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HOUSE BILL 187

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

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

7 ~~[K.]~~ L. Upon an eighth or subsequent conviction
8 pursuant to this section, an offender is guilty of a second
9 degree felony and, notwithstanding the provisions of Section
10 31-18-15 NMSA 1978, shall be sentenced to a term of
11 imprisonment of twelve years, ten years of which shall not be
12 suspended, deferred or taken under advisement.

13 ~~[L.]~~ M. Upon any conviction pursuant to this
14 section, an offender shall be required to participate in and
15 complete, within a time specified by the court, an alcohol or
16 drug abuse screening program approved by the department of
17 finance and administration and, if necessary, a treatment
18 program approved by the court. The requirement imposed
19 pursuant to this subsection shall not be suspended, deferred or
20 taken under advisement.

21 ~~[M.]~~ N. Upon a second or third conviction pursuant
22 to this section, an offender shall be required to participate
23 in and complete, within a time specified by the court:

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

4 (3) a drug court program approved by the
5 court; or

6 (4) any other substance abuse treatment
7 program approved by the court.

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

10 ~~[N.]~~ O. Upon a felony conviction pursuant to this
11 section, the corrections department shall provide substance
12 abuse counseling and treatment to the offender in its custody.
13 While the offender is on probation or parole under its
14 supervision, the corrections department shall also provide
15 substance abuse counseling and treatment to the offender or
16 shall require the offender to obtain substance abuse counseling
17 and treatment.

18 ~~[O.]~~ P. Upon a conviction pursuant to this section,
19 an offender who had an alcohol concentration as set out in
20 Subsection C of this section shall be required to obtain an
21 ignition interlock license and have an ignition interlock
22 device installed and operating on all motor vehicles driven by
23 the offender, pursuant to rules adopted by the bureau. Unless
24 determined by the bureau to be indigent, the offender shall pay
25 all costs associated with having an ignition interlock device

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1 installed on the appropriate motor vehicles. The offender
2 shall operate only those vehicles equipped with ignition
3 interlock devices for:

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

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

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

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

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

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1 [Q.] R. An offender who obtains an ignition
2 interlock license and installs an ignition interlock device
3 prior to conviction shall be given credit at sentencing for the
4 time period the ignition interlock device has been in use.

5 [R.] S. In the case of a first, second or third
6 offense under this section, the magistrate court has concurrent
7 jurisdiction with district courts to try the offender.

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

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

23 [U.] V. With respect to this section and
24 notwithstanding any provision of law to the contrary, if an
25 offender's sentence was suspended or deferred in whole or in

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1 part and the offender violates any condition of probation, the
2 court may impose any sentence that the court could have
3 originally imposed and credit shall not be given for time
4 served by the offender on probation.

5 ~~[V.]~~ W. As used in this section:

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

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

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

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

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

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

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

2 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
3 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

10 B. When the blood or breath of the person tested
11 contains:

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

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

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

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

25 (3) an alcohol concentration of four one

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1 hundredths or more and the person is driving a commercial
2 vehicle, it shall be presumed that the person is under the
3 influence of intoxicating liquor.

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

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

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

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

18 E. If the test performed pursuant to the Implied
19 Consent Act is administered more than three hours after the
20 person was driving a vehicle, the test result may be introduced
21 as evidence of the alcohol or drug concentration in the
22 person's blood or breath at the time of the test and the trier
23 of fact shall determine what weight to give the test result for
24 the purpose of determining a violation of Section 66-8-102 NMSA
25 1978.

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1 F. The determination of alcohol concentration shall
2 be based on the grams of alcohol in one hundred milliliters of
3 blood or the grams of alcohol in two hundred ten liters of
4 breath.

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

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

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

15 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
16 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

17 A. If a person under arrest for violation of an
18 offense enumerated in the Motor Vehicle Code refuses upon
19 request of a law enforcement officer to submit to chemical
20 tests designated by the law enforcement agency as provided in
21 Section 66-8-107 NMSA 1978, none shall be administered except
22 when a municipal judge, magistrate or district judge issues a
23 search warrant authorizing chemical tests as provided in
24 Section 66-8-107 NMSA 1978 upon finding in a law enforcement
25 officer's written affidavit that there is probable cause to

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1 believe that the person has driven a motor vehicle while under
2 the influence of alcohol or a controlled substance, thereby
3 causing the death or great bodily injury of another person, or
4 there is probable cause to believe that the person has
5 committed a felony while under the influence of alcohol or a
6 controlled substance and that chemical tests as provided in
7 Section 66-8-107 NMSA 1978 will produce material evidence in a
8 felony prosecution.

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

21 C. The department, upon receipt of a statement
22 signed under penalty of perjury from a law enforcement officer
23 stating the officer's reasonable grounds to believe the
24 arrested person had been driving a motor vehicle within this
25 state while under the influence of intoxicating liquor or drugs

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1 and that the person submitted to chemical testing pursuant to
2 Section 66-8-107 NMSA 1978 and the test results indicated an
3 alcohol, a controlled substance or a metabolite concentration
4 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
5 alcohol concentration in the person's blood or breath of [~~eight~~
6 ~~one hundredths or more if the person is twenty-one years of age~~
7 ~~or older, four one hundredths or more if the person is driving~~
8 ~~a commercial motor vehicle or~~] two one hundredths or more if
9 the person is less than twenty-one years of age, shall revoke
10 the person's license or permit to drive or [~~his~~] nonresident
11 operating privilege for a period of:

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

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

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

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1 D. The determination of alcohol concentration shall
2 be based on the grams of alcohol in one hundred milliliters of
3 blood or the grams of alcohol in two hundred ten liters of
4 breath.

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

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

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

25 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
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1 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
2 HEARING.--

3 A. On behalf of the department, a law enforcement
4 officer requesting a chemical test or directing the
5 administration of a chemical test pursuant to Section 66-8-107
6 NMSA 1978 shall serve immediate written notice of revocation
7 and of right to a hearing before the administrative hearings
8 office pursuant to the Implied Consent Act on a person who:

- 9 (1) refuses to permit chemical testing; or
10 (2) submits to a chemical test the results of
11 which indicate an alcohol, a controlled substance or a
12 metabolite concentration that is unlawful pursuant to Section
13 66-8-102 NMSA 1978 or an alcohol concentration in the person's
14 blood or breath of

15 [~~(a) eight one hundredths or more if the~~
16 ~~person is twenty-one years of age or older;~~

17 [~~(b) four one hundredths or more if the~~
18 ~~person is driving a commercial motor vehicle; or~~

19 [~~(c)] two one hundredths or more if the~~
20 ~~person is less than twenty-one years of age.~~

21 B. The written notice of revocation and of a right
22 to a hearing served on the driver shall be a temporary license
23 valid for twenty days or, if the driver requests a hearing
24 pursuant to Section 66-8-112 NMSA 1978, valid until the date
25 the administrative hearings office issues the order following

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1 that hearing; provided that a written notice of revocation and
2 right to a hearing shall not be a temporary license for a
3 driver without any otherwise valid driving privileges in this
4 state.

5 C. The law enforcement officer shall send to the
6 department the signed statement required pursuant to Section
7 66-8-111 NMSA 1978."

8 SECTION 5. Section 66-8-112 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 520, as amended) is amended to read:

10 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
11 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
12 REVIEW.--

13 A. The effective date of revocation pursuant to
14 Section 66-8-111 NMSA 1978 is twenty days after notice of
15 revocation or, if the person whose driver's license or
16 privilege to drive is being revoked or denied requests a
17 hearing pursuant to the Administrative Hearings Office Act, the
18 date that the administrative hearings office issues the order
19 following that hearing. The date of notice of revocation is:

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

23 (2) in the event the results of a chemical
24 test cannot be obtained immediately, the date notice of
25 revocation is served by mail by the department. This notice of

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1 revocation and of right to a hearing shall be sent by certified
2 mail and shall be deemed to have been served on the date borne
3 by the return receipt showing delivery, refusal of the
4 addressee to accept delivery or attempted delivery of the
5 notice at the address obtained by the arresting law enforcement
6 officer or on file with the department.

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

25 C. The administrative hearings office may postpone

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1 or continue any hearing on its own motion or upon application
2 from the person and for good cause shown for a period not to
3 exceed ninety days from the date of notice of revocation and,
4 provided that, upon a continuance, the department shall extend
5 the validity of the temporary license for the period of the
6 postponement or continuation.

7 D. At the hearing, the administrative hearings
8 office may administer oaths and may issue subpoenas for the
9 attendance of witnesses and the production of relevant books
10 and papers.

11 E. The hearing shall be limited to the following
12 issues:

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

17 (2) whether the person was arrested;

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

20 (4) whether:

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

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

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(5) whether:

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

(b) the test results indicated an alcohol, a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of ~~[eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or]~~ two one hundredths or more if the person is less than twenty-one years of age.

F. The administrative hearings office shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the hearing officer from the administrative hearings office finds that:

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

(2) the person was arrested;

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

(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised the person that the person's

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1 failure to submit to the test could result in the revocation of
2 the person's privilege to drive; or

3 (b) that a chemical test was
4 administered pursuant to the provisions of the Implied Consent
5 Act and the test results indicated an alcohol, a controlled
6 substance or a metabolite concentration that is unlawful
7 pursuant to Section 66-8-102 NMSA 1978 or an alcohol
8 concentration in the person's blood or breath of [~~eight one~~
9 ~~hundredths or more if the person is twenty-one years of age or~~
10 ~~older, four one hundredths or more if the person is driving a~~
11 ~~commercial motor vehicle or~~] two one hundredths or more if the
12 person is less than twenty-one years of age.

13 G. If one or more of the elements set forth in
14 Paragraphs (1) through (4) of Subsection F of this section are
15 not found by the hearing officer, the person's license shall
16 not be revoked.

17 H. A person adversely affected by an order of the
18 administrative hearings office may seek review within thirty
19 days in the district court in the county in which the offense
20 for which the person was arrested took place. The district
21 court, upon thirty days' written notice to the department,
22 shall hear the case. On review, it is for the court to
23 determine only whether reasonable grounds exist for revocation
24 or denial of the person's license or privilege to drive based
25 on the record of the administrative proceeding.

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1 I. Any person less than eighteen years of age shall
2 have results of the person's hearing forwarded by the
3 administrative hearings office to the person's parent, guardian
4 or custodian."

5 SECTION 6. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2021.

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