

1 HOUSE BILL 484

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 William "Bill" R. Rehm

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9  
10 AN ACT

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

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 66-8-102 NMSA 1978 (being Laws 1953,  
19 Chapter 139, Section 54, as amended) is amended to read:

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

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

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1           B. It is unlawful for a person who is under the  
2 influence of any drug [~~to a degree that renders the person~~  
3 ~~incapable of safely driving a vehicle~~] to drive a vehicle  
4 within this state.

5           C. It is unlawful for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 M. Upon a second or third conviction pursuant to  
22 this section, an offender shall be required to participate in  
23 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. 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. Upon a conviction pursuant to this section, an  
19 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. 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. An offender who obtains an ignition interlock  
2 license and installs an ignition interlock device prior to  
3 conviction shall be given credit at sentencing for the time  
4 period the ignition interlock device has been in use.

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

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

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

22           U. With respect to this section and notwithstanding  
23 any provision of law to the contrary, if an offender's sentence  
24 was suspended or deferred in whole or in part and the offender  
25 violates any condition of probation, the court may impose any

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1 sentence that the court could have originally imposed and  
2 credit shall not be given for time served by the offender on  
3 probation.

4 V. As used in this section:

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

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

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

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

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

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

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

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1 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL  
2 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

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

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

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

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

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

24 (3) an alcohol concentration of four one  
25 hundredths or more and the person is driving a commercial

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1 vehicle, it shall be presumed that the person is under the  
2 influence of intoxicating liquor.

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

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

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

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

19 E. If the test performed pursuant to the Implied  
20 Consent Act is administered more than three hours after the  
21 person was driving a vehicle, the test result may be introduced  
22 as evidence of the alcohol, delta-9-tetrahydrocannabinol or  
23 delta-9-tetrahydrocannabinol metabolite or controlled substance  
24 concentration in the person's blood or breath at the time of  
25 the test and the trier of fact shall determine what weight to

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1 give the test result for the purpose of determining a violation  
2 of Section 66-8-102 NMSA 1978.

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

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

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

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

17 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
18 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

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

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

23 C. The department, upon receipt of a statement  
24 signed under penalty of perjury from a law enforcement officer  
25 stating the officer's reasonable grounds to believe the

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1 arrested person had been driving a motor vehicle within this  
2 state while under the influence of intoxicating liquor, delta-  
3 9-tetrahydrocannabinol or a delta-9-tetrahydrocannabinol  
4 metabolite or a controlled substance and that the person  
5 submitted to chemical testing pursuant to Section 66-8-107 NMSA  
6 1978 and the test results indicated an alcohol concentration,  
7 any concentration of delta-9-tetrahydrocannabinol or delta-9-  
8 tetrahydrocannabinol metabolite or a controlled substance or a  
9 metabolite concentration that is unlawful pursuant to Section  
10 66-8-102 NMSA 1978 or an alcohol concentration in the person's  
11 blood or breath of [~~eight one hundredths or more if the person~~  
12 ~~is twenty-one years of age or older, four one hundredths or~~  
13 ~~more if the person is driving a commercial motor vehicle or]~~  
14 two one hundredths or more if the person is less than twenty-  
15 one years of age, shall revoke the person's license or permit  
16 to drive or [~~his~~] nonresident operating privilege for a period  
17 of:

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

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

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

7                   D. The determination of alcohol concentration shall  
8 be based on the grams of alcohol in one hundred milliliters of  
9 blood or the grams of alcohol in two hundred ten liters of  
10 breath.

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

18                  F. A statement signed by a law enforcement officer,  
19 pursuant to the provisions of Subsection B or C of this  
20 section, shall be sworn to by the officer or shall contain a  
21 declaration substantially to the effect: "I hereby declare  
22 under penalty of perjury that the information given in this  
23 statement is true and correct to the best of my knowledge."  
24 The statement may be signed and submitted electronically in a  
25 manner and form approved by the department. A law enforcement

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1 officer who signs a statement knowing that the statement is  
2 untrue in any material issue or matter is guilty of perjury as  
3 provided in Section 66-5-38 NMSA 1978."

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

6 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
7 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
8 HEARING.--

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

15 (1) refuses to permit chemical testing; or  
16 (2) submits to a chemical test the results of  
17 which indicate an alcohol, a controlled substance or a  
18 metabolite concentration or any concentration of  
19 delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol  
20 metabolite that is unlawful pursuant to Section 66-8-102 NMSA  
21 1978 or an alcohol concentration in the person's blood or  
22 breath of

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

25 [~~(b) four one hundredths or more if the~~

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1 ~~person is driving a commercial motor vehicle; or~~

2                   ~~(e)~~] two one hundredths or more if the  
3 person is less than twenty-one years of age.

4                   B. The written notice of revocation and of a right  
5 to a hearing served on the driver shall be a temporary license  
6 valid for twenty days or, if the driver requests a hearing  
7 pursuant to Section 66-8-112 NMSA 1978, valid until the date  
8 the administrative hearings office issues the order following  
9 that hearing; provided that a written notice of revocation and  
10 right to a hearing shall not be a temporary license for a  
11 driver without any otherwise valid driving privileges in this  
12 state.

13                   C. The law enforcement officer shall send to the  
14 department the signed statement required pursuant to Section  
15 66-8-111 NMSA 1978."

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

18                   "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
19 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
20 REVIEW.--

21                   A. The effective date of revocation pursuant to  
22 Section 66-8-111 NMSA 1978 is twenty days after notice of  
23 revocation or, if the person whose driver's license or  
24 privilege to drive is being revoked or denied requests a  
25 hearing pursuant to the Administrative Hearings Office Act, the

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1 date that the administrative hearings office issues the order  
2 following that hearing. The date of notice of revocation is:

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

6 (2) in the event the results of a chemical  
7 test cannot be obtained immediately, the date notice of  
8 revocation is served by mail by the department. This notice of  
9 revocation and of right to a hearing shall be sent by certified  
10 mail and shall be deemed to have been served on the date borne  
11 by the return receipt showing delivery, refusal of the  
12 addressee to accept delivery or attempted delivery of the  
13 notice at the address obtained by the arresting law enforcement  
14 officer or on file with the department.

15 B. Within ten days after receipt of notice of  
16 revocation pursuant to Subsection A of this section, a person  
17 whose license or privilege to drive is revoked or denied or the  
18 person's agent may request a hearing. The hearing request  
19 shall be made in writing and shall be accompanied by a payment  
20 of twenty-five dollars (\$25.00) or a sworn statement of  
21 indigency on a form provided by the department. A standard for  
22 indigency shall be established pursuant to rules adopted by the  
23 department. Failure to request a hearing within ten days shall  
24 result in forfeiture of the person's right to a hearing. Any  
25 person less than eighteen years of age who fails to request a

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1 hearing within ten days shall have notice of revocation sent to  
2 the person's parent, guardian or custodian by the department.  
3 A date for the hearing shall be set by the administrative  
4 hearings office, if practical, within thirty days after receipt  
5 of notice of revocation. The hearing shall be held in the  
6 county in which the offense for which the person was arrested  
7 took place.

8 C. The administrative hearings office may postpone  
9 or continue any hearing on its own motion or upon application  
10 from the person and for good cause shown for a period not to  
11 exceed ninety days from the date of notice of revocation and,  
12 provided that, upon a continuance, the department shall extend  
13 the validity of the temporary license for the period of the  
14 postponement or continuation.

15 D. At the hearing, the administrative hearings  
16 office may administer oaths and may issue subpoenas for the  
17 attendance of witnesses and the production of relevant books  
18 and papers.

19 E. The hearing shall be limited to the following  
20 issues:

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

25 (2) whether the person was arrested;

underscoring material = new  
[bracketed material] = delete

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

3 (4) whether:

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

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

9 (5) whether:

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

12 (b) the test results indicated an  
13 alcohol, a delta-9-tetrahydrocannabinol or delta-9-  
14 tetrahydrocannabinol metabolite, a controlled substance or a  
15 metabolite concentration that is unlawful pursuant to Section  
16 66-8-102 NMSA 1978 or an alcohol concentration in the person's  
17 blood or breath of [eight one hundredths or more if the person  
18 is twenty-one years of age or older, four one hundredths or  
19 more if the person is driving a commercial motor vehicle or]  
20 two one hundredths or more if the person is less than twenty-  
21 one years of age.

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

.223974.1

underscored material = new  
[bracketed material] = delete

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

4 (2) the person was arrested;

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

7 (4) either:

8 (a) the person refused to submit to the  
9 test upon request of the law enforcement officer after the law  
10 enforcement officer advised the person that the person's  
11 failure to submit to the test could result in the revocation of  
12 the person's privilege to drive; or

13 (b) that a chemical test was  
14 administered pursuant to the provisions of the Implied Consent  
15 Act and the test results indicated an alcohol, a delta-9-  
16 tetrahydrocannabinol or delta-9-tetrahydrocannabinol  
17 metabolite, a controlled substance or a metabolite  
18 concentration that is unlawful pursuant to Section 66-8-102  
19 NMSA 1978 or an alcohol concentration in the person's blood or  
20 breath of [~~eight one hundredths or more if the person is~~  
21 ~~twenty-one years of age or older, four one hundredths or more~~  
22 ~~if the person is driving a commercial motor vehicle or~~] two one  
23 hundredths or more if the person is less than twenty-one years  
24 of age.

25 G. If one or more of the elements set forth in

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underscoring material = new  
~~[bracketed material] = delete~~

1 Paragraphs (1) through (4) of Subsection F of this section are  
2 not found by the hearing officer, the person's license shall  
3 not be revoked.

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

13 I. Any person less than eighteen years of age shall  
14 have results of the person's hearing forwarded by the  
15 administrative hearings office to the person's parent, guardian  
16 or custodian."