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SENATE BILL 804

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

CARLOS R. CISNEROS

AN ACT

RELATING TO MOTOR VEHICLES; REVISING THE DOCUMENTATION THAT MUST
BE PROVIDED AND THE PROCEDURES TO BE FOLLOWED BY PERSONS
APPLYING FOR A LIMITED DRIVER'S LICENSE; REQUIRING THAT
REVOCATION HEARINGS BE CONDUCTED PURSUANT TO THE RULES OF
EVIDENCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MOTOR
VEHICLE CODE.

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

Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978,
Chapter 35, Section 257, as amended) is repealed and a new
Section 66-5-35 NMSA 1978 is enacted to read:

"66-5-35. [NEW MATERIAL] LIMITED DRIVING PRIVILEGE
FOLLOWING SUSPENSION OR REVOCATION-- ELIGIBILITY-- APPLICATION
PROCEDURES-- FEE-- REVIEW. --

A. Except as provided in Subsection B of this

1 section, a person whose driver's license or permit has been
2 suspended or revoked following conviction or adjudication as a
3 delinquent under any law, ordinance or regulation relating to
4 motor vehicles may apply to the department for a limited license
5 or permit to drive.

6 B. No person shall be eligible to apply for:

7 (1) a limited commercial driver's license; or

8 (2) a limited driver's license or permit when
9 the person's driver's license or permit was revoked or suspended
10 pursuant to:

11 (a) the provisions of the Implied Consent
12 Act, except as provided in Subsection C of this section;

13 (b) an offense for which the person is a
14 subsequent offender as defined in the Motor Vehicle Code; or

15 (c) a violation of Section 66-8-101 NMSA
16 1978.

17 C. A person, including a person whose driver's
18 license has been revoked for the first time pursuant to the
19 provisions of Paragraph (1) or (2) of Subsection C of Section
20 66-8-111 NMSA 1978, may apply for and shall receive a limited
21 license or permit if the person pays every appropriate fee and
22 meets the uniform criteria for limited driving privileges as set
23 forth in this section and in department regulations and provides
24 the department with documentation of the following:

25 (1) proof of financial responsibility pursuant

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1 to the provisions of the Mandatory Financial Responsibility Act
2 for the lesser of one year or the period of the limited license;
3 and

4 (2) proof of gainful employment or gainful
5 self-employment and that the person needs a limited license to
6 travel to and from his place of employment;

7 (3) proof that the person is enrolled in school
8 and needs a limited license to travel to and from school; or

9 (4) proof that the person needs a limited
10 license to provide for the health, safety and welfare of his
11 immediate family.

12 In addition, an applicant for a limited license whose
13 driver's license has been revoked for the first time pursuant to
14 the provisions of Paragraph (1) or (2) of Subsection C of
15 Section 66-8-111 NMSA 1978 must provide the department with
16 documentation that the person is enrolled in a DWI school
17 approved by the traffic safety bureau of the state highway and
18 transportation department.

19 D. A limited license may not be issued earlier than
20 thirty days after the applicant's license was revoked.

21 E. When the department receives an application from
22 a person who is eligible to apply for a limited license pursuant
23 to Subsections A and B of this section, the department shall
24 approve the issuance of a limited license or permit to the
25 applicant showing the limitations specified in the approved

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1 application. For each limited license or permit to drive, the
2 applicant shall pay to the department a fee of forty-five
3 dollars (\$45.00), which shall be transferred to the state
4 highway and transportation department. All money collected
5 under this subsection shall be used for DWI prevention and
6 education programs for elementary and secondary school students.
7 The state highway and transportation department shall coordinate
8 with the department of health to ensure that there is no program
9 duplication. The limited license or permit to drive may be
10 suspended as provided in Section 66-5-30 NMSA 1978.

11 F. An applicant who is denied a limited license or
12 permit to drive by the department may request a hearing within
13 twenty days of mailing of the notice of denial. The hearing
14 shall be held in the county in which the applicant resides,
15 unless the department and applicant agree that the hearing may
16 be held in some other county. Upon hearing, the hearing officer
17 designated by the department may administer oaths and may issue
18 subpoenas for the attendance of witnesses and the production of
19 relevant books and papers. The hearing officer shall make
20 specific findings as to whether the applicant has met the
21 requirements of this section and established uniform criteria
22 for limited driving privileges adopted by regulation of the
23 department. The hearing officer shall enter an order either
24 approving or denying the applicant's request for a limited
25 license or permit to drive. If any of the specific findings set

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1 forth in Subsection C of this section are not found by the
2 hearing officer, the applicant's request for a limited license
3 or permit shall not be approved.

4 G. A person adversely affected by an order of a
5 hearing officer may seek review within thirty days in the
6 district court in the county in which he resides. On review, it
7 is for the court to determine only whether the applicant met the
8 requirements in this section for issuance of a limited license
9 or permit to drive."

10 Section 2. Section 66-8-109 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 517, as amended) is amended to read:

12 "66-8-109. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF
13 COSTS--ADDITIONAL TESTS--INFORMATION REGARDING CONSEQUENCES OF
14 REFUSING TO TAKE TEST. --

15 A. Only the persons authorized by Section
16 66-8-103 NMSA 1978 shall withdraw blood from any person for the
17 purpose of determining its alcohol or drug content. This
18 limitation does not apply to the taking of samples of breath.

19 B. The person tested shall be advised by the law
20 enforcement officer of the person's right to be given an
21 opportunity to arrange for a physician, licensed professional or
22 practical nurse or laboratory technician or technologist who is
23 employed by a hospital or physician of his own choosing to
24 perform a chemical test in addition to any test performed at the
25 direction of [a] the law enforcement officer.

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1 C. Upon the request of the person tested, full
2 information concerning the test performed at the direction of
3 the law enforcement officer shall be made available to him as
4 soon as it is available from the person performing the test.

5 D. The law enforcement agency represented by the law
6 enforcement officer at whose direction the chemical test is
7 performed shall pay for the chemical test.

8 E. If a person exercises his right under Subsection
9 B of this section to have a chemical test performed upon him by
10 a person of his own choosing, the cost of that test shall be
11 paid by the law enforcement agency represented by the law
12 enforcement officer at whose direction a chemical test was
13 administered under Section 66-8-107 NMSA 1978.

14 F. The law enforcement officer shall advise the
15 person that failure to submit to a test requested by the officer
16 shall preclude the person from applying to the department for a
17 limited license or permit to drive as provided in Section
18 66-5-35 NMSA 1978. "

19 Section 3. Section 66-8-112 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 520, as amended) is amended to read:

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

23 A. The effective date of revocation pursuant to
24 Section 66-8-111 NMSA 1978 is twenty days after notice of
25 revocation or, if the person whose license or privilege to drive

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1 is being revoked or denied requests a hearing pursuant to this
2 section, the date that the department issues the order following
3 that hearing. The date of notice of revocation is:

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

7 (2) in the event the results of a chemical test
8 cannot be obtained immediately, the date notice of revocation is
9 served by mail by the department. This notice of revocation and
10 of right to a hearing shall be sent by certified mail and shall
11 be deemed to have been served on the date borne by the return
12 receipt showing delivery, refusal of the addressee to accept
13 delivery or attempted delivery of the notice at the address
14 obtained by the arresting law enforcement officer or on file
15 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 shall
20 be made in writing and shall be accompanied by a payment of
21 twenty-five dollars (\$25.00) or a sworn statement of indigency
22 on a form provided by the department. A standard for indigency
23 shall be established pursuant to regulations adopted by the
24 department. Failure to request a hearing within ten days shall
25 result in forfeiture of the person's right to a hearing. Any

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

15 D. To ensure the uniformity of the hearing process,
16 hearings shall be conducted pursuant to the Rules of Evidence
17 adopted by the supreme court. At the hearing, the department or
18 its agent may administer oaths and may issue subpoenas for the
19 attendance of witnesses and the production of relevant books and
20 papers.

21 E. The hearing shall be limited to the issues:

22 (1) whether the law enforcement officer had
23 reasonable grounds to believe that the person had been driving a
24 motor vehicle within this state while under the influence of
25 intoxicating liquor or drug;

1 (2) whether the person was arrested;
2 (3) whether this hearing is held no later than
3 ninety days after notice of revocation; and either

4 (4)
5 (a) whether the person refused to submit
6 to a test upon request of the law enforcement officer; and

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

10 (5)
11 (a) whether the chemical test was
12 administered pursuant to the provisions of the Implied Consent
13 Act; and

14 (b) the test results indicated an alcohol
15 concentration of eight one-hundredths or more in the person's
16 blood or breath if the person is twenty-one years of age or
17 older or an alcohol concentration of two one-hundredths or more
18 in the person's blood or breath if the person is less than
19 twenty-one years of age.

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

23 (1) the law enforcement officer had reasonable
24 grounds to believe the driver was driving a motor vehicle while
25 under the influence of intoxicating liquor or drug;

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1 (2) the person was arrested;

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

4 (4) the person either refused to submit to the
5 test upon request of the law enforcement officer after the law
6 enforcement officer advised him that his failure to submit to
7 the test could result in the revocation of his privilege to
8 drive or that a chemical test was administered pursuant to the
9 provisions of the Implied Consent Act and the test results
10 indicated an alcohol concentration of eight one-hundredths or
11 more if the person is twenty-one years of age or older or an
12 alcohol concentration of two one-hundredths or more if the
13 person is less than twenty-one years of age.

14 G. If one or more of the elements set forth in
15 Paragraphs (1) through (4) of [~~this~~] Subsection F of this
16 section are not found by the department, the person's license
17 shall not be revoked.

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

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proceeding.

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

Section 4. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1996.

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