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SENATE BILL 99

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

INTRODUCED BY

Allen V. Hurt

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; PROVIDING THAT THE OFFENSE OF DWI DOES NOT APPLY IF A PERSON IS IN A PARKED MOTOR VEHICLE AND THE ENGINE OF THAT MOTOR VEHICLE IS NOT RUNNING; 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. The offense of driving while under the influence of

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1 intoxicating liquor does not apply when a person who is
2 allegedly under the influence of intoxicating liquor is found
3 in a parked motor vehicle and the engine of that motor vehicle
4 is not running.

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

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

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

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

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

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

23 E. ~~Every~~ A person under first conviction pursuant
24 to this section shall be punished, notwithstanding the
25 provisions of Section 31-18-13 NMSA 1978, by imprisonment for

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1 not more than ninety days or by a fine of not more than five
2 hundred dollars (\$500), or both; provided that if the sentence
3 is suspended in whole or in part or deferred, the period of
4 probation may extend beyond ninety days but shall not exceed
5 one year. Upon a first conviction pursuant to this section, an
6 offender may be sentenced to not less than forty-eight hours of
7 community service or a fine of three hundred dollars (\$300).

8 The offender shall be ordered by the court to participate in
9 and complete a screening program described in Subsection H of
10 this section and to attend a driver rehabilitation program for
11 alcohol or drugs, also known as a "DWI school", approved by the
12 bureau and also may be required to participate in other
13 rehabilitative services as the court shall determine to be
14 necessary. In addition to those penalties, when an offender
15 commits aggravated driving while under the influence of
16 intoxicating liquor or drugs, the offender shall be sentenced
17 to not less than forty-eight consecutive hours in jail. If an
18 offender fails to complete, within a time specified by the
19 court, any community service, screening program, treatment
20 program or DWI school ordered by the court, the offender shall
21 be sentenced to not less than an additional forty-eight
22 consecutive hours in jail. Any jail sentence imposed pursuant
23 to this subsection for failure to complete, within a time
24 specified by the court, any community service, screening
25 program, treatment program or DWI school ordered by the court

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

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

19 (1) upon a second conviction, [~~each~~] an
20 offender shall be sentenced to a jail term of not less than
21 seventy-two consecutive hours, forty-eight hours of community
22 service and a fine of five hundred dollars (\$500). In addition
23 to those penalties, when an offender commits aggravated driving
24 while 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 ninety-six consecutive hours. If an offender fails to
2 complete, within a time specified by the court, any community
3 service, screening program or treatment program ordered by the
4 court, the offender shall be sentenced to not less than an
5 additional seven consecutive days in jail. A penalty imposed
6 pursuant to this paragraph shall not be suspended or deferred
7 or taken under advisement; and

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

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

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

8 I. Upon a first conviction for aggravated driving
9 while under the influence of intoxicating liquor or drugs
10 pursuant to the provisions of Subsection D of this section,
11 as a condition of probation, an offender shall be required to
12 have an ignition interlock device installed and operating for a
13 period of one year on all motor vehicles driven by the
14 offender, pursuant to rules adopted by the bureau. Unless
15 determined by the sentencing court to be indigent, the offender
16 shall pay all costs associated with having an ignition
17 interlock device installed on the appropriate motor vehicles.
18 If an offender drives a motor vehicle that does not have an
19 ignition interlock device installed on the motor vehicle, the
20 offender may be in violation of the terms and conditions of his
21 probation.

22 J. Upon a first conviction for driving while under
23 the influence of intoxicating liquor or drugs pursuant to the
24 provisions of Subsection A, B or C of this section, as a
25 condition of probation, an offender may be required to have an

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1 ignition interlock device installed and operating for a period
2 of one year on all motor vehicles driven by the offender,
3 pursuant to rules adopted by the bureau. Unless determined by
4 the sentencing court to be indigent, the offender shall pay all
5 costs associated with having an ignition interlock device
6 installed on the appropriate motor vehicles. If an offender
7 drives a motor vehicle that does not have an ignition interlock
8 device installed on the motor vehicle, the offender may be in
9 violation of the terms and conditions of his probation.

10 K. Upon any subsequent conviction pursuant to this
11 section, as a condition of probation, a subsequent offender
12 shall be required to have an ignition interlock device
13 installed and operating for a period of at least one year on
14 all motor vehicles driven by the subsequent offender, pursuant
15 to rules adopted by the bureau. Unless determined by the
16 sentencing court to be indigent, the subsequent offender shall
17 pay all costs associated with having an ignition interlock
18 device installed on the appropriate motor vehicles. If a
19 subsequent offender drives a motor vehicle that does not have
20 an ignition interlock device installed on the motor vehicle,
21 the subsequent offender may be in violation of the terms and
22 conditions of his probation.

23 L. In the case of a first, second or third offense
24 under this section, the magistrate court has concurrent
25 jurisdiction with district courts to try the offender.

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1 M. A conviction pursuant to a municipal or county
2 ordinance in New Mexico or a law of any other jurisdiction,
3 territory or possession of the United States that is equivalent
4 to New Mexico law for driving while under the influence of
5 intoxicating liquor or drugs, and that prescribes penalties for
6 driving while under the influence of intoxicating liquor or
7 drugs, shall be deemed to be a conviction pursuant to this
8 section for purposes of determining whether a conviction is a
9 second or subsequent conviction.

10 N. In addition to any other fine or fee [~~which~~
11 that may be imposed pursuant to the conviction or other
12 disposition of the offense under this section, the court may
13 order the offender to pay the costs of any court-ordered
14 screening and treatment programs.

15 O. As used in this section:

16 (1) "bodily injury" means an injury to a
17 person that is not likely to cause death or great bodily harm
18 to the person, but does cause painful temporary disfigurement
19 or temporary loss or impairment of the functions of any member
20 or organ of the person's body; and

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

23 Section 2. Section 66-8-107 NMSA 1978 (being Laws 1978,
24 Chapter 35, Section 515, as amended) is amended to read:

25 "66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST. --

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1 A. ~~[Any]~~ A person who operates a motor vehicle
2 within this state shall be deemed to have given consent,
3 subject to the provisions of the Implied Consent Act, to
4 chemical tests of his breath or blood or both, approved by the
5 scientific laboratory division of the department of health
6 pursuant to the provisions of Section 24-1-22 NMSA 1978, ~~[as~~
7 ~~determined by a law enforcement officer, or]~~ for the purpose of
8 determining the drug or alcohol content of his blood if
9 arrested for ~~[any]~~ an offense arising out of the acts alleged
10 to have been committed ~~[while]~~ when the person was driving a
11 motor vehicle while under the influence of ~~[an]~~ intoxicating
12 liquor or ~~[drug]~~ drugs.

13 B. A test of blood or breath or both, approved by
14 the scientific laboratory division of the department of health
15 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
16 be administered at the direction of a law enforcement officer
17 ~~[having]~~ who has reasonable grounds to believe ~~[the person to~~
18 ~~have been]~~ that a person was driving a motor vehicle within
19 this state while under the influence of intoxicating liquor or
20 ~~[drug]~~ drugs.

21 C. The offense of driving while under the influence
22 of intoxicating liquor does not apply when a person who is
23 allegedly under the influence of intoxicating liquor is in a
24 parked motor vehicle and the engine of that motor vehicle is
25 not running. "

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

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