

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 414

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT IMPLIED CONSENT HEARINGS MAY BE CONDUCTED BY TELEPHONE; CLARIFYING THE AUTHORITY OF HEARING OFFICERS DURING IMPLIED CONSENT HEARINGS; PROVIDING THAT THE RULES OF EVIDENCE AND THE RULES OF CIVIL PROCEDURE DO NOT APPLY TO IMPLIED CONSENT HEARINGS; PROVIDING THAT A LAW ENFORCEMENT OFFICER'S STATEMENT IS PRIMA FACIE EVIDENCE OF FINDINGS REQUIRED AT AN IMPLIED CONSENT HEARING.

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

underscored material = new  
[bracketed material] = delete

1 Section 66-8-111 NMSA 1978 is twenty days after notice of  
2 revocation or, if the person whose license or privilege to  
3 drive is being revoked or denied requests a hearing pursuant to  
4 this section, the date that the department issues the order  
5 following that hearing. The date of notice of revocation is:

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

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

18 B. Within ten days after receipt of notice of  
19 revocation pursuant to Subsection A of this section, a person  
20 whose license or privilege to drive is revoked or denied or the  
21 person's agent may request a hearing. The hearing request  
22 shall be made in writing and shall be accompanied by a payment  
23 of twenty-five dollars (\$25.00) or a sworn statement of  
24 indigency on a form provided by the department. A standard for  
25 indigency shall be established pursuant to regulations adopted

. 143882. 1

underscored material = new  
[bracketed material] = delete

1 by the department. Failure to request a hearing within ten  
2 days shall result in forfeiture of the person's right to a  
3 hearing. ~~[Any]~~ A person less than eighteen years of age who  
4 fails to request a hearing within ten days shall have notice of  
5 revocation sent to his parent, guardian or custodian by the  
6 department. A date for the hearing shall be set by the  
7 department, if practical, within thirty days after receipt of  
8 notice of revocation. ~~[The hearing shall be held in the county~~  
9 ~~in which the offense for which the person was arrested took~~  
10 ~~place.]~~ At the department's discretion, a hearing officer may  
11 conduct a hearing in person or by telephone.

12 C. The department may postpone or continue ~~[any]~~ a  
13 hearing on its own motion or upon application from the person  
14 and for good cause shown for a period not to exceed ninety days  
15 from the date of notice of revocation and provided that the  
16 department extends the validity of the temporary license for  
17 the period of the postponement or continuation.

18 ~~[D. At the hearing, the department or its agent may~~  
19 ~~administer oaths and may issue subpoenas for the attendance of~~  
20 ~~witnesses and the production of relevant books and papers.]~~

21 D. The hearing shall be conducted by a hearing  
22 officer designated by the secretary. The hearing officer may:

23 (1) administer oaths;

24 (2) issue subpoenas for the attendance of  
25 witnesses in person or by telephone;

underscored material = new  
[bracketed material] = delete

- 1                   (3) issue subpoenas for the production of  
2 relevant books and papers;  
3                   (4) take testimony;  
4                   (5) examine witnesses;  
5                   (6) admit or exclude evidence offered at the  
6 hearing; and  
7                   (7) reopen a hearing to receive additional  
8 evidence.

9                   E. The Rules of Evidence and the Rules of Civil  
10 Procedure shall not apply to a hearing. A law enforcement  
11 officer's statement, submitted pursuant to the provisions of  
12 Section 66-8-111 NMSA 1978, shall be prima facie evidence of  
13 the findings required pursuant to the provisions of Subsection  
14 G of this section.

15                   ~~[E.]~~ F. The hearing shall be limited to the issues:

16                   (1) whether the law enforcement officer had  
17 reasonable grounds to believe that the person had been driving  
18 a motor vehicle within this state while under the influence of  
19 intoxicating liquor or drugs;

20                   (2) whether the person was arrested;

21                   (3) whether ~~[this]~~ the hearing is held no  
22 later than ninety days after notice of revocation; and either

23                   (4)

24                   (a) whether the person refused to submit  
25 to a test upon request of the law enforcement officer; and

underscored material = new  
[bracketed material] = delete

1 (b) whether the law enforcement officer  
2 advised that the failure to submit to a test could result in  
3 revocation of the person's privilege to drive; or

4 (5)

5 (a) whether the chemical test was  
6 administered pursuant to the provisions of the Implied Consent  
7 Act; and

8 (b) the test results indicated an  
9 alcohol concentration of eight one hundredths or more in the  
10 person's blood or breath if the person is twenty-one years of  
11 age or older or an alcohol concentration of two one hundredths  
12 or more in the person's blood or breath if the person is less  
13 than twenty-one years of age.

14 [~~F.~~] G. The department shall enter an order  
15 sustaining the revocation or denial of the person's license or  
16 privilege to drive if the department finds that:

17 (1) the law enforcement officer had reasonable  
18 grounds to believe the driver was driving a motor vehicle while  
19 under the influence of intoxicating liquor or [~~drug~~] drugs;

20 (2) the person was arrested;

21 (3) [~~this~~] the hearing is held no later than  
22 ninety days after notice of revocation; and

23 (4) the person either refused to submit to the  
24 test upon request of the law enforcement officer after the law  
25 enforcement officer advised him that his failure to submit to

underscored material = new  
[bracketed material] = delete

1 the test could result in the revocation of his privilege to  
2 drive or that a chemical test was administered pursuant to the  
3 provisions of the Implied Consent Act and the test results  
4 indicated an alcohol concentration of eight one hundredths or  
5 more if the person is twenty-one years of age or older or an  
6 alcohol concentration of two one hundredths or more if the  
7 person is less than twenty-one years of age.

8 If one or more of the elements set forth in Paragraphs (1)  
9 through (4) of this subsection are not found by the department,  
10 the person's license shall not be revoked.

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

20 [~~H.—Any~~] I. A person less than eighteen years of  
21 age shall have results of his hearing forwarded by the  
22 department to his parent, guardian or custodian. "

23 Section 2. EFFECTIVE DATE. --The effective date of the  
24 provisions of this act is July 1, 2003.