

# **Driving Hardship Licenses**

By: U.S. Legal Forms, Inc.  
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## **Scope**

This handbook is a general overview of the topic of hardship driving licenses and is not intended to be an exhaustive treatise dealing with all the intricacies of the law in each state. Therefore the focus herein is on understanding what a hardship driving license is and how it may be obtained.

The construction, scope, and effect of statutes providing for hardship licensing for commercial drivers, are not questions within the scope of this handbook.

This handbook does not specifically consider the availability of a hardship driving license for physically or mentally impaired drivers.

## **Terminology**

Some of the terms referred to in this handbook are interpreted to have different meanings in various jurisdictions. Some states may refer to a hardship license as a restricted license while others distinguish between a hardship license and a restricted license. Some of the other terms used to refer to hardship licenses include limited licenses, special restricted licenses, restricted temporary licenses, probationary licenses, work permits, employment driving privileges, and limited driving privileges.

For purposes of this handbook, the term ‘hardship license’ will be used to encompass all of the above terms interchangeably.

## **What is a Hardship License?**

A hardship license is a special exemption from being otherwise prohibited from driving due to having a driver’s license suspended, revoked, denied, or cancelled. It allows someone to drive only for limited purposes. These purposes include employment, school, attending to medical needs of the driver or dependents, attending court-ordered appointments with probation officers or ignition interlock device appointments, or attending an alcohol or substance abuse rehabilitative program or meeting.

There is no uniformity in the law allowing hardship licenses among the states and not all states allow hardship licensing. The requirements for obtaining a hardship license and their permitted uses vary, so it is important to consult the law in your state to determine your eligibility for and the restrictions attached to a hardship license.

## **How Does my Suspension Affect My Eligibility for a Hardship License?**

Although some states will grant a hardship license for license revocations, cancellations, and denials, as well as suspensions, this handbook will focus on the issues involved with license suspension. If a state allows a hardship license for license revocation, cancellation, or denial, it will be covered under the same statutory law that deals with hardship licensing for suspensions. Therefore, the requirements for a hardship license after revocation, cancellation, or denial, when allowed, parallel those for suspended drivers.

The statutes and ordinances providing for the issuance of drivers' licenses usually set forth a variety of grounds upon which suspension or revocation of such licenses may be based. Also, such licenses are generally subject to suspension or revocation, as the statutes may provide, on any ground that would justify a refusal to issue the license in the first instance.

There are important issues to be considered in evaluating your chances of obtaining a hardship license. It is important to understand what type of suspension you have. It may be mandatory or discretionary, judicial or administrative. There are certain offense categories for suspensions, and your eligibility for a hardship license may depend on which category your suspension falls under. The offense your suspension is based upon may not only determine whether you may receive a hardship license, but how long the minimum suspension time that must be served is before you're eligible to apply or before your hardship license is effective. The following text discusses the important suspension issues to be considered before proceeding with a request for a hardship license.

### **Length of Suspension**

There are, in general, two kinds of driver's license suspensions: suspensions which last for a particular period of time and those which last until you have paid a fine or complied with some other requirement. For example, in addition to imposing fines, municipal courts may suspend a driver's license for driving with a suspended license. You must wait before all suspensions expire before seeking reinstatement. If you have more than one suspension of this kind, they will run one after the other. The second kind of suspension is most often imposed for failure to pay a fine or fee, such as a parking ticket or an insurance surcharge. The driver will have to pay all or part of that amount to regain driving privileges, and the suspension will last however many days, months, or years it takes for the fine to be paid in full.

## **Judicial vs. Administrative Suspensions**

All suspensions do not come from the same place. It is very important to know which of the various courts or agencies is responsible for the suspension you are trying to address, because that will determine where you go and what you must do to obtain a hardship license. Some are imposed by municipal courts, which are the courts of the cities or townships. In order to address those suspensions, you will need to contact the specific municipal court that ordered the suspension. In other cases, such as violations of drug laws, suspensions may be imposed by the state-level trial court. Family Division judges may impose suspensions for failure to pay child support. These are all judicial suspensions, which means they were imposed by the courts.

In addition, some suspensions are imposed directly by the Division of Motor Vehicle Services for violation of certain regulations, such as failure to carry insurance on a registered motor vehicle or accumulating too many points. These are administrative suspensions. Because administrative license suspension laws are independent of criminal procedures and are invoked right after arrest, they've been found to be more effective than traditional post-conviction sanctions. The majority of states have administrative license suspension laws. Applications for a hardship license after an administrative suspension will often be made to the Division of Motor Vehicles itself, rather than a court.

The statutory grounds for the suspension or revocation of a driver's license generally include convictions of certain offenses relating to the operation of motor vehicles, but with the exception of those grounds, a court conviction is not necessary to sustain a suspension or revocation.

## **Mandatory vs. Discretionary Suspensions**

Suspensions can either be mandatory, which means that the law requires that a suspension be imposed, or discretionary, meaning that a judge or the DMV can suspend a license, but the law does not require them to do so. If a suspension is discretionary, then a driver may have the ability to avoid suspension, or present good reasons to lift a suspension. Words like "shall," "must," and "not less than" indicate mandatory suspensions. Words like "may," "not more than," and "discretion" indicate that suspension is discretionary. Some states exclude mandatory suspensions from eligibility for a hardship license.

## **Offenses Which Lead to the Suspension of a Driving License**

The following text describes offense categories for suspension of driving privileges, with the details on how to address each one.

### ***Driving While Suspended or Without a License:***

Driving while suspended will lead to further suspension, with the length of time varying depending on the reason for the underlying suspension. Driving with no license will also lead to a suspension, which functions as a delay of several months to several years before a license can be obtained. Many states require that you have a valid license at the time of suspension in order to be eligible for a hardship license.

### ***Failure to Carry Insurance***

Most states require vehicle owners by law to carry a minimum level of liability insurance to cover the costs of a possible accident. Failing to maintain adequate insurance can lead to two kinds of mandatory suspension: a judicial (court-ordered) suspension for the violation if the driver receives a summons (ticket) and is convicted of failure to carry insurance, or an administrative suspension, when an insurance company notifies the DMV that a driver has been dropped from coverage. Many states require you to provide proof of insurance, such as obtaining a Form 22 from your insurance carrier, to receive a hardship license.

### ***Failure to Pay a Court-Ordered Penalty***

When a county or municipal court has ordered a driver to pay any sort of penalty, typically, a fine for a traffic violation, but also including court costs and fees, the court can suspend the driver's license for failing to pay if there was no good reason for the driver's failure. Likewise, if the court has established a payment plan to allow a defendant to pay a large fine in installments, a late or missing payment, particularly if not explained, can also lead to suspension.

In addition, the court may suspend the license of an individual convicted of a crime if he or she has failed to pay any fines or restitution, or any installments in a payment agreement that the court has ordered. Some states require a showing of excusable inability to pay or submission of a payment plan in order to receive a hardship license.

### ***Failure to Pay Parking Tickets***

State laws may allow municipalities to use license suspension as punishment for failure to pay the parking fines imposed by the municipality, or even just failing to show up at a parking offense-related hearing. Some states disallow a hardship license until full payment is remitted.

### ***Criminal and Juvenile Justice Code Suspensions***

Some states permit or require judges to suspend licenses on conviction for certain crimes, in addition to other punishments like incarceration or probation. The most common

criminal code suspensions result from violations of the statutes prohibiting possession, use, or sale of controlled substances.

In addition, some statutes related to crimes involving or committed using cars, such as auto theft or using a motor vehicle to elude law enforcement or promote prostitution, specify license suspension for a period of time as a penalty. A sentencing court may have the power to add a suspension to a sentence for any crime or disorderly conduct offense if a motor vehicle was used to commit the offense. Similar provisions may apply to juveniles. In addition, juveniles' licenses may also be suspended for graffiti, discharge of weapons or explosives from a vehicle, or circulating a "false public alarm" (such as by calling school and instigating a bomb scare). Juveniles not yet old enough to drive can have their eligibility to drive postponed by the length of suspension.

Applications for hardship licenses in these type of suspensions will normally be made to the sentencing court. In the case of juvenile offenses, the parents or guardians may be required to participate in the application for, or monitoring the use of, a hardship license.

### ***Failure to Pay Child Support***

A Family Court may be allowed by state law to suspend a driver's license for failure to pay child support payments. Because there is a strong argument for allowing the driver to continue working in such a case, most states allowing suspensions for arrears in child support payments make a provision for a hardship license. In some cases, the request for hardship driving privileges must be made to a social services agency. Some states require a court or agency approved payment plan to be filed before a hardship driving license will be granted. The hardship license will be revoked if the required payments aren't complied with.

### ***DUI/DWI Laws***

The largest body of hardship licensing law deals with DUI/DWI offenses. Eligibility for a hardship license may depend on whether the driver is a repeat offender, how intoxicated the person was found to be, and/or whether an accident causing injury or death resulted from the offense. Substance abuse evaluation and/or treatment is often required as a condition to receiving a hardship license. The majority of states require a minimum suspension period be served before a person may apply for or drive under a hardship license. The minimum suspension period will usually increase for repeat or more serious offenses.

License suspension or revocation traditionally follows conviction for alcohol-impaired driving. Under administrative license suspension, licenses are taken before conviction when a driver fails or refuses to take an alcohol detection test.

In the majority of states, multiple offenders may forfeit vehicles that are driven while impaired by alcohol. Forty-two states and Washington D.C. have laws prohibiting the

driver, passengers or both from possessing an open container of alcohol in the passenger compartment of a vehicle.

“Illegal per se” laws make it illegal in and of itself to drive with a BAC measured at or above an established level. All 50 states and the District of Columbia have per se laws defining it as a crime to drive with a blood alcohol concentration (BAC) at or above a proscribed level, usually 0.08 percent. As of July 2002, 31 states, Washington DC and Puerto Rico had .08 as the established BAC level, while 18 states remained at the .10 level. In other words, it is illegal to drive a motor vehicle if a driver has a BAC level of .08 or .10, depending on the state. Research indicates that virtually all drivers show impairment in driving ability at .08 BAC, and the majority exhibit serious deterioration. Virtually all highway safety organizations and transportation safety agencies support .08 BAC, and in October 2000, Congress passed .08 BAC as the national standard for impaired driving regulations. States that do not adopt .08 BAC by a certain date will be denied a portion of their highway construction funds.

A high BAC generally is viewed as an indication that the offender has established a pattern of heavy drinking over a substantial period of time, resulting in sufficient tolerance to be able to reach BACs of 0.15 percent or higher. This definition has been adopted by several safety organizations and Government agencies, including The Century Council (2000), Mothers Against Drunk Driving (MADD) and the National Transportation Safety Board (2000), and these groups have supported legislation to reduce the legal BAC limit from 0.10 to 0.08 percent. Groups opposing such laws have argued that legislation could be directed more profitably at the problem drinkers arrested with high BACs who are at greater risk of being involved in crashes than heavy consuming “social drinkers”. The level of alcohol concentration detected may determine your eligibility for a hardship license.

Minimum legal drinking age (MLDA) laws make it illegal for individuals younger than 21 to purchase, possess or consume alcoholic beverages or to misrepresent their age to obtain such beverages. Most states allow minors convicted of alcohol-related offenses to be eligible for a hardship license on an equal basis with adults.

Zero tolerance laws make it illegal for drivers younger than 21 to drive with any measurable amount of alcohol in their system—regardless of the BAC limit for drivers over 21. Many states set the limit for drivers under 21 at .02 BAC or below to help reduce legal challenges based on claims that mouthwash, gum or cold medicine can be responsible for a positive but very low BAC measurement. However, there is no evidence that such substances affect the standard breath analysis tests when conducted properly or that other challenges to the accuracy of alcohol detection equipment are valid. By late 1999, all states plus the District of Columbia had zero tolerance laws for youth. Some states require a minor convicted under such laws to wait until they reach 21 or serve the full suspension period before their driving privileges may be reinstated.

Open container laws prohibit the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of a motor vehicle.



In 1998, the Federal government took steps to encourage states to enact open container laws by passing the Transportation Equity Act for the 21st Century (TEA-21), which required states to enact open container laws by October 1, 2000 or lose a portion of their Federal highway construction funds. To avoid having their funds transferred to other safety activities, states must certify that they comply with Federal requirements and that their open container law is in effect and being enforced. By April 2002, 30 states and the District of Columbia had open container laws in effect.

Administrative license revocation (ALR) laws involve license suspension or revocation following conviction for impaired driving. ALR laws give state officials the authority to immediately suspend the license of any driver who fails or refuses to take a BAC test. Some states may restore driving privileges on a limited basis due to demonstrated hardship, as determined by the courts. Depending on the state, suspensions range from seven days to six months for first-time offenders and longer for repeat offenders. The majority of states and the District of Columbia have ALR laws in effect.

In addition to license suspension, several alternative methods for limiting driving opportunities of offenders have proven effective, including impounding offenders' vehicles or license plates, installing ignition interlocks, and requiring electronic home monitoring or house arrest. Effective court monitoring is a critical component in supporting recovery and compelling offenders to participate in rehabilitation programs. Vehicle and license plate sanctions affect the vehicle or license plates. These incapacitating measures, are designed to protect the public (at least for the duration of the sanction) by making it impossible for the offender to drink and drive, regardless of the reason for the original offense.

Actions states can take include the following.

- \* Vehicle impoundment
- \* Suspension of vehicle registration
- \* Vehicle confiscation
- \* Vehicle forfeiture (sale of an offender's vehicle)
- \* Vehicle immobilization (bars offender from using his or her car)
- \* Special license plates or plate markings (permit use of a vehicle by family members of convicted DUI/DWI offenders)

#### *EDUCATION/TREATMENT PROGRAMS*

These sanctions assume that the driver committed the DWI offense because of a lack of knowledge about the following: drinking-and-driving laws, the effects of alcohol on driving, and ways to avoid drinking and driving. Education programs, together with alcoholism treatment programs, are classified as rehabilitative approaches. The use of these sanctions is based upon the premise that many DWI offenders abuse or are dependent on alcohol and must recover from their uncontrolled alcohol consumption in order to avoid impaired driving. A person may be ordered to successfully complete or enroll in such a program to be eligible for a hardship license. A fee for the program may also be required.

### *IGNITION INTERLOCKS*

Forty-three states permit some offenders to drive only if their vehicles have been equipped with ignition interlocks. These devices analyze a driver's breath and disable the ignition if the driver has been drinking. Alcohol safety interlocks are also widely used to control the driving of DWI offenders. These devices require the driver to take a breath test before starting the car and will prevent vehicle ignition if the operator has a BAC higher than 0.025 percent. Interlock devices are highly effective in preventing drinking and driving, thereby reducing DWI recidivism. A court may allow hardship driving privileges only upon installing an ignition interlock device, or may allow the person otherwise required to have such a device installed to operate an employer's vehicle without such a device, subject to certain conditions.

### *HOUSE ARREST AND ELECTRONIC HOME MONITORING*

A relatively recent type of sanction is placing the offender under house arrest (while allowing him or her to go to work or attend other court-approved activities), which is enforced through electronic monitoring (e.g., electronic bracelets). Electronic house arrest generally has been considered an alternative to jail. If, however, the duration of the house arrest were equal to the corresponding jail sentence, such a sanction would be viewed as significantly less severe. Therefore, sentences for house arrest are generally longer than those given in jail sentences for the same offenses.

### ***Implied Consent***

Implied consent statutes typically provide that a person who operates a motor vehicle in the state is deemed to have given his consent to a chemical test of his breath, blood, urine, or saliva, for the purpose of determining the alcoholic content of his blood, and the refusal of a motorist to submit to such a test on a proper request being made therefore generally constitutes grounds for the suspension or revocation of his driver's license.

The burden of proving the invalidity of the test, as an excuse for refusal, has been held to be upon the licensee. In a proceeding for reinstatement of a license administratively suspended or revoked for refusal to take a sobriety test, the burden is upon the licensee to show error on the part of the administrative official. Some states deny a hardship license to a driver who has refused to submit to such chemical testing, even when a hardship license may be available to a person convicted of a DUI offense.

### ***Habitual Offender***

In some jurisdictions, drivers' licenses may be suspended or revoked in the case of habitual or persistent violations of laws relating to motor vehicles. It has been held that such a provision is not unconstitutional as delegating to an administrative body legislative functions without any criteria or standards defining the words "habitual" or "persistent", but rather that such a requirement in respect to the administration of traffic rules should

be left to the reasonable discretion of the administrative official, and as against the contention that such statutes constitute double jeopardy. Nor is such a statute unconstitutional as a bill of attainder. Such statutes have also been upheld as against the contention that they were unconstitutional as being retroactive, since the constitutional prohibition against such a construction applies only where vested rights are involved, and would not apply in the case of a driver's license, which is a mere privilege.

In some states, motor vehicle officials have established a so-called "point system" to single out habitual or persistent violators, whereby points are charged against a driver's record for violations of laws relating to motor vehicles, and upon accumulation of a specified number of such points, such officials may suspend or revoke the violator's license. The validity of such a point system has been upheld, and it has been held that suspension of a minor's license after he has accumulated fewer points than is required for suspension of an adult's license is constitutionally permissible.

Regulations establishing a point system leading to suspension or revocation of driving licenses have generally been regarded by the courts as not being for the purpose of punishment, but instead for the purpose of increasing public safety on highways. The validity of such regulations has been attacked for various reasons, but the courts have held, generally, that drivers are accorded due process under them; that they are not discriminatory in violation of the equal protection clause; that they do not constitute an unlawful delegation of legislative power; that the establishment of the point system is authorized by the statute; that the system is not an unreasonable exercise of the police power; and that the system is not invalid as an "ex post facto" application.

Some cases involving point system regulations have held that such regulations are not mandatory in operation—that loss of an operator's license will not follow merely from his accumulation of a certain number of points, the decisions turning primarily upon the language of the regulations. The discretionary nature is sometimes expressed as a rule of evidence that accumulation of a certain number of points will raise a presumption, or be prima facie evidence, of a driver's unfitness to retain his operator's permit, the driver in such case being free to rebut this, if possible.

On the other hand, a majority of the cases have held that, when a "point system" has been established, its operation is mandatory and the duty of the administrative agent to revoke or suspend a driving license upon accumulation of sufficient points is ministerial in character.

It is the general view that mitigating circumstances are not relevant to a determination of the appropriate suspension period, unless consideration of such mitigating circumstances is expressly provided for by law. Accordingly, the courts have rejected arguments that an habitual offender suspension period be shortened, or a hardship license issued, even though to do otherwise would cause economic hardship, or might have been warranted by the defendant's model behavior following the habitual traffic offender order. Opinion appears to be evenly divided on whether an habitual traffic offender's enrollment in a driver rehabilitation class is a ground for issuance of a hardship license. The courts have also declined to modify statutorily mandated suspension periods even on grounds

specifically permitted by law, such as the relatively minor nature of the underlying traffic convictions, or the defendant's increased exposure to a likelihood of receiving traffic citations, where the defendant fails to show his eligibility for the court's consideration of such circumstances. Where courts do have the authority to grant hardship licenses to habitual traffic violators, it appears that the period of probation may properly exceed the maximum license suspension period provided by law.

### ***Constitutional Issues***

The suspension or revocation of a driver's license is not intended as a punishment to the driver, but is designed solely for the protection of the public in the use of the highways, and is one of the most effective measures to compel observance of the traffic laws. Statutes and ordinances regulating the granting of drivers' licenses usually contain provisions for their suspension or revocation under stated circumstances, and such provisions have generally been sustained against various constitutional objections. Moreover, the fact that a driver's license or permit was granted under a statute or ordinance which stated that it should be perpetual unless revoked as provided in such statute or ordinance, and which contained no provision for revocation, does not preclude revocation under a provision introduced by subsequent amendment. Drivers' licenses may not, however, be suspended or revoked arbitrarily or capriciously, but only in the manner and on the grounds provided by law.

Decisions of the United States Supreme Court have made it clear that a person's interest in his driver's license is "property," which a State may not revoke or suspend without satisfying the due process guarantee of the Fourteenth Amendment. *Bell v. Burson*, 402 U.S. 535, 539 (1971). Cf. *Pennsylvania Game Comm'n v. Marich*, 542 Pa. 226, 233, 666 A.2d 253, 257 (1995) (driver's license, which is a privilege and not a right, may not be suspended without adherence to procedural due process requirements of the Fourteenth Amendment); *Commonwealth v. Zimmick*, 539 Pa. 548, 558, 653 A.2d 1217, 1222 (1995) (same).

The courts have held that a driving license is not a fundamental right, and therefore the level of scrutiny applied to a state suspension/revocation statute requires only that the state's law bears a 'reasonable' relation to the objective. In determining the standard for administrative review, the courts have held that while a license does not rise to the level of a fundamental right for due process or equal protection purposes, continued retention of a license does involve a fundamental right of substantial importance in terms of both the economic implications and "the importance of" the possession to the individual in the life situation.

### **When Can a Hardship License be Obtained?**

If the driving offense is adjudicated in a court, a hardship driving privilege may be ordered at the time of sentencing. Administrative sanctions may require the person to

request a hearing within a certain number of days of receiving the notice of intent to suspend/revoke the driver's license. A request of petition may be made at the time of hearing. In other cases, a petition must be submitted and the decision will be made administratively without a hearing. For certain offenses, a minimum time period may be imposed before a petition for hardship driving privileges may be made. If an administrative decision is made to deny a petition for hardship driving privileges, a person may be able to appeal the decision to a court within a specified time period for appeals. In other cases, such a denial is not subject to appeal.

### **How Long Will a Hardship License be Valid?**

A hardship license may be valid for the length of the suspension period, until the person is eligible for reinstatement of their driving license, or another shorter time period. Most states provide for revoking a hardship license upon a subsequent offense or violation of the restrictions accompanying the granting of hardship driving privileges.

### **Fees**

Many states require a fee for issuing a hardship license. There may also be additional fees for attending a court-ordered treatment or educational program. If the person is required to install an ignition interlock program, there is an additional cost, which may be waived or reduced for economic hardship reasons.

### **Summary**

The availability of a hardship license will depend on the nature of the sanction imposed and the offense upon which the sanction is based. More serious offenses and repeat offenses may exclude eligibility for hardship driving privileges, or impose increased minimum suspension times before a hardship license may be applied for or granted. A person seeking a hardship license must determine whether the request needs to be made in court, at an administrative hearing, or by submitting a petition to the motor vehicle agency. It is important to consult the state requirements for the granting of hardship driving privileges and submit the necessary proof of need, insurance, fees, and other documentation in a timely manner.