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HOUSE BILL 190

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

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; PROHIBITING DRIVING WITH CERTAIN AMOUNTS OF  
CONTROLLED SUBSTANCES OR METABOLITES IN THE BLOOD; PROVIDING  
THAT THE IGNITION INTERLOCK REQUIREMENT ONLY APPLIES TO  
OFFENDERS WITH ALCOHOL CONCENTRATION IN THEIR BLOOD OR BREATH.

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. 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  
4 within this state.

5           C. It is unlawful for:

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

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

18           D. Aggravated driving under the influence of  
19 intoxicating liquor or drugs consists of:

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

25                   (2) causing bodily injury to a human being as

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1 a result of the unlawful operation of a motor vehicle while  
2 driving under the influence of intoxicating liquor or drugs; or  
3 (3) refusing to submit to chemical testing, as  
4 provided for in the Implied Consent Act, and in the judgment of  
5 the court, based upon evidence of intoxication presented to the  
6 court, the driver was under the influence of intoxicating  
7 liquor or drugs.

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

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

21 F. A second or third conviction pursuant to this  
22 section shall be punished, notwithstanding the provisions of  
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
24 three hundred sixty-four days or by a fine of not more than one  
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of  
2 probation may extend beyond one year but shall not exceed five  
3 years. Notwithstanding any provision of law to the contrary  
4 for suspension or deferment of execution of a sentence:

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

19 (2) upon a third conviction, an offender shall  
20 be sentenced to a jail term of not less than thirty consecutive  
21 days, not less than ninety-six hours of community service and a  
22 fine of seven hundred fifty dollars (\$750). In addition to  
23 those penalties, when an offender commits aggravated driving  
24 under the influence of intoxicating liquor or drugs, the  
25 offender shall be sentenced to a jail term of not less than

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1 sixty consecutive days. If an offender fails to complete,  
2 within a time specified by the court, any community service,  
3 screening program or treatment program ordered by the court,  
4 the offender shall be sentenced to not less than an additional  
5 sixty consecutive days in jail. A penalty imposed pursuant to  
6 this paragraph shall not be suspended or deferred or taken  
7 under advisement.

8 G. Upon a fourth 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 eighteen  
12 months, six months of which shall not be suspended, deferred or  
13 taken under advisement.

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

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

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

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

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

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

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

23                   (3) a drug court program approved by the  
24 court; or

25                   (4) any other substance abuse treatment

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1 program approved by the court.

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

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

12 N. Upon a conviction pursuant to this section, an  
13 offender who was driving under the influence of intoxicating  
14 liquor or who had any alcohol concentration in the blood or  
15 breath within three hours of driving and the alcohol  
16 concentration resulted from alcohol consumed before or while  
17 driving the vehicle shall be required to obtain an ignition  
18 interlock license and have an ignition interlock device  
19 installed and operating on all motor vehicles driven by the  
20 offender, pursuant to rules adopted by the [~~traffic safety~~]  
21 bureau. Unless determined by the bureau to be indigent, the  
22 offender shall pay all costs associated with having an ignition  
23 interlock device installed on the appropriate motor vehicles.  
24 The offender shall operate only those vehicles equipped with  
25 ignition interlock devices for:

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1 (1) a period of one year, for a first  
2 ~~[offender]~~ conviction;

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

5 (3) a period of three years, for a third  
6 conviction ~~[pursuant to this section]~~; or

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

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

23 P. An offender who obtains an ignition interlock  
24 license and installs an ignition interlock device prior to  
25 conviction shall be given credit at sentencing for the time

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1 period the ignition interlock device has been in use.

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

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

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

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

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1 U. As used in this section:

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

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

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

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

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

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

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

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

25 A. The results of a test performed pursuant to the

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1 Implied Consent Act may be introduced into evidence in any  
2 civil action or criminal action arising out of the acts alleged  
3 to have been committed by the person tested for driving a motor  
4 vehicle while under the influence of intoxicating liquor or  
5 drugs.

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

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

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

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

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

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

25 C. The arresting officer shall charge the person

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1 tested with a violation of Section 66-8-102 NMSA 1978 when the  
2 blood or breath of the person contains an alcohol concentration  
3 ~~[of:~~

4 ~~(1) eight one hundredths or more; or~~  
5 ~~(2) four one hundredths or more if the person~~  
6 ~~is driving a commercial motor vehicle] or a controlled~~  
7 substance or metabolite concentration that is unlawful pursuant  
8 to the provisions of Section 66-8-102 NMSA 1978.

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

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

22 F. The determination of alcohol concentration shall  
23 be based on the grams of alcohol in one hundred milliliters of  
24 blood or the grams of alcohol in two hundred ten liters of  
25 breath.

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1           G. The presumptions in Subsection B of this section  
2 do not limit the introduction of other competent evidence  
3 concerning whether the person was under the influence of  
4 intoxicating liquor.

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

9           **SECTION 3.** Section 66-8-111 NMSA 1978 (being Laws 1978,  
10 Chapter 35, Section 519, as amended) is amended to read:

11           "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
12 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

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1 committed a felony while under the influence of alcohol or a  
2 controlled substance and that chemical tests as provided in  
3 Section 66-8-107 NMSA 1978 will produce material evidence in a  
4 felony prosecution.

5 B. The department, upon receipt of a statement  
6 signed under penalty of perjury from a law enforcement officer  
7 stating the officer's reasonable grounds to believe the  
8 arrested person had been driving a motor vehicle within this  
9 state while under the influence of intoxicating liquor or drugs  
10 and that, upon request, the person refused to submit to a  
11 chemical test after being advised that failure to submit could  
12 result in revocation of the person's privilege to drive, shall  
13 revoke the person's New Mexico driver's license or any  
14 nonresident operating privilege for a period of one year or  
15 until all conditions for license reinstatement are met,  
16 whichever is later.

17 C. The department, upon receipt of a statement  
18 signed under penalty of perjury from a law enforcement officer  
19 stating the officer's reasonable grounds to believe the  
20 arrested person had been driving a motor vehicle within this  
21 state while under the influence of intoxicating liquor or drugs  
22 and that the person submitted to chemical testing pursuant to  
23 Section 66-8-107 NMSA 1978 and the test results indicated an  
24 alcohol, a controlled substance or a metabolite concentration  
25 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an

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1 alcohol concentration in the person's blood or breath of [~~eight~~  
2 ~~one hundredths or more if the person is twenty-one years of age~~  
3 ~~or older, four one hundredths or more if the person is driving~~  
4 ~~a commercial motor vehicle or~~] two one hundredths or more if  
5 the person is less than twenty-one years of age, shall revoke  
6 the person's license or permit to drive or [~~his~~] nonresident  
7 operating privilege for a period of:

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

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

16 (3) one year or until all conditions for  
17 license reinstatement are met, whichever is later, if the  
18 [~~person has previously had his~~] person's license has been  
19 revoked previously pursuant to the provisions of this section,  
20 notwithstanding the provisions of Paragraph (1) of this  
21 subsection.

22 D. The determination of alcohol concentration shall  
23 be based on the grams of alcohol in one hundred milliliters of  
24 blood or the grams of alcohol in two hundred ten liters of  
25 breath.

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1           E. If the person subject to the revocation  
2 provisions of this section is a resident or will become a  
3 resident within one year and is without a license to operate a  
4 motor vehicle in this state, the department shall deny the  
5 issuance of a license to [~~him~~] the person for the appropriate  
6 period of time as provided in Subsections B and C of this  
7 section.

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

19           **SECTION 4.** Section 66-8-111.1 NMSA 1978 (being Laws 1984,  
20 Chapter 72, Section 7, as amended by Laws 2003, Chapter 51,  
21 Section 14 and by Laws 2003, Chapter 90, Section 7) is amended  
22 to read:

23           "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
24 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
25 HEARING.--On behalf of the department, a law enforcement

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1 officer requesting a chemical test or directing the  
2 administration of a chemical test pursuant to Section 66-8-107  
3 NMSA 1978 shall serve immediate written notice of revocation  
4 and of right to a hearing on a person who refuses to permit  
5 chemical testing or on a person who submits to a chemical test  
6 the results of which indicate an alcohol, a controlled  
7 substance or a metabolite concentration that is unlawful  
8 pursuant to Section 66-8-102 NMSA 1978 or an alcohol  
9 concentration in the person's blood or breath of [~~eight one~~  
10 ~~hundredths or more if the person is twenty-one years of age or~~  
11 ~~older, four one hundredths or more if the person is driving a~~  
12 ~~commercial motor vehicle or~~] two one hundredths or more if the  
13 person is less than twenty-one years of age. Upon serving  
14 notice of revocation, the law enforcement officer shall take  
15 the license or permit of the driver, if any, and issue a  
16 temporary license valid for twenty days or, if the driver  
17 requests a hearing pursuant to Section 66-8-112 NMSA 1978,  
18 valid until the date the department issues the order following  
19 that hearing; provided that a temporary license shall not be  
20 issued to a driver without a valid license or permit. The law  
21 enforcement officer shall send the person's driver's license to  
22 the department along with the signed statement required  
23 pursuant to Section 66-8-111 NMSA 1978."

24 SECTION 5. Section 66-8-112 NMSA 1978 (being Laws 1978,  
25 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
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1 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
2 to read:

3 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
4 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
5 REVIEW.--

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

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

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

25 B. Within ten days after receipt of notice of

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

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

24 D. At the hearing, the department or its agent may  
25 administer oaths and may issue subpoenas for the attendance of

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1 witnesses and the production of relevant books and papers.

2 E. The hearing shall be limited to the following  
3 issues:

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

8 (2) whether the person was arrested;

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

11 (4) whether:

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

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

17 (5) whether:

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

20 (b) the test results indicated an  
21 alcohol, a controlled substance or a metabolite concentration  
22 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an  
23 alcohol concentration in the person's blood or breath of ~~[eight~~  
24 ~~one hundredths or more if the person is twenty-one years of age~~  
25 ~~or older, four one hundredths or more if the person is driving~~

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underscored material = new  
[bracketed material] = delete

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

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

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

9 (2) the person was arrested;

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

12 (4) either:

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

18 (b) that a chemical test was  
19 administered pursuant to the provisions of the Implied Consent  
20 Act and the test results indicated an alcohol, a controlled  
21 substance or a metabolite concentration that is unlawful  
22 pursuant to Section 66-8-102 NMSA 1978 or an alcohol  
23 concentration in the person's blood or breath of ~~eight one~~  
24 ~~hundredths or more if the person is twenty-one years of age or~~  
25 ~~older, four one hundredths or more if the person is driving a~~

.194750.3

underscored material = new  
[bracketed material] = delete

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

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

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

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

19 SECTION 6. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2014.