

**42-2-132.5. Mandatory and voluntary restricted licenses following alcohol convictions – rules.**

(1) The following persons shall be required to hold a restricted license pursuant to this section for at least one year prior to being eligible to obtain any other driver's license issued under this article:

(a) Any person who has been convicted on two or more occasions of DUI or DUI per se, which offenses were committed within a period of five years and one of the offenses occurred on or after July 1, 1999, and on or before June 30, 2000;

(b) Any person whose privilege to drive was revoked pursuant to section 42-2-125 (1) (g) (I) or (1) (i) and one of the offenses giving rise to the revocation occurred on or after July 1, 2000;

(b.5) Any person whose license has been revoked pursuant to the provisions of section 42-2-126 when the person's BAC was 0.17 or more at the time of driving or within two hours after driving;

(c) Any person whose privilege to drive was revoked under section 42-2-203 where the revocation was due in part because of a DUI, DUI per se, DWAI, or habitual user conviction and one of the offenses giving rise to the revocation occurred on or after July 1, 2000; or

(d) Any person whose privilege to drive was revoked pursuant to subsection (5) of this section.

(1.5) (a) A person whose privilege to drive has been revoked for more than one year because of a DUI, DUI per se, or DWAI conviction or has been revoked for more than one year under any provision of section 42-2-126 may voluntarily apply for an early reinstatement with a restricted license under the provisions of this section after the person's privilege to drive has been revoked for one year. The restrictions imposed pursuant to this section shall remain in effect for the longer of one year or the total time period remaining on the license restraint prior to early reinstatement.

Editor's note: This version of paragraph (a) is effective until January 1, 2009.

(a) (I) A person whose privilege to drive has been revoked for more than one year because of a DUI, DUI per se, or DWAI conviction or has been revoked for more than one year under any provision of section 42-2-126 may voluntarily apply for an early reinstatement with a restricted license under the provisions of this section after the person's privilege to drive has been revoked for one year. Except as provided in subparagraph (II) of this paragraph (a) or subsection (1.7) of this section, the restrictions imposed pursuant to this section shall remain in effect for the longer of one year or the total time period remaining on the license restraint prior to early reinstatement.

(II) (A) For revocations under section 42-2-125 (1) (b.5) or 42-2-126 (3) (a) (I) for a first violation that requires only a nine-month revocation, a person twenty-one years of age or older at the time of the offense may voluntarily apply for an early reinstatement with a restricted license under the provisions of this section after the person's privilege to drive has been revoked for at least

one month. Except as provided in paragraph (b.5) of subsection (1) of this section, subsection (1.7) of this section, and sub-subparagraph (B) of this subparagraph (II), the restrictions imposed pursuant to this subparagraph (II) shall remain in effect for eight months.

(B) For a person with a restricted license issued pursuant to sub-subparagraph (A) of this subparagraph (II), if the department's monthly monitoring reports required by paragraph (c) of subsection (4) of this section show that, for four consecutive monthly reporting periods, the approved ignition interlock device did not prevent the operation of the motor vehicle due to an excessive blood alcohol content or did not detect that there has been tampering with the device, there have been no other reports of circumvention or tampering, and there are no grounds to extend the restriction pursuant to paragraph (a) of subsection (5) of this section, then the person shall be eligible for a license without the restriction required by this section. If the department determines that a person is eligible for a license without the restriction required by this section pursuant to this sub-subparagraph (B), the department shall serve upon the person a notice of such eligibility. A person eligible for a license without the restriction required by this section pursuant to this sub-subparagraph (B) may request a hearing on the person's eligibility. The provisions of this sub-subparagraph (B) shall not apply to a person covered by subsection (1.7) of this section.

(C) The department shall establish a program to assist persons who apply for a restricted license under this subparagraph (II) who are unable to pay the full cost of an ignition interlock device. The program shall be funded from the first time drunk driving offender account in the highway users tax fund established pursuant to section 42-2-132 (4) (b) (II). The executive director of the department may promulgate rules governing the program.

Editor's note: This version of paragraph (a) is effective January 1, 2009.

(b) (I) To be eligible for early reinstatement with a restricted license pursuant to this subsection (1.5), a person must have satisfied all conditions for reinstatement imposed by law including time periods for non-alcohol-related restraints; except that a person whose license was restrained pursuant to section 42-2-138 may be eligible for early reinstatement under this section so long as the restraint was caused in part by driving activity occurring after an alcohol-related offense and the length of any license restriction under this section includes the period of restraint under section 42-2-138.

(II) Before being eligible for early reinstatement with a restricted license under this section, a person must provide proof of financial responsibility to the department pursuant to the requirements of the "Motor Vehicle Financial Responsibility Act", article 7 of this title. Such person must maintain such proof of financial responsibility with the department for the longer of three years or the period that the person's license is restricted under this section.

(c) No person who has been designated an habitual offender under the provisions of section 42-2-202 for any offense other than a violation of section

42-4-1301, 42-2-138, or 42-4-1401 shall be eligible for a restricted license pursuant to this subsection (1.5).

(d) Repealed.

(1.7) A person required to hold a restricted license pursuant to this section who is a persistent drunk driver as defined in section 42-1-102 (68.5), based on an offense that occurred on or after July 1, 2004, shall be required to hold the restricted license for at least two years prior to being eligible to obtain any other driver's license issued under this article.

(1.8) As soon as a person meets the conditions of subsection (1) of this section, the department shall note on the driving record of any person required to hold a restricted license under this section that the person is required to have an ignition interlock device. A person whose driving record contains the notation required by this subsection (1.8) shall not operate a motor vehicle without an approved ignition interlock device until the restriction is removed pursuant to this section.

(2)(Deleted by amendment, L. 2000, p. 1076, § 4, effective July 1, 2000.)

(3) (a) The department shall issue a restricted license under this section if the department receives from a person described in subsection (1), (1.5), or (1.7) of this section an affidavit stating that the person has obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the restricted license. A copy of each signed lease agreement shall be attached to the affidavit.

Editor's note: This version of paragraph (a) is effective until January 1, 2009.

(a) (I) The department shall issue a restricted license under this section if the department receives from a person described in subsection (1), (1.5), or (1.7) of this section an affidavit stating that the person has obtained:

(A) A signed lease agreement for the installation and use of an approved ignition interlock device in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the restricted license; and

(B) The written consent of all other owners, if any, of each motor vehicle in which the approved ignition interlock device is installed.

(II) A copy of each signed lease agreement shall be attached to the affidavit.

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(a.5) (I) Notwithstanding the requirements of paragraph (a) of this subsection (3), the department shall issue a restricted license to any person who is required to hold a restricted license pursuant to subsection (1) of this section who is not the registered owner or co-owner of a motor vehicle if the person submits an affidavit stating that the person is not the owner or co-owner of any motor vehicle and has no access to a motor vehicle in which to install an approved ignition interlock device.

(II) Any restricted license issued pursuant to this paragraph (a.5) shall require that if the license holder becomes an owner or co-owner of a motor vehicle or otherwise has access to a motor vehicle in which an approved ignition interlock device may be installed, he or she shall submit to the department a signed lease agreement for the installation and use of an approved ignition interlock device on such vehicle for a period equal to the remaining period of the restricted license.

(b) The terms of the restricted license shall include that the person shall not drive a motor vehicle other than a vehicle in which an approved ignition interlock device is installed.

(c) The department shall not issue a license under this section that would authorize operation of a commercial motor vehicle as defined in section 42-2-402 (4) until the restriction created by this section has expired.

(4) (a) and (b) Repealed.

(c) The leasing agency for any approved ignition interlock device shall provide monthly monitoring reports for the device to the department to monitor compliance with the provisions of this section. The leasing agency shall check the device at least once every sixty days to ensure that the device is operating and that there has been no tampering with the device. If the leasing agency detects that there has been tampering with the device, the leasing agency shall notify the department of that fact within five days of the detection.

(5) (a) Upon receipt of a conviction under section 42-2-116 (6) (b), the department shall revoke any license of such person issued under this section and shall not reinstate the license for a period of the longer of one year or the remaining period of license restraint imposed prior to the issuance of a license pursuant to this section. A person shall be entitled to a hearing on the question of whether the revocation is sustained and the length of the ineligibility.

(b) Upon receipt of a record other than a conviction described in paragraph (a) of this subsection (5) indicating that any person who is subject to the restrictions of this section has operated a motor vehicle other than a vehicle in which an approved ignition interlock device is installed or has circumvented or attempted to circumvent the proper use of an approved ignition interlock device, the department may revoke any license of such person issued under this section and not reinstate the license for a period of one year or the remaining period of license restraint imposed prior to the issuance of a license pursuant to this section, whichever is longer. A person shall be entitled to a hearing on the question of whether the license should be revoked and the length of the ineligibility.

(c) If a lease for an approved ignition interlock device is terminated for any reason prior to the expiration of the period of the restriction and no other such lease has been provided by the licensee, the department shall notify the licensee that the license shall be suspended unless and until a new signed lease agreement for the remaining period of the restriction is filed with the department.

(d) If the monthly monitoring reports required by paragraph (c) of subsection

(4) of this section show that the approved ignition interlock device prevented the operation of the vehicle due to excessive blood alcohol content in three of any twelve consecutive reporting periods, the restriction on the person's license shall be extended for an additional twelve months after the expiration of the existing restriction. The department shall notify the person that the ignition interlock restriction provision is being extended and that any license shall be suspended unless the person provides a new signed lease agreement for the use of an approved ignition interlock device for the extended period. The person shall be entitled to a hearing on the extension of the restriction. Based upon findings at the hearing, including aggravating and mitigating factors, the hearing office may sustain the extension, rescind the extension, or reduce the period of extension.

(6) The department may promulgate rules to implement the provisions of this section.

(7) (a) For the purposes of this section, "approved ignition interlock device" means a device approved by the department of public health and environment that is installed in a motor vehicle and that measures the breath alcohol content of the driver before a vehicle is started and that periodically requires additional breath samples during vehicle operation. The device may not allow a motor vehicle to be started or to continue normal operation if the device measures an alcohol level above the level established by the department of public health and environment.

(b) The state board of health may promulgate rules to implement the provisions of this subsection (7) concerning approved ignition interlock devices.