

1 HOUSE BILL 607

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Paul A. Pacheco

5
6
7
8
9
10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; CLARIFYING THE ELEMENTS FOR PERMITTING AN
13 UNAUTHORIZED PERSON TO DRIVE; INCLUDING DRIVING ON A SUSPENDED
14 OR REVOKED LICENSE WHILE UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS AS AN AGGRAVATING CIRCUMSTANCE; ALLOWING
16 SUSPENSION OR REVOCATION OF A LICENSE UPON CONVICTION OF A
17 THIRD DEGREE FELONY FOR DRIVING UNDER THE INFLUENCE OF
18 INTOXICATING LIQUOR OR DRUGS; REMOVING THE ALLOWANCE FOR A
19 TEMPORARY DRIVER'S LICENSE; PROVIDING FOR PENALTIES.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--
25 PROVIDING PENALTIES.--

.191304.5SA

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 A. Any person who drives a motor vehicle on any
2 public highway of this state at a time when [~~his~~] the person's
3 privilege to do so is suspended or revoked and who knows or
4 should have known that [~~his~~] the person's license was suspended
5 or revoked is guilty of a misdemeanor and shall be charged with
6 a violation of this section. Upon conviction, the person shall
7 be punished, notwithstanding the provisions of Section 31-18-13
8 NMSA 1978, by imprisonment for not less than four days or more
9 than three hundred sixty-four days or participation for an
10 equivalent period of time in a certified alternative sentencing
11 program, and there may be imposed in addition a fine of not
12 more than one thousand dollars (\$1,000). When a person pays
13 any or all of the cost of participating in a certified
14 alternative sentencing program, the court may apply that
15 payment as a deduction to any fine imposed by the court.
16 Notwithstanding any other provision of law for suspension or
17 deferment of execution of a sentence, if the person's privilege
18 to drive was revoked for driving while under the influence of
19 intoxicating liquor or drugs or a violation of the Implied
20 Consent Act, upon conviction under this section, that person
21 shall be punished by imprisonment for not less than seven
22 consecutive days and shall be fined not less than three hundred
23 dollars (\$300) or not more than one thousand dollars (\$1,000),
24 and the fine and imprisonment shall not be suspended, deferred
25 or taken under advisement. Notwithstanding any other provision

.191304.5SA

underscored material = new
~~[bracketed material] = delete~~

1 of law for suspension or deferment of execution of a sentence,
2 if the person's privilege to drive was revoked for driving
3 while under the influence of intoxicating liquor or drugs or a
4 violation of the Implied Consent Act, and if the person is
5 convicted under this section and the driving offense for which
6 the person was convicted is driving while under the influence
7 of intoxicating liquor or drugs, then that person is guilty of
8 a fourth degree felony and shall be sentenced pursuant to the
9 provisions of Section 31-18-15 NMSA 1978, and the fine and
10 imprisonment shall not be suspended, deferred or taken under
11 advisement. No other disposition by plea of guilty to any
12 other charge in satisfaction of a charge under this section
13 shall be authorized if the person's privilege to drive was
14 revoked for driving while under the influence of intoxicating
15 liquor or drugs or a violation of the Implied Consent Act. Any
16 municipal ordinance prohibiting driving with a suspended or
17 revoked license shall provide penalties no less stringent than
18 provided in this section.

19 B. In addition to any other penalties imposed
20 pursuant to the provisions of this section, when a person is
21 convicted pursuant to the provisions of this section or a
22 municipal ordinance that prohibits driving on a suspended or
23 revoked license, the motor vehicle the person was driving shall
24 be immobilized by an immobilization device for thirty days,
25 unless immobilization of the motor vehicle poses an imminent

.191304.5SA

underscoring material = new
[bracketed material] = delete

1 danger to the health, safety or employment of the convicted
2 person's immediate family or the family of the owner of the
3 motor vehicle. The convicted person shall bear the cost of
4 immobilizing the motor vehicle.

5 C. The division, upon receiving a record of the
6 conviction of any person under this section upon a charge of
7 driving a vehicle while the license of the person was
8 suspended, shall extend the period of suspension for an
9 additional like period, and if the conviction was upon a charge
10 of driving while a license was revoked, the division shall not
11 issue a new license for an additional period of one year from
12 the date the person would otherwise have been entitled to apply
13 for a new license."

14 SECTION 2. Section 66-5-41 NMSA 1978 (being Laws 1978,
15 Chapter 35, Section 263) is amended to read:

16 "66-5-41. PERMITTING UNAUTHORIZED PERSON TO DRIVE.--

17 A. No person shall authorize or knowingly permit a
18 motor vehicle owned by ~~[him]~~ the person or under ~~[his]~~ the
19 person's control to be driven upon any highway by ~~[any person]~~
20 another who the person knows or should have known is not
21 authorized ~~[hereunder]~~ under the Motor Vehicle Code or is in
22 violation of any of the provisions of ~~[this]~~ Chapter 66,
23 Article 5 NMSA 1978.

24 B. If a person authorizes or knowingly permits a
25 motor vehicle owned by the person or under the person's control

.191304.5SA

underscored material = new
[bracketed material] = delete

1 to be driven upon any highway by another whom the person
2 reasonably should have known had a license suspended or revoked
3 for driving under the influence of intoxicating liquor or
4 drugs, the person is guilty of a fourth degree felony and shall
5 be sentenced pursuant to the provisions of Section 31-18-15
6 NMSA 1978."

7 SECTION 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
8 Chapter 139, Section 54, as amended) is amended to read:

9 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
10 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
11 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

15 B. It is unlawful for a person who is under the
16 influence of any drug to a degree that renders the person
17 incapable of safely driving a vehicle to drive a vehicle within
18 this state.

19 C. It is unlawful for:

20 (1) a person to drive a vehicle in this state
21 if the person has an alcohol concentration of eight one
22 hundredths or more in the person's blood or breath within three
23 hours of driving the vehicle and the alcohol concentration
24 results from alcohol consumed before or while driving the
25 vehicle; or

.191304.5SA

underscored material = new
[bracketed material] = delete

1 (2) a person to drive a commercial motor
2 vehicle in this state if the person has an alcohol
3 concentration of four one hundredths or more in the person's
4 blood or breath within three hours of driving the commercial
5 motor vehicle and the alcohol concentration results from
6 alcohol consumed before or while driving the vehicle.

7 D. Aggravated driving under the influence of
8 intoxicating liquor or drugs consists of:

9 (1) driving a vehicle in this state with an
10 alcohol concentration of sixteen one hundredths or more in the
11 driver's blood or breath within three hours of driving the
12 vehicle and the alcohol concentration results from alcohol
13 consumed before or while driving the vehicle;

14 (2) causing bodily injury to a human being as
15 a result of the unlawful operation of a motor vehicle while
16 driving under the influence of intoxicating liquor or drugs;
17 [~~or~~]

18 (3) refusing to submit to chemical testing, as
19 provided for in the Implied Consent Act, and in the judgment of
20 the court, based upon evidence of intoxication presented to the
21 court, the driver was under the influence of intoxicating
22 liquor or drugs; or

23 (4) driving under the influence of
24 intoxicating liquor or drugs with a suspended or revoked
25 license, or with a license issued under the Ignition Interlock

.191304.5SA

underscored material = new
[bracketed material] = delete

1 Licensing Act.

2 E. A first conviction pursuant to this section
3 shall be punished, notwithstanding the provisions of Section
4 31-18-13 NMSA 1978, by imprisonment for not more than ninety
5 days or by a fine of not more than five hundred dollars (\$500),
6 or both; provided that if the sentence is suspended in whole or
7 in part or deferred, the period of probation may extend beyond
8 ninety days but shall not exceed one year. Upon a first
9 conviction pursuant to this section, an offender shall be
10 sentenced to not less than twenty-four hours of community
11 service. In addition, the offender may be required to pay a
12 fine of three hundred dollars (\$300). The offender shall be
13 ordered by the court to participate in and complete a screening
14 program described in Subsection [~~K~~] L of this section and to
15 attend a driver rehabilitation program for alcohol or drugs,
16 also known as a "DWI school", approved by the bureau and also
17 may be required to participate in other rehabilitative services
18 as the court shall determine to be necessary. In addition to
19 those penalties, when an offender commits aggravated driving
20 under the influence of intoxicating liquor or drugs, the
21 offender shall be sentenced to not less than forty-eight
22 consecutive hours in jail. If an offender fails to complete,
23 within a time specified by the court, any community service,
24 screening program, treatment program or DWI school ordered by
25 the court or fails to comply with any other condition of

.191304.5SA

underscoring material = new
~~[bracketed material] = delete~~

1 probation, the offender shall be sentenced to not less than an
2 additional forty-eight consecutive hours in jail. Any jail
3 sentence imposed pursuant to this subsection for failure to
4 complete, within a time specified by the court, any community
5 service, screening program, treatment program or DWI school
6 ordered by the court or for aggravated driving under the
7 influence of intoxicating liquor or drugs shall not be
8 suspended, deferred or taken under advisement. On a first
9 conviction pursuant to this section, any time spent in jail for
10 the offense prior to the conviction for that offense shall be
11 credited to any term of imprisonment fixed by the court. A
12 deferred sentence pursuant to this subsection shall be
13 considered a first conviction for the purpose of determining
14 subsequent convictions.

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

24 (1) upon a second conviction, an offender
25 shall be sentenced to a jail term of not less than ninety-six

.191304.5SA

underscoring material = new
~~[bracketed material]~~ = delete

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

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

.191304.5SA

underscored material = new
~~[bracketed material] = delete~~

1 under advisement.

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

8 H. Upon a fifth conviction pursuant to this
9 section, an offender is guilty of a fourth degree felony and,
10 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
11 shall be sentenced to a term of imprisonment of two years, one
12 year of which shall not be suspended, deferred or taken under
13 advisement.

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

20 J. Upon a seventh or subsequent conviction pursuant
21 to this section, an offender is guilty of a third degree felony
22 and, notwithstanding the provisions of Section 31-18-15 NMSA
23 1978, shall be sentenced to a term of imprisonment of three
24 years, two years of which shall not be suspended, deferred or
25 taken under advisement.

.191304.5SA

underscored material = new
[bracketed material] = delete

1 K. Upon a conviction pursuant to this section that
2 results in a penalty of a third degree felony or greater, the
3 division may suspend or revoke the registration of a vehicle or
4 a certificate of title, registration evidence or registration
5 plate or any nonresident permit or other permit.

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

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

- 17 (1) not less than a twenty-eight-day
18 inpatient, residential or in-custody substance abuse treatment
19 program approved by the court;
- 20 (2) not less than a ninety-day outpatient
21 treatment program approved by the court;
- 22 (3) a drug court program approved by the
23 court; or
- 24 (4) any other substance abuse treatment
25 program approved by the court.

underscored material = new
[bracketed material] = delete

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

3 ~~[M-]~~ N. Upon a felony conviction pursuant to this
4 section, the corrections department shall provide substance
5 abuse counseling and treatment to the offender in its custody.
6 While the offender is on probation or parole under its
7 supervision, the corrections department shall also provide
8 substance abuse counseling and treatment to the offender or
9 shall require the offender to obtain substance abuse counseling
10 and treatment.

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

21 (1) a period of one year, for a first
22 offender;

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

25 (3) a period of three years, for a third

.191304.5SA

underscored material = new
[bracketed material] = delete

1 conviction pursuant to this section; or

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

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

16 [~~P-~~] Q. An offender who obtains an ignition
17 interlock license and installs an ignition interlock device
18 prior to conviction shall be given credit at sentencing for the
19 time period the ignition interlock device has been in use.

20 [~~Q-~~] R. In the case of a first, second or third
21 offense under this section, the magistrate court has concurrent
22 jurisdiction with district courts to try the offender.

23 [~~R-~~] S. A conviction pursuant to a municipal or
24 county ordinance in New Mexico or a law of any other
25 jurisdiction, territory or possession of the United States or

.191304.5SA

underscored material = new
[bracketed material] = delete

1 of a tribe, when that ordinance or law is equivalent to New
2 Mexico law for driving under the influence of intoxicating
3 liquor or drugs, and prescribes penalties for driving under the
4 influence of intoxicating liquor or drugs, shall be deemed to
5 be a conviction pursuant to this section for purposes of
6 determining whether a conviction is a second or subsequent
7 conviction.

8 ~~[S.]~~ T. In addition to any other fine or fee that
9 may be imposed pursuant to the conviction or other disposition
10 of the offense under this section, the court may order the
11 offender to pay the costs of any court-ordered screening and
12 treatment programs.

13 ~~[F.]~~ U. With respect to this section and
14 notwithstanding any provision of law to the contrary, if an
15 offender's sentence was suspended or deferred in whole or in
16 part and the offender violates any condition of probation, the
17 court may impose any sentence that the court could have
18 originally imposed and credit shall not be given for time
19 served by the offender on probation.

20 ~~[H.]~~ V. As used in this section:

21 (1) "bodily injury" means an injury to a
22 person that is not likely to cause death or great bodily harm
23 to the person, but does cause painful temporary disfigurement
24 or temporary loss or impairment of the functions of any member
25 or organ of the person's body; and

.191304.5SA

underscored material = new
[bracketed material] = delete

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

4 (a) has a gross combination weight
5 rating of more than twenty-six thousand pounds inclusive of a
6 towed unit with a gross vehicle weight rating of more than ten
7 thousand pounds;

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

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

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

15 SECTION 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
16 Chapter 72, Section 7, as amended by Laws 2003, Chapter 51,
17 Section 14 and by Laws 2003, Chapter 90, Section 7) is amended
18 to read:

19 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
20 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
21 HEARING.--

22 A. On behalf of the department, a law enforcement
23 officer requesting a chemical test or directing the
24 administration of a chemical test pursuant to Section 66-8-107
25 NMSA 1978 shall serve immediate written notice of revocation

.191304.5SA

underscored material = new
[bracketed material] = delete

1 and of right to a hearing on a person who refuses to permit
2 chemical testing or on a person who submits to a chemical test
3 the results of which indicate an alcohol concentration in the
4 person's blood or breath of eight one hundredths or more if the
5 person is twenty-one years of age or older, four one hundredths
6 or more if the person is driving a commercial motor vehicle or
7 two one hundredths or more if the person is less than twenty-
8 one years of age.

9 B. Upon serving notice of revocation, the law
10 enforcement officer shall take the license or permit of the
11 driver, if any [~~and issue a temporary license valid for twenty~~
12 ~~days or, if the driver requests a hearing pursuant to Section~~
13 ~~66-8-112 NMSA 1978, valid until the date the department issues~~
14 ~~the order following that hearing; provided that a temporary~~
15 ~~license shall not be issued to a driver without a valid license~~
16 ~~or permit]. The law enforcement officer shall send the
17 person's driver's license to the department along with the
18 signed statement required pursuant to Section 66-8-111 NMSA
19 1978."~~

20 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2013.

22 - 16 -

23
24
25