

1 SENATE BILL 174

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 William E. Sharer

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; INCREASING THE PENALTIES FOR CONVICTIONS FOR DRIVING
13 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 31-12-7 NMSA 1978 (being Laws 1981,
17 Chapter 367, Section 1, as amended) is amended to read:

18 "31-12-7. MOTOR VEHICLES--INFLUENCE OF INTOXICATING
19 LIQUOR OR DRUGS--FEE UPON CONVICTION.--Notwithstanding the
20 provisions of Section 66-8-102 NMSA 1978 or any municipal
21 ordinance that prohibits driving while under the influence of
22 intoxicating liquor or drugs, a person convicted of a violation
23 of Section 66-8-102 NMSA 1978 or a violation of a municipal
24 ordinance that prohibits driving while under the influence of
25 intoxicating liquor or drugs shall be assessed by the court, in

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1 addition to any other fee or fine:

2 A. a fee of eighty-five dollars (\$85.00) to defray
3 the costs of chemical and other tests used to determine the
4 influence of liquor or drugs; and

5 B. a fee of [~~seventy-five dollars (\$75.00)] one
6 hundred dollars (\$100) for a first offense, two hundred dollars
7 (\$200) for a second offense and three hundred dollars (\$300)
8 for a third or subsequent offense to fund comprehensive
9 community programs for the prevention of driving while under
10 the influence of intoxicating liquor or drugs and for other
11 traffic safety purposes."~~

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

14 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
16 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

17 A. It is unlawful for a person who is under the
18 influence of intoxicating liquor to drive a vehicle within this
19 state.

20 B. It is unlawful for a person who is under the
21 influence of any drug to a degree that renders the person
22 incapable of safely driving a vehicle to drive a vehicle within
23 this state.

24 C. It is unlawful for:

25 (1) a person to drive a vehicle in this state

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1 if the person has an alcohol concentration of eight one
2 hundredths or more in the person's blood or breath within three
3 hours of driving the vehicle and the alcohol concentration
4 results from alcohol consumed before or while driving the
5 vehicle; or

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

12 D. Aggravated driving under the influence of
13 intoxicating liquor or drugs consists of:

14 (1) driving a vehicle in this state with an
15 alcohol concentration of sixteen one hundredths or more in the
16 driver's blood or breath within three hours of driving the
17 vehicle and the alcohol concentration results from alcohol
18 consumed before or while driving the vehicle;

19 (2) causing bodily injury to a human being as
20 a result of the unlawful operation of a motor vehicle while
21 driving under the influence of intoxicating liquor or drugs; or

22 (3) refusing to submit to chemical testing, as
23 provided for in the Implied Consent Act, and in the judgment of
24 the court, based upon evidence of intoxication presented to the
25 court, the driver was under the influence of intoxicating

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1 liquor or drugs.

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

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

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

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

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

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

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1 suspended or deferred or taken under advisement.

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

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

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

20 J. Upon a seventh 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 three years,
24 two years of which shall not be suspended, deferred or taken
25 under advisement.

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

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

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

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

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1 (3) a period of three years, for a third
2 conviction pursuant to this section; or

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

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

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

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

24 S. A conviction pursuant to a municipal or county
25 ordinance in New Mexico or a law of any other jurisdiction,

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

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

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

20 V. As used in this section:

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

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

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

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

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

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

15 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
16 provisions of this act is July 1, 2017.