

1 SENATE BILL 467

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Sander Rue

5
6
7
8
9 AN ACT

10
11 RELATING TO REVOCATION OF A DRIVER'S LICENSE; ALLOWING FOR
12 PARTICIPATION OF LAW ENFORCEMENT OFFICERS BY VIDEOCONFERENCE.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 66-8-112 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,
17 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended
18 to read:

19 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
20 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
21 REVIEW.--

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

.191971.1

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 hearing pursuant to this section, the date that the department
2 issues the order following that hearing. The date of notice of
3 revocation is:

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

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

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

.191971.1

underscored material = new
[bracketed material] = delete

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

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

15 D. ~~[At the hearing, the department or its agent may~~
16 ~~administer oaths and may issue subpoenas for the attendance of~~
17 ~~witnesses and the production of relevant books and papers.]~~ The
18 hearing shall be conducted by a hearing officer designated by
19 the secretary. The powers of the hearing officer shall include
20 issuing subpoenas for the attendance of witnesses and the
21 production of relevant documents and things, administering
22 oaths or affirmations to witnesses, taking testimony, examining
23 witnesses, admitting or excluding evidence and reopening any
24 hearing to receive additional evidence. The hearing may be
25 conducted with a law enforcement officer participating in

.191971.1

underscored material = new
[bracketed material] = delete

1 person or by videoconference.

2 E. The hearing shall be limited to the following
3 issues:

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

8 (2) whether the person was arrested;

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

11 (4) whether:

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

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

17 (5) whether:

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

20 (b) the test results indicated an
21 alcohol concentration in the person's blood or breath of eight
22 one hundredths or more if the person is twenty-one years of age
23 or older, four one hundredths or more if the person is driving
24 a commercial motor vehicle or two one hundredths or more if the
25 person is less than twenty-one years of age.

.191971.1

underscored material = new
[bracketed material] = delete

1 F. The department shall enter an order sustaining
2 the revocation or denial of the person's license or privilege
3 to drive if the department finds that:

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

7 (2) the person was arrested;

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

10 (4) either:

11 (a) the person refused to submit to the
12 test upon request of the law enforcement officer after the law
13 enforcement officer advised [~~him~~] the person that [~~his~~] the
14 person's failure to submit to the test could result in the
15 revocation of [~~his~~] the person's privilege to drive; or

16 (b) that a chemical test was
17 administered pursuant to the provisions of the Implied Consent
18 Act and the test results indicated an alcohol concentration in
19 the person's blood or breath of eight one hundredths or more if
20 the person is twenty-one years of age or older, four one
21 hundredths or more if the person is driving a commercial motor
22 vehicle or two one hundredths or more if the person is less
23 than twenty-one years of age.

24 G. If one or more of the elements set forth in
25 Paragraphs (1) through (4) of Subsection F of this section are

.191971.1

underscored material = new
[bracketed material] = delete

1 not found by the department, the person's license shall not be
2 revoked.

3 H. A person adversely affected by an order of the
4 department may seek review within thirty days in the district
5 court in the county in which the offense for which the person
6 was arrested took place. The district court, upon thirty days'
7 written notice to the department, shall hear the case. On
8 review, it is for the court to determine only whether
9 reasonable grounds exist for revocation or denial of the
10 person's license or privilege to drive based on the record of
11 the administrative proceeding.

12 I. Any person less than eighteen years of age shall
13 have results of [~~his~~] the person's hearing forwarded by the
14 department to [~~his~~] the person's parent, guardian or
15 custodian."

16 SECTION 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2013.