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HOUSE BILL 399

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Patsy G. Trujillo Knauer

AN ACT

RELATING TO DRIVING 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

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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
4 to 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
12 of revocation and of right to a hearing shall be sent by
13 certified mail and shall be deemed to have been served on the
14 date borne by the return receipt showing delivery, refusal of
15 the addressee to accept delivery or attempted delivery of the
16 notice at the address obtained by the arresting law
17 enforcement 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
21 the 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
25 for indigency shall be established pursuant to regulations

. 141039. 1

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1 adopted by the department. Failure to request a hearing
2 within ten days shall result in forfeiture of the person's
3 right to a hearing. Any person less than eighteen years of
4 age who fails to request a hearing within ten days shall have
5 notice of revocation sent to his parent, guardian or custodian
6 by the 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~~
9 ~~county in which the offense for which the person was arrested~~
10 ~~took place.~~] In the department's discretion, a hearing officer
11 may conduct a hearing in person or by telephone.

12 C. The department may postpone or continue any
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
15 days from the date of notice of revocation and provided that
16 the department extends the validity of the temporary license
17 for the period of the postponement or continuation.

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

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

24 (1) administer oaths;

25 (2) issue subpoenas for the attendance of

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1 witnesses in person or by telephone;

2 (3) issue subpoenas for the production of
3 relevant books and papers;

4 (4) take testimony;

5 (5) examine witnesses;

6 (6) admit or exclude evidence offered at the
7 hearing; and

8 (7) reopen a hearing to receive additional
9 evidence.

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

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

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

22 (2) whether the person was arrested;

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

25 (4)

1 (a) whether the person refused to
2 submit to a test upon request of the law enforcement officer;
3 and

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

7 (5)

8 (a) whether the chemical test was
9 administered pursuant to the provisions of the Implied Consent
10 Act; and

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

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

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

24 (2) the person was arrested;

25 (3) this hearing is held no later than ninety

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1 days after notice of revocation; and

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

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

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

24 [~~H.~~] I. Any person less than eighteen years of age
25 shall have results of his hearing forwarded by the department

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1 to his parent, guardian or custodian. "

2 Section 2. EFFECTIVE DATE. -- The effective date of the
3 provisions of this act is July 1, 2002.

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