

DIL GOSAL DUI/IRP SUPPLEMENTAL INFORMATION

EXCERPT OF THE MOTOR VEHICLE ACT, RSBC we may Use to Appeal the Immediate Roadside Prohibition (IRP):

Automatic roadside driving prohibition

215.41 (1) In this section, “driver” includes a person having the care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion.

(2) In this section and in sections 215.42, 215.43 and 215.5,

“approved screening device” means a device prescribed by the Lieutenant Governor in Council for the purposes of this section;

“fail” means an indication on an approved screening device that the concentration of alcohol in a person’s blood is not less than 80 milligrams of alcohol in 100 millilitres of blood;

“warn” means an indication on an approved screening device that the concentration of alcohol in a person’s blood is not less than 50 milligrams of alcohol in 100 millilitres of blood.

(3) If, at any time or place on a highway or industrial road,

(a) a peace officer makes a demand to a driver under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and

(b) the peace officer has reasonable grounds to believe, as a result of the analysis, that the driver’s ability to drive is affected by alcohol,

the peace officer, or another peace officer, must,

(c) if the driver holds a valid licence or permit issued under this Act, or a document issued in another jurisdiction that allows the driver to operate a motor vehicle, take possession of the driver’s licence, permit or document if the driver has it in his or her possession, and

(d) serve on the driver a notice of driving prohibition.

(4) If a peace officer has reasonable grounds to believe that a driver failed or refused, without reasonable excuse, to comply with a demand made under the Criminal Code to provide a sample of breath for analysis by means of an approved screening device, the peace officer, or another peace officer, must take those actions described in subsection (3) (c) and (d).

(5) If the driver is not in possession of his or her licence or permit issued under this Act to operate a motor vehicle at the time the driver is served with the notice of driving prohibition, the driver must promptly send the licence or permit to the Insurance Corporation of British Columbia.

(6) The notice of driving prohibition must be in the prescribed form and must contain the following:

(a) a statement that the driver is immediately prohibited from driving, for the period set out in the notice of prohibition;

(b) a statement setting out

(i) the amount of any monetary penalty imposed on the driver under section 215.44, and

(ii) the requirement that the monetary penalty be paid no later than 30 days after the date the notice is served;

(c) a statement of the right to have the driving prohibition reviewed by the superintendent under section 215.48;

(d) instructions describing how to apply for that review.

(7) A notice of driving prohibition must not be served on a person under this section if a notice of driving prohibition is served on the person under section 94.1.

Opportunity for second analysis

215.42 (1) If an analysis of the breath of a person by means of an approved screening device under section 215.41 (3) registers a warn or a fail, a second analysis must be performed if, after a peace officer serves on the person a notice of driving prohibition under section 215.41 (3) (d), the person forthwith requests the second analysis.

(2) A second analysis performed under this section must be performed with a different approved screening device than was used in the analysis under section 215.41 (3).

(3) If a person provides a sample of breath for a second analysis under this section forthwith on being requested to do so by the peace officer, the result of the second analysis governs, and any prohibition resulting from the analysis under section 215.41 (3) continues or terminates or is varied accordingly.

Effect of driving prohibition under section 215.41

215.43 (1) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where an approved screening device registers a warn, the person is prohibited from driving for

(a) 3 days, in the case of a first prohibition,

(b) 7 days, in the case of a second prohibition, or

(c) 30 days, in the case of a subsequent prohibition.

(2) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where

(a) an approved screening device registers a fail, or

(b) the person refuses or fails to comply with a demand as described in section 215.41 (4),

the person is prohibited from driving for a period of 90 days.

(3) A period of prohibition under this section takes effect immediately on service of the notice of driving prohibition under section 215.41.

(4) For the purposes of subsection (1), a prohibition is

(a) a first prohibition if a person has not been subject to a previous prohibition under that subsection within the 5 year period preceding the prohibition,

(b) a second prohibition if a person has been subject to one previous prohibition under that subsection within the 5 year period preceding the prohibition, and

(c) a subsequent prohibition if the person has been subject to 2 or more previous prohibitions under that subsection within the 5 year period preceding the prohibition.

(5) For the purposes of determining whether a prohibition is a second or subsequent prohibition, the prohibition must not be considered to be a previous prohibition unless

(a) the period for requesting a review of the prohibition under section 215.48 has expired, or

(b) if the person requests a review of the prohibition, the period referred to under section 215.5 (6) or (7), as applicable, has expired.

Additional consequences — monetary penalty

215.44 (1) A person who has been served with a notice of driving prohibition under section 215.41 is also liable to pay, no later than 30 days after the date the notice is served, a monetary penalty in the amount prescribed by regulation.

(2) The monetary penalty must not exceed the amount prescribed by regulation, and in any event must not exceed \$500.

Additional consequences — remedial program

215.45 If a person is prohibited from driving for a period of 30 or 90 days under section 215.43, the person must register in and attend any remedial program required by the superintendent under section 25.1.

Additional consequences — impoundment of vehicle

215.46 (1) If a peace officer serves a person with a notice of a 3-day or 7-day driving prohibition under section 215.41 (3) and believes that impoundment of the motor vehicle that the person was driving or operating at the time the notice was served is necessary to prevent the person from driving or operating the motor vehicle before the prohibition expires, the peace officer may cause the motor vehicle to be taken to and impounded at a place directed by the peace officer.

(2) If a peace officer serves a person with a notice of a 30-day or 90-day driving prohibition under section 215.41 (3), the peace officer must cause the motor vehicle that the person was driving or operating at the time the notice was served to be taken to and impounded at a place directed by the peace officer.

Duties of peace officer related to driving prohibition under section 215.41

215.47 A peace officer who serves a notice of driving prohibition on a person under section 215.41 must promptly forward to the superintendent

(a) the person's licence or permit or any document issued in another jurisdiction that allows the person to operate a motor vehicle, if the peace officer took the licence, permit or document into possession,

(b) a copy of the notice of driving prohibition,

(c) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the driving prohibition, and

(d) a report, in the form established by the superintendent.

Review of driving prohibition under section 215.41

215.48 (1) A person may, within 7 days of being served with a notice of driving prohibition under section 215.41, apply to the superintendent for a review of the driving prohibition by

(a) filing an application for review with the superintendent,

(b) paying to the superintendent the prescribed hearing fee, and

(c) if it has not been taken by the peace officer or sent to the superintendent under section 215.41, surrendering to the Insurance Corporation of British Columbia his or her licence or permit to operate a motor vehicle unless the person completes and files with the superintendent a statutory declaration stating that the licence or permit has been lost, stolen or destroyed.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any statements or other evidence that the applicant wishes the superintendent to consider.

(4) The filing of an application for review does not stay the driving prohibition.

(5) The superintendent is not required to hold an oral hearing unless

(a) the driving prohibition is for 30 or 90 days, and

(b) the applicant

(i) requests an oral hearing at the time of filing the application for review, and

(ii) pays the prescribed oral hearing fees.

(6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing, without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

Considerations on review under section 215.48

215.49 (1) In a review of a driving prohibition under section 215.48, the superintendent must consider

- (a) any relevant written statements or evidence submitted by the applicant,
- (b) the report of the peace officer forwarded under section 215.47 (d),
- (c) a copy of the notice of driving prohibition,
- (d) any other relevant documents and information forwarded to the superintendent by the peace officer who served the notice of driving prohibition or any other peace officer,
- (e) in the case of an oral hearing, any relevant evidence given or representations made at the hearing, and
- (f) in the case of a second or subsequent prohibition, as described in section 215.43 (4) and (5), the person's driving record.

(2) In a review under section 215.48, no person may be cross examined.

(3) Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received, at the time of the hearing, all those documents required to be forwarded to the superintendent under section 215.47.

Decision of superintendent after review under section 215.48

215.5 (1) If, after considering an application for review under section 215.48, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and,

- (a) in respect of a 3-day, 7-day or 30-day driving prohibition,
 - (i) an approved screening device registered a warn, and
 - (ii) in the case of
 - (A) a 7-day driving prohibition, the driving prohibition was a second prohibition, or
 - (B) a 30-day driving prohibition, the driving prohibition was a subsequent prohibition, or
- (b) in respect of a 90-day driving prohibition,
 - (i) an approved screening device registered a fail, or
 - (ii) the person failed or refused, without reasonable excuse, to comply with a demand made on the person as described in section 215.41 (4),

the superintendent must confirm the driving prohibition, the monetary penalty for which the person is liable under section 215.44 and the impoundment imposed under section 215.46 for the period specified in section 253.

(2) If, after considering an application for review under section 215.48 in respect of a 7-day or 30-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn, and determines that

(a) in the case of a 7-day driving prohibition, the prohibition was a first prohibition, or

(b) in the case of a 30-day driving prohibition, the prohibition was either

(i) a first prohibition, or

(ii) a second prohibition,

the superintendent must

(c) substitute

(i) a 3-day driving prohibition, in the circumstances described in paragraph (a) or (b) (i), or

(ii) a 7-day driving prohibition, in the circumstances described in paragraph (b) (ii), and

(d) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies.

(3) If, after considering an application for review under section 215.48 in respect of a 90-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn rather than a fail, the superintendent must

(a) substitute a 3-day, 7-day or 30-day prohibition, as applicable, and

(b) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of the impoundment, section 253 (8) applies.

(4) If, after considering an application for review under section 215.48, the superintendent is satisfied that

(a) the person was not a driver within the meaning of section 215.41 (1),

(b) in the case of a 3-day, 7-day or 30-day driving prohibition, an approved screening device did not register a warn, or

(c) in the case of a 90-day driving prohibition,

(i) an approved screening device did not register a fail or a warn, or

(ii) the person did not fail or refuse to comply with a demand made on the person as described in section 215.41 (4), or had a reasonable excuse for failing to comply with the demand,

the superintendent must

(d) revoke the driving prohibition,

(e) cancel the monetary penalty for which the person would otherwise be liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies, and

(f) if the person held a valid licence or permit issued under this Act to operate a motor vehicle at the time the notice of driving prohibition was served under section 215.41, direct the Insurance Corporation of British Columbia to return any licence or permit to operate a motor vehicle taken into possession by the peace officer or sent to the corporation.

(5) Despite subsection (4) (b), the superintendent must not take any action described in subsection (4) (d), (e) or (f) in respect of a 3-day, 7-day or 30-day driving prohibition if the superintendent is satisfied that, in the circumstances under review, an approved screening device registered a fail instead of a warn.

(6) Subject to subsection (7), the decision of the superintendent and the reasons for the decision must be in writing and a copy must be sent to the applicant within 21 days of the date the notice of driving prohibition was served on the applicant under section 215.41.

(7) If the superintendent is unable to send the decision to the applicant within the 21 day period set out in subsection (6), the superintendent may extend that period for a period determined by the superintendent.

(8) If the superintendent extends the period for sending a decision to the applicant under subsection (7), the superintendent may

(a) stay the driving prohibition imposed on the applicant under section 215.43 for the period of the extension determined under subsection (7), and

(b) if the applicant held a valid licence or permit issued under this Act to operate a motor vehicle at the time the applicant was served with the notice of driving prohibition under section 215.41, direct the Insurance Corporation of British Columbia to issue to the applicant a temporary driver's licence that expires with the period of extension determined under subsection (7).

(9) The superintendent must promptly give the person notice of an extension made under subsection (7).

(10) The copy referred to in subsection (6) and the notice referred to in subsection (9) must be sent to the person

(a) at the last known address of the person as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

(11) A notice of extension given under subsection (9) is deemed to be a notice of prohibition for the purposes of section 95 (4) (a) or (b).

Regulations — automatic roadside driving prohibitions

215.51 Without limiting the authority of the Lieutenant Governor in Council to make regulations under any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing an approved screening device for the purposes of the definition of “approved screening device” in section 215.41 (2);
- (b) prescribing the form of notice of driving prohibition for the purposes of section 215.41 (6);
- (c) for the purposes of section 215.44,
 - (i) prescribing monetary penalties, including prescribing a schedule of increasing monetary penalties based on whether a driving prohibition is a first, second or subsequent prohibition as described in section 215.43 (4), and
 - (ii) prescribing the manner for payment of monetary penalties;
- (d) prescribing hearing fees, including oral hearing fees, for the purposes of section 215.48.