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HOUSE BILL 133

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO REVOCATION OF A DRIVER'S LICENSE; PROVIDING POWERS
OF A HEARING OFFICER; ALLOWING FOR PARTICIPATION OF LAW
ENFORCEMENT OFFICERS 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.

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

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

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

22 (2) administer oaths or affirmations to
23 witnesses;

24 (3) take testimony;

25 (4) examine witnesses;

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- 1 (5) admit or exclude evidence; and
- 2 (6) reopen any hearing to receive additional
- 3 evidence.

4 E. A hearing may be conducted with a law
5 enforcement officer participating in person or by
6 videoconference.

7 ~~[E.]~~ F. The hearing shall be limited to the
8 following issues:

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

13 (2) whether the person was arrested;

14 (3) whether this hearing is held no later than
15 ninety days after notice of revocation; and either

16 (4) whether:

17 (a) the person refused to submit to a
18 test upon request of the law enforcement officer; and

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

22 (5) whether:

23 (a) the chemical test was administered
24 pursuant to the provisions of the Implied Consent Act; and

25 (b) the test results indicated an

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

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

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

13 (2) the person was arrested;

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

16 (4) either:

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

22 (b) that a chemical test was
23 administered pursuant to the provisions of the Implied Consent
24 Act and the test results indicated an alcohol concentration in
25 the person's blood or breath of eight one hundredths or more if

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1 the person is twenty-one years of age or older, four one
2 hundredths or more if the person is driving a commercial motor
3 vehicle or two one hundredths or more if the person is [~~less~~]
4 younger than twenty-one years of age.

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

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

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

22 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is July 1, 2017.