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HOUSE BILL 115

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO MOTOR VEHICLES; REVOKING A DRIVER'S LICENSE FOR TEN YEARS AFTER A CONVICTION FOR VEHICULAR HOMICIDE OR GREAT BODILY INJURY WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PERMITTING PERSONS CONVICTED OF VEHICULAR HOMICIDE OR GREAT BODILY INJURY WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO APPLY FOR AN IGNITION INTERLOCK DRIVER'S LICENSE AFTER ONE YEAR AND TO APPLY FOR A NEW DRIVER'S LICENSE AFTER TEN YEARS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1975, Chapter 35, Section 227, as amended by Laws 2007, Chapter 316, Section 1 and by Laws 2007, Chapter 317, Section 1) is amended to read:

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1 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall  
2 not issue a driver's license under the Motor Vehicle Code to  
3 any person:

4 A. who is under the age of eighteen years, except  
5 the division may, in its discretion, issue:

6 (1) an instruction permit to a person fifteen  
7 years of age or over who is enrolled in and attending or has  
8 completed a driver education course that includes a DWI  
9 education and prevention component approved by the bureau or  
10 offered by a public school;

11 (2) a provisional license to any person  
12 fifteen years and six months of age or older:

13 (a) who has completed a driver education  
14 course approved by the bureau or offered by a public school  
15 that includes a DWI education and prevention component and has  
16 had an instruction permit for at least six months; and

17 (b) who has successfully completed a  
18 practice driving component;

19 (3) a driver's license to any person sixteen  
20 years and six months of age or older:

21 (a) who has had a provisional license  
22 for the twelve-month period immediately preceding the date of  
23 the application for the driver's license;

24 (b) who has complied with restrictions  
25 on that license;

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1 (c) who has not been convicted of a  
2 traffic violation that was committed during the ninety days  
3 prior to applying for a driver's license; and

4 (d) who has not been adjudicated for an  
5 offense involving the use of alcohol or drugs during that  
6 period and who has no pending adjudications alleging an offense  
7 involving the use of alcohol or drugs at the time of  
8 application; and

9 (4) to any person thirteen years of age or  
10 older who passes an examination prescribed by the division, a  
11 license restricted to the operation of a motorcycle, provided:

12 (a) the motorcycle is not in excess of  
13 one hundred cubic centimeters displacement;

14 (b) no holder of an initial license may  
15 carry any other passenger while driving a motorcycle; and

16 (c) the director approves and certifies  
17 motorcycles as not in excess of one hundred cubic centimeters  
18 displacement and by rule provides for a method of  
19 identification of such motorcycles by all law enforcement  
20 officers;

21 B. whose license or driving privilege has been  
22 suspended or denied, during the period of suspension or denial,  
23 or to any person whose license has been revoked, except as  
24 provided in Section 66-5-32 NMSA 1978 and the Ignition  
25 Interlock Licensing Act;

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1 C. who is an habitual user of narcotic drugs or  
2 alcohol or an habitual user of any drug to a degree that  
3 renders the person incapable of safely driving a motor vehicle;

4 D. who is four or more times convicted of driving a  
5 motor vehicle while under the influence of intoxicating liquor  
6 or narcotic drug regardless of whether the convictions are  
7 under the laws or ordinances of this state or any municipality  
8 or county of this state or under the laws or ordinances of any  
9 other state, the District of Columbia or any governmental  
10 subdivision thereof, except as provided in the Ignition  
11 Interlock Licensing Act. Five years from the date of the  
12 fourth conviction and every five years thereafter, the person  
13 may apply to any district court of this state for restoration  
14 of the license, and the court, upon good cause being shown, may  
15 order restoration of the license applied for; provided that the  
16 person has not been subsequently convicted of driving a motor  
17 vehicle while under the influence of intoxicating liquor or  
18 drugs. Upon issuance of the order of restoration, a certified  
19 copy shall immediately be forwarded to the division, and if the  
20 person is otherwise qualified for the license applied for, the  
21 four previous convictions shall not prohibit issuance of the  
22 license;

23 E. who is convicted of homicide by vehicle or great  
24 bodily injury by vehicle while under the influence of  
25 intoxicating liquor or while under the influence of any drug

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1 pursuant to Section 66-8-101 NMSA 1978 or under the laws or  
2 ordinances of any municipality or county of this state or under  
3 the laws or ordinances of any other state, the District of  
4 Columbia or any governmental subdivision thereof. Ten years  
5 from the date of the conviction and every five years  
6 thereafter, the person may apply to any district court of this  
7 state for restoration of the license, and the court, upon good  
8 cause being shown, may order restoration of the license applied  
9 for; provided that the person has not been subsequently  
10 convicted of driving a motor vehicle while under the influence  
11 of intoxicating liquor or drugs. Upon issuance of the order of  
12 restoration, a certified copy shall immediately be forwarded to  
13 the division, and if the person is otherwise qualified for the  
14 license applied for, the conviction shall not prohibit issuance  
15 of the license;

16 ~~[E.]~~ F. who was convicted on or after June 17, 2005  
17 of driving a motor vehicle while under the influence of  
18 intoxicating liquor or drugs pursuant to the laws or ordinances  
19 of any other state, the District of Columbia or any  
20 governmental subdivision thereof, unless the person obtains an  
21 ignition interlock license as provided in the Ignition  
22 Interlock Licensing Act for a period of one year for a first  
23 conviction; a period of two years for a second conviction; a  
24 period of three years for a third conviction; or the remainder  
25 of the offender's life for a fourth or subsequent conviction,

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1 subject to a five-year review as provided in Subsection D of  
2 this section. Upon presentation of proof satisfactory to the  
3 division, the division may credit time spent by a person  
4 operating a motor vehicle with an ignition interlock or  
5 comparable device, as a condition of the person's sentence for  
6 a conviction in another jurisdiction pursuant to this  
7 subsection, against the ignition interlock time requirements  
8 imposed by this subsection. The division shall promulgate  
9 rules necessary for granting credit to persons who participate  
10 in comparable out-of-state programs following a conviction for  
11 driving a motor vehicle while under the influence of  
12 intoxicating liquor or drugs. The requirements of this  
13 subsection shall not apply to a person who applies for a  
14 driver's license ten years or more from the date of the  
15 person's last conviction, except for a person who is subject to  
16 lifetime driver's license revocation for a conviction in  
17 another jurisdiction; [~~pursuant to this subsection~~

18 ~~F.]~~ G. who has previously been afflicted with or  
19 who is suffering from any mental disability or disease that  
20 would render the person unable to drive a motor vehicle with  
21 safety upon the highways and who has not, at the time of  
22 application, been restored to health;

23 [~~G.]~~ H. who is required by the Motor Vehicle Code  
24 to take an examination, unless the person has successfully  
25 passed the examination;

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1           ~~[H.]~~ I. who is required under the laws of this  
2 state to deposit proof of financial responsibility and who has  
3 not deposited the proof;

4           ~~[I.]~~ J. when the director has good cause to believe  
5 that the operation of a motor vehicle on the highways by the  
6 person would be inimical to public safety or welfare; or

7           ~~[J.]~~ K. as a motorcycle driver who is less than  
8 eighteen years of age and who has not presented a certificate  
9 or other evidence of having successfully completed a motorcycle  
10 driver education program licensed or offered in conformance  
11 with rules of the bureau."

12           Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978,  
13 Chapter 35, Section 251, as amended) is amended to read:

14           "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

15           A. The division shall immediately revoke the  
16 driving privilege or driver's license of a driver upon  
17 receiving a record of the driver's adjudication as a delinquent  
18 for or conviction of any of the following offenses, whether the  
19 offense is under any state law or local ordinance, when the  
20 conviction or adjudication has become final:

21                   (1) manslaughter or negligent homicide  
22 resulting from the operation of a motor vehicle;

23                   (2) any offense rendering a person a "first  
24 offender" as defined in the Motor Vehicle Code;

25                   (3) any offense rendering a person a

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1 "subsequent offender" as defined in the Motor Vehicle Code;

2 (4) any felony in the commission of which a  
3 motor vehicle is used;

4 (5) failure to stop and render aid as required  
5 under the laws of this state in the event of a motor vehicle  
6 accident resulting in the death or personal injury of another;

7 (6) perjury or the making of a false affidavit  
8 or statement under oath to the division under the Motor Vehicle  
9 Code or under any other law relating to the ownership or  
10 operation of motor vehicles; or

11 (7) conviction or forfeiture of bail not  
12 vacated upon three charges of reckless driving committed within  
13 a period of twelve months.

14 B. Except as provided in the Ignition Interlock  
15 Licensing Act and in Subsection C, D, E, [~~F~~] F or G of this  
16 section, a person whose driving privilege or driver's license  
17 has been revoked under this section shall not be entitled to  
18 apply for or receive a new license until one year from the date  
19 that the conviction is final and all rights to an appeal have  
20 been exhausted.

21 C. A person who upon adjudication as a delinquent  
22 for driving while under the influence of intoxicating liquor or  
23 drugs or a conviction pursuant to Section 66-8-102 NMSA 1978 is  
24 subject to revocation of the driving privilege or driver's  
25 license under this section for an offense pursuant to which the

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1 person was also subject to revocation of the driving privilege  
2 or driver's license pursuant to Section 66-8-111 NMSA 1978  
3 shall have the person's driving privilege or driver's license  
4 revoked for that offense for a combined period of time equal  
5 to:

6 (1) one year for a first offender; or

7 (2) for a subsequent offender:

8 (a) two years for a second conviction;

9 (b) three years for a third conviction;

10 or

11 (c) the remainder of the offender's life  
12 for a fourth or subsequent conviction, subject to a five-year  
13 review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

14 D. A person who is convicted of homicide by vehicle  
15 or great bodily injury by vehicle while under the influence of  
16 intoxicating liquor or while under the influence of any drug  
17 pursuant to Section 66-8-101 NMSA 1978 is subject to revocation  
18 of the driving privilege or driver's license and shall have the  
19 person's driving privilege or driver's license revoked for that  
20 offense for the remainder of the offender's life, subject to a  
21 ten-year review, as provided in Section 66-5-5 NMSA 1978.

22 [~~D.~~] E. The division shall apply the license  
23 revocation provisions of Subsection C of this section and the  
24 provisions of Subsection D of Section 66-5-5 NMSA 1978 to a  
25 person who was three or more times convicted of driving a motor

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1 vehicle under the influence of intoxicating liquor or drugs and  
2 who has a driver's license revocation pursuant to the law in  
3 effect prior to June 17, 2005, upon the request of the person  
4 and if the person has had an ignition interlock license for  
5 three years or more and has proof from the ignition interlock  
6 vendor of no violations of the ignition interlock device in the  
7 previous six months.

8 ~~[E-]~~ F. Upon receipt of an order from a court  
9 pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of  
10 Section 32A-2-22 NMSA 1978, the division shall revoke the  
11 driver's license or driving privileges for a period of time in  
12 accordance with these provisions.

13 ~~[F-]~~ G. Upon receipt from a district court of a  
14 record of conviction for the offense of shooting at or from a  
15 motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA  
16 1978 or of a conviction for a conspiracy or an attempt to  
17 commit that offense, the division shall revoke the driver's  
18 license or driving privileges of the convicted person. A  
19 person whose driver's license or driving privilege has been  
20 revoked pursuant to the provisions of this subsection shall not  
21 be entitled to apply for or receive any new driver's license or  
22 driving privilege until one year from the date that the  
23 conviction is final and all rights to an appeal have been  
24 exhausted."

25 Section 3. Section 66-5-32 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 254, as amended by Laws 2005, Chapter 241,  
2 Section 3 and by Laws 2005, Chapter 269, Section 3) is amended  
3 to read:

4 "66-5-32. PERIOD OF SUSPENSION OR REVOCATION.--

5 A. The division shall not suspend a driver's  
6 license or privilege to drive a motor vehicle on the public  
7 highways for a period of more than one year except as permitted  
8 under Subsection C of this section and Sections 66-5-5, [~~and~~]  
9 66-5-29 and 66-5-39 NMSA 1978.

10 B. Except as provided in the Ignition Interlock  
11 Licensing Act, a person whose license or privilege to drive a  
12 motor vehicle on the public highways has been revoked shall not  
13 be entitled to have the license or privilege renewed or  
14 restored unless the revocation was for a cause that has been  
15 removed, except that after the expiration of the periods  
16 specified in Subsections B, [~~and~~] C and D of Section 66-5-29  
17 NMSA 1978 from the date on which the revoked license was  
18 surrendered to and received by the division, the person may  
19 make application for a new license as provided by law.

20 C. The suspension period for failure to appear or  
21 failure to remit the penalty assessment shall, at the  
22 discretion of the director, be extended indefinitely subject to  
23 the provisions of Subsection B of Section 66-5-30 NMSA 1978."

24 Section 4. Section 66-5-503 NMSA 1978 (being Laws 2003,  
25 Chapter 239, Section 3, as amended) is amended to read:

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1 "66-5-503. IGNITION INTERLOCK LICENSE--REQUIREMENTS--  
2 EXCLUSIONS.--

3 A. A person whose driving privilege or driver's  
4 license has been revoked or denied or who has not met the  
5 ignition interlock license requirement as a condition of  
6 reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply  
7 for an ignition interlock license from the division.

8 B. An applicant for an ignition interlock license  
9 shall:

10 (1) provide proof of installation of the  
11 ignition interlock device by a traffic safety bureau-approved  
12 ignition interlock installer on any vehicle the applicant  
13 drives; and

14 (2) sign an affidavit acknowledging that:

15 (a) operation by the applicant of any  
16 vehicle that is not equipped with an ignition interlock device  
17 is subject to penalties for driving with a revoked license;

18 (b) tampering or interfering with the  
19 proper and intended operation of an ignition interlock device  
20 may subject the applicant to penalties for driving with a  
21 license that was revoked for driving under the influence of  
22 intoxicating liquor or drugs or a violation of the Implied  
23 Consent Act; and

24 (c) the applicant shall maintain the  
25 ignition interlock device and keep up-to-date records in the

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1 motor vehicle showing required service and calibrations and be  
2 able to provide the records upon request.

3 C. A person who has been convicted of homicide by  
4 vehicle or great bodily injury by vehicle while under the  
5 influence of intoxicating liquor or drugs, as provided in  
6 Section 66-8-101 NMSA 1978, shall not be issued an ignition  
7 interlock license until one year from the date that the  
8 conviction is final and all rights to appeal have been  
9 exhausted."

10 Section 5. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2010.

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