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HOUSE BILL 86

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Stephanie Garcia Richard

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING THE REQUIREMENTS TO BE MET FOR REMOVAL OF AN IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S LICENSE; REQUIRING HOME BREATHALYZER DEVICES AND ALLOWING ELECTRONIC MONITORING DEVICES FOR AN OFFENDER UNDER HOUSE ARREST; PROVIDING ASSISTANCE FOR HOME BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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

SECTION 1. Section 66-5-33.1 NMSA 1978 (being Laws 1985, Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR REGISTRATION--IGNITION INTERLOCK--FEE.--

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its .198455.2

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1 reinstatement, compliance with all appropriate provisions of
2 the Motor Vehicle Code and the payment of a fee of twenty-five
3 dollars (\$25.00) is a prerequisite to the reinstatement of any
4 license or registration.

5 B. If a driver's license was revoked for driving
6 while under the influence of intoxicating liquor or drugs, for
7 aggravated driving while under the influence of intoxicating
8 liquor or drugs or pursuant to the Implied Consent Act, the
9 following are required to reinstate the driver's license:

10 (1) an additional fee of seventy-five dollars
11 (\$75.00);

12 (2) completion of the license revocation
13 period;

14 (3) satisfaction of any court-ordered ignition
15 interlock requirements; ~~and~~

16 (4) a minimum of six months of driving with an
17 ignition interlock license with no attempts to circumvent or
18 tamper with the ignition interlock device;

19 (5) evidence that the ignition interlock
20 device has recorded no more than two tests at a level greater
21 than five one hundredths alcohol concentration during the six
22 months prior to reinstatement of the unrestricted driver's
23 license; and

24 (6) evidence of at least one ignition
25 interlock test during each of twenty-four weeks during the six

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1 months.

2 C. The department may reinstate the driving
3 privileges of an out-of-state resident without the requirement
4 that the person obtain an ignition interlock license for a
5 minimum of six months, if the following conditions are met:

6 (1) the license revocation period is
7 completed;

8 (2) satisfactory proof is presented to the
9 department that the person is no longer a resident of New
10 Mexico; and

11 (3) the license reinstatement fee is paid.

12 D. Fees collected pursuant to Subsection B of this
13 section are appropriated to the local governments road fund.
14 The department shall maintain an accounting of the fees
15 collected and shall report that amount upon request to the
16 legislature."

17 SECTION 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
18 Chapter 139, Section 54, as amended) is amended to read:

19 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
20 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
21 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

25 B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders the person
2 incapable of safely driving a vehicle to drive a vehicle within
3 this state.

4 C. It is unlawful for:

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

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

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

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

24 (2) causing bodily injury to a human being as
25 a result of the unlawful operation of a motor vehicle while

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

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

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

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

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

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

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

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

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

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

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

25 J. Upon a seventh or subsequent conviction pursuant

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

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

14 L. Upon a second or third conviction pursuant to
15 this section, an offender shall be required to participate in
16 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.

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

3 M. 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. Upon a conviction pursuant to this section, an
12 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

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

16 P. If an offender receives a sentence of
17 incarceration for driving under the influence of intoxicating
18 liquor or drugs and is ordered to serve the sentence under
19 house arrest, where house arrest is available, the court shall
20 order the offender to obtain a home breathalyzer device that
21 identifies the person giving the sample and to provide morning
22 and evening breath samples for the duration of the house
23 arrest, pursuant to rules adopted by the bureau.

24 Q. As a condition of house arrest, the court may
25 also require an offender to be monitored by an electronic

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1 monitoring device, as approved by the bureau, placed on the
2 offender's person. The offender shall pay any costs associated
3 with the house arrest program as ordered by the court, unless
4 determined to be indigent by the bureau.

5 [P-] R. An offender who obtains an ignition
6 interlock license and installs an ignition interlock device
7 prior to conviction shall be given credit at sentencing for the
8 time period the ignition interlock device has been in use.

9 [Q-] S. In the case of a first, second or third
10 offense under this section, the magistrate court has concurrent
11 jurisdiction with district courts to try the offender.

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

22 [S-] U. In addition to any other fine or fee that
23 may be imposed pursuant to the conviction or other disposition
24 of the offense under this section, the court may order the
25 offender to pay the costs of any court-ordered screening and

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1 treatment programs.

2 [F.] V. With respect to this section and
3 notwithstanding any provision of law to the contrary, if an
4 offender's sentence was suspended or deferred in whole or in
5 part and the offender violates any condition of probation, the
6 court may impose any sentence that the court could have
7 originally imposed and credit shall not be given for time
8 served by the offender on probation.

9 [U.] W. As used in this section:

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

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

18 (a) has a gross combination weight
19 rating of more than twenty-six thousand pounds inclusive of a
20 towed unit with a gross vehicle weight rating of more than ten
21 thousand pounds;

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

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

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1 (d) is of any size and is used in the
2 transportation of hazardous materials, which requires the motor
3 vehicle to be placarded under applicable law; and

4 (3) "electronic monitoring device" means an
5 active or passive global-positioning-system-enabled device
6 capable of recording and transmitting an offender's location at
7 all times or at designated intervals or a radio frequency
8 device capable of monitoring an offender's location."

9 SECTION 3. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
10 Chapter 82, Section 2, as amended) is amended to read:

11 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
12 CREATED.--

13 A. A fee is imposed on a person convicted of
14 driving under the influence of intoxicating liquor or drugs in
15 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
16 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
17 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
18 driver's license is revoked pursuant to the provisions of the
19 Implied Consent Act, in an amount determined by rule of the
20 [~~traffic safety~~] bureau [~~of the department of transportation~~]
21 not to exceed one hundred dollars (\$100) but not less than
22 fifty dollars (\$50.00) for each year the person is required to
23 operate only vehicles equipped with an ignition interlock
24 device or to use a home breathalyzer device in order to ensure
25 the solvency of the interlock device fund. The fee shall not

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1 be imposed on an indigent person.

2 B. The "interlock device fund" is created in the
3 state treasury. The fee imposed pursuant to Subsection A of
4 this section shall be collected by the motor vehicle division
5 of the [~~taxation and revenue~~] department and deposited in the
6 interlock device fund.

7 C. All money in the interlock device fund is
8 appropriated to the [~~traffic safety~~] bureau [~~of the department~~
9 ~~of transportation~~] to cover part of the costs of installing,
10 removing and leasing ignition interlock devices or leasing home
11 breathalyzer devices for indigent people who are required,
12 pursuant to convictions under Section 66-8-102 NMSA 1978 or
13 adjudications on the basis of Subparagraph (a) of Paragraph (1)
14 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's
15 license revocations pursuant to the provisions of the Implied
16 Consent Act or as a condition of parole, to install [~~these~~]
17 ignition interlock devices in their vehicles or to use a home
18 breathalyzer device. Provided that money is available in the
19 interlock device fund, the [~~traffic safety~~] bureau shall pay:

20 (1) for one vehicle per offender, up to fifty
21 dollars (\$50.00) for the cost of installation, up to fifty
22 dollars (\$50.00) for the cost of removal and up to thirty
23 dollars (\$30.00) monthly for verified active usage of the
24 interlock device; or

25 (2) up to thirty dollars (\$30.00) monthly

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1 toward the lease and use of a home breathalyzer device.

2 D. The [~~traffic safety~~] bureau shall not pay any
3 amount above what an offender would be required to pay for the
4 installation, removal or usage of an interlock device or for
5 the lease of a home breathalyzer device.

6 [~~D.~~] E. Indigency shall be determined by the
7 [~~traffic safety~~] bureau based on proof of enrollment in one or
8 more of the following types of public assistance:

- 9 (1) temporary assistance for needy families;
10 (2) general assistance;
11 (3) the supplemental [~~nutritional~~] nutrition
12 assistance program, also known as "food stamps";
13 (4) supplemental security income;
14 (5) the federal food distribution program on
15 Indian reservations; or
16 (6) other criteria approved by the [~~traffic~~
17 ~~safety~~] bureau.

18 [~~E.~~] F. Any balance remaining in the interlock
19 device fund shall not revert to the general fund at the end of
20 any fiscal year.

21 [~~F.~~] G. The interlock device fund shall be
22 administered by the [~~traffic safety~~] bureau [~~of the department~~
23 ~~of transportation~~]. No more than ten percent of the money in
24 the interlock device fund in any fiscal year shall be expended
25 by the [~~traffic safety~~] bureau [~~of the department of~~

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1 ~~transportation]~~ for the purpose of administering the fund."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2015.

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