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HOUSE BILL 405

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; ESTABLISHING A TIME FRAME FOR ADMINISTERING A CHEMICAL TEST TO AN ALLEGED OFFENDER; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

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

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

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

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

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders him incapable of
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for a person who has an alcohol
4 concentration of eight one hundredths or more in his blood or
5 breath to drive a vehicle within this state.

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

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

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

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

18 E. The alcohol concentration in a person's blood or
19 breath shall be determined by a chemical test administered to
20 the person within three hours of the alleged driving while
21 under the influence of intoxicating liquor. If the chemical
22 test is administered more than three hours after the alleged
23 driving while under the influence of intoxicating liquor, the
24 test result is admissible as evidence of the alcohol
25 concentration in the person's blood or breath at the time of

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1 the alleged driving and the trier of fact shall determine what
2 weight to give the test result.

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

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

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

24 (1) upon a second conviction, ~~[each]~~ an
25 offender shall be sentenced to a jail term of not less than

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

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

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1 ~~[G.]~~ H. Upon a fourth or subsequent conviction
2 pursuant to this section, an offender is guilty of a fourth
3 degree felony, as provided in Section 31-18-15 NMSA 1978, and
4 shall be sentenced to a jail term of not less than six months,
5 which shall not be suspended or deferred or taken under
6 advisement.

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

14 ~~[I.]~~ J. Upon a first conviction for aggravated
15 driving while under the influence of intoxicating liquor or
16 drugs pursuant to the provisions of Subsection D of this
17 section, as a condition of probation, an offender shall be
18 required to have an ignition interlock device installed and
19 operating for a period of one year on all motor vehicles driven
20 by the offender, pursuant to rules adopted by the bureau.
21 Unless determined by the sentencing court to be indigent, the
22 offender shall pay all costs associated with having an ignition
23 interlock device installed on the appropriate motor vehicles.
24 If an offender drives a motor vehicle that does not have an
25 ignition interlock device installed on the motor vehicle, the

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1 offender may be in violation of the terms and conditions of his
2 probation.

3 ~~[J.]~~ K. Upon a first conviction for driving while
4 under the influence of intoxicating liquor or drugs pursuant to
5 the provisions of Subsection A, B or C of this section, as a
6 condition of probation, an offender may be required to have an
7 ignition interlock device installed and operating for a period
8 of one year on all motor vehicles driven by the offender,
9 pursuant to rules adopted by the bureau. Unless determined by
10 the sentencing court to be indigent, the offender shall pay all
11 costs associated with having an ignition interlock device
12 installed on the appropriate motor vehicles. If an offender
13 drives a motor vehicle that does not have an ignition interlock
14 device installed on the motor vehicle, the offender may be in
15 violation of the terms and conditions of his probation.

16 ~~[K.]~~ L. Upon any subsequent conviction pursuant to
17 this section, as a condition of probation, a subsequent
18 offender shall be required to have an ignition interlock device
19 installed and operating for a period of at least one year on
20 all motor vehicles driven by the subsequent offender, pursuant
21 to rules adopted by the bureau. Unless determined by the
22 sentencing court to be indigent, the subsequent offender shall
23 pay all costs associated with having an ignition interlock
24 device installed on the appropriate motor vehicles. If a
25 subsequent offender drives a motor vehicle that does not have

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1 an ignition interlock device installed on the motor vehicle,
2 the subsequent offender may be in violation of the terms and
3 conditions of his probation.

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

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

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

21 [~~0.~~] P. As used in this section:

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

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1 or organ of the person's body; and

2 (2) "conviction" means an adjudication of
3 guilt and does not include imposition of a sentence."

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

6 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
7 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

14 B. When the blood or breath of the person tested
15 contains:

16 (1) an alcohol concentration of five one
17 hundredths or less, it shall be presumed that the person was
18 not under the influence of intoxicating liquor; or

19 (2) an alcohol concentration of more than five
20 one hundredths but less than eight one hundredths, no
21 presumption shall be made that the person either was or was not
22 under the influence of intoxicating liquor. However, the
23 amount of alcohol in the person's blood or breath may be
24 considered with other competent evidence in determining whether
25 the person was under the influence of intoxicating liquor.

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1 C. When the blood or breath of the person tested
2 contains an alcohol concentration of eight one hundredths or
3 more, the arresting officer shall charge him with a violation
4 of Section 66-8-102 NMSA 1978.

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

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

14 F. The alcohol concentration in a person's blood or
15 breath shall be determined by a chemical test administered to
16 the person within three hours of the alleged driving while
17 under the influence of intoxicating liquor. If the chemical
18 test is administered more than three hours after the alleged
19 driving while under the influence of intoxicating liquor, the
20 test result is admissible as evidence of the alcohol
21 concentration in the person's blood or breath at the time of
22 the alleged driving and the trier of fact shall determine what
23 weight to give the test result.

24 [F.] G. The presumptions in Subsection B of this
25 section do not limit the introduction of other competent

1 evidence concerning whether the person was under the influence
2 of intoxicating liquor.

3 [G.] H. If a person is convicted of driving a motor
4 vehicle while under the influence of intoxicating liquor, the
5 trial judge shall be required to inquire into the past driving
6 record of the person before sentence is entered in the matter."

7 Section 3. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 2003.

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