

CHAPTER 620
OWI AND IMPLIED CONSENT
[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 11]

761—620.1(321J) Definitions. Rescinded IAB 1/8/92, effective 2/12/92.

761—620.2(321J) Information and location. Applications, forms, information, assistance, and answers to questions relating to this chapter are available by mail from Driver and Identification Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; or by facsimile at (515)239-1837.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

761—620.3(321J) Issuance of temporary restricted license.

620.3(1) Eligibility and application.

a. The department may issue a temporary restricted license to a person who is eligible under and for the purposes listed in Iowa Code chapter 321J. The department shall not issue a temporary restricted license to a person who is otherwise ineligible.

b. To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form 430400 to driver and identification services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to driver and identification services.

c. A temporary restricted license issued for any purpose may include permission for the licensee to participate in the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. For purposes of this chapter, a sobriety and drug monitoring program means the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. If the licensee is required to participate in and comply with the sobriety and drug monitoring program as a condition of the license, the licensee shall notify the department of the jurisdiction to which the licensee is reporting in compliance with the program.

620.3(2) Additional requirements. A person applying for a temporary restricted license shall also comply with all of the following requirements:

a. Provide a description of all motor vehicles owned or operated under the temporary restricted license.

b. Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles owned or operated under the temporary restricted license.

c. Provide certification of installation of an approved ignition interlock device on every motor vehicle owned or operated.

d. Pay the \$200 civil penalty.

620.3(3) Issuance and restrictions.

a. The department shall not issue the temporary restricted license until the application is approved, all requirements are met, the applicable reinstatement and license fees have been paid, and the applicant has passed the appropriate examination for the type of vehicle to be operated under the temporary restricted license.

b. The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

620.3(4) Denial. A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of driver and identification services at the address given

in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 761—620.4(321J).

[ARC 8024B, IAB 8/12/09, effective 7/14/09; ARC 8203B, IAB 10/7/09, effective 11/11/09; ARC 4001C, IAB 9/12/18, effective 10/17/18; ARC 4347C, IAB 3/13/19, effective 4/17/19]

761—620.4(321J) Hearings and appeals.

620.4(1) Contested case hearing.

a. A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of driver and identification services at the address given in 761—620.2(321J). The request shall include the person's name, date of birth, driver license number, complete address and telephone number.

b. A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

c. A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within this time period.

d. Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

e. After a hearing, a written decision will be issued by the presiding officer.

620.4(2) Appeal. A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

a. The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

b. The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of driver and identification services at the address given in 761—620.2(321J).

d. An appeal shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The director of driver and identification services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

620.4(3) Final agency action. The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

620.4(4) Default.

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2).

A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

f. "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

g. A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

i. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

620.4(5) *Petition to reopen a hearing.*

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of driver and identification services at the address in 761—620.2(321J). If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

b. A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

c. A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of driver and identification services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

761—620.5(321J) Reinstatement. The department may reinstate the license when the revocation has ended if the person has:

620.5(1) Filed proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated.

620.5(2) Paid the \$200 civil penalty.

620.5(3) Provided proof of satisfactory completion of a course for drinking drivers and proof of completion of substance abuse evaluation and treatment or rehabilitation services on a form and in a manner approved by the department.

620.5(4) Successfully completed the required driver license examination.

620.5(5) Paid the specified reinstatement fee.

620.5(6) Paid the appropriate license or permit fee.

620.5(7) Provided, if required by Iowa Code section 321J.17(3), proof of installation of an approved ignition interlock device or proof the person remains in compliance with the ignition interlock device requirement if the device was installed for a temporary restricted license.

620.5(8) Provided, if required in accordance with Iowa Code section 321J.20, proof of participation in and compliance with the sobriety and drug monitoring program.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

761—620.6(321J) Issuance of temporary restricted license after revocation period has expired. The department may issue a temporary restricted license to a person whose period of revocation under Iowa Code chapter 321J has expired but who has not met all the requirements for license reinstatement. The period of issuance shall be determined by the department, but it shall not exceed six months from the end of the original revocation period.

620.6(1) An applicant for a temporary restricted license under this rule must meet one of the following two conditions:

a. The applicant must demonstrate to the satisfaction of the department that a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

b. The applicant must demonstrate to the satisfaction of the department that substance abuse evaluation and treatment or rehabilitation services have not been completed because of an inability to schedule them or because they are ongoing.

620.6(2) An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.3(321J) and Iowa Code section 321J.20, including installation of an ignition interlock device.

761—620.7 to 620.9 Reserved.

761—620.10(321J) Revocation for deferred judgment. The revocation period under Iowa Code subsection 321J.4(3) shall be 90 days.

761—620.11 to 620.14 Reserved.

761—620.15(321J) Substance abuse evaluation and treatment or rehabilitation services. When the department revokes a person's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance abuse evaluation and, if recommended, treatment or rehabilitation services. A provider of substance abuse evaluation and treatment or rehabilitation programs shall be licensed by the Iowa department of public health, division of substance abuse.

620.15(1) Reporting.

a. When a person who has been ordered to attend a substance abuse program has satisfactorily completed the program, the program provider shall electronically report completion to the department in a manner approved by the department.

b. Reporting to the department shall be in accordance with Iowa Code sections 125.37, 125.84 and 125.86 and the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2.

620.15(2) Payment. Payment of substance abuse evaluation and treatment or rehabilitation costs shall be in accordance with Iowa department of public health rules.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

761—620.16(321J) Drinking drivers course. When the department revokes a person's license under Iowa Code chapter 321J, the department shall order the person to enroll, attend and satisfactorily complete a course for drinking drivers, as provided in Iowa Code section 321J.22.

620.16(1) Reporting.

a. When a person who has been ordered to attend a drinking drivers course has successfully completed the course, the program provider under Iowa Code section 321J.22(2) "a" shall electronically report completion to the department in a manner approved by the department.

b. Reserved.

620.16(2) Payment. A person ordered to complete a drinking drivers course is responsible for payment of course fees and expenses in accordance with Iowa Code section 321J.22.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

761—620.17(321J) Sobriety and drug monitoring program. When the department revokes a person's driver's license under Iowa Code chapter 321J, and the person seeks a temporary restricted license, or the person seeks reinstatement of the person's driver's license under Iowa Code section 321J.17, the department shall, if applicable, require the person to participate in and comply with the sobriety and drug monitoring program.

620.17(1) Condition of license. Participation in and compliance with the sobriety and drug monitoring program shall be a condition of the license if all of the following apply:

a. The person committed an eligible offense as defined in Iowa Code section 901D.2(4). A first offense means the person has no previous revocation under Iowa Code chapter 321J, and a second or subsequent offense means the person has had a previous revocation under Iowa Code chapter 321J.

b. The eligible offense was committed in a participating jurisdiction.

620.17(2) *Duration.* Unless otherwise provided in Iowa Code chapter 901D or Iowa Code section 321J.20, the person shall be required to participate in the sobriety and drug monitoring program for the length of time that an ignition interlock device is required as provided in Iowa Code section 321J.20.

620.17(3) *Excuse from participation and compliance.* Participation in and compliance with the sobriety and drug monitoring program shall not be required as a condition of the person's driver's license if the court enters an order finding the person is not required to participate in and comply with the program.

620.17(4) *Cancellation.* If the department is notified that a person required to participate in the sobriety and drug monitoring program has not completed enrollment in the program, the department shall cancel the person's driver's license in accordance with the department's existing provisions for cancellation of a license.

620.17(5) *Noncompliance.* If the department is notified pursuant to Iowa Code section 901D.9 that a person required to participate in the sobriety and drug monitoring program is no longer in compliance with the program, the department shall revoke the person's driver's license in accordance with the department's existing provisions for revocation of a license.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

These rules are intended to implement Iowa Code chapters 17A, 321J and 901D and sections 321.193, 321.201, 321.376 and 707.6A.

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