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SENATE BILL 213

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO REVOCATION OF A DRIVER'S LICENSE; PROVIDING POWERS OF A HEARING OFFICER; ALLOWING FOR PARTICIPATION IN A HEARING BY VIDEOCONFERENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to the Administrative Hearings Office Act, the

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1 date that the administrative hearings office issues the order
2 following that hearing. The date of notice of revocation is:

3 (1) the date the law enforcement officer
4 serves written notice of revocation and of right to a hearing
5 pursuant to Section 66-8-111.1 NMSA 1978; or

6 (2) in the event the results of a chemical
7 test cannot be obtained immediately, the date notice of
8 revocation is served by mail by the department. This notice of
9 revocation and of right to a hearing shall be sent by certified
10 mail and shall be deemed to have been served on the date borne
11 by the return receipt showing delivery, refusal of the
12 addressee to accept delivery or attempted delivery of the
13 notice at the address obtained by the arresting law enforcement
14 officer or on file with the department.

15 B. Within ten days after receipt of notice of
16 revocation pursuant to Subsection A of this section, a person
17 whose license or privilege to drive is revoked or denied or the
18 person's agent may request a hearing. The hearing request
19 shall be made in writing and shall be accompanied by a payment
20 of twenty-five dollars (\$25.00) or a sworn statement of
21 indigency on a form provided by the department. A standard for
22 indigency shall be established pursuant to rules adopted by the
23 department. Failure to request a hearing within ten days shall
24 result in forfeiture of the person's right to a hearing. Any
25 person [~~less~~] younger than eighteen years of age who fails to

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1 request a hearing within ten days shall have notice of
2 revocation sent to the person's parent, guardian or custodian
3 by the department. A date for the hearing shall be set by the
4 administrative hearings office, if practical, within thirty
5 days after receipt of notice of revocation. The hearing shall
6 be held in the county in which the offense for which the person
7 was arrested took place; provided, however, that at the
8 discretion of the administrative hearing officer, all or part
9 of the hearing may be conducted by videoconference.

10 C. The administrative hearings office may postpone
11 or continue any hearing on its own motion or upon application
12 from the person and for good cause shown for a period not to
13 exceed ninety days from the date of notice of revocation and,
14 provided that, upon a continuance, the department shall extend
15 the validity of the temporary license for the period of the
16 postponement or continuation.

17 D. ~~[At the hearing, the administrative hearings~~
18 ~~office may administer oaths and may issue subpoenas for the~~
19 ~~attendance of witnesses and the production of relevant books~~
20 ~~and papers]~~ A hearing officer may:

21 (1) issue subpoenas for the attendance of
22 witnesses and the production of relevant documents and tangible
23 items;

24 (2) administer oaths or affirmations to
25 witnesses;

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- 1 (3) take testimony;
- 2 (4) examine witnesses; and
- 3 (5) admit or exclude evidence.

4 E. If the administrative hearings office determines
5 that all or part of a hearing may be conducted by
6 videoconference, any party to the hearing, a witness, a law
7 enforcement officer and the hearing officer may participate by
8 videoconference.

9 ~~[E-]~~ F. The hearing shall be limited to the
10 following issues:

- 11 (1) whether the law enforcement officer had
12 reasonable grounds to believe that the person had been driving
13 a motor vehicle within this state while under the influence of
14 intoxicating liquor or drugs;
- 15 (2) whether the person was arrested;
- 16 (3) whether this hearing is held no later than
17 ninety days after notice of revocation; and either
- 18 (4) whether:
 - 19 (a) the person refused to submit to a
20 test upon request of the law enforcement officer; and
 - 21 (b) the law enforcement officer advised
22 that the failure to submit to a test could result in revocation
23 of the person's privilege to drive; or
- 24 (5) whether:
 - 25 (a) the chemical test was administered

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1 pursuant to the provisions of the Implied Consent Act; and

2 (b) the test results indicated an
3 alcohol concentration in the person's blood or breath of eight
4 one hundredths or more if the person is twenty-one years of age
5 or older, four one hundredths or more if the person is driving
6 a commercial motor vehicle or two one hundredths or more if the
7 person is [~~less~~] younger than twenty-one years of age.

8 [~~F.~~] G. The administrative hearings office shall
9 enter an order sustaining the revocation or denial of the
10 person's license or privilege to drive if the hearing officer
11 from the administrative hearings office finds that:

12 (1) the law enforcement officer had reasonable
13 grounds to believe the driver was driving a motor vehicle while
14 under the influence of intoxicating liquor or drugs;

15 (2) the person was arrested;

16 (3) this hearing is held no later than ninety
17 days after notice of revocation; and

18 (4) either:

19 (a) the person refused to submit to the
20 test upon request of the law enforcement officer after the law
21 enforcement officer advised the person that the person's
22 failure to submit to the test could result in the revocation of
23 the person's privilege to drive; or

24 (b) that a chemical test was
25 administered pursuant to the provisions of the Implied Consent

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1 Act and the test results indicated an alcohol concentration in
2 the person's blood or breath of eight one hundredths or more if
3 the person is twenty-one years of age or older, four one
4 hundredths or more if the person is driving a commercial motor
5 vehicle or two one hundredths or more if the person is [~~less~~]
6 younger than twenty-one years of age.

7 [~~G.~~] H. If one or more of the elements set forth in
8 Paragraphs (1) through (4) of Subsection [~~F~~] G of this section
9 are not found by the hearing officer, the person's license
10 shall not be revoked.

11 [~~H.~~] I. A person adversely affected by an order of
12 the administrative hearings office may seek review within
13 thirty days in the district court in the county in which the
14 offense for which the person was arrested took place. The
15 district court, upon thirty days' written notice to the
16 department, shall hear the case. On review, it is for the
17 court to determine only whether reasonable grounds exist for
18 revocation or denial of the person's license or privilege to
19 drive based on the record of the administrative proceeding.

20 [~~I.~~] J. Any person [~~less~~] younger than eighteen
21 years of age shall have results of the person's hearing
22 forwarded by the administrative hearings office to the person's
23 parent, guardian or custodian."

24 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2018.

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