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SENATE BILL 405

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

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; CLARIFYING THE STANDARD FOR DRIVING UNDER THE
INFLUENCE OF INTOXICATING LIQUOR; REMOVING THE SLIGHTEST
IMPAIRMENT STANDARD; PROHIBITING DRIVING UNDER THE INFLUENCE OF
A COMBINATION OF INTOXICATING LIQUOR AND DRUGS.

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]~~ to drive a
2 vehicle in this state when the person is under the influence of
3 ~~[any drug]~~ intoxicating liquor, one or more drugs or a
4 combination of intoxicating liquor and one or more drugs to a
5 degree that renders the person incapable of safely driving a
6 vehicle. ~~[to drive a vehicle within this state~~

7 ~~G.~~ B. It is unlawful for:

8 (1) a person to drive a vehicle in this state
9 ~~[if the person has]~~ with an alcohol concentration of eight one
10 hundredths or more in the person's blood or breath within three
11 hours of driving the vehicle and the alcohol concentration
12 results from alcohol consumed before or while driving the
13 vehicle; or

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

20 ~~D.~~ C. Aggravated driving under the influence of
21 intoxicating liquor or drugs consists of:

22 (1) driving a vehicle in this state with an
23 alcohol concentration of sixteen one hundredths or more in the
24 driver's blood or breath within three hours of driving the
25 vehicle and the alcohol concentration results from alcohol

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1 consumed before or while driving the vehicle;

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

5 (3) refusing to submit to chemical testing, as
6 provided for in the Implied Consent Act, and in the judgment of
7 the court, based upon evidence of intoxication presented to the
8 court, the driver was under the influence of intoxicating
9 liquor or drugs to a degree that rendered the driver incapable
10 of safely driving a vehicle.

11 ~~[E-]~~ D. A first conviction pursuant to this section
12 shall be punished, notwithstanding the provisions of Section
13 31-18-13 NMSA 1978, by imprisonment for not more than ninety
14 days or by a fine of not more than five hundred dollars (\$500),
15 or both; provided that if the sentence is suspended in whole or
16 in part or deferred, the period of probation may extend beyond
17 ninety days but shall not exceed one year. Upon a first
18 conviction pursuant to this section, an offender shall be
19 sentenced to not less than twenty-four hours of community
20 service. In addition, the offender may be required to pay a
21 fine of three hundred dollars (\$300). The offender shall be
22 ordered by the court to participate in and complete a screening
23 program described in Subsection ~~[K]~~ J of this section and to
24 attend a driver rehabilitation program for alcohol or drugs,
25 also known as a "DWI school", approved by the bureau and also

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1 may be required to participate in other rehabilitative services
2 as the court shall determine to be necessary. In addition to
3 those penalties, when an offender commits aggravated driving
4 under the influence of intoxicating liquor or drugs, the
5 offender shall be sentenced to not less than forty-eight
6 consecutive hours in jail. If an offender fails to complete,
7 within a time specified by the court, any community service,
8 screening program, treatment program or DWI school ordered by
9 the court or fails to comply with any other condition of
10 probation, the offender shall be sentenced to not less than an
11 additional forty-eight consecutive hours in jail. Any jail
12 sentence imposed pursuant to this subsection for failure to
13 complete, within a time specified by the court, any community
14 service, screening program, treatment program or DWI school
15 ordered by the court or for aggravated driving under the
16 influence of intoxicating liquor or drugs shall not be
17 suspended, deferred or taken under advisement. On a first
18 conviction pursuant to this section, any time spent in jail for
19 the offense prior to the conviction for that offense shall be
20 credited to any term of imprisonment fixed by the court. A
21 deferred sentence pursuant to this subsection shall be
22 considered a first conviction for the purpose of determining
23 subsequent convictions.

24 ~~[F-]~~ E. A second or third conviction pursuant to
25 this section shall be punished, notwithstanding the provisions

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1 of Section 31-18-13 NMSA 1978, by imprisonment for not more
2 than three hundred sixty-four days or by a fine of not more
3 than one thousand dollars (\$1,000), or both; provided that if
4 the sentence is suspended in whole or in part, the period of
5 probation may extend beyond one year but shall not exceed five
6 years. Notwithstanding any provision of law to the contrary
7 for suspension or deferment of execution of a sentence:

8 (1) upon a second conviction, an offender
9 shall be sentenced to a jail term of not less than ninety-six
10 consecutive hours, not less than forty-eight hours of community
11 service and a fine of five hundred dollars (\$500). In addition
12 to those penalties, when an offender commits aggravated driving
13 under the influence of intoxicating liquor or drugs, the
14 offender shall be sentenced to a jail term of not less than
15 ninety-six consecutive hours. If an offender fails to
16 complete, within a time specified by the court, any community
17 service, screening program or treatment program ordered by the
18 court, the offender shall be sentenced to not less than an
19 additional seven consecutive days in jail. A penalty imposed
20 pursuant to this paragraph shall not be suspended or deferred
21 or taken under advisement; and

22 (2) upon a third conviction, an offender shall
23 be sentenced to a jail term of not less than thirty consecutive
24 days, not less than ninety-six hours of community service and a
25 fine of seven hundred fifty dollars (\$750). In addition to

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1 those penalties, when an offender commits aggravated driving
2 under the influence of intoxicating liquor or drugs, the
3 offender shall be sentenced to a jail term of not less than
4 sixty consecutive days. If an offender fails to complete,
5 within a time specified by the court, any community service,
6 screening program or treatment program ordered by the court,
7 the offender shall be sentenced to not less than an additional
8 sixty consecutive days in jail. A penalty imposed pursuant to
9 this paragraph shall not be suspended or deferred or taken
10 under advisement.

11 ~~[G.]~~ F. Upon a fourth conviction pursuant to this
12 section, an offender is guilty of a fourth degree felony and,
13 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
14 shall be sentenced to a term of imprisonment of eighteen
15 months, six months of which shall not be suspended, deferred or
16 taken under advisement.

17 ~~[H.]~~ G. Upon a fifth conviction pursuant to this
18 section, an offender is guilty of a fourth degree felony and,
19 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
20 shall be sentenced to a term of imprisonment of two years, one
21 year of which shall not be suspended, deferred or taken under
22 advisement.

23 ~~[I.]~~ H. Upon a sixth conviction pursuant to this
24 section, an offender is guilty of a third degree felony and,
25 notwithstanding the provisions of Section 31-18-15 NMSA 1978,

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1 shall be sentenced to a term of imprisonment of thirty months,
2 eighteen months of which shall not be suspended, deferred or
3 taken under advisement.

4 ~~[J-]~~ I. Upon a seventh or subsequent conviction
5 pursuant to this section, an offender is guilty of a third
6 degree felony and, notwithstanding the provisions of Section
7 31-18-15 NMSA 1978, shall be sentenced to a term of
8 imprisonment of three years, two years of which shall not be
9 suspended, deferred or taken under advisement.

10 ~~[K-]~~ J. Upon any conviction pursuant to this
11 section, an offender shall be required to participate in and
12 complete, within a time specified by the court, an alcohol or
13 drug abuse screening program approved by the department of
14 finance and administration and, if necessary, a treatment
15 program approved by the court. The requirement imposed
16 pursuant to this subsection shall not be suspended, deferred or
17 taken under advisement.

18 ~~[L-]~~ K. Upon a second or third conviction pursuant
19 to this section, an offender shall be required to participate
20 in and complete, within a time specified by the court:

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

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

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1 (3) a drug court program approved by the
2 court; or

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

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

7 ~~[M.]~~ L. Upon a felony conviction pursuant to this
8 section, the corrections department shall provide substance
9 abuse counseling and treatment to the offender in its custody.
10 While the offender is on probation or parole under its
11 supervision, the corrections department shall also provide
12 substance abuse counseling and treatment to the offender or
13 shall require the offender to obtain substance abuse counseling
14 and treatment.

15 ~~[N.]~~ M. Upon a conviction pursuant to this section,
16 an offender shall be required to obtain an ignition interlock
17 license and have an ignition interlock device installed and
18 operating on all motor vehicles driven by the offender,
19 pursuant to rules adopted by the ~~[traffic safety]~~ bureau.
20 Unless determined by the bureau to be indigent, the offender
21 shall pay all costs associated with having an ignition
22 interlock device installed on the appropriate motor vehicles.
23 The offender shall operate only those vehicles equipped with
24 ignition interlock devices for:

25 (1) a period of one year, for a first

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1 offender;

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

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

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

8 [~~Θ-~~] N. Five years from the date of conviction and
9 every five years thereafter, a fourth or subsequent offender
10 may apply to a district court for removal of the ignition
11 interlock device requirement provided in this section and for
12 restoration of a driver's license. A district court may, for
13 good cause shown, remove the ignition interlock device
14 requirement and order restoration of the license; provided that
15 the offender has not been subsequently convicted of driving a
16 motor vehicle under the influence of intoxicating liquor or
17 drugs. Good cause may include an alcohol screening and proof
18 from the interlock vendor that the person has not had
19 violations of the interlock device.

20 [~~P-~~] O. An offender who obtains an ignition
21 interlock license and installs an ignition interlock device
22 prior to conviction shall be given credit at sentencing for the
23 time period the ignition interlock device has been in use.

24 [~~Q-~~] P. In the case of a first, second or third
25 offense under this section, the magistrate court has concurrent

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1 jurisdiction with district courts to try the offender.

2 [R-] Q. A conviction pursuant to a municipal or
3 county ordinance in New Mexico or a law of any other
4 jurisdiction, territory or possession of the United States or
5 of a tribe, when that ordinance or law is equivalent to New
6 Mexico law for driving under the influence of intoxicating
7 liquor or drugs, and prescribes penalties for driving under the
8 influence of intoxicating liquor or drugs, shall be deemed to
9 be a conviction pursuant to this section for purposes of
10 determining whether a conviction is a second or subsequent
11 conviction.

12 [S-] R. In addition to any other fine or fee that
13 may be imposed pursuant to the conviction or other disposition
14 of the offense under this section, the court may order the
15 offender to pay the costs of any court-ordered screening and
16 treatment programs.

17 [T-] S. With respect to this section and
18 notwithstanding any provision of law to the contrary, if an
19 offender's sentence was suspended or deferred in whole or in
20 part and the offender violates any condition of probation, the
21 court may impose any sentence that the court could have
22 originally imposed and credit shall not be given for time
23 served by the offender on probation.

24 [U-] T. As used in this section:

25 (1) "bodily injury" means an injury to a

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1 person that is not likely to cause death or great bodily harm
2 to the person, but does cause painful temporary disfigurement
3 or temporary loss or impairment of the functions of any member
4 or organ of the person's body; and

5 (2) "commercial motor vehicle" means a motor
6 vehicle or combination of motor vehicles used in commerce to
7 transport passengers or property if the motor vehicle:

8 (a) has a gross combination weight
9 rating of more than twenty-six thousand pounds inclusive of a
10 towed unit with a gross vehicle weight rating of more than ten
11 thousand pounds;

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

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

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

19 **SECTION 2.** Section 66-8-110 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 518, as amended) is amended to read:

21 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
22 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

23 A. The results of a test performed pursuant to the
24 Implied Consent Act may be introduced into evidence in any
25 civil action or criminal action arising out of the acts alleged

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1 to have been committed by the person tested for driving a motor
2 vehicle while under the influence of intoxicating liquor or
3 drugs.

4 B. When the blood or breath of the person tested
5 contains:

6 (1) an alcohol concentration of less than four
7 one hundredths, it shall be presumed that the person was not
8 under the influence of intoxicating liquor;

9 (2) an alcohol concentration of at least four
10 one hundredths but less than eight one hundredths:

11 (a) no presumption shall be made that
12 the person either was or was not under the influence of
13 intoxicating liquor, unless the person is driving a commercial
14 motor vehicle; and

15 (b) the amount of alcohol or drugs in
16 the person's blood or breath may be considered with other
17 competent evidence in determining whether the person was under
18 the influence of intoxicating liquor or drugs to a degree that
19 rendered the person incapable of safely driving a vehicle; or

20 (3) an alcohol concentration of four one
21 hundredths or more and the person is driving a commercial
22 vehicle, it shall be presumed that the person is under the
23 influence of intoxicating liquor or drugs to a degree that
24 rendered the person incapable of safely driving a vehicle.

25 C. When a person driving a commercial motor vehicle

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1 has refused to submit to chemical testing as provided in the
2 Implied Consent Act, it shall be presumed that the person was
3 under the influence of intoxicating liquor or drugs to a degree
4 that rendered the person incapable of safely driving a vehicle.

5 ~~[G-]~~ D. The arresting officer shall charge the
6 person tested with a violation of Section 66-8-102 NMSA 1978
7 when the blood or breath of the person contains an alcohol
8 concentration 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-]~~ E. When a person is less than twenty-one years
13 of age and the blood or breath of the person contains an
14 alcohol concentration of two one hundredths or more, the
15 person's driving privileges shall be revoked pursuant to the
16 provisions of the Implied Consent Act.

17 ~~[E-]~~ F. If the test performed pursuant to the
18 Implied Consent Act is administered more than three hours after
19 the person was driving a vehicle, the test result may be
20 introduced as evidence of the alcohol concentration in the
21 person's blood or breath at the time of the test and the trier
22 of fact shall determine what weight to give the test result for
23 the purpose of determining a violation of Section 66-8-102 NMSA
24 1978.

25 ~~[F-]~~ G. The determination of alcohol concentration

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1 shall be based on the grams of alcohol in one hundred
2 milliliters of blood or the grams of alcohol in two hundred ten
3 liters of breath.

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

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

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