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HOUSE BILL 400

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING FINES FOR CERTAIN VIOLATIONS OF THE NEW MEXICO COMMERCIAL DRIVER'S LICENSE ACT AND INTEGRATING THE FOUR ONE-HUNDREDTHS BLOOD ALCOHOL CONTENT PROHIBITION FOR COMMERCIAL DRIVERS WITH PROVISIONS FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

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

Section 1. Section 66-1-4.3 NMSA 1978 (being Laws 1990, Chapter 120, Section 4, as amended) is amended to read:

"66-1-4.3. DEFINITIONS. -- As used in the Motor Vehicle Code:

A. "camping body" means a vehicle body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities;

B. "camping trailer" means a camping body that

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1 exceeds neither eight feet in width nor forty feet in length,
2 mounted on a chassis, or frame with wheels, designed to be
3 drawn by another vehicle and that has collapsible partial side
4 walls that fold for towing and unfold at the campsite;

5 C. "cancellation" means that a driver's license is
6 annulled and terminated because of some error or defect or
7 because the licensee is no longer entitled to the license, but
8 cancellation of a license is without prejudice, and
9 application for a new license may be made at any time after
10 cancellation;

11 D. "casual sale" means the sale of a motor vehicle
12 by the registered owner of the vehicle if the owner has not
13 sold more than four vehicles in that calendar year;

14 E. "chassis" means the complete motor vehicle,
15 including standard factory equipment, exclusive of the body
16 and cab;

17 F. "collector" means a person who is the owner of
18 one or more vehicles of historic or special interest who
19 collects, purchases, acquires, trades or disposes of these
20 vehicles or parts thereof for the person's own use in order to
21 preserve, restore and maintain a similar vehicle for hobby
22 purposes;

23 G. "combination" means any connected assemblage
24 of a motor vehicle and one or more semitrailers, trailers or
25 semitrailers converted to trailers by means of a converter

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1 gear;

2 H. "combination gross vehicle weight" means the
3 sum total of the gross vehicle weights of all units of a
4 combination;

5 I. "commerce" means the transportation of
6 persons, property or merchandise for hire, compensation,
7 profit or in the furtherance of a commercial enterprise in
8 this state or between New Mexico and a place outside New
9 Mexico, including a place outside the United States;

10 J. "commercial motor vehicle" means a motor
11 vehicle used in commerce:

12 (1) if the vehicle has a [~~declared~~] gross
13 vehicle weight rating of twenty-six thousand one or more
14 pounds;

15 (2) if the vehicle is designed to transport
16 sixteen or more passengers, including the driver; or

17 (3) if the vehicle is transporting hazardous
18 materials and is required to be placarded pursuant to
19 applicable law;

20 K. "controlled-access highway" means every
21 highway, street or roadway in respect to which owners or
22 occupants of abutting lands and other persons have no legal
23 right of access to or from the highway, street or roadway
24 except at those points only and in the manner as may be
25 determined by the public authority having jurisdiction over

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1 the highway, street or roadway;

2 L. "controlled substance" means any substance
3 defined in Section 30-31-2 NMSA 1978 as a controlled
4 substance;

5 M. "converter gear" means any assemblage of one
6 or more axles with a fifth wheel mounted thereon, designed for
7 use in a combination to support the front end of a semitrailer
8 but not permanently attached thereto. A converter gear shall
9 not be considered a vehicle, as that term is defined in
10 Section 66-1-4.19 NMSA 1978, but weight attributable thereto
11 shall be included in [~~declared~~] gross vehicle weight;

12 N. "convicted" or "conviction" means, for the
13 purposes of Sections 66-5-28, 66-5-29 and 66-8-102 NMSA 1978,
14 the alleged violator has entered a plea of guilty or nolo
15 contendere or has been found guilty in the trial court and has
16 waived or exhausted all rights to an appeal and for all other
17 purposes of the Motor Vehicle Code, final adjudication of
18 guilt; "convicted" or "conviction" does not include the
19 imposition of sentence; for purposes of the Motor Vehicle
20 Code, a forfeiture of bail or collateral deposited to secure a
21 defendant's appearance in court or promise to mail payment on
22 a penalty assessment when unvacated is equivalent to a
23 conviction;

24 O. "crosswalk" means:

25 (1) that part of a roadway at an intersection

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1 included within the connections of the lateral lines of the
2 sidewalks on opposite sides of the highway measured from the
3 curbs or, in the absence of curbs, from the edges of the
4 traversable roadway; and

5 (2) any portion of a roadway at an
6 intersection or elsewhere distinctly indicated for pedestrian
7 crossing by lines or other markings on the surface; and

8 P. "curb cut" means a short ramp through a curb
9 or built up to the curb."

10 Section 2. Section 66-5-52 NMSA 1978 (being Laws 1989,
11 Chapter 14, Section 1, as amended) is amended to read:

12 "66-5-52. SHORT TITLE. -- Sections 66-5-52 through
13 [~~66-5-70~~] 66-5-71 NMSA 1978 may be cited as the "New Mexico
14 Commercial Driver's License Act". "

15 Section 3. Section 66-5-68 NMSA 1978 (being Laws 1989,
16 Chapter 14, Section 17, as amended) is amended to read:

17 "66-5-68. DISQUALIFICATION. --

18 A. The department shall disqualify a person from
19 driving a commercial motor vehicle for a period of not less
20 than one year if the person:

21 (1) refuses to submit to a chemical test when
22 requested pursuant to the provisions of the Implied Consent
23 Act; or

24 (2) is convicted of [~~a violation of~~]:

25 (a) driving a commercial motor vehicle

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1 under the influence of alcohol or a controlled substance,
2 [~~pursuant to Section 66-5-68.1 NMSA 1978~~] in violation of
3 Section 66-8-102 NMSA 1978, an ordinance of a municipality of
4 this state or the law of another state;

5 (b) leaving the scene of an accident
6 involving a commercial motor vehicle driven by the person in
7 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
8 municipality of this state or the law of another state; or

9 (c) using a commercial motor vehicle in
10 the commission of any felony.

11 B. The department shall disqualify a person from
12 driving a commercial motor vehicle for a period of not less
13 than three years if any of the violations specified in
14 Subsection A of this section occur while transporting a
15 hazardous material required to be placarded.

16 C. The department shall disqualify a person from
17 driving a commercial motor vehicle for life if convicted of
18 two or more violations of any of the offenses specified in
19 Subsection A of this section, or any combination of those
20 offenses, arising from two or more separate incidents, but the
21 secretary may issue regulations establishing guidelines,
22 including conditions, under which a disqualification for life
23 under this subsection may be reduced to a period of not less
24 than ten years. This subsection applies only to those
25 offenses committed after July 1, 1989.

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1 D. The department shall disqualify a person from
2 driving a commercial motor vehicle for life if the person uses
3 a commercial motor vehicle in the commission of any felony
4 involving the manufacture, distribution or dispensing of a
5 controlled substance or the possession with intent to
6 manufacture, distribute or dispense a controlled substance.

7 E. The department shall disqualify a person from
8 driving a commercial motor vehicle for a period of not less
9 than sixty days if convicted of two serious traffic violations
10 or one hundred twenty days if convicted of three serious
11 traffic violations, if the violations were committed while
12 driving a commercial motor vehicle, arising from separate
13 incidents occurring within a three-year period.

14 F. When a person is disqualified from driving a
15 commercial motor vehicle, any commercial driver's license held
16 by that person is invalidated without separate proceeding of
17 any kind and the driver is not eligible to apply for a
18 commercial driver's license until the period of time for which
19 the driver was disqualified has elapsed.

20 G. After disqualifying, suspending, revoking or
21 canceling a commercial driver's license, the department shall,
22 within ten days, update its records to reflect that action.
23 After disqualifying, suspending, revoking or canceling a
24 nonresident commercial driver's privileges, the department
25 shall, within ten days, notify the licensing authority of the

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1 state that issued the commercial driver's license.

2 H. For purposes of this section, the term
3 "convicted" includes a license revocation pursuant to the
4 Implied Consent Act or the implied consent act of another
5 state. "

6 Section 4. Section 66-5-71 NMSA 1978 (being Laws 1998,
7 Chapter 17, Section 5) is amended to read:

8 "66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE
9 ORDERS. --

10 A. A driver who is convicted of violating an out-
11 of-service order shall be subject to a civil penalty of not
12 less than [~~ten dollars (\$10.00)~~] one thousand dollars (\$1,000)
13 or more than [~~twenty-five dollars (\$25.00)~~] two thousand five
14 hundred dollars (\$2,500), in addition to disqualification as
15 provided in Subsection C of this section.

16 B. An employer who is convicted of a violation of
17 Subsection C of Section 66-5-58 NMSA 1978 shall be subject to
18 a civil penalty of not less than [~~twenty-five dollars~~
19 ~~(\$25.00)~~] two thousand five hundred dollars (\$2,500) or more
20 than [~~one hundred dollars (\$100)~~] ten thousand dollars
21 (\$10,000).

22 C. A driver who is convicted of violating an out-
23 of-service order shall be disqualified for:

- 24 (1) not less than ninety days or more than
25 one year if the driver is convicted of a first violation of an

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1 out-of-service order;

2 (2) not less than one year or more than five
3 years if, during any ten-year period, the driver is convicted
4 of two violations of out-of-service orders in separate
5 incidents; and

6 (3) not less than three years or more than
7 five years if, during any ten-year period, the driver is
8 convicted of three or more violations of out-of-service orders
9 in separate incidents. "

10 Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953,
11 Chapter 139, Section 54, as amended by Laws 1997, Chapter 43,
12 Section 1 and also by Laws 1997, Chapter 205, Section 1) is
13 amended to read:

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

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

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

24 C. It is unlawful for any person who has an
25 alcohol concentration of eight one-hundredths or more in his

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1 blood or breath to drive any vehicle within this state or who
2 has an alcohol concentration of four one-hundredths or more in
3 his blood or breath to drive any commercial motor vehicle
4 within this state.

5 D. Aggravated driving while under the influence of
6 intoxicating liquor or drugs consists of a person who:

7 (1) has an alcohol concentration of sixteen
8 one-hundredths or more in his blood or breath while driving
9 any vehicle within this state;

10 (2) has caused bodily injury to a human being
11 as a result of the unlawful operation of a motor vehicle while
12 driving under the influence of intoxicating liquor or drugs;

13 or

14 (3) refused to submit to chemical testing, as
15 provided for in the Implied Consent Act, and in the judgment
16 of the court, based upon evidence of intoxication presented to
17 the court, was under the influence of intoxicating liquor or
18 drugs.

19 E. Every person under first conviction under this
20 section shall be punished, notwithstanding the provisions of
21 Section 31-18-13 NMSA 1978, by imprisonment for not more than
22 ninety days or by a fine of not more than five hundred dollars
23 (\$500), or both; provided that if the sentence is suspended in
24 whole or in part or deferred, the period of probation may
25 extend beyond ninety days but shall not exceed one year. Upon

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1 a first conviction under this section, an offender may be
2 sentenced to not less than forty-eight hours of community
3 service or a fine of three hundred dollars (\$300). The
4 offender shall be ordered by the court to participate in and
5 complete a screening program described in Subsection H of this
6 section and to attend a driver rehabilitation program for
7 alcohol or drugs, also known as a "DWI school", approved by
8 the traffic safety bureau of the state highway and
9 transportation department and also may be required to
10 participate in other rehabilitative services as the court
11 shall determine to be necessary. In addition to those
12 penalties, when an offender commits aggravated driving while
13 under the influence of intoxicating liquor or drugs, the
14 offender shall be sentenced to not less than forty-eight
15 consecutive hours in jail. If an offender fails to complete,
16 within a time specified by the court, any community service,
17 screening program, treatment program or DWI school ordered by
18 the court, the offender shall be sentenced to not less than an
19 additional forty-eight consecutive hours in jail. Any jail
20 sentence imposed under this subsection for failure to
21 complete, within a time specified by the court, any community
22 service, screening program, treatment program or DWI school
23 ordered by the court or for aggravated driving while under the
24 influence of intoxicating liquor or drugs shall not be
25 suspended, deferred or taken under advisement. On a first

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1 conviction under this section, any time spent in jail for the
2 offense prior to the conviction for that offense shall be
3 credited to any term of imprisonment fixed by the court. A
4 deferred sentence under this subsection shall be considered a
5 first conviction for the purpose of determining subsequent
6 convictions.

7 F. A second or third conviction under this section
8 shall be punished, notwithstanding the provisions of Section
9 31-18-13 NMSA 1978, by imprisonment for not more than three
10 hundred sixty-four days or by a fine of not more than one
11 thousand dollars (\$1,000), or both; provided that if the
12 sentence is suspended in whole or in part, the period of
13 probation may extend beyond one year but shall not exceed five
14 years. Notwithstanding any provision of law to the contrary
15 for suspension or deferment of execution of a sentence:

16 (1) upon a second conviction, each offender
17 shall be sentenced to a fine of five hundred dollars (\$500)
18 and either a jail term of not less than [seventy-two
19 consecutive hours, forty-eight hours] five days or not less
20 than thirty days of community service [and a fine of five
21 hundred dollars (\$500)]. In addition to those penalties, when
22 an offender commits aggravated driving while under the
23 influence of intoxicating liquor or drugs, the offender shall
24 be sentenced to a jail term of not less than ninety-six
25 consecutive hours. If an offender fails to complete, within a

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

7 (2) upon a third conviction, an offender
8 shall be sentenced to a fine of seven hundred fifty dollars
9 (\$750) and either a jail term of not less than thirty
10 consecutive days [and a fine of seven hundred fifty dollars
11 (\$750)] or not less than sixty days of community service. In
12 addition to those penalties, when an offender commits
13 aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to a jail
15 term of not less than sixty consecutive days. If an offender
16 fails to complete, within a time specified by the court, any
17 screening program or treatment program ordered by the court,
18 the offender shall be sentenced to not less than an additional
19 sixty consecutive days in jail. A penalty imposed pursuant to
20 this paragraph shall not be suspended or deferred or taken
21 under advisement.

22 G. Upon a fourth or subsequent conviction under
23 this section, an offender is guilty of a fourth degree felony,
24 as provided in Section 31-18-15 NMSA 1978, and shall be
25 sentenced to a jail term of not less than six months, which

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1 shall not be suspended or deferred or taken under advisement.

2 H. Upon any conviction under this section, an
3 offender shall be required to participate in and complete,
4 within a time specified by the court, an alcohol or drug abuse
5 screening program and, if necessary, a treatment program
6 approved by the court. In addition to any other fine or fee
7 that may be imposed pursuant to the conviction or other
8 disposition of the offense pursuant to this section, the court
9 may order the offender to pay the costs of any court-ordered
10 screening and treatment programs. The penalty imposed
11 pursuant to this subsection shall not be suspended, deferred
12 or taken under advisement.

13 I. In the case of a first, second or third offense
14 under this section, the magistrate court has concurrent
15 jurisdiction with district courts to try the offender.

16 J. A conviction under a municipal or county
17 ordinance in New Mexico or a law of any other jurisdiction,
18 territory or possession of the United States that is
19 equivalent to New Mexico law for driving while under the
20 influence of intoxicating liquor or drugs, prescribing
21 penalties for driving while under the influence of
22 intoxicating liquor or drugs shall be deemed to be a
23 conviction under this section for purposes of determining
24 whether a conviction is a second or subsequent conviction.

25 [~~K. In addition to any other fine or fee which may~~

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1 ~~be imposed pursuant to the conviction or other disposition of~~
2 ~~the offense under this section, the court may order the~~
3 ~~offender to pay the costs of any court-ordered screening and~~
4 ~~treatment programs.]~~

5 K. In addition to any other fine, fee, jail term
6 or other punishment that may be imposed pursuant to the second
7 or subsequent conviction under this section, all motor
8 vehicles owned by the offender shall be impounded, immobilized
9 or subject to the installation of an ignition interlock.
10 Vehicle impoundment or immobilization, if imposed, shall be
11 imposed during the period for which the offender's driver's
12 license is revoked as the result of the conviction for the
13 same offense. An ignition interlock shall be required to be
14 installed at the conclusion of the period of revocation. The
15 offender shall bear the cost of impoundment, immobilization
16 and installation of an ignition interlock. The court may make
17 limited exceptions to mandatory immobilization or impoundment
18 requirements on an individual basis to avoid undue hardship to
19 an individual, including a family member of the repeat
20 intoxicated driver, or a co-owner of the motor vehicle, but
21 not including the repeat intoxicated driver. The department
22 shall develop statewide published guidelines governing
23 hardship exceptions.

24 L. As used in this section, [~~(1)~~] "bodily injury"
25 means an injury to a person that is not likely to cause death

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1 or great bodily harm to the person, but does cause painful
2 temporary disfigurement or temporary loss or impairment of the
3 functions of any member or organ of the person's body [~~and~~
4 ~~(2) "conviction" means an adjudication of~~
5 ~~guilt and does not include imposition of a sentence~~]. "

6 Section 6. Section 66-8-102.1 NMSA 1978 (being Laws
7 1982, Chapter 102, Section 2, as amended) is amended to read:

8 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
9 complaint or information alleges a violation of Section
10 66-8-102 NMSA 1978, any plea of guilty thereafter entered in
11 satisfaction of the charges shall include at least a plea of
12 guilty to the violation of one of the subsections of Section
13 66-8-102 NMSA 1978, and no other disposition by plea of guilty
14 to any other charge in satisfaction of the charge shall be
15 authorized if the results of a test performed pursuant to the
16 Implied Consent Act disclose that the blood or breath of the
17 person charged contains an alcohol concentration of eight one-
18 hundredths or more or, if the person was driving a commercial
19 motor vehicle, four one-hundredths or more. "

20 Section 7. Section 66-8-110 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 518, as amended) is amended to read:

22 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
23 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

24 A. The results of a test performed pursuant to the
25 Implied Consent Act may be introduced into evidence in any

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1 civil action or criminal action arising out of the acts
2 alleged to have been committed by the person tested for
3 driving a motor vehicle while under the influence of
4 intoxicating liquor or drugs.

5 B. When the blood or breath of the person tested
6 contains:

7 (1) an alcohol concentration of [~~five~~] less
8 than four one-hundredths [~~or less~~], it shall be presumed that
9 the person was not under the influence of intoxicating liquor;
10 or

11 (2) an alcohol concentration of [~~more than~~
12 ~~five~~] at least four one-hundredths but less than eight one-
13 hundredths and the person was not driving a commercial motor
14 vehicle, no presumption shall be made that the person either
15 was or was not under the influence of intoxicating liquor.
16 However, the amount of alcohol in the person's blood may be
17 considered with other competent evidence in determining
18 whether the person was under the influence of intoxicating
19 liquor.

20 C. [~~When the blood or breath of the person tested~~
21 ~~contains an alcohol concentration of eight one-hundredths or~~
22 ~~more~~] The arresting officer shall charge [~~him~~] the person
23 tested with a violation of Section 66-8-102 NMSA 1978 when the
24 blood or breath of the person contains an alcohol
25 concentration of eight one-hundredths or more or, if the

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1 person was driving a commercial motor vehicle, four one-
2 hundredths or more.

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

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

12 F. The presumptions in Subsection B of this
13 section do not limit the introduction of other competent
14 evidence concerning whether the person was under the influence
15 of intoxicating liquor.

16 G. If a person is convicted of driving a motor
17 vehicle while under the influence of intoxicating liquor, the
18 trial judge shall be required to inquire into the past driving
19 record of the person before sentence is entered in the
20 matter. "

21 Section 8. Section 66-8-111 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 519, as amended) is amended to read:

23 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--
24 TESTING-- GROUND FOR REVOCATION OF LICENSE OR PRIVILEGE TO
25 DRIVE. --

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1 A. If a person under arrest for violation of an
2 offense enumerated in the Motor Vehicle Code refuses upon
3 request of a law enforcement officer to submit to chemical
4 tests designated by the law enforcement agency as provided in
5 Section 66-8-107 NMSA 1978, none shall be administered except
6 when a municipal judge, magistrate or district judge issues a
7 search warrant authorizing chemical tests as provided in
8 Section 66-8-107 NMSA 1978 upon his finding in a law
9 enforcement officer's written affidavit that there is probable
10 cause to believe that the person has driven a motor vehicle
11 while under the influence of alcohol or [~~a controlled~~
12 ~~substance~~] drugs, thereby causing the death or great bodily
13 injury of another person, or there is probable cause to
14 believe that the person has committed a felony while under the
15 influence of alcohol or [~~a controlled substance~~] drugs and
16 that chemical tests as provided in Section 66-8-107 NMSA 1978
17 will produce material evidence in a felony prosecution.

18 B. 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
23 [~~drug~~] drugs and that, upon his request, the person refused to
24 submit to a chemical test after being advised that failure to
25 submit could result in revocation of his privilege to drive,

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1 shall revoke the person's New Mexico driver's license or any
2 nonresident operating privilege for a period of one year or
3 until all conditions for license reinstatement are met,
4 whichever is later.

5 C. The department shall revoke for the period
6 specified in Subsection D of this section the person's license
7 or permit to drive or his nonresident operating privilege upon
8 receipt of a statement signed under penalty of perjury from a
9 law enforcement officer stating the officer's reasonable
10 grounds to believe the arrested person had been driving a
11 motor vehicle within this state while under the influence of
12 intoxicating liquor or drugs and that the person submitted to
13 chemical testing pursuant to Section 66-8-107 NMSA 1978 and
14 the test results indicated an alcohol concentration in the
15 person's blood or breath of:

16 (1) eight one-hundredths or more [~~in the~~
17 ~~person's blood or breath~~] if the person is twenty-one years of
18 age or older;

19 (2) four one-hundredths or more if the person
20 was driving a commercial motor vehicle; or

21 (3) an alcohol concentration of two one-
22 hundredths or more in the person's blood or breath if the
23 person is less than twenty-one years of age [~~shall revoke the~~
24 ~~person's license or permit to drive or his nonresident~~
25 ~~operating privilege~~].

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D. The revocation made pursuant to Subsection C of this section shall be for a period of:

(1) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) or (2) of this subsection or any provision of the Children's Code.

~~D.~~ E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

~~E.~~ F. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the

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1 issuance of a license to him for the appropriate period of
2 time as provided in Subsections B and C of this section.

3 [F-] G. A statement signed by a law enforcement
4 officer, pursuant to the provisions of Subsection B or C of
5 this section, shall be sworn to by the officer or shall
6 contain a declaration substantially to the effect: "I hereby
7 declare under penalty of perjury that the information given in
8 this statement is true and correct to the best of my
9 knowledge.". A law enforcement officer who signs a statement,
10 knowing that the statement is untrue in any material issue or
11 matter, is guilty of perjury as provided in Section 66-5-38
12 NMSA 1978. "

13 Section 9. Section 66-8-111.1 NMSA 1978 (being Laws
14 1984, Chapter 72, Section 7, as amended) is amended to read:

15 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
16 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
17 HEARING.--On behalf of the department, a law enforcement
18 officer requesting a chemical test or directing the
19 administration of a chemical test pursuant to Section 66-8-107
20 NMSA 1978 shall serve immediate written notice of revocation
21 and of right to a hearing on a person who refuses to permit
22 chemical testing or on a person who submits to a chemical test
23 the results of which indicate an alcohol concentration in the
24 person's blood or breath of eight one-hundredths or more [~~in~~
25 ~~the person's blood or breath~~] if the person is twenty-one

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1 years of age or older, four one-hundredths or more if the
2 person was driving a commercial motor vehicle or [~~an alcohol~~
3 ~~concentration of~~] two one-hundredths or more in the person's
4 blood or breath if the person is less than twenty-one years of
5 age. Upon serving notice of revocation, the law enforcement
6 officer shall take the license or permit of the driver, if
7 any, and issue a temporary license valid for twenty days or,
8 if the driver requests a hearing pursuant to Section 66-8-112
9 NMSA 1978, valid until the date the department issues the
10 order following that hearing; provided that no temporary
11 license shall be issued to a driver without a valid license or
12 permit. The law enforcement officer shall send the person's
13 driver's license to the department along with the signed
14 statement required pursuant to Section 66-8-111 NMSA 1978."

15 Section 10. Section 66-8-112 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 520, as amended) is amended to read:

17 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
18 NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS-- REVIEW. --

19 A. The effective date of revocation pursuant to
20 Section 66-8-111 NMSA 1978 is twenty days after notice of
21 revocation or, if the person whose driver's license or
22 privilege to drive is being revoked or denied requests a
23 hearing pursuant to this section, the date that the department
24 issues the order following that hearing. The date of notice
25 of revocation is:

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

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

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

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1 eighteen years of age who fails to request a hearing within
2 ten days shall have notice of revocation sent to his parent,
3 guardian or custodian by the department. A date for the
4 hearing shall be set by the department, if practical, within
5 thirty days after receipt of notice of revocation. The
6 hearing shall be held in the county in which the offense for
7 which the person was arrested took place.

8 C. The department may postpone or continue any
9 hearing [~~on its own motion or upon application from the person~~
10 ~~and~~] for good cause shown by either party for a period not to
11 exceed ninety days from the date of notice of revocation [~~and~~
12 ~~provided that the department extends the validity of the~~
13 ~~temporary license for the period of the postponement or~~
14 ~~continuation~~].

15 D. The hearing may be held by video conference or
16 telephonically except, with respect to telephonic hearings,
17 when the driver makes a sufficient showing that the
18 credibility of witnesses will be an issue and that the hearing
19 officer would be substantially aided by observing the demeanor
20 of witnesses. A protestant who obtains an in-person hearing
21 upon representations that the protestant will be presenting
22 witnesses to raise credibility issues, who then fails to
23 present the witnesses without good cause, shall be liable for
24 the hearing officer's travel costs. Payment of those travel
25 costs shall be a prerequisite to the reinstatement or issuance

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1 of the person's license and such payments are appropriated to
2 the department to defray the costs of hearings.

3 ~~[D.]~~ E. At the hearing, the department or its
4 agent may administer oaths and may issue subpoenas for the
5 attendance of witnesses and the production of relevant books
6 and papers.

7 ~~[E.]~~ F. The hearing shall be limited to the
8 issues:

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

13 (2) whether the person was arrested;

14 (3) whether this hearing is held no later
15 than ninety days after notice of revocation; ~~[and either]~~

16 (4) whether the person's driver's license has
17 been previously revoked pursuant to the Implied Consent Act;
18 and either

19 (5)

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

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

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1 to the test could result in the revocation of his privilege to
2 drive or that a chemical test was administered pursuant to the
3 provisions of the Implied Consent Act and the test results
4 indicated an alcohol concentration of eight one-hundredths or
5 more if the person is twenty-one years of age or older, [~~or an~~
6 ~~alcohol concentration of~~] four one-hundredths or more if the
7 person was driving a commercial motor vehicle or two one-
8 hundredths or more if the person is less than twenty-one years
9 of age.

10 If one or more of the elements set forth in Paragraphs
11 (1) through (4) of this subsection are not found by the
12 department, the person's license shall not be revoked.

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

22 [~~H.~~] I. Any person less than eighteen years of age
23 shall have results of his hearing forwarded by the department
24 to his parent, guardian or custodian. "

25 Section 11. REPEAL. -- Section 66-5-68.1 NMSA 1978 (being

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Laws 1992, Chapter 13, Section 9) is repealed.

Section 12. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1999.