of motor vehicles;

(vi) Conviction under W.S. 31-7-133(a)(v);

(vii) Conviction under W.S. 6-2-106 or a similar statute in another jurisdiction.

(b) The period of revocation for the violations in subsection (a) of this section is one (1) year except the period of revocation under paragraph (a)(ii) of this section is three (3) years.

(c) Any person whose driver's license or nonresident operating privilege has been revoked shall, for a three (3) year period beginning on the date of revocation, file and maintain proof of financial responsibility as required in W.S. 31-9-401 through 31-9-414.

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

(a) The division shall suspend the license or nonresident operating privilege of any driver upon receiving a record of the driver's conviction under W.S. 31-5-229, a similar local ordinance or a similar statute or ordinance in another jurisdiction for:

(i) Ninety (90) days, for the first conviction;

(ii) Six (6) months, if the person has been previously convicted once under W.S. 31-5-229, a similar ordinance or a similar statute or ordinance in another jurisdiction within the five (5) year period preceding:

(A) The date of the offense upon which the conviction is based; or

(B) The date of conviction at issue.

(b) Upon receiving a record of a driver's conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, the division shall suspend the license or nonresident operating privilege for:

(i) Ninety (90) days for the first conviction;

(ii) One (1) year, if the person has been previously convicted once under W.S. 31-5-233 or other law prohibiting driving while under the influence within the five (5) year period preceding:

(A) The date of the offense upon which the conviction is based; or

(B) The date of the conviction at issue.

(c) If a person has been convicted under W.S. 31-5-233 or other law prohibiting driving while under the influence at least once within the two (2) year period preceding the date of the most recent offense upon which a conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence is based, the registration of the vehicle being driven if registered in this state to the convicted individual shall be suspended by the division for the period of the driver's license revocation or suspension. The division shall notify the county treasurer of the vehicle registration suspension. The county treasurer, during the period of registration suspension, shall not issue any new vehicle registrations to the convicted individual. Any peace officer may confiscate the license plate of a vehicle whose registration is solely in the name of the driver whose license has been suspended or revoked under state law.

(d) The division shall suspend the license or any nonresident operating privileges of any person failing to report an accident as required by W.S. 31-5-1106 through 31-5-1108 until the report has been filed.

(e) Any person whose driver's license or nonresident operating privilege has been suspended shall, for a three (3) year period beginning on the date of suspension, file and maintain proof of financial responsibility as required in W.S. 31-9-401 through 31-9-414. The requirement for filing and maintaining proof of financial responsibility under this subsection does not apply to a suspension under subsections (f) and (g) of this section.

(f) Upon receiving a record of the conviction of a driver who is under nineteen (19) years of age for violating any law regarding the possession, delivery, manufacture or use of a controlled substance or alcohol, the division shall suspend the license or nonresident operating privilege for:

(i) Ninety (90) days for the first conviction;

(ii) Six (6) months, if the person has been previously convicted within the preceding twelve (12) months for violating any law regarding the possession, delivery, manufacture or use of a controlled substance or alcohol.

(g) Upon receiving notice from the department of family services that a driver is in arrears in a child support obligation, the division shall withhold or suspend the license or any nonresident operating privileges of any driver as specified in the notice until the division receives notice from the department of family services that the driver has made full payment of his child support obligation in arrears or has entered into and is complying with a payment plan approved by the department of family services.

(h) Upon receiving a record of a driver's violation of W.S. 31-5-234, the department shall suspend or deny the license or nonresident driving privileges as follows:

(i) A person who has been issued a driver's license shall be suspended:

(A) For a period of ninety (90) days for a first offense;

(B) For a period of six (6) months if the person has previously violated W.S. 31-5-234 once, or has previously been convicted once under W.S. 31-5-233 or other law prohibiting driving while under the influence within two (2) years preceding:

(I) The date of the offense upon which the conviction is based; or

(II) The date of conviction.

(C) Repealed by Laws 2002, Sp. Sess., ch. 93, § 2.

(ii) A person who has not been issued a driver's license shall not operate a vehicle and the department shall not issue the person a driver's license or learner's permit for the time specified in paragraph (h)(i) of this section.

(j) The provisions of subsection (e) of this section do not apply to a denial or suspension under W.S. 31-5-234 if the denial or suspension is based solely on a violation of W.S. 31-5-234.

(k) Records of convictions or license suspensions under subsection (h) of this section shall not be made a part of the abstracts or records kept by the department of transportation pursuant to W.S. 31-5-1214 or 31-7-120. Any records maintained by the department for suspensions under subsection (h) of this section shall be maintained separately and shall not be available for public inspection except for inspection by any law enforcement officer or agency to enforce the laws of Wyoming. Records under this subsection shall be maintained so that, upon inquiry by any member of the public who is not otherwise entitled to inspect a record maintained under this subsection, the records relating to the subject of the inquiry shall not display information with respect to a license suspension under subsection (h) of this section. Any driver's license suspension or related records under subsection (h) of this section shall not be the basis for any increase in insurance premiums or the cancellation of any insurance policy for a person or his parents affected by subsection (h) of this section.

(m) Notwithstanding subsection (k) of this section, the department shall expunge the record relating to the suspension of a driver's license under subsection (h) of this section when the person under suspension attains twenty-one (21) years of age, unless the person's driver's license is under suspension at that time, in which case the record shall be expunged when the suspension terminates and the person has paid the reinstatement fee required under W.S. 31-7-113(e).

### **§ 31-7-134. Driving while license cancelled, suspended or revoked.**

(a) No person shall drive a motor vehicle on any public highway in this state at a time when his driver's license, from this or any other jurisdiction, or nonresident operating privileges are cancelled, suspended or revoked under this act or any other law. Except as provided in subsection (c) of this section, a person convicted of violating this section is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), by imprisonment for not more than six (6) months, or both.

(b) Repealed by Laws 1998, ch. 113, § 2.

(c) A person convicted of a subsequent violation of subsection (a) of this section for driving during the same period of cancellation, suspension or revocation giving rise to the previous conviction, or a person convicted of driving during a period of cancellation, suspension or revocation arising from a previous conviction under W.S. 31-5-229 or 31-5-233, is guilty of a misdemeanor and shall be imprisoned for not less than seven (7) days nor more than six (6) months and shall not be eligible for probation or suspension of sentence or release on any other basis until he has served at least seven (7) days in jail. In addition, the person shall be fined not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00). Notwithstanding any other provision of law, any person under the age of twenty-one (21) years convicted of being in control of a vehicle in this state with an alcohol concentration of between two one-hundredths of one percent (0.02%) and the amount specified in W.S. 31-5-233(b)(i) shall not be punished by imprisonment of at

least seven (7) days in jail as otherwise provided under this section, but shall have his license administratively suspended for thirty (30) days.

(d) Notwithstanding any other provision of law, any person under the age of twenty-one (21) years convicted of being in control of a vehicle in this state with an alcohol concentration of between two one-hundredths of one percent (0.02%) and the amount specified in W.S. 31-5-233(b)(i) shall not be punished by imprisonment of at least seven (7) days in jail as otherwise provided by this section, but shall have his license administratively suspended for thirty (30) days.

**§ 31-7-138. Temporary license pursuant to W.S. 31-5-1205(k) (arrest for driving under the influence).**

(a) The division shall provide to law enforcement agencies in this state temporary driver's license forms to be issued pursuant to W.S. 31-5-1205(k). The temporary license form shall be prescribed by the division, be completed by the issuing officer, be valid for thirty (30) days and shall specify:

(i) The date of issuance;

(ii) That the license is valid for thirty (30) days;

(iii) That the person may apply for an extension from the division, if eligible for a Wyoming driver's license;

(iv) That the person's license, whether a Wyoming license or a license from another jurisdiction was or was not surrendered to the arresting officer;

(v) That the license is not valid if at the time of issuance, the person does not have a valid driver's license authorizing the person to drive in this state.

(b) The division shall issue or renew a temporary license, without charge, to a licensee issued a temporary license under W.S. 31-5-1205(k) on a form prescribed by the division as valid for sixty (60) days if the licensee:

(i) Applies in person at a licensing station;

(ii) Surrenders or has surrendered his Wyoming driver's license;

(iii) Surrenders the temporary license issued under W.S. 31-5-1205(k); and

(iv) Is otherwise eligible to receive a Wyoming driver's license.

(c) The time limitations for renewal of a valid Wyoming license are extended during the time a person has a valid temporary license under this section.

(d) The Wyoming driver's license of any person provided a temporary license under W.S. 31-5-1205(k) is invalid until disposition of the arrest or citation and shall be surrendered to the division.

(e) Upon receipt of a record indicating the disposition of the arrest or citation which required surrender of the license:

(i) Each Wyoming license surrendered under this section or pursuant to W.S. 31-5-1205(k) shall be:

(A) Returned, if the licensee is not convicted and is otherwise entitled to receive the license; or

(B) Retained, if the licensee is convicted.

(ii) Otherwise, each record received shall be forwarded to the jurisdiction in which the license was issued and shall indicate:

(A) The licensee was not convicted and is otherwise entitled to receive his license or driving privileges; or

(B) The licensee was convicted.

(f) The division shall upon receipt of out-of-state driver's license from the arresting officer under W.S. 31-5-1205(k) and 31-6-104(b) return the license to the jurisdiction in which it was issued along with a copy of the temporary driver's license issued to licensee. The licensee is responsible for contacting the jurisdiction in which the license was issued for securing its return.

(g) As used in subsection (e) of this section:

(i) "Convicted" includes the department's suspension or denial of a license pursuant to W.S. 31-5-234 or 31-6-108;

(ii) "Otherwise entitled to receive the license" means the license is not currently under any suspension, revocation or cancellation for any reason, including suspension under W.S. 31-6-102 or 31-6-107 as a result of the same incident on which an arrest or citation was based.