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HOUSE BILL 44

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

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. It is unlawful for a person to drive a vehicle
19 in this state if the person has the following amount or more of
20 a controlled substance or metabolite in the person's blood
21 within three hours of driving the vehicle and the controlled
22 substance or metabolite concentration results from consumption
23 of a controlled substance before or while driving the vehicle:

24 (1) for amphetamine, one hundred nanograms per
25 milliliter of blood;

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1 (2) for cocaine, fifty nanograms per
2 milliliter of blood;

3 (3) for cocaine metabolite, cocaethylene,
4 fifty nanograms per milliliter of blood;

5 (4) for heroin, fifty nanograms per milliliter
6 of blood;

7 (5) for heroin metabolite, morphine, fifty
8 nanograms per milliliter of blood;

9 (6) for heroin metabolite,
10 6-monoacetylmorphine, ten nanograms per milliliter of blood;

11 (7) for the active compound in marijuana,
12 delta-9-tetrahydrocannabinol, five nanograms per milliliter of
13 blood;

14 (8) for methamphetamine, one hundred nanograms
15 per milliliter of blood; or

16 (9) for 3,4-methylenedioxymethamphetamine, one
17 hundred nanograms per milliliter of blood.

18 ~~[D-]~~ E. 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-]~~ F. 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]~~ L of this section and to
21 attend a driver rehabilitation program for alcohol or drugs,
22 also known as a "DWI school", approved by the bureau and also
23 may be required to participate in other rehabilitative services
24 as the court shall determine to be necessary. In addition to
25 those penalties, when an offender commits aggravated driving

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

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

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

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

15 ~~[L-]~~ M. Upon a second or third conviction pursuant
16 to this section, an offender shall be required to participate
17 in 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-] N. 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-] O. Upon a conviction pursuant to this section,
13 an 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 ~~θ.]~~ P. 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.]~~ Q. An offender who obtains an ignition
24 interlock license and installs an ignition interlock device
25 prior to conviction shall be given credit at sentencing for the

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1 time period the ignition interlock device has been in use.

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

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

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

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

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1 served by the offender on probation.

2 ~~[U-]~~ V. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 C. The arresting officer shall charge the person
2 tested with a violation of Section 66-8-102 NMSA 1978 when the
3 blood or breath of the person contains an alcohol concentration
4 ~~[of:~~

5 ~~(1) eight one hundredths or more; or~~

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

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

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

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

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1 breath.

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

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

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

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

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

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

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

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

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1 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
2 alcohol concentration in the person's blood or breath of [~~eight~~
3 ~~one hundredths or more if the person is twenty-one years of age~~
4 ~~or older, four one hundredths or more if the person is driving~~
5 ~~a commercial motor vehicle or~~] two one hundredths or more if
6 the person is less than twenty-one years of age, shall revoke
7 the person's license or permit to drive or [~~his~~] nonresident
8 operating privilege for a period of:

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

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

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

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

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1 breath.

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

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

20 SECTION 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
21 Chapter 72, Section 7, as amended) is amended to read:

22 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
23 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
24 HEARING.--On behalf of the department, a law enforcement
25 officer requesting a chemical test or directing the

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1 administration of a chemical test pursuant to Section 66-8-107
2 NMSA 1978 shall serve immediate written notice of revocation
3 and of right to a hearing before the administrative hearings
4 office pursuant to the Implied Consent Act on a person who
5 refuses to permit chemical testing or on a person who submits
6 to a chemical test the results of which indicate an alcohol, a
7 controlled substance or a metabolite concentration that is
8 unlawful 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 administrative hearings office issues
19 the order following that hearing; provided that a temporary
20 license shall not be issued to a driver without a valid license
21 or permit. The law enforcement officer shall send the person's
22 driver's license to the department along with the signed
23 statement required 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) is amended to read:

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1 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
2 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
3 REVIEW.--

4 A. The effective date of revocation pursuant to
5 Section 66-8-111 NMSA 1978 is twenty days after notice of
6 revocation or, if the person whose driver's license or
7 privilege to drive is being revoked or denied requests a
8 hearing pursuant to the Administrative Hearings Office Act, the
9 date that the administrative hearings office issues the order
10 following that hearing. The date of notice of revocation is:

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

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

23 B. Within ten days after receipt of notice of
24 revocation pursuant to Subsection A of this section, a person
25 whose license or privilege to drive is revoked or denied or the

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

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

23 D. At the hearing, the administrative hearings
24 office may administer oaths and may issue subpoenas for the
25 attendance of witnesses and the production of relevant books

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1 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 administrative hearings office shall enter
4 an order sustaining the revocation or denial of the person's
5 license or privilege to drive if the hearing officer from the
6 administrative hearings office finds that:

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

10 (2) the person was arrested;

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

13 (4) either:

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

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

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underscored material = new
[bracketed material] = delete

1 ~~older, four one hundredths or more if the person is driving a~~
2 ~~commercial motor vehicle or~~] two one hundredths or more if the
3 person is less 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 hearing officer, the person's license shall
7 not be revoked.

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

17 I. Any person less than eighteen years of age shall
18 have results of the person's hearing forwarded by the
19 administrative hearings office to the person's parent, guardian
20 or custodian."

21 SECTION 6. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2016.