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A GUIDE TO THE LAW IN ALBERTA REGARDING

DRIVER'S LICENCE SUSPENSION

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GENERAL

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INTRODUCTION

In Alberta there are 2 main sets of laws that deal with drivers: The Traffic Safety Act, and the Criminal Code of Canada. This pamphlet will discuss some of the most common reasons why drivers in Alberta have their licences suspended and how these laws apply to suspensions.

BASIC DEFINITIONS

“Motor Vehicle” -A vehicle which moves using any sort of power other than muscular power. This includes mopeds but does not include bicycles, tractors, aircraft and trains.

“Highway” -Any public or private place where the public is usually allowed to drive or park vehicles.

“Operator’s licence” -Any licence or permit issued anywhere which allows a person to drive a motor vehicle in Alberta.

LICENCE RULES

In Alberta a person cannot drive a vehicle if he/she does not hold a driver’s licence or it is suspended. This includes suspensions issued in places other than Alberta. When a person is disqualified from driving a motor vehicle in Alberta, that person’s licence is suspended and he/she is disqualified from holding a valid licence.

Under s. 94 of the Traffic Safety Act, a person is not authorized to drive if (a) that person’s licence has been suspended or cancelled under the Act, (b) that person is disqualified from driving, (c) that person’s licence or permit has been cancelled somewhere other

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than Alberta, (d) that person's privilege to secure a licence or permit in another jurisdiction has been cancelled.

A person who contravenes s. 94 and is not authorized to drive for any of the above named reasons may receive a fine of up to \$2000 or a term of imprisonment for between 14 days and 6 months. For each subsequent offence, the punishment is imprisonment (for a term of 14 days to 6 months). Additionally, according to s. 95(2), a person who drives when he/she is not authorized to drive will be disqualified from driving for an additional 6 months from the day of finding guilt.

A valid licence from another Canadian jurisdiction is transferable in Alberta. Testing of driving skill is not usually required, but one must pass the medical and vision test. It is an offence to have more than one valid licence and an Alberta licence may only be replaced if it is damaged, lost or expired. A person cannot apply for an Alberta licence if they are currently suspended from driving in another jurisdiction.

FOUR WAYS A LICENCE CAN BE SUSPENDED

There are four reasons why a driver in Alberta may have their licence suspended:

1. The driver has been found guilty of driving while under the influence of drugs or alcohol under the Criminal Code of Canada (sections 253 or 254).
2. The driver has violated another criminal code section dealing with driving.
3. Under s. 86 of the Traffic Safety Act, the court may suspend a driver's licence for up to 3 months if the driver:
 - a. Fails to fulfill the duties that arise after an accident has occurred (duties listed under s. 69 and s. 71 of the Act);
 - b. Fails to follow certain rules of the road (which are subject to the Traffic Safety Act);

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- c. Drives carelessly according to s. 115 of the Traffic Safety Act;
 - d. Violates a municipal bylaw which regulates moving vehicles, including a speed limit; or
 - e. Violates a regulation in the National Parks Act to which the Traffic Safety Act applies.
4. Other reasons for suspension include a failure to pay outstanding fines or motor vehicle judgements.

I. DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL

There are 2 sets of laws that deal with impaired driving:

1. Federal Law: The Criminal Code of Canada

The important sections are:

- a. Impaired driving regardless of blood alcohol levels, s. 253(a);
- b. Driving with blood alcohol level over 0.08%, s. 253(b);
- c. Refusing to provide breath or blood sample, s. 254(5);
- d. Impaired driving causing bodily harm, s. 255(2);
- e. Impaired driving causing death, s. 255(3);
- f. Dangerous Driving s. 249; and
- g. Flight from Police, s. 249.1(1)

These are serious criminal charges and therefore the penalties are severe. They range from heavy fines to jail terms and court ordered prohibitions from driving. Conviction under one of these offences will result in criminal record.

2. Provincial Law: Traffic Safety Act

The general rule under s. 83(1) of the Traffic Safety Act is that when a person is found guilty under the impaired driving charges in the Criminal Code (s. 253 and 254) that person becomes disqualified from driving for 1 year from the day of a finding of guilt. The disqualification is 3 years if the person has one prior

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conviction (and 5 years if the person has 2 prior convictions) in the past 10 years under s. 253 or 254 of the Criminal Code. If the 2 prior convictions arose from the same incident, then the convictions are treated as 1 offence and disqualification is for 1 year.

For impaired driving charges that occur anywhere in Canada, that person is disqualified from driving in Alberta for 6 months from the finding of guilt.

Alberta has a program in place called the Alberta Administrative Licence Suspension Program. It is aimed at keeping drunk drivers off the roads. Under s. 88 of the Traffic Safety Act, a police officer who has reasonable and probable grounds to believe that a driver is impaired may require the surrender their driver's licence if:

- a. The driver's blood alcohol level is over 0.08% (usually after a breathalyser test); or
- b. The driver fails or refuses to comply with a breath demand.

Under this program, a police officer will issue a driver's licence suspensions for 3 months or 6 months for alcohol-related offences. No conviction is necessary. If the driver is in an accident causing bodily harm or death, the suspension is 6 months. The suspension comes into effect immediately. However, the police officer may, depending on the circumstances of the offence, give a 21 day temporary driving permit; in this circumstance, the suspension comes into effect after the 21 days have expired.

A licence suspension may be appealed to the Transportation Safety Board; however, there is a fee for any appeal hearing (\$125 for a non-personal hearing or \$250 for an in-person hearing before the Board, plus Registry Agent fees). The appeal must be started within 30 days from the date the Notice of Suspension or Disqualification was issued. A person must have valid grounds for

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appeal in order to have their case heard. If a person can prove that the blood or breath sample that was NOT over 0.08%, or that he/she did NOT refuse to provide a blood or breath sample, then there may be valid grounds for appeal. Inconvenience or hardship caused by the suspension is not a valid reason to appeal.

A person's licence suspension is still effective unless and until there is a successful appeal to the Alberta Transportation Safety Board, EVEN IF the Alberta Courts find that person not guilty of the charged offence, or guilty of a lesser offence.

A notice of suspension will be sent to the most recent address given to the department of motor vehicles. It is your responsibility to give a new address to the Department of Motor Vehicles if you move.

THE IGNITION INTERLOCK PROGRAM

Drivers convicted under sections 253 or 254 of the Criminal Code may be eligible to apply to the Ignition Interlock Program. A driver who is convicted of impaired driving causing bodily harm or death is NOT eligible for this program.

The Ignition Interlock Program is an alcohol-sensing device that is attached to the ignition of a vehicle. The vehicle will not start if the device detects a level of alcohol on the driver's breath. The device is monitored by the Transportation Safety Board and drivers who are issued a "fail" or "warning" by the device may not be allowed to participate in the Ignition Interlock Program anymore.

A person may be eligible if:

1. The conviction was for a ss. 253 or s. 254 offence - not impaired driving causing bodily harm or death;

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2. The driver has served the court-ordered driving prohibition period; this period will be at least 3 months for a first offence and at least 6 months for a second offence;
3. The court has approved the driver's participation in the Ignition Interlock Program;
4. They attend the "Planning Ahead" course, if it is their first offence;
5. They attend the "Impact" course and attend a hearing, if it is a repeat offence;
6. The driver does not have any outstanding fines or un-served suspensions; and
7. They attend the Ignition Interlock Program for at least 6 months.

To be approved for exit from the program, the driver may not have any readings of "warning" or "fail" in the last 3 months.

The cost of the Ignition Interlock Program is:

1. An installation fee of \$150 and a removal fee of \$50;
2. A \$105/month rental fee;
3. Application fee of \$63 and Registry Agent fee; and
4. \$150 for the "Planning Ahead" course and \$375 for the "Impact" course

GETTING YOUR LICENCE BACK AFTER A SUSPENSION

Even though the suspension period may be finished a person cannot get their licence back until he/she has completed all of the conditions listed on the notice of suspension. This even applies to people who leave the province. **The conditions on the notice of suspension must be read very carefully!** Some of the basic conditions that must be met are:

- a. completion of an impaired driving course;

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- b. completion of "Planning Ahead", a one day educational course (for first offenders), or completion of "Impact", a weekend pretreatment course (for repeat offenders); and
- c. completion of a drivers examination and payment of the licence reinstatement fee.

A person must give a registry agent proof of completion of the conditions outlined. After doing this, written notice will be sent stating that he/she can drive legally again. The person can then apply for a new licence.

II. VIOLATING OTHER CRIMINAL CODE SECTIONS

If a person is convicted of certain other Criminal Code sections, there may be punishments very similar to those just described in the impaired driving section. There will be a federal prohibition and also some form of provincial suspension. The provincial suspensions can be very severe. For example, if a person is convicted of wrongfully causing death with a motor vehicle there is an automatic 5 year licence suspension. In addition, he/she will probably face some form of fine or jail time, depending on how serious the offence was. The rules in this area are not set in stone and both the Court and the Driver's Control Board have the power to give out very long suspension periods if they feel it is necessary.

Some of the relevant criminal charges are:

- a. Criminal negligence causing death;
- b. Criminal negligence causing bodily harm;
- c. Manslaughter;
- d. Dangerous driving;
- e. Failure of a vessel operator to keep watch on a person being towed;
- f. Failure to remain at the scene of an accident;
- g. Impaired driving causing death or harm;
- h. Driving while disqualified; and

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- i. Flight from police.

The procedure for getting a licence back after a suspension period is the same as described above in the impaired section except that a person would not be required to take alcohol-related courses, like "Planning Ahead" or "Impact."

III. SUSPENSIONS DUE TO DEMERIT POINTS

When a person is found guilty of committing certain driving offences demerit points are recorded against their licence. The following offences result in the following number of demerit points.

Failure to remain at the scene of an accident	7 points.
Speeding more than 50 km/h over the limit	6 points.
Careless driving	6 points.
Racing	6 points.
Failing to stop for school bus	6 points.
Failing to stop at a train at crossing, or truck carrying dangerous load	5 points.
Failing to stop for a police officer	5 points.
Following too closely	4 points.
Speeding more than 30 km/h but less than 50 km/h over the limit	4 points.
Speeding at an unreasonable rate	4 points.
Failure to yield right of way to a pedestrian	4 points.
Failing to report an accident	3 points.
Improper passing	3 points.
Driving on wrong side of road	3 points.
Wrong way on one way road	3 points.
Blocking passing vehicle	3 points.
Failure to stop for sign or traffic lights	3 points.
Stunting	3 points.
Speeding more than 15 km/h but less than 30 km/h over the limit	3 points.
Failure to obey traffic control device	2 points.

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Traffic lane violation	2 points.
Improper turns	2 points.
Improper backing	2 points.
Speeding up to 15 km/h over the limit	2 points.

When a person gets 8 or more points, but less than 15, a letter will be sent informing him/her of the amount of demerit points. 15 or more points in a 2 year period leads to an **automatic** suspension for 1 month. If a person reaches 15 points twice in 2 years there is an automatic 3 month suspension; 15 points 3 times in 2 years is an automatic 6 month suspension, plus a possible appearance before the Traffic Safety Board. There is no way to appeal this unless the points have been added up wrongly. A person can request to look at your detailed driving record by contacting the Transportation Safety Board.

When the suspension period is over then a person's licence is given back with 7 demerit points against it. Before reaching 15 points, a person can take an approved defensive driving course which will result in 3 points being taken off the licence. This can only be done once every 2 years.

It takes 2 years for the points to roll off a licence for any given offence. The 2 years is calculated from the date of **payment** of the fine, not from the day the fine was received.

The demerit point system is stricter under the Graduated Driver Licensing (GDL) program. When a total of 4 or more, but less than 8, points have accumulated, a person is mailed a courtesy notice. If he/she get 8 or more points within a 2 year period, there is an automatic 1 month suspension. Reaching 8 points twice in 2 years, gives an automatic 3 month suspension. Accumulating 8 points three times in 2 years, gives an automatic 6 month suspension.

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In addition to the demerit points listed above, GDL drivers also are subject to the following points:

Curfew (no driving from midnight until 5 am; Class 7 Learners Only) 2 points.
Having more passengers than seat belts 2 points.
Supervisor not fully qualified 2 points.

There is a zero tolerance policy for alcohol consumption for drivers under the GDL. Drivers licenced under the GDL are prohibited from operating a vehicle with any amount of alcohol in their system. Violation results in an automatic 1 month licence suspension. If a driver under the GDL violates this condition twice, there will be another 1 month licence suspension and the driver will be required to appear before the Transportation Safety Board.

Like the suspensions issued for impaired charges, before a licence can be given back, the conditions of suspension outlined on the suspension order must be completed. There is a fee that has to be paid before the licence is given back.

IV. OTHER REASONS FOR SUSPENSIONS

Driving is considered a privilege not a right. For this reason the Alberta Transportation Safety Board has the power to suspend an Alberta driver's licence if they think it is necessary. Suspension may be ordered for a poor driving record (as discussed above), medical grounds, failure to pay a motor vehicle judgement and failure to pay an outstanding fine. The Board has the right to suspend a licence for any length of time. Before suspending a licence, the person is given 10 days notice and a chance to be heard in writing or in person, with or without a lawyer. In making its decision, the Board considers a number of things including the person's driving record, driving attitude, driving skills, knowledge and any other important facts.

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Under s. 54(1) of the Traffic Safety Act, it is an offence to drive an uninsured vehicle. A person driving an uninsured vehicle may be charged even if the vehicle is not theirs. A person borrowing someone else's vehicle must always check to make sure the vehicle has a valid pink slip. A person may be found guilty, unless he/she has checked to make sure it is insured. Also, the registered owner of the uninsured vehicle may be charged for allowing the vehicle to be driven. This is a very serious offence and there are not very many defences to it. If the judge finds a person guilty there is an **automatic** \$2500 fine and a mandatory victim fine surcharge of \$375, making a total of \$2875 in fines. If he/she does not pay this in the time allowed, there is usually a term of imprisonment between 45 days and 6 months. Two offences of driving without valid insurance within a five year period leads to a fine between \$5000 and \$20,000, with a sentence of 60 days to 6 months in jail if the fine is not paid. A driver's licence suspension can also be ordered. For each subsequent driving without insurance offence, provided the offences are not within a one year period, the fine will double in amount. For example, the fine for a second offence would be \$5000.

A person's licence may also be suspended for failing to pay court ordered payments, such as child maintenance. If a motor vehicle restriction is in place because of a person's child maintenance debt, he/she should contact the Maintenance Enforcement Program (MEP) to set up payment arrangements. The restriction will not be removed until MEP has reviewed the person's statement of finances and a payment arrangement is set up and followed.

APPEALING A DECISION

If the Alberta Transportation Safety Board has suspended a person's licence, he/she may appeal directly to the Board. If the Board-imposed suspension is longer, then an application can be made to have a Court of Queen's Bench judge review the

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decision. An application to the Court of Queen's Bench must be made within 30 days of the suspension decision. If a person is appealing a court imposed suspension it is best to seek the assistance of a lawyer.

It is best to assume the suspension is still in effect: a person should not drive until it has been confirmed with the Transportation Safety Board that it is all right to do so.

CONCLUSION

There are a number of reasons why a driver may have their licence suspended. If you suspect that your licence may be suspended, be safe and contact your local motor vehicles registry branch. If you are caught driving while suspended, the penalties are very harsh. It is important to always update any address changes with your local registry agent so you will receive any notice of suspension. It is **not** an excuse to say you were not advised about the suspension if you did not report an address change. If you have been suspended, do not drive until you are sure that all of the suspension conditions have been met and that your licence is valid.

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REFERRAL NUMBERS

Your local authorized registry agent will be listed in the yellow Pages. They will be able to provide you with some information regarding licence suspensions or can give you the appropriate number to call. Questions involving the Motor Vehicle Registrar or the Driver Control Board should be directed to:

Alberta Solicitor General [780] 427-7013
www.solgps.alberta.ca

Legal guidance agencies:

Lawyer Referral Services 1-800-661-1095 (toll free)
www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm

Legal Aid Society of Alberta [780] 427-7575
www.legalaid.ab.ca

There are also Legal Aid offices in Medicine Hat, Wetaskiwin, Grande Prairie, Peace River, Lethbridge, Fort McMurray, St. Paul, Hinton, Red Deer and Calgary. In smaller centres a Legal Aid representative pays weekly or biweekly visits to the local courthouse.

Student Legal Services of Edmonton [780] 492-2226
Corona Criminal Law Office [780] 425-3356
www.slsedmonton.com

Elizabeth Fry Society Court worker Program: [780] 422-4775
Located on fourth floor of courthouse
. Women's support number: 780-421-1175

Other agencies:

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AMA Impaired Drivers' Programs Registration . . . [780] 430-8811
www.ama.ab.ca/cps/rde/xchg/ama/web/advocacy_safety_AIDPstep1-8495.htm

Maintenance Enforcement Program Info Line [780] 422-5555
www.justice.gov.ab.ca/mep/

Transportation Safety Board [780] 427-8230
www.infratrans.gov.ab.ca/