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HOUSE BILL 355

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO THE IMPLIED CONSENT ACT; REQUIRING A LAW ENFORCEMENT OFFICER TO SEEK A CHEMICAL TEST OF ANY DRIVER INVOLVED IN AN ACCIDENT THAT CAUSES DEATH OR SERIOUS BODILY INJURY WHEN THE LAW ENFORCEMENT OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT THE DRIVER IS INTOXICATED.

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

SECTION 1. Section 66-8-105 NMSA 1978 (being Laws 1978, Chapter 35, Section 513) is amended to read:

"66-8-105. IMPLIED CONSENT ACT--SHORT TITLE.--Sections ~~[64-8-105 through 64-8-112 NMSA 1953]~~ 66-8-105 through 66-8-112 NMSA 1978 may be cited as the "Implied Consent Act"."

SECTION 2. Section 66-8-107 NMSA 1978 (being Laws 1978, Chapter 35, Section 515, as amended) is amended to read:

"66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

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1           A. Any person who operates a motor vehicle within  
2 this state shall be deemed to have given consent, subject to  
3 the provisions of the Implied Consent Act, to chemical tests of  
4 [~~his~~] that person's breath or blood or both, approved by the  
5 scientific laboratory division of the department of health  
6 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
7 determined by a law enforcement officer or for the purpose of  
8 determining the drug or alcohol content of [~~his~~] the person's  
9 blood if the person is arrested for any offense arising out of  
10 the acts alleged to have been committed while the person was  
11 driving a motor vehicle while under the influence of [~~an~~]  
12 intoxicating liquor or [~~drug~~] drugs.

13           B. A test of blood or breath or both, approved by  
14 the scientific laboratory division of the department of health  
15 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
16 be administered at the direction of a law enforcement officer  
17 having reasonable grounds to believe the person to have been  
18 driving a motor vehicle within this state while under the  
19 influence of intoxicating liquor or [~~drugs~~] drugs.

20           C. Notwithstanding Subsection A in this section, in  
21 the case of an accident resulting in death or great bodily  
22 injury to a person, a law enforcement officer having reasonable  
23 grounds to believe that a driver involved in the accident was  
24 under the influence of intoxicating liquor or drugs shall  
25 request the driver to submit to a chemical test of blood or

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1 breath or both.

2 D. The provisions of Subsection C of this section  
3 shall not apply if administering a chemical test would  
4 interfere with or delay the provision of emergency medical  
5 treatment to any person involved in the accident."

6 SECTION 3. Section 66-8-108 NMSA 1978 (being Laws 1978,  
7 Chapter 35, Section 516) is amended to read:

8 "66-8-108. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT  
9 WITHDRAWN.--Any person who is dead, unconscious or otherwise in  
10 a condition rendering ~~[him]~~ the person incapable of refusal  
11 shall be deemed not to have withdrawn the consent provided by  
12 Section ~~[64-8-107 NMSA 1953]~~ 66-8-107 NMSA 1978, and the test  
13 ~~[or tests]~~ designated by the law enforcement officer may be  
14 administered."

15 SECTION 4. Section 66-8-109 NMSA 1978 (being Laws 1978,  
16 Chapter 35, Section 517, as amended) is amended to read:

17 "66-8-109. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF  
18 COSTS--ADDITIONAL TESTS.--

19 A. Only the persons authorized by Section 66-8-103  
20 NMSA 1978 shall withdraw blood from any person for the purpose  
21 of determining its alcohol or drug content. This limitation  
22 does not apply to the taking of samples of breath.

23 B. The person tested shall be advised by the law  
24 enforcement officer of the person's right to be given an  
25 opportunity to arrange for a physician, licensed professional

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1 or practical nurse or laboratory technician or technologist who  
2 is employed by a hospital or physician of [~~his~~] the person's  
3 own choosing to perform a chemical test in addition to any test  
4 performed at the direction of a law enforcement officer.

5 C. Upon the request of the person tested, full  
6 information concerning the test performed at the direction of  
7 the law enforcement officer shall be made available to [~~him~~]  
8 the person as soon as it is available from the person  
9 performing the test.

10 D. The law enforcement agency represented by the  
11 law enforcement officer at whose direction the chemical test is  
12 performed shall pay for the chemical test.

13 E. If a person exercises [~~his~~] the person's right  
14 under Subsection B of this section to have a chemical test  
15 performed upon [~~him~~] the person by a person of [~~his~~] the  
16 person's own choosing, the cost of that test shall be paid by  
17 the law enforcement agency represented by the law enforcement  
18 officer at whose direction a chemical test was administered  
19 under Section 66-8-107 NMSA 1978."

20 SECTION 5. Section 66-8-110 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 518, as amended) is amended to read:

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

24 A. The results of a test performed pursuant to the  
25 Implied Consent Act may be introduced into evidence in any

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1 civil action or criminal action arising out of the acts alleged  
2 to have been committed by the person tested for driving a motor  
3 vehicle while under the influence of intoxicating liquor or  
4 drugs.

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

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

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

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

16 (b) the amount of alcohol in the  
17 person's blood or breath may be considered with other competent  
18 evidence in determining whether the person was under the  
19 influence of intoxicating liquor; 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.

24 C. The ~~[arresting officer shall charge the]~~ person  
25 tested shall be charged with a violation of Section 66-8-102

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1 NMSA 1978 when the blood or breath of the person contains an  
2 alcohol concentration of:

3 (1) eight one hundredths or more; or

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

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

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

18 F. The determination of alcohol concentration shall  
19 be based on the grams of alcohol in one hundred milliliters of  
20 blood or the grams of alcohol in two hundred ten liters of  
21 breath.

22 G. The presumptions in Subsection B of this section  
23 do not limit the introduction of other competent evidence  
24 concerning whether the person was under the influence of  
25 intoxicating liquor.

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1           H. If a person is convicted of driving a motor  
2 vehicle while under the influence of intoxicating liquor, the  
3 trial judge shall inquire into the past driving record of the  
4 person before sentence is entered in the matter."

5           **SECTION 6.** Section 66-8-111 NMSA 1978 (being Laws 1978,  
6 Chapter 35, Section 519, as amended) is amended to read:

7           "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
8 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

9           A. If a person under arrest for violation of an  
10 offense enumerated in the Motor Vehicle Code or a driver  
11 involved in an accident resulting in death or great bodily  
12 injury as provided in Subsection C of Section 66-8-107 NMSA  
13 1978 refuses upon request of a law enforcement officer to  
14 submit to chemical tests designated by the law enforcement  
15 agency as provided in Section 66-8-107 NMSA 1978, none shall be  
16 administered except when a municipal judge, magistrate or  
17 district judge issues a search warrant authorizing chemical  
18 tests as provided in Section 66-8-107 NMSA 1978 upon finding in  
19 a law enforcement officer's written affidavit that there is  
20 probable cause to believe that the person has driven a motor  
21 vehicle while under the influence of alcohol or a controlled  
22 substance, thereby causing the death or great bodily injury of  
23 another person, or there is probable cause to believe that the  
24 person has committed a felony while under the influence of  
25 alcohol or a controlled substance and that chemical tests as

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1 provided in Section 66-8-107 NMSA 1978 will produce material  
2 evidence in a felony prosecution.

3 B. If a driver refuses upon request of a law  
4 enforcement officer to submit to a chemical test pursuant to  
5 Subsection C of Section 66-8-107 NMSA 1978, the law enforcement  
6 officer shall seek a warrant authorizing chemical tests of the  
7 driver's blood or breath or both at the earliest practicable  
8 time.

9 [~~B-~~] C. The department, upon receipt of a statement  
10 signed under penalty of perjury from a law enforcement officer  
11 stating the officer's reasonable grounds to believe the  
12 [~~arrested~~] person arrested or involved in an accident resulting  
13 in death or great bodily injury as provided in Subsection C of  
14 Section 66-8-107 NMSA 1978 had been driving a motor vehicle  
15 within this state while under the influence of intoxicating  
16 liquor or drugs and that, upon request, the person refused to  
17 submit to a chemical test after being advised that failure to  
18 submit could result in revocation of the person's privilege to  
19 drive, shall revoke the person's New Mexico driver's license or  
20 any nonresident operating privilege for a period of one year or  
21 until all conditions for license reinstatement are met,  
22 whichever is later.

23 [~~G-~~] D. The department, upon receipt of a statement  
24 signed under penalty of perjury from a law enforcement officer  
25 stating the officer's reasonable grounds to believe the

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1 ~~[arrested]~~ person arrested or involved in an accident resulting  
2 in death or great bodily injury as provided in Subsection C of  
3 Section 66-8-107 NMSA 1978 had been driving a motor vehicle  
4 within this state while under the influence of intoxicating  
5 liquor and that the person submitted to chemical testing  
6 pursuant to Section 66-8-107 NMSA 1978 and the test results  
7 indicated an alcohol concentration in the person's blood or  
8 breath of eight one hundredths or more if the person is twenty-  
9 one years of age or older, four one hundredths or more if the  
10 person is driving a commercial motor vehicle or two one  
11 hundredths or more if the person is less than twenty-one years  
12 of age, shall revoke the person's license or permit to drive or  
13 ~~[his]~~ the person's nonresident operating privilege for a period  
14 of:

15 (1) six months or until all conditions for  
16 license reinstatement are met, whichever is later, if the  
17 person is twenty-one years of age or older;

18 (2) one year or until all conditions for  
19 license reinstatement are met, whichever is later, if the  
20 person was less than twenty-one years of age at the time of the  
21 arrest, notwithstanding any provision of the Children's Code;  
22 or

23 (3) one year or until all conditions for  
24 license reinstatement are met, whichever is later, if the  
25 ~~[person has previously had his]~~ person's license has been

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1       revoked previously pursuant to the provisions of this section,  
2       notwithstanding the provisions of Paragraph (1) of this  
3       subsection.

4               ~~[D-]~~ E. The determination of alcohol concentration  
5       shall be based on the grams of alcohol in one hundred  
6       milliliters of blood or the grams of alcohol in two hundred ten  
7       liters of breath.

8               ~~[E-]~~ F. If the person subject to the revocation  
9       provisions of this section is a resident or will become a  
10      resident within one year and is without a license to operate a  
11      motor vehicle in this state, the department shall deny the  
12      issuance of a license to ~~[him]~~ the person for the appropriate  
13      period of time as provided in Subsections B and C of this  
14      section.

15              ~~[F-]~~ G. A statement signed by a law enforcement  
16      officer, pursuant to the provisions of Subsection ~~[B- or]~~ C or D  
17      of this section, shall be sworn to by the officer or shall  
18      contain a declaration substantially to the effect: "I hereby  
19      declare under penalty of perjury that the information given in  
20      this statement is true and correct to the best of my  
21      knowledge.". The statement may be signed and submitted  
22      electronically in a manner and form approved by the department.  
23      A law enforcement officer who signs a statement knowing that  
24      the statement is untrue in any material issue or matter is  
25      guilty of perjury as provided in Section 66-5-38 NMSA 1978."

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1           SECTION 7. Section 66-8-112 NMSA 1978 (being Laws 1978,  
2 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
3 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
4 to read:

5           "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
6 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
7 REVIEW.--

8           A. The effective date of revocation pursuant to  
9 Section 66-8-111 NMSA 1978 is twenty days after notice of  
10 revocation or, if the person whose driver's license or  
11 privilege to drive is being revoked or denied requests a  
12 hearing pursuant to this section, the date that the department  
13 issues the order following that hearing. The date of notice of  
14 revocation is:

15                   (1) the date the law enforcement officer  
16 serves written notice of revocation and of right to a hearing  
17 pursuant to Section 66-8-111.1 NMSA 1978; or

18                   (2) in the event the results of a chemical  
19 test cannot be obtained immediately, the date notice of  
20 revocation is served by mail by the department. This notice of  
21 revocation and of right to a hearing shall be sent by certified  
22 mail and shall be deemed to have been served on the date borne  
23 by the return receipt showing delivery, refusal of the  
24 addressee to accept delivery or attempted delivery of the  
25 notice at the address obtained by the arresting law enforcement

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1 officer or on file with the department.

2 B. Within ten days after receipt of notice of  
3 revocation pursuant to Subsection A of this section, a person  
4 whose license or privilege to drive is revoked or denied or the  
5 person's agent may request a hearing. The hearing request  
6 shall be made in writing and shall be accompanied by a payment  
7 of twenty-five dollars (\$25.00) or a sworn statement of  
8 indigency on a form provided by the department. A standard for  
9 indigency shall be established pursuant to regulations adopted  
10 by the department. Failure to request a hearing within ten  
11 days shall result in forfeiture of the person's right to a  
12 hearing. Any person less than eighteen years of age who fails  
13 to request a hearing within ten days shall have notice of  
14 revocation sent to [~~his~~] the person's parent, guardian or  
15 custodian by the department. A date for the hearing shall be  
16 set by the department, if practical, within thirty days after  
17 receipt of notice of revocation. The hearing shall be held in  
18 the county in which the offense for which the person was  
19 arrested took place.

20 C. The department may postpone or continue any  
21 hearing on its own motion or upon application from the person  
22 and for good cause shown for a period not to exceed ninety days  
23 from the date of notice of revocation and provided that the  
24 department extends the validity of the temporary license for  
25 the period of the postponement or continuation.

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1           D. At the hearing, the department or its agent may  
2 administer oaths and may issue subpoenas for the attendance of  
3 witnesses and the production of relevant books and papers.

4           E. The hearing shall be limited to the following  
5 issues:

6                   (1) whether the law enforcement officer had  
7 reasonable grounds to believe that the person had been driving  
8 a motor vehicle within this state while under the influence of  
9 intoxicating liquor or drugs;

10                   (2) whether the person was arrested or  
11 involved in an accident resulting in death or great bodily  
12 injury;

13                   (3) whether this hearing is held no later than  
14 ninety days after notice of revocation; and either

15                   (4) whether:

16                           (a) the person refused to submit to a  
17 test upon request of the law enforcement officer; and

18                           (b) the law enforcement officer advised  
19 that the failure to submit to a test could result in revocation  
20 of the person's privilege to drive; or

21                   (5) whether:

22                           (a) the chemical test was administered  
23 pursuant to the provisions of the Implied Consent Act; and

24                           (b) the test results indicated an  
25 alcohol concentration in the person's blood or breath of eight

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1 one hundredths or more if the person is twenty-one years of age  
2 or older, four one hundredths or more if the person is driving  
3 a commercial motor vehicle or two one hundredths or more if the  
4 person is less than twenty-one years of age.

5 F. The department shall enter an order sustaining  
6 the revocation or denial of the person's license or privilege  
7 to drive if the department finds that:

8 (1) the law enforcement officer had reasonable  
9 grounds to believe the driver was driving a motor vehicle while  
10 under the influence of intoxicating liquor or drugs;

11 (2) the person was arrested or involved in an  
12 accident resulting in death or great bodily injury;

13 (3) this hearing is held no later than ninety  
14 days after notice of revocation; and

15 (4) either:

16 (a) the person refused to submit to the  
17 test upon request of the law enforcement officer after the law  
18 enforcement officer advised [~~him~~] the person that [~~his~~] the  
19 person's failure to submit to the test could result in the  
20 revocation of [~~his~~] the person's privilege to drive; or

21 (b) that a chemical test was  
22 administered pursuant to the provisions of the Implied Consent  
23 Act and the test results indicated an alcohol concentration in  
24 the person's blood or breath of eight one hundredths or more if  
25 the person is twenty-one years of age or older, four one

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1 hundredths or more if the person is driving a commercial motor  
2 vehicle or two one hundredths or more if the person is less  
3 than twenty-one years of age.

4 G. If one or more of the elements set forth in  
5 Paragraphs (1) through (4) of Subsection F of this section are  
6 not found by the department, the person's license shall not be  
7 revoked.

8 H. A person adversely affected by an order of the  
9 department may seek review within thirty days in the district  
10 court in the county in which the offense for which the person  
11 was arrested took place. The district court, upon thirty days'  
12 written notice to the department, shall hear the case. On  
13 review, it is for the court to determine only whether  
14 reasonable grounds exist for revocation or denial of the  
15 person's license or privilege to drive based on the record of  
16 the administrative proceeding.

17 I. Any person less than eighteen years of age shall  
18 have results of [~~his~~] the person's hearing forwarded by the  
19 department to [~~his~~] the person's parent, guardian or  
20 custodian."