

## **66-5-30. Authority of division to suspend or revoke license.**

A. The division may suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

- (1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;
- (2) has been convicted as a driver in an accident resulting in the death or personal injury of another or serious property damage;
- (3) has been convicted with such frequency of offenses against traffic laws or rules governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
- (4) is an habitually reckless or negligent driver of a motor vehicle;
- (5) is incompetent to drive a motor vehicle;
- (6) has permitted an unlawful or fraudulent use of the license;
- (7) has been convicted of an offense in another state or tribal jurisdiction that if committed within this state's jurisdiction would be grounds for suspension or revocation of the license;
- (8) has violated provisions stipulated by a district court in limitation of certain driving privileges; or
- (9) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. The division may issue an administrative suspension of the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee has failed to:

- (1) fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code or pursuant to the laws of the tribe;

(2) pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or

(3) comply with the terms of a citation issued in a foreign jurisdiction that is a party to the Nonresident Violator Compact [66-8-137.1 NMSA 1978] and that has notified the department of the failure in accordance with the Nonresident Violator Compact.

C. If a person whose license was issued by a jurisdiction outside New Mexico that is a party to the Nonresident Violator Compact fails to comply with the terms of a citation issued in New Mexico, the department shall notify that other jurisdiction of the failure and that jurisdiction shall initiate a license suspension action in accordance with the provisions of Article IV of the Nonresident Violator Compact.

D. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing of the licensee's right to a hearing before the administrative hearings office and, upon the licensee's request, shall notify the administrative hearings office. The administrative hearings office shall schedule the hearing to take place as early as practicable, but within no more than twenty days, not counting Saturdays, Sundays and legal holidays after receipt of the request. The hearing shall be held in the county in which the licensee resides unless the hearing officer and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The hearing officer may, in the hearing officer's discretion, extend the twenty-day period. The hearing shall be held as provided in the Administrative Hearings Office Act [Chapter 7, Article 1B NMSA 1978]. After the hearing, the hearing officer shall either rescind the order of suspension or continue, modify or extend the suspension of the license or revoke the license.

**History:** 1953 Comp., § 64-5-30, enacted by Laws 1978, ch. 35, § 252; 1979, ch. 71, § 6; 1981, ch. 360, § 5; 1981, ch. 380, § 1; 1991, ch. 192, § 1; 1999, ch. 175, § 10; 2003, ch. 164, § 9; 2015, ch. 73, § 31; 2019, ch. 224, § 1.

#### ANNOTATIONS

**Cross references.** — For definition of "suspension", see 66-1-4.16 NMSA 1978. For suspending resident's license upon conviction in another state, see 66-5-26 NMSA 1978.

For subpoenas, see Rule 1-045 NMRA.

**The 2019 amendment**, effective October 1, 2019, provided for administrative suspensions of instruction permits, driver's licenses or provisional licenses; in Subsection A, deleted Paragraphs A(9) and A(10) and redesignated former Paragraph A(11) as Paragraph A(9); and added new Subsections B and C and redesignated former Subsection B as Subsection D.

**The 2015 amendment**, effective July 1, 2015, entitled a license whose license has been suspended the right to a hearing before the administrative hearings office; in the introductory sentence of Subsection A, after "The division", deleted "is authorized to"

and added "may"; in Subsection B, after "notify the licensee in writing", deleted "and upon his request shall afford him an opportunity for a hearing" and added "of the licensee's right to a hearing before the administrative hearings office and, upon the licensee's request, shall notify the administrative hearings office. The administrative hearings office shall schedule the hearing to take place", after "practicable", added "but", after "within", deleted "not to exceed" and added "no more than", after "request", added "The hearing shall be held", after "county", deleted "wherein" and added "in which", after "resides unless the", deleted "division" and added "hearing officer", after "United States mail. The", deleted "director" and added "hearing officer", after "may, in", deleted "his" and added "the hearing officer's", after "twenty-day period", deleted "Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon" and added "The hearing shall be held as provided in the Administrative Hearings Office Act. After", after "the hearing, the", deleted "division" and added "hearing officer", after "rescind", deleted "its" and added "the", and after "suspension or", deleted "good cause appearing therefor, may".

**The 2003 amendment**, effective July 1, 2003, inserted "including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978" following "other sufficient evidence" in Subsection A; rewrote Paragraph A(7); in Paragraph A(9), substituted "state court or tribal court" for "court" following "notice from a", added "or pursuant to the laws of the tribe" at the end; inserted "by the state or a tribe" near the end of Paragraph A(10).

**The 1999 amendment**, effective January 1, 2000, in Subsection A inserted "instruction permit, driver's" and "or provisional license" and made a minor stylistic change.

**The 1991 amendment**, effective June 14, 1991, rewrote Paragraph (9) of Subsection A, which read "has failed to fulfill a signed promise to appear in court as evidenced by notice from a court", and made minor stylistic changes in Subsection B.

**Necessity for procedural due process** applies to suspension of one's driver's license by this state. *City of Albuquerque v. Juarez*, 1979-NMCA-084, 93 N.M. 188, 598 P.2d 650, overruled on other grounds by *State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Constitutional for administrative officer to have power to suspend license.** — A driver's license being a privilege, there is no denial of the due process of law resulting from placing the power to revoke or suspend the same in an administrative officer. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449.

**Suspension of license purely administrative.** — The suspension of an operator's license, even though perhaps quasi-judicial, is purely an administrative act and not a judicial duty. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449.

**Twenty day period not mandatory.** — The language in Subsection B providing that upon request of the licensee a hearing shall be conducted within 20 days is directory and not mandatory in nature. *Littlefield v. State ex rel. Taxation & Revenue Dep't*, 1992-NMCA-083, 114 N.M. 390, 839 P.2d 134, cert. denied, 114 N.M. 123, 835 P.2d 839.

**Juvenile's license can be suspended without juvenile court action.** — Motor vehicle department (now motor vehicle division) can suspend driving privileges of a juvenile by hearing before a representative of the department, when there has been no

citation or petition to the juvenile court, and no action taken by a juvenile court of the state of New Mexico. 1961 Op. Att'y Gen. No. [61-97](#).

**Section is only statutory authorization for revocation of Indian's license.** — Section 64-13-60, 1953 Comp. (similar to this section), is the only statutory authorization for the revocation of an Indian's driver's license because of his driving habits on state highways on Indian land. Since it does not provide that a person need be convicted of traffic offenses, it appears clearly within the discretion of the division to act if it has "sufficient evidence" tending to show that the driver is habitually reckless or negligent. 1962 Op. Att'y Gen. No. [62-06](#).

**Suspension without preliminary hearing.** — Section 64-13-60, 1953 Comp. (similar to this section), grants the power to suspend the license of an operator without preliminary hearing upon sufficient evidence that the licensee has committed an offense for which mandatory revocation of license is required upon conviction. 1960 Op. Att'y Gen. No. [60-194](#).

**Request for hearing.** — The licensee may demand a hearing on the suspension and obtain a hearing within 20 days following the request for the hearing, and if the hearing is not allowed, the suspension would be invalid. 1959 Op. Att'y Gen. No. [59-06](#).

**Surrender of license not condition precedent to holding hearing.** — Section 64-13-63, 1953 Comp. (similar to former Section [66-5-33](#) NMSA 1978), does clearly give the division the right to require a license surrender to the division upon entering the order of suspension. However, that provision does not give the division the authority to require such a surrender as a condition precedent to holding the hearing required by Section 64-13-60, 1953 Comp. (similar to this section). 1960 Op. Att'y Gen. No. [60-129](#).

**Sufficient evidence of fault must be required.** — Section 64-13-60 A (2), 1953 Comp. (similar, but with substantially different wording as to fault, to this section), is unconstitutional for failure to require sufficient evidence of fault on the part of a driver involved in an accident resulting in the death or personal injury of another or serious property damage, in that the failure to include such a requirement renders the statute an attempt to grant the department of motor vehicles (now motor vehicle division) the power to deprive licensees of property without due process of law, and denies to licensees the equal protection of the laws, contrary to [N.M. Const., art. II, § 18](#). 1960 Op. Att'y Gen. No. [60-194](#) (rendered under prior law).

**Causes for suspension same with residents and nonresidents.** — The procedures employed and the causes for which a nonresident license may be suspended or revoked are identical with that for the suspension or revocation of a resident operator's license. 1960 Op. Att'y Gen. No. [60-167](#).

**Suspension if convicted in municipal court of driving while intoxicated.** — A suspension of a driver's license can be made by the motor vehicle division if the driver is convicted in municipal court for driving while intoxicated even though the person convicted takes an appeal to the district court. 1959 Op. Att'y Gen. No. [59-06](#).

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 115 to 121.

What amounts to conviction or adjudication of guilt for purpose of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866.

Suspension or revocation for refusal to take sobriety test, 88 A.L.R.2d 1064.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power, 92 A.L.R.2d 204.

Conviction or acquittal in previous criminal case as bar to revocation or suspension of driver's license on same factual charge, 96 A.L.R.2d 612.

Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle, 5 A.L.R.3d 690.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

Validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 18 A.L.R.5th 542.

Admissibility, in motor vehicle license suspension proceedings, of evidence obtained by unlawful search and seizure, 23 A.L.R.5th 108.

60 C.J.S. Motor Vehicles §§ 164.5, 165.11 - 165.13.