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HOUSE BILL 150

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

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO REVOCATION OF A DRIVER'S LICENSE; PROVIDING FOR
HEARINGS TO BE POSTPONED FOR ONE HUNDRED TWENTY DAYS; ALLOWING
A HEARING TO BE CONDUCTED BY ELECTRONIC MEANS.

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 by Laws 2003, Chapter 51,
Section 15 and by Laws 2003, Chapter 90, Section 8) 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

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

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

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

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

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

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

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

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1 hearing to receive additional evidence. A party or witness may
2 appear in person or via landline telephone or by other
3 appropriate electronic means; provided that the party or
4 witness is able to access a fax machine or is able to send and
5 receive electronic documents at the time of the hearing.

6 E. The hearing shall be limited to the following
7 issues:

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

12 (2) whether the person was arrested;

13 (3) whether this hearing is held no later than
14 [~~ninety~~] one hundred twenty days after notice of revocation;
15 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 than twenty-one years of age.

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

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

12 (2) the person was arrested;

13 (3) this hearing is held no later than
14 [~~ninety~~] one hundred twenty days after notice of revocation;
15 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 [~~him~~] the person that [~~his~~] the
20 person's failure to submit to the test could result in the
21 revocation of [~~his~~] 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 than twenty-one years of age.

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

9 H. A person adversely affected by an order of the
10 department may seek review, pursuant to Rule 1-074 NMRA, Rules
11 of Civil Procedure for the District Courts, within thirty days
12 in the district court in the county in which the offense for
13 which the person was arrested took place. [~~The district court,~~
14 ~~upon thirty days' written notice to the department, shall hear~~
15 ~~the case.~~] On review, it is for the court to determine only
16 whether reasonable grounds exist for revocation or denial of
17 the person's license or privilege to drive based on the record
18 of the administrative proceeding.

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

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