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HOUSE BILL 392

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

David C. Chavez

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; REQUIRING MINIMUM ALCOHOL CONCENTRATION LEVELS IN THE
BLOOD OR BREATH FOR CONVICTION; REMOVING THE SLIGHTEST
IMPAIRMENT STANDARD; ALLOWING DRIVING UNDER THE INFLUENCE OF
CERTAIN LAWFULLY PRESCRIBED MEDICATIONS.

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

SECTION 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

~~[A. It is unlawful for a person who is under the
influence of intoxicating liquor to drive a vehicle within this
state.~~

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1 ~~B.]~~ A. It is unlawful for a person who is under the
2 influence of any drug to a degree that renders the person
3 incapable of safely driving a vehicle to drive a vehicle within
4 this state.

5 B. Subsection A of this section does not apply to a
6 person who is taking medication:

7 (1) that is lawfully prescribed to the person;

8 (2) in the manner and amount directed by the
9 health care practitioner who prescribed the medication; and

10 (3) for which there is no federal food and
11 drug administration prohibition or warning on driving while
12 taking the medication.

13 ~~C. [It is unlawful for]~~ Driving under the influence
14 of intoxicating liquor is unlawful and consists of:

15 (1) ~~[a person to drive]~~ driving a vehicle in
16 this state ~~[if the person has]~~ with an alcohol concentration of
17 eight one hundredths or more in the ~~[person's]~~ driver's blood
18 or breath within three hours of driving the vehicle and the
19 alcohol concentration results from alcohol consumed before or
20 while driving the vehicle; or

21 (2) ~~[a person to drive]~~ driving a commercial
22 motor vehicle in this state ~~[if the person has]~~ with an alcohol
23 concentration of four one hundredths or more in the ~~[person's]~~
24 driver's blood or breath within three hours of driving the
25 commercial motor vehicle and the alcohol concentration results

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1 from alcohol consumed before or while driving the vehicle.

2 D. Aggravated driving under the influence of
3 intoxicating liquor or drugs consists of:

4 (1) driving a vehicle in this state with an
5 alcohol concentration of sixteen one hundredths or more in the
6 driver's blood or breath within three hours of driving the
7 vehicle and the alcohol concentration results from alcohol
8 consumed before or while driving the vehicle;

9 (2) causing bodily injury to a human being as
10 a result of the unlawful operation of a motor vehicle while
11 driving under the influence of intoxicating liquor or drugs; or

12 (3) refusing to submit to chemical testing, as
13 provided for in the Implied Consent Act, and in the judgment of
14 the court, based upon evidence [~~of intoxication~~] presented to
15 the court, the law enforcement officer had reasonable grounds
16 to believe the driver was driving a vehicle in this state while
17 under the influence of intoxicating liquor or drugs.

18 E. A first conviction pursuant to this section
19 shall be punished, notwithstanding the provisions of Section
20 31-18-13 NMSA 1978, by imprisonment for not more than ninety
21 days or by a fine of not more than five hundred dollars (\$500),
22 or both; provided that if the sentence is suspended in whole or
23 in part or deferred, the period of probation may extend beyond
24 ninety days but shall not exceed one year. Upon a first
25 conviction pursuant to this section, an offender shall be

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1 sentenced to not less than twenty-four hours of community
2 service. In addition, the offender may be required to pay a
3 fine of three hundred dollars (\$300). The offender shall be
4 ordered by the court to participate in and complete a screening
5 program described in Subsection K of this section and to attend
6 a driver rehabilitation program for alcohol or drugs, also
7 known as a "DWI school", approved by the bureau and also may be
8 required to participate in other rehabilitative services as the
9 court shall determine to be necessary. In addition to those
10 penalties, when an offender commits aggravated driving under
11 the influence of intoxicating liquor or drugs, the offender
12 shall be sentenced to not less than forty-eight consecutive
13 hours in jail. If an offender fails to complete, within a time
14 specified by the court, any community service, screening
15 program, treatment program or DWI school ordered by the court
16 or fails to comply with any other condition of probation, the
17 offender shall be sentenced to not less than an additional
18 forty-eight consecutive hours in jail. Any jail sentence
19 imposed pursuant to this subsection for failure to complete,
20 within a time specified by the court, any community service,
21 screening program, treatment program or DWI school ordered by
22 the court or for aggravated driving under the influence of
23 intoxicating liquor or drugs shall not be suspended, deferred
24 or taken under advisement. On a first conviction pursuant to
25 this section, any time spent in jail for the offense prior to

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1 the conviction for that offense shall be credited to any term
2 of imprisonment fixed by the court. A deferred sentence
3 pursuant to this subsection shall be considered a first
4 conviction for the purpose of determining subsequent
5 convictions.

6 F. A second or third conviction pursuant to this
7 section shall be punished, notwithstanding the provisions of
8 Section 31-18-13 NMSA 1978, by imprisonment for not more than
9 three hundred sixty-four days or by a fine of not more than one
10 thousand dollars (\$1,000), or both; provided that if the
11 sentence is suspended in whole or in part, the period of
12 probation may extend beyond one year but shall not exceed five
13 years. Notwithstanding any provision of law to the contrary
14 for suspension or deferment of execution of a sentence:

15 (1) upon a second conviction, an offender
16 shall be sentenced to a jail term of not less than ninety-six
17 consecutive hours, not less than forty-eight hours of community
18 service and a fine of five hundred dollars (\$500). In addition
19 to those penalties, when an offender commits aggravated driving
20 under the influence of intoxicating liquor or drugs, the
21 offender shall be sentenced to a jail term of not less than
22 ninety-six consecutive hours. If an offender fails to
23 complete, within a time specified by the court, any community
24 service, screening program or treatment program ordered by the
25 court, the offender shall be sentenced to not less than an

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1 additional seven consecutive days in jail. A penalty imposed
2 pursuant to this paragraph shall not be suspended or deferred
3 or taken under advisement; and

4 (2) upon a third conviction, an offender shall
5 be sentenced to a jail term of not less than thirty consecutive
6 days, not less than ninety-six hours of community service and a
7 fine of seven hundred fifty dollars (\$750). In addition to
8 those penalties, when an offender commits aggravated driving
9 under the influence of intoxicating liquor or drugs, the
10 offender shall be sentenced to a jail term of not less than
11 sixty consecutive days. If an offender fails to complete,
12 within a time specified by the court, any community service,
13 screening program or treatment program ordered by the court,
14 the offender shall be sentenced to not less than an additional
15 sixty consecutive days in jail. A penalty imposed pursuant to
16 this paragraph shall not be suspended or deferred or taken
17 under advisement.

18 G. Upon a fourth conviction pursuant to this
19 section, an offender is guilty of a fourth degree felony and,
20 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
21 shall be sentenced to a term of imprisonment of eighteen
22 months, six months of which shall not be suspended, deferred or
23 taken under advisement.

24 H. Upon a fifth conviction pursuant to this
25 section, an offender is guilty of a fourth degree felony and,

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1 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
2 shall be sentenced to a term of imprisonment of two years, one
3 year of which shall not be suspended, deferred or taken under
4 advisement.

5 I. Upon a sixth conviction pursuant to this
6 section, an offender is guilty of a third degree felony and,
7 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
8 shall be sentenced to a term of imprisonment of thirty months,
9 eighteen months of which shall not be suspended, deferred or
10 taken under advisement.

11 J. Upon a seventh or subsequent conviction pursuant
12 to this section, an offender is guilty of a third degree felony
13 and, notwithstanding the provisions of Section 31-18-15 NMSA
14 1978, shall be sentenced to a term of imprisonment of three
15 years, two years of which shall not be suspended, deferred or
16 taken under advisement.

17 K. Upon any conviction pursuant to this section, an
18 offender shall be required to participate in and complete,
19 within a time specified by the court, an alcohol or drug abuse
20 screening program approved by the department of finance and
21 administration and, if necessary, a treatment program approved
22 by the court. The requirement imposed pursuant to this
23 subsection shall not be suspended, deferred or taken under
24 advisement.

25 L. Upon a second or third conviction pursuant to

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1 this section, an offender shall be required to participate in
2 and complete, within a time specified by the court:

3 (1) not less than a twenty-eight-day
4 inpatient, residential or in-custody substance abuse treatment
5 program approved by the court;

6 (2) not less than a ninety-day outpatient
7 treatment program approved by the court;

8 (3) a drug court program approved by the
9 court; or

10 (4) any other substance abuse treatment
11 program approved by the court.

12 The requirement imposed pursuant to this subsection shall
13 not be suspended, deferred or taken under advisement.

14 M. Upon a felony conviction pursuant to this
15 section, the corrections department shall provide substance
16 abuse counseling and treatment to the offender in its custody.
17 While the offender is on probation or parole under its
18 supervision, the corrections department shall also provide
19 substance abuse counseling and treatment to the offender or
20 shall require the offender to obtain substance abuse counseling
21 and treatment.

22 N. Upon a conviction pursuant to this section, an
23 offender shall be required to obtain an ignition interlock
24 license and have an ignition interlock device installed and
25 operating on all motor vehicles driven by the offender,

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1 pursuant to rules adopted by the traffic safety bureau. Unless
2 determined by the bureau to be indigent, the offender shall pay
3 all costs associated with having an ignition interlock device
4 installed on the appropriate motor vehicles. The offender
5 shall operate only those vehicles equipped with ignition
6 interlock devices for:

7 (1) a period of one year, for a first
8 offender;

9 (2) a period of two years, for a second
10 conviction pursuant to this section;

11 (3) a period of three years, for a third
12 conviction pursuant to this section; or

13 (4) the remainder of the offender's life, for
14 a fourth or subsequent conviction pursuant to this section.

15 0. Five years from the date of conviction and every
16 five years thereafter, a fourth or subsequent offender may
17 apply to a district court for removal of the ignition interlock
18 device requirement provided in this section and for restoration
19 of a driver's license. A district court may, for good cause
20 shown, remove the ignition interlock device requirement and
21 order restoration of the license; provided that the offender
22 has not been subsequently convicted of driving a motor vehicle
23 under the influence of intoxicating liquor or drugs. Good
24 cause may include an alcohol screening and proof from the
25 interlock vendor that the person has not had violations of the

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1 interlock device.

2 P. An offender who obtains an ignition interlock
3 license and installs an ignition interlock device prior to
4 conviction shall be given credit at sentencing for the time
5 period the ignition interlock device has been in use.

6 Q. In the case of a first, second or third offense
7 under this section, the magistrate court has concurrent
8 jurisdiction with district courts to try the offender.

9 R. A conviction pursuant to a municipal or county
10 ordinance in New Mexico or a law of any other jurisdiction,
11 territory or possession of the United States or of a tribe,
12 when that ordinance or law is equivalent to New Mexico law for
13 driving under the influence of intoxicating liquor or drugs,
14 and prescribes penalties for driving under the influence of
15 intoxicating liquor or drugs, shall be deemed to be a
16 conviction pursuant to this section for purposes of determining
17 whether a conviction is a second or subsequent conviction.

18 S. In addition to any other fine or fee that may be
19 imposed pursuant to the conviction or other disposition of the
20 offense under this section, the court may order the offender to
21 pay the costs of any court-ordered screening and treatment
22 programs.

23 T. With respect to this section and notwithstanding
24 any provision of law to the contrary, if an offender's sentence
25 was suspended or deferred in whole or in part and the offender

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1 violates any condition of probation, the court may impose any
2 sentence that the court could have originally imposed and
3 credit shall not be given for time served by the offender on
4 probation.

5 U. As used in this section:

6 (1) "bodily injury" means an injury to a
7 person that is not likely to cause death or great bodily harm
8 to the person, but does cause painful temporary disfigurement
9 or temporary loss or impairment of the functions of any member
10 or organ of the person's body; and

11 (2) "commercial motor vehicle" means a motor
12 vehicle or combination of motor vehicles used in commerce to
13 transport passengers or property if the motor vehicle:

14 (a) has a gross combination weight
15 rating of more than twenty-six thousand pounds inclusive of a
16 towed unit with a gross vehicle weight rating of more than ten
17 thousand pounds;

18 (b) has a gross vehicle weight rating of
19 more than twenty-six thousand pounds;

20 (c) is designed to transport sixteen or
21 more passengers, including the driver; or

22 (d) is of any size and is used in the
23 transportation of hazardous materials, which requires the motor
24 vehicle to be placarded under applicable law."

25 SECTION 2. Section 66-8-110 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 518, as amended) is amended to read:

2 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
3 ACTIONS--~~[LEVELS OF INTOXICATION]~~ PRESUMPTION--MANDATORY
4 CHARGING.--

5 A. The results of a test performed pursuant to the
6 Implied Consent Act may be introduced into evidence in any
7 civil action or criminal action arising out of the acts alleged
8 to have been committed by the person tested for driving a motor
9 vehicle while under the influence of intoxicating liquor or
10 drugs.

11 B. When the blood or breath of the person tested
12 contains

13 [~~(1) an alcohol concentration of less than~~
14 ~~four one hundredths, it shall be presumed that the person was~~
15 ~~not under the influence of intoxicating liquor;~~

16 ~~(2) an alcohol concentration of at least four~~
17 ~~one hundredths but less than eight one hundredths:~~

18 ~~(a) no presumption shall be made that~~
19 ~~the person either was or was not under the influence of~~
20 ~~intoxicating liquor, unless the person is driving a commercial~~
21 ~~motor vehicle; and~~

22 ~~(b) the amount of alcohol in the~~
23 ~~person's blood or breath may be considered with other competent~~
24 ~~evidence in determining whether the person was under the~~
25 ~~influence of intoxicating liquor; or~~

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1 ~~(3)~~] an alcohol concentration of four one
2 hundredths or more and the person is driving a commercial motor
3 vehicle, it shall be presumed that the person is under the
4 influence of intoxicating liquor.

5 C. The arresting officer shall charge the person
6 tested with a violation of Section 66-8-102 NMSA 1978 when the
7 blood or breath of the person contains an alcohol concentration
8 of:

9 (1) eight one hundredths or more; or

10 (2) four one hundredths or more if the person
11 is driving a commercial motor vehicle.

12 D. When a person is less than twenty-one years of
13 age and the blood or breath of the person contains an alcohol
14 concentration of two one hundredths or more, the person's
15 driving privileges shall be revoked pursuant to the provisions
16 of the Implied Consent Act.

17 E. If the test performed pursuant to the Implied
18 Consent Act is administered more than three hours after the
19 person was driving a vehicle, the test result may be introduced
20 as evidence of the alcohol concentration in the person's blood
21 or breath at the time of the test and the trier of fact shall
22 determine what weight to give the test result for the purpose
23 of determining a violation of Section 66-8-102 NMSA 1978.

24 F. The determination of alcohol concentration shall
25 be based on the grams of alcohol in one hundred milliliters of

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1 blood or the grams of alcohol in two hundred ten liters of
2 breath.

3 G. The ~~[presumptions]~~ presumption in Subsection B
4 of this section ~~[do]~~ does not limit the introduction of other
5 competent evidence concerning whether the person was under the
6 influence of intoxicating liquor.

7 H. If a person is convicted of driving a motor
8 vehicle while under the influence of intoxicating liquor, the
9 trial judge shall inquire into the past driving record of the
10 person before sentence is entered in the matter."

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.