



# Iowa Department of Transportation

## OPERATION OF IOWA CODE CHAPTER 321J, SECTION 321.208 AND YOUR RIGHTS

Under Iowa Code Chapter 321J a person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person was intoxicated is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine for the purpose of determining the alcohol concentration or presence of drugs.

If a person refuses to submit to chemical testing, no test shall be given but the person's privilege to drive shall be revoked by the Department of Transportation (DOT) for one year if the person has no prior revocation within the previous twelve years, and for two years if the person does have a prior revocation within the prior twelve years.

If the person submits to chemical testing and the test results indicate an alcohol concentration of 0.08 or more, or the presence of a controlled substance or other drug or a combination of alcohol and another drug in violation of 321J.2, the DOT shall revoke the person's driving privileges for 180 days if the person has no revocation within the previous twelve years, and for one year if the person has one or more previous revocations within the previous twelve years.

If the person is under age 18, the revocation shall be for the above periods, or until the person reaches age 18, whichever period is longer. If the person is under age 21 and the results indicate 0.02 but less than 0.08, the revocation shall be 60 days if no prior revocations in twelve years or 90 days if a prior revocation in twelve years.

Under §321J.6(3), if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered. Refusal of such a blood or urine test will be considered a refusal to submit to chemical testing under §321J.9.

If a person operating a commercial motor vehicle either refuses to submit to chemical testing (including blood or urine test for drugs) or submits to chemical testing and the test results indicate an alcohol concentration of 0.04 or more, the person shall be disqualified from operating a commercial motor vehicle for a period of one year, or a period of three years if the person was operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding, except, the disqualification shall be for life if the person previously committed, while operating a commercial motor vehicle after June 30, 1990, any of the following acts or offenses in any state or foreign jurisdiction: (a) operating while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances; (b) operating with an alcohol concentration of four hundredths or more; (c) refusal to submit to required chemical testing; (d) failure to stop and render aid at the scene of an accident involving the person's vehicle; (e) a felony or aggravated misdemeanor. A lifetime disqualification is subject to reduction to ten years as provided in federal law.

The revocation shall become effective 10 days after the DOT has mailed notice of the revocation by first class mail, or 10 days after peace officer has served a notice of revocation. The peace officer may issue a temporary license valid only for 10 days. A disqualification shall become effective 30 days after DOT mailed the notice of disqualification or 30 days after the peace officer served the notice. The officer may issue a temporary permit valid only for 30 days.

The DOT is now attempting to revoke your privilege to drive because you have allegedly either refused testing (§321J.9) or failed a chemical test (321J.12 or 321J.2A) and/or to disqualify you from operating a commercial motor vehicle because allegedly while operating a commercial motor vehicle you either refused testing or submitted to testing with a result of 0.04 or more (§321.208).

If you wish to contest the revocation, you must mail a written hearing request to the DOT within 10 days after you have received notice of revocation. If you wish to contest the disqualification you must mail a written hearing request to DOT within 30 days after you receive notice of disqualification. You have been given a form (Form 432018) which you may use for this purpose.

The DOT shall then grant you a hearing within 45 days after it receives the request. The revocation will then be stayed (postponed) until a final DOT ruling is made. However, a disqualification and revocation for 0.02 but less than 0.08 will not be stayed during the administrative proceedings. The hearing may be held by telephone conference call and may be recorded. Its scope shall be limited to the issues of whether the peace officer had reasonable grounds to believe that you were operating a motor vehicle in violation of Iowa Code §321J.2 or 321J.2A(OWI), whether you refused to submit to chemical testing, whether a test was administered and the test results indicated an alcohol concentration of 0.02 but less than 0.08 if you are under 21 or 0.08 or more or whether a test was administered and the test results indicated the presence of a controlled substance or other drug or a combination of alcohol and another drug, in violation of 321J.2, whether you were operating a commercial motor vehicle, and whether a test was administered and the test results indicated an alcohol concentration of 0.04 or more. After the hearing the administrative law judge shall order that the revocation and/or disqualification be either rescinded or sustained.

Upon receipt of the proposed decision of the administrative law judge to sustain a revocation and/or disqualification, you have only 10 days to appeal the decision to the DOT director. The decision may specify the appeal procedure or you may follow the DOT rules found at 761 Iowa Admin. Code Ch. 620. The director shall within 30 days either rescind or sustain the revocation and/or disqualification, or order a new hearing to be held within 20 days.

If the DOT fails to comply with the time limits for hearing and administrative appeal, the revocation and/or disqualification shall be rescinded, unless a continuance has been granted at your request or that of the peace officer.

You may seek judicial review of your revocation or disqualification in accordance with the Iowa Administrative Procedure Act, Iowa Code Chapter 17A, but only if you have exhausted all adequate administrative remedies, including administrative appeal. A petition for judicial review must be filed within 30 days after issuance of the final DOT decision. The DOT will not further postpone a revocation while on judicial review unless the reviewing court so orders. However, the filing of a petition for judicial review shall stay a disqualification pending a determination by the district court.

If your license is revoked you may be entitled to apply for a temporary restricted license (work permit). You may submit an application for a temporary restricted license at any time. (See 321J.4, 321J.9, 321J.12 and 321J.20). Iowa Code §321J.20 provides:

#### *321J.20 Temporary Restricted License.*

- 1. The department may, on application, issue a temporary restricted license to a person whose motor vehicle license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's motor vehicle license has not been revoked previously under 321J.4, 321J.9, or 321J.12 and if any of the following apply:
  - a. The person's motor vehicle license is revoked under section 321J.4. This subsection shall not apply to a revocation ordered under section 321J.4 resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.*
  - b. The person's motor vehicle license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of Section 321J.2 which arose from the same set of circumstances which resulted in the person's motor vehicle license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license.*
  - c. The person's motor vehicle license is revoked under section 321J.12. However, a temporary restricted license may be issued if the person's motor vehicle license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred and sixty-five days of the revocation have expired.**

- 2. This section does not apply to a person whose license was revoked under section 321J.2A, 321J.4 subsection 4 or 6, or to a person whose license is suspended or revoked for another reason.*
- 3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.*
- 4. A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle.*
- 5. A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.*
- 6. Following certain minimum periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued. There is no minimum period of ineligibility for first offense revocations if there was no accident involvement and the test result did not exceed .15 and there is no requirement for an ignition interlock device if the test result is not more than 0.10.*

If you are convicted in a criminal court of OWI, and your driver's license has not been revoked for refusing or failing a chemical test for the same occurrence, then the DOT shall revoke your driving privilege for 180 days if you have had no previous alcohol-related conviction or revocation within the previous twelve years, and for two years if you have had one or more previous convictions or revocations within that time.

If the court defers judgment on an OWI violation, the DOT shall revoke the license for a period of 30 to 90 days, if your license has not been revoked for refusing or failing a chemical test for the same occurrence.

If your license is revoked under Ch. 321J, it cannot be reinstated until you have paid a \$200 civil penalty. You must also provide proof of satisfactory completion of evaluation and treatment or rehabilitation services and proof of satisfactory completion of a course for drinking drivers as provided in Section 321J.22 before reinstatement.

If you are convicted in a criminal court of OWI in a commercial motor vehicle and you have not been disqualified for the same occurrence, the DOT shall disqualify you pursuant to Section 321.208.

**For the full text of Iowa OWI law, you should read Iowa Code Chapter 321J and Section 321.208. You are also encouraged to consult with an attorney who can further explain the operation of the law and your rights.**