

Veto

HOUSE BILL 419

42ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1995

INTRODUCED BY

*R. David Pederson + HMG
Galtys & Trujillo
Paul J. Jorgensen*
FOR THE DWI OVERSIGHT TASK FORCE

AN ACT

Barbara A. Perea Casey

RELATING TO MOTOR VEHICLES; REVISING THE DOCUMENTATION THAT MUST BE PROVIDED BY PERSONS APPLYING FOR A LIMITED DRIVER'S LICENSE; AMENDING A SECTION 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 amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR REVOCATION--HEARING--REVIEW.--

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or regulation relating to motor vehicles, [a] the person may apply to the [~~director~~] department for a driver's license or permit to drive, limited to use allowing him to engage in gainful employment, except

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1 that no person shall be eligible to apply for:

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

3 (2) a limited license when the person's
4 driver's license was revoked or suspended pursuant to:

5 ~~(1)~~ (a) the provisions of the Implied
6 Consent Act, except as provided in Subsection B of this
7 section; ~~or~~

8 ~~(2)~~ (b) an offense for which the person
9 is a subsequent offender as defined in the Motor Vehicle Code;
10 or

11 (c) a violation of Section 66-8-101 NMSA
12 1978.

13 B. A person ~~[who has had his license]~~ whose
14 driver's license has been revoked for the first time pursuant
15 to the provisions of Paragraph (1) or (2) of Subsection C of
16 Section 66-8-111 NMSA 1978 may apply for and shall receive a
17 limited license or permit thirty days after ~~[suspension or]~~
18 revocation of his driver's license if the person ~~[provides the~~
19 ~~director]~~ pays every appropriate fee, meets the uniform
20 criteria for limited driving privileges as set forth in
21 department regulations and provides the department with
22 documentation of the following:

23 (1) that the person is enrolled in ~~[an~~
24 ~~approved DWI school and an approved alcohol screening program]~~
25 a DWI school approved by the traffic safety bureau of the

underscored material = no
[bracketed material] = delete

1 state highway and transportation department;

2 (2) proof of financial responsibility
 3 pursuant to the provisions of the Mandatory Financial
 4 Responsibility Act; and either

5 (3) proof of gainful employment or gainful
 6 self-employment and that the person needs a limited license to
 7 travel to and from his place of employment; ~~[or]~~

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

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

12 C. Upon ~~[receipt of the application, proof of~~
 13 ~~financial responsibility for the future and a hearing as~~
 14 ~~provided in Subsection D of this section, the director]~~
 15 issuance of an order approving an application for a limited
 16 license and payment of the fee specified in this subsection,
 17 the department shall issue a limited license or permit to the
 18 applicant showing the limitations specified in the approved
 19 application ~~[provided that the applicant meets established~~
 20 ~~uniform criteria for limited driving privileges adopted by~~
 21 ~~regulation of the department]~~. For each limited license or
 22 permit to drive, the applicant shall pay to the ~~[division]~~
 23 department a fee of forty-five dollars (\$45.00), which shall
 24 be transferred to the state highway and transportation
 25 department. All money collected under this subsection shall

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1 be used for DWI prevention and education programs for
2 elementary and secondary school students. The state highway
3 and transportation department shall coordinate with the
4 department of health to ensure that there is no program
5 duplication. The limited license or permit to drive may be
6 suspended as provided in Section 66-5-30 NMSA 1978.

7 D. The [~~director~~] department, within twenty days of
8 receipt of an application for a limited driver's license or
9 permit pursuant to this section, shall afford the applicant a
10 hearing in the county in which the applicant resides, unless
11 the [~~division~~] department and the [~~licensee~~] applicant agree
12 that the hearing may be held in some other county. The
13 [~~director may, in his discretion~~] department may extend the
14 twenty-day period, provided that the extension is in writing
15 and made no later than fifteen days after receipt of an
16 application. Upon hearing, [~~the director or his duly~~
17 ~~authorized~~] the hearing officer designated by the department
18 may administer oaths and may issue subpoenas for the
19 attendance of witnesses and the production of relevant books
20 and papers. The [~~director~~] hearing officer shall make
21 specific findings as to whether the applicant has shown proof
22 of financial responsibility for the future and meets
23 established uniform criteria for limited driving privileges
24 adopted by regulation of the department. The [~~director~~]
25 hearing officer shall enter an order either approving or

underscored material = no
[bracketed material] = delete

1 denying the applicant's request for a limited license or
2 permit to drive. If any of the specific findings set forth in
3 this subsection are not found by the [~~director~~] hearing
4 officer, the applicant's request for a limited license or
5 permit shall not be approved.

6 E. A person adversely affected by an order of [~~the~~
7 ~~director~~] a hearing officer may seek review within thirty days
8 in the district court in the county in which he resides. [~~The~~
9 ~~district court, upon thirty days' written notice to the~~
10 ~~director, shall hear the case.~~] On review, it is for the
11 court to determine only whether the applicant met the
12 requirements in this section for issuance of a limited license
13 or permit to drive."

14 Section 2. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 1995.

State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE
FIRST SESSION, 1995

February 15, 1995

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

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has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 11, after the semicolon strike the remainder of the line, strike lines 12 and 13 in their entirety and insert in lieu thereof "REVISING THE DOCUMENTATION THAT MUST BE PROVIDED AND THE PROCEDURES TO BE FOLLOWED BY PERSONS APPLYING FOR A LIMITED DRIVER'S LICENSE; REPEALING AND ENACTING A SECTION OF THE MOTOR VEHICLE CODE."

2. On page 1, strike lines 16 through 25 in their entirety, strike pages 2 through 4 in their entirety, and on page 5, strike lines 1 through 13 and insert in lieu thereof the following new section:

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

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B. No person shall be eligible to apply for:

- (1) a limited commercial driver's license; or
- (2) a limited driver's license or permit when the person's driver's license or permit was revoked or suspended pursuant to:
 - (a) the provisions of the Implied Consent Act, except as provided in Subsection C of this section;
 - (b) an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code; or
 - (c) a violation of Section 66-8-101 NMSA 1978.

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

- (1) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act for the lesser of one year or the period of the limited license; and either
- (2) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment;
- (3) that the person is enrolled in school and needs a limited license to travel to and from school; or
- (4) that the person needs a limited license to provide for the health, safety and welfare of his immediate family.

In addition, an applicant for a limited license whose driver's license has been revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 must provide the department with documentation that the person is enrolled in a DWI school approved by the traffic safety bureau of the state highway and transportation department; provided, a limited license may not be issued earlier than thirty days after the applicant's license was revoked.

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D. When the department receives an application from a person who, pursuant to Subsections A and B of this section, is eligible to apply for a limited license, the department shall approve the issuance of a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

E. An applicant who is denied a limited license or permit to drive by the department may request a hearing within twenty days of mailing of the notice of denial. The hearing shall be held in the county in which the applicant resides, unless the department and applicant agree that the hearing may be held in some other county. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has met the requirements of this section and established uniform criteria for limited driving privileges adopted by regulation of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in Subsection C of this section are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

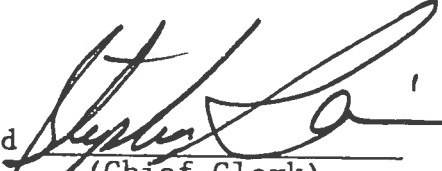
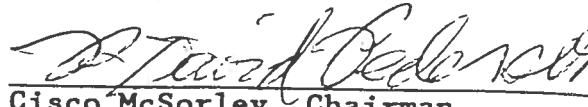
F. A person adversely affected by an order of a hearing officer may seek review within thirty days in the district court in the county in which he resides. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or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

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Respectfully submitted,

Adopted  (Chief Clerk) Not Adopted  (Chief Clerk)
Cisco McSorley, Chairman
Vice Chairman

Date 2/16/95

The roll call vote was 8 For 0 Against
Yes: 8
Excused: King, McSorley, Sanchez, RG
Absent: Gubbels, Stewart

.105533.1
H0419JC1

State of New Mexico
Senate

MAR 17 1995

FORTY-SECOND LEGISLATURE
FIRST SESSION, 1995

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March 16, 1995

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 419, as amended

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike House Judiciary Committee Amendments 1 and 2.
2. Strike Senate Public Affairs Committee Amendments 1 and 2.

3. On page 1, line 11, after the semicolon strike the remainder of the line, strike lines 12 and 13 in their entirety and insert in lieu thereof "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."

4. On page 1, strike lines 16 through 25 in their entirety, strike pages 2 through 4 in their entirety, and on page 5, strike lines 1 through 13 and insert in lieu thereof the following new sections to read:

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

B. No person shall be eligible to apply for:

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

(2) a limited driver's license or permit when the person's driver's license or permit was revoked or suspended pursuant to a violation of Section 66-8-101 NMSA 1978.

C. A person may apply for and shall receive a limited license or permit if the person pays every appropriate fee and

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meets the uniform criteria for limited driving privileges as set forth in this section and in department regulations and provides the department with documentation of the following:

- (1) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act for the lesser of one year or the period of the limited license; and either
- (2) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment;
- (3) that the person is enrolled in school and needs a limited license to travel to and from school; or
- (4) that the person needs a limited license to provide for the health, safety and welfare of his immediate family.

In addition, an applicant for a limited license whose driver's license has been revoked pursuant to the provisions of the Implied Consent Act must provide the department with documentation that the person is enrolled in a DWI school approved by the traffic safety bureau of the state highway and transportation department; provided, a limited license may not be issued earlier than thirty days after the applicant's license was revoked.

D. When the department receives an application from a person who, pursuant to Subsections A and C of this section, is eligible to apply for a limited license, the department shall approve the issuance of a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

E. An applicant who is denied a limited license or permit to drive by the department may request a hearing within twenty days of mailing of the notice of denial. The hearing shall be held in the county in which the applicant resides, unless the department and applicant agree that the hearing may be held in some other county. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to

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whether the applicant has met the requirements of this section and established uniform criteria for limited driving privileges adopted by regulation of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in Subsection C of this section are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

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

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

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

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

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

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of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

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

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

E. The hearing shall be limited to the issues:

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

(2) whether the person was arrested;

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

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

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

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

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

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive

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blood or breath if the person is less than twenty-one years of age.

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

- (1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drug;
- (2) the person was arrested;
- (3) this hearing is held no later than ninety days after notice of revocation; and
- (4) the person either refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his privilege to drive or that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration of eight one-hundredths or more if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more if the person is less than twenty-one years of age.

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

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

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

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5. Renumber the succeeding section accordingly.

Respectfully submitted,


Janice D. Paster, Chairman

Adopted 
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date 3/17/95

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.107091.4

State of New Mexico
Senate

MAR 18 1995

Adopt
V/V

FORTY-SECOND LEGISLATURE
FIRST SESSION

March 18, 1995

SENATE FLOOR AMENDMENT number 1 to HOUSE BILL 419, as amended
Amendment sponsored by Senator Michael S. Sanchez

1. Strike Senate Judiciary Committee Amendment 4.

2. On page 1, strike lines 16 through 25 in their entirety, strike pages 2 through 4 in their entirety, and on page 5, strike lines 1 through 13 in their entirety and insert in lieu thereof the following new sections to read:

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

B. No person shall be eligible to apply for:

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

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

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

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

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

C. A person, including a person whose driver's license has been revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978,

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may apply for and shall receive a limited license or permit if the person pays every appropriate fee and meets the uniform criteria for limited driving privileges as set forth in this section and in department regulations and provides the department with documentation of the following:

(1) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act for the lesser of one year or the period of the limited license; and either

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

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

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

In addition, an applicant for a limited license whose driver's license has been revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 must provide the department with documentation that the person is enrolled in a DWI school approved by the traffic safety bureau of the state highway and transportation department; provided, a limited license may not be issued earlier than thirty days after the applicant's license was revoked.

D. When the department receives an application from a person who, pursuant to Subsections A and B of this section, is eligible to apply for a limited license, the department shall approve the issuance of a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

E. An applicant who is denied a limited license or permit to drive by the department may request a hearing within twenty days

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of mailing of the notice of denial. The hearing shall be held in the county in which the applicant resides, unless the department and applicant agree that the hearing may be held in some other county. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has met the requirements of this section and established uniform criteria for limited driving privileges adopted by regulation of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in Subsection C of this section are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

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

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

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

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

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

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

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

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

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

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

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

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

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing

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and shall be accompanied by a payment of twenty-five dollars (\$25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to regulations adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

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

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

E. The hearing shall be limited to the issues:

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

(2) whether the person was arrested;

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

(4)

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

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

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(5)

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

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

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

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

(2) the person was arrested;

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

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

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

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

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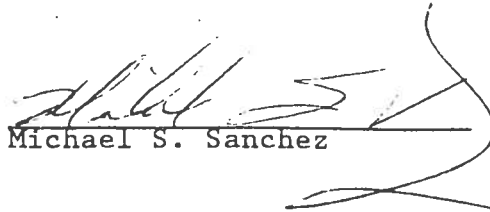
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H. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."".

3. Renumber the succeeding section accordingly.


Michael S. Sanchez

Adopted


(Chief Clerk)

Not Adopted

(Chief Clerk)

Date

3/18/95