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SENATE BILL 449

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR FORFEITURE OF MOTOR VEHICLES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 66-5-39 NMSA 1978 (being Laws 1978, Chapter 35, Section 261, as amended) is amended to read:

"66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED-- PROVIDING PENALTIES.--

A. Any person who drives a motor vehicle on any public highway of this state at a time when his privilege to do so is suspended or revoked and who knows or should have known that his license was suspended or revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished,

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1 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
2 by imprisonment for not less than four days or more than three
3 hundred sixty-four days or participation for an equivalent
4 period of time in a certified alternative sentencing program,
5 and there may be imposed in addition a fine of not more than
6 one thousand dollars (\$1,000). When a person pays any or all
7 of the cost of participating in a certified alternative
8 sentencing program, the court may apply that payment as a
9 deduction to any fine imposed by the court. Notwithstanding
10 any other provision of law for suspension or deferment of
11 execution of a sentence, if the person's privilege to drive was
12 revoked for driving while under the influence of intoxicating
13 liquor or drugs or a violation of the Implied Consent Act, upon
14 conviction under this section, that person shall be punished by
15 imprisonment for not less than seven consecutive days and shall
16 be fined not less than three hundred dollars (\$300) or not more
17 than one thousand dollars (\$1,000) and the fine and
18 imprisonment shall not be suspended, deferred or taken under
19 advisement. No other disposition by plea of guilty to any
20 other charge in satisfaction of a charge under this section
21 shall be authorized if the person's privilege to drive was
22 revoked for driving while under the influence of intoxicating
23 liquor or drugs or a violation of the Implied Consent Act. Any
24 municipal ordinance prohibiting driving with a suspended or
25 revoked license shall provide penalties no less stringent than

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1 provided in this section.

2 B. In addition to any other penalties imposed
3 pursuant to the provisions of this section, when a person is
4 convicted pursuant to the provisions of this section or a
5 municipal ordinance that prohibits driving on a suspended or
6 revoked license, the motor vehicle the person was driving shall
7 be immobilized by an immobilization device for thirty days,
8 unless immobilization of the motor vehicle poses an imminent
9 danger to the health, safety or employment of the convicted
10 person's immediate family or the family of the owner of the
11 motor vehicle. The convicted person shall bear the cost of
12 immobilizing the motor vehicle.

13 C. In addition to any other penalties imposed
14 pursuant to the provisions of this section, when a person is
15 arrested pursuant to the provisions of this section or a
16 municipal ordinance that prohibits driving on a revoked
17 license, when the person's privilege to drive was revoked for
18 driving while under the influence of intoxicating liquor or
19 drugs or a violation of the Implied Consent Act, the motor
20 vehicle the person was driving shall be subject to seizure and
21 forfeiture.

22 D. The provisions of the Forfeiture Act apply to
23 the seizure, forfeiture and disposal of a motor vehicle subject
24 to forfeiture pursuant to Subsection C of this section;
25 provided, a motor vehicle that has been seized may be returned

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1 to the registered owner immediately if the owner installs an
2 ignition interlock device, approved by the bureau, on the motor
3 vehicle. The registered owner of the motor vehicle shall
4 maintain the ignition interlock device on the motor vehicle for
5 a period of three years following installation of the ignition
6 interlock device. Any attempt to dismantle, disengage or
7 otherwise disable the ignition interlock device shall cause the
8 motor vehicle to be immediately subject to seizure, forfeiture
9 and disposal pursuant to the provisions of the Forfeiture Act.
10 The motor vehicle shall be subject to random inspections to
11 determine if the ignition interlock device is properly
12 installed.

13 [~~G.~~] E. The division, upon receiving a record of
14 the conviction of any person under this section upon a charge
15 of driving a vehicle while the license of the person was
16 suspended, shall extend the period of suspension for an
17 additional like period, and if the conviction was upon a charge
18 of driving while a license was revoked, the division shall not
19 issue a new license for an additional period of one year from
20 the date the person would otherwise have been entitled to apply
21 for a new license."

22 Section 2. A new section of Chapter 66, Article 8 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
25 PROCEDURE.--

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1 A. Upon an arrest for a second or subsequent
2 offense of driving while under the influence of intoxicating
3 liquor or drugs or aggravated driving while under the influence
4 of intoxicating liquor or drugs, the motor vehicle used in the
5 commission of the offense shall be subject to seizure and
6 forfeiture.

7 B. The provisions of the Forfeiture Act apply to
8 the seizure, forfeiture and disposal of a motor vehicle subject
9 to forfeiture pursuant to Subsection A of this section;
10 provided, a motor vehicle that has been seized may be returned
11 to the registered owner immediately if the owner installs an
12 ignition interlock device, approved by the bureau, on the motor
13 vehicle. The registered owner of the motor vehicle shall
14 maintain the ignition interlock device on the motor vehicle for
15 a period of three years following installation of the ignition
16 interlock device. Any attempt to dismantle, disengage or
17 otherwise disable the ignition interlock device shall cause the
18 motor vehicle to be immediately subject to seizure, forfeiture
19 and disposal pursuant to the provisions of the Forfeiture Act.
20 The motor vehicle shall be subject to random inspections to
21 determine if the ignition interlock device is properly
22 installed."

23 Section 3. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2004.