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SENATE BILL 489

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

INTRODUCED BY

Mark L. Boitano

AN ACT

RELATING TO ALCOHOL; LOWERING THE STANDARD FOR A PRESUMPTION OF INTOXICATION WHEN A PERSON DRIVES WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; AMENDING SECTIONS OF THE NMSA 1978.

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 by Laws 1997, Chapter 43, Section 1 and also by Laws 1997, Chapter 205, Section 1) is amended to read:

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

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

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

5 C. It is unlawful for any person who has an
6 alcohol concentration of [~~eight~~] five one-hundredths or more
7 in his blood or breath to drive any vehicle within this state.

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

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

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

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

22 E. Every person under first conviction [~~under~~]
23 pursuant to this section shall be punished, notwithstanding
24 the provisions of Section 31-18-13 NMSA 1978, by imprisonment
25 for not more than ninety days or by a fine of not more than

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

. 125006. 2

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1 school ordered by the court or for aggravated driving while
2 under the influence of intoxicating liquor or drugs shall not
3 be suspended, deferred or taken under advisement. On a first
4 conviction [~~under~~] pursuant to this section, any time spent in
5 jail for the offense prior to the conviction for that offense
6 shall be credited to any term of imprisonment fixed by the
7 court. A deferred sentence [~~under~~] pursuant to this
8 subsection shall be considered a first conviction for the
9 purpose of determining subsequent convictions.

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

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

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

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

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

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

3 H. Upon any conviction [~~under~~] pursuant to this
4 section, an offender shall be required to participate in and
5 complete, within a time specified by the court, an alcohol or
6 drug abuse screening program and, if necessary, a treatment
7 program approved by the court. The penalty imposed pursuant
8 to this subsection shall not be suspended, deferred or taken
9 under advisement.

10 I. In the case of a first, second or third offense
11 [~~under~~] pursuant to this section, the magistrate court has
12 concurrent jurisdiction with district courts to try the
13 offender.

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

24 K. In addition to any other fine or fee [~~which~~]
25 that may be imposed pursuant to the conviction or other

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

4 L. 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) "conviction" means an adjudication of
11 guilt and does not include imposition of a sentence."

12 Section 2. Section 66-8-102.1 NMSA 1978 (being Laws
13 1982, Chapter 102, Section 2, as amended) is amended to read:

14 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
15 complaint or information alleges a violation of Section
16 66-8-102 NMSA 1978, any plea of guilty thereafter entered in
17 satisfaction of the charges shall include at least a plea of
18 guilty to the violation of one of the subsections of Section
19 66-8-102 NMSA 1978, and no other disposition by plea of guilty
20 to any other charge in satisfaction of the charge shall be
21 authorized if the results of a test performed pursuant to the
22 Implied Consent Act disclose that the blood or breath of the
23 person charged contains an alcohol concentration of [~~eight~~]
24 five one-hundredths or more."

25 Section 3. 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
7 alleged to have been committed by the person tested for
8 driving a motor vehicle while under the influence of
9 intoxicating liquor or drugs.

10 B. When the blood or breath of the person tested
11 contains [~~(1)~~] an alcohol concentration of less than five one-
12 hundredths [~~or less~~], it shall be presumed that the person was
13 not under the influence of intoxicating liquor [~~or~~

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

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

25 D. When a person is less than twenty-one years of

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1 age and the blood or breath of the person contains an alcohol
2 concentration of two one-hundredths or more, the person's
3 driving privileges shall be revoked pursuant to the provisions
4 of the Implied Consent Act.

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

9 ~~[F. The presumptions in Subsection B of this~~
10 ~~section do not limit the introduction of other competent~~
11 ~~evidence concerning whether the person was under the influence~~
12 ~~of intoxicating liquor.]~~

13 ~~G.]~~ F. If a person is convicted of driving a motor
14 vehicle while under the influence of intoxicating liquor or
15 drugs, the trial judge shall be required to inquire into the
16 past driving record of the person before sentence is entered
17 in the matter."

18 Section 4. Section 66-8-111 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 519, as amended) is amended to read:

20 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--
21 TESTING--GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO
22 DRIVE. --

23 A. If a person under arrest for violation of an
24 offense enumerated in the Motor Vehicle Code refuses upon
25 request of a law enforcement officer to submit to chemical

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

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

. 125006. 2

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1 whichever is later.

2 C. The department, upon receipt of a statement
3 signed under penalty of perjury from a law enforcement officer
4 stating the officer's reasonable grounds to believe the
5 arrested person had been driving a motor vehicle within this
6 state while under the influence of intoxicating liquor and
7 that the person submitted to chemical testing pursuant to
8 Section 66-8-107 NMSA 1978 and the test results indicated an
9 alcohol concentration of [~~eight~~] five one-hundredths or more
10 in the person's blood or breath if the person is twenty-one
11 years of age or older or an alcohol concentration of two one-
12 hundredths or more in the person's blood or breath if the
13 person is less than twenty-one years of age, shall revoke the
14 person's license or permit to drive or his nonresident
15 operating privilege for a period of:

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

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

25 (3) one year or until all conditions for

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

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

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

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

. 125006. 2

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1 Section 5. Section 66-8-111.1 NMSA 1978 (being Laws
2 1984, Chapter 72, Section 7, as amended) is amended to read:
3 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
4 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
5 HEARING.--On behalf of the department, a law enforcement
6 officer requesting a chemical test or directing the
7 administration of a chemical test pursuant to Section 66-8-107
8 NMSA 1978 shall serve immediate written notice of revocation
9 and of right to a hearing on a person who refuses to permit
10 chemical testing or on a person who submits to a chemical test
11 the results of which indicate an alcohol concentration of
12 [~~eight~~] five one-hundredths or more in the person's blood or
13 breath if the person is twenty-one years of age or older, [~~or~~]
14 an alcohol concentration of two one-hundredths or more in the
15 person's blood or breath if the person is less than twenty-one
16 years of age or that the person had been under the influence
17 of any drug. Upon serving notice of revocation, the law
18 enforcement officer shall take the license or permit of the
19 driver, if any, and issue a temporary license valid for twenty
20 days or, if the driver requests a hearing pursuant to Section
21 66-8-112 NMSA 1978, valid until the date the department issues
22 the order following that hearing; provided that no temporary
23 license shall be issued to a driver without a valid license or
24 permit. The law enforcement officer shall send the person's
25 driver's license to the department along with the signed

. 125006. 2

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1 statement required pursuant to Section 66-8-111 NMSA 1978."

2 Section 6. Section 66-8-112 NMSA 1978 (being Laws 1978,
3 Chapter 35, Section 520, as amended) is amended to read:

4 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
5 NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW--

6 A. The effective date of revocation pursuant to
7 Section 66-8-111 NMSA 1978 is twenty days after notice of
8 revocation or, if the person whose license or privilege to
9 drive is being revoked or denied requests a hearing pursuant
10 to this section, the date that the department issues the order
11 following that hearing. The date of notice of revocation is:

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

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

24 B. Within ten days after receipt of notice of
25 revocation pursuant to Subsection A of this section, a person

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

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

23 D. At the hearing, the department or its agent may
24 administer oaths and may issue subpoenas for the attendance of
25 witnesses and the production of relevant books and papers.

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E. The hearing shall be limited to the issues:

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

(2) whether the person was arrested; and

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

~~[(4)]~~ (a) whether the person refused to submit to a test upon request of the law enforcement officer and ~~[(b)]~~ whether the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

~~[(5)-(a)]~~ (b) whether the chemical test was administered pursuant to the provisions of the Implied Consent Act and ~~[(b)]~~ whether the test results indicated an alcohol concentration of ~~[eight]~~ five one-hundredths or more in the person's blood or breath if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more in the person's blood or breath if the person is less than twenty-one years of age.

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

(1) the law enforcement officer had

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1 reasonable grounds to believe the driver was driving a motor
2 vehicle while under the influence of intoxicating liquor or
3 [~~drug~~] 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) the person either refused to submit to
8 the test upon request of the law enforcement officer after the
9 law enforcement officer advised him that his failure to submit
10 to the test could result in the revocation of his privilege to
11 drive or that a chemical test was administered pursuant to the
12 provisions of the Implied Consent Act and the test results
13 indicated an alcohol concentration of [~~eight~~] five one-
14 hundredths or more if the person is twenty-one years of age or
15 older or an alcohol concentration of two one-hundredths or
16 more if the person is less than twenty-one years of age.

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

20 G. A person adversely affected by an order of the
21 department may seek review within thirty days in the district
22 court in the county in which the offense for which the person
23 was arrested took place. The district court, upon thirty
24 days' written notice to the department, shall hear the case.

25 On review, it is for the court to determine only whether

1 reasonable grounds exist for revocation or denial of the
2 person's license or privilege to drive based on the record of
3 the administrative proceeding.

4 H. Any person less than eighteen years of age
5 shall have results of his hearing forwarded by the department
6 to his parent, guardian or custodian. "

7 Section 7. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 1999.

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