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HOUSE BILL 187

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROHIBITING DRIVING WITH CERTAIN AMOUNTS OF CONTROLLED SUBSTANCES OR METABOLITES IN THE BLOOD; PROVIDING THAT THE IGNITION INTERLOCK REQUIREMENT APPLIES TO OFFENDERS WITH ANY ALCOHOL CONCENTRATION IN THEIR BLOOD OR BREATH.

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~~] DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING [~~WHILE~~] UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--[~~PENALTY~~] PENALTIES.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this .180395.1

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1 state.

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

6 C. It is unlawful for:

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

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

19 D. It is unlawful for a person to drive a vehicle
20 in this state if the person has the following amount or more of
21 a controlled substance or metabolite in the person's blood
22 within three hours of driving the vehicle and the controlled
23 substance or metabolite concentration results from consumption
24 of a controlled substance before or while driving the vehicle:

25 (1) for amphetamine, one hundred nanograms per
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1 milliliter of blood;

2 (2) for cocaine, fifty nanograms per
3 milliliter of blood;

4 (3) for cocaine metabolite, cocaethylene,
5 fifty nanograms per milliliter of blood;

6 (4) for heroin, fifty nanograms per milliliter
7 of blood;

8 (5) for heroin metabolite, morphine, fifty
9 nanograms per milliliter of blood;

10 (6) for heroin metabolite, 6-monoacetyl
11 morphine, ten nanograms per milliliter of blood; or

12 (7) for methamphetamine, one hundred nanograms
13 per milliliter of blood.

14 ~~[D.]~~ E. Aggravated driving ~~[while]~~ under the
15 influence of intoxicating liquor or drugs consists of ~~[a person~~
16 ~~who]~~:

17 (1) ~~[drives]~~ driving a vehicle in this state
18 ~~[and has]~~ with an alcohol concentration of sixteen one
19 hundredths or more in the ~~[person's]~~ driver's blood or breath
20 within three hours of driving the vehicle and the alcohol
21 concentration results from alcohol consumed before or while
22 driving the vehicle;

23 (2) ~~[has caused]~~ causing bodily injury to a
24 human being as a result of the unlawful operation of a motor
25 vehicle while driving under the influence of intoxicating

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1 liquor or drugs; or

2 (3) [~~refused~~] refusing to submit to chemical
3 testing, as provided for in the Implied Consent Act, and in the
4 judgment of the court, based upon evidence of intoxication
5 presented to the court, the driver was under the influence of
6 intoxicating liquor or drugs.

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

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

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

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

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

19 (2) upon a third conviction, an offender shall
20 be sentenced to a jail term of not less than thirty consecutive
21 days, not less than ninety-six hours of community service and a
22 fine of seven hundred fifty dollars (\$750). In addition to
23 those penalties, when an offender commits aggravated driving
24 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 sixty consecutive days. If an offender fails to complete,
2 within a time specified by the court, any community service,
3 screening program or treatment program ordered by the court,
4 the offender shall be sentenced to not less than an additional
5 sixty consecutive days in jail. A penalty imposed pursuant to
6 this paragraph shall not be suspended or deferred or taken
7 under advisement.

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

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

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

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1 ~~[J-]~~ K. Upon a seventh or subsequent conviction
2 pursuant to this section, an offender is guilty of a third
3 degree felony and, notwithstanding the provisions of Section
4 31-18-15 NMSA 1978, shall be sentenced to a term of
5 imprisonment of three years, two years of which shall not be
6 suspended, deferred or taken under advisement.

7 ~~[K-]~~ L. 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 approved by the department of
11 finance and administration and, if necessary, a treatment
12 program approved by the court. The requirement imposed
13 pursuant to this subsection shall not be suspended, deferred or
14 taken under advisement.

15 ~~[L-]~~ M. Upon a second or third conviction pursuant
16 to this section, an offender shall be required to participate
17 in and complete, within a time specified by the court:

18 (1) not less than a twenty-eight-day
19 inpatient, residential or in-custody substance abuse treatment
20 program approved by the court;

21 (2) not less than a ninety-day outpatient
22 treatment program approved by the court;

23 (3) a drug court program approved by the
24 court; or

25 (4) any other substance abuse treatment

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1 program approved by the court.

2 The requirement imposed pursuant to this subsection shall
3 not be suspended, deferred or taken under advisement.

4 ~~[M-]~~ N. Upon a felony conviction pursuant to this
5 section, the corrections department shall provide substance
6 abuse counseling and treatment to the offender in its custody.
7 While the offender is on probation or parole under its
8 supervision, the corrections department shall also provide
9 substance abuse counseling and treatment to the offender or
10 shall require the offender to obtain substance abuse counseling
11 and treatment.

12 ~~[N-]~~ O. Upon a conviction pursuant to this section,
13 an offender who was driving under the influence of intoxicating
14 liquor or who had any alcohol concentration in the blood or
15 breath within three hours of driving and the alcohol
16 concentration resulted from alcohol consumed before or while
17 driving the vehicle shall be required to obtain an ignition
18 interlock license and have an ignition interlock device
19 installed and operating on all motor vehicles driven by the
20 offender, pursuant to rules adopted by the bureau. Unless
21 determined by the sentencing court to be indigent, the offender
22 shall pay all costs associated with having an ignition
23 interlock device installed on the appropriate motor vehicles.
24 The offender shall operate only those vehicles equipped with
25 ignition interlock devices for:

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1 (1) a period of one year, for a first
2 [~~offender~~] conviction;

3 (2) a period of two years, for a second
4 conviction [~~pursuant to this section~~];

5 (3) a period of three years, for a third
6 conviction [~~pursuant to this section~~]; or

7 (4) the remainder of the offender's life, for
8 a fourth or subsequent conviction. [~~pursuant to this section.~~

9 ~~θ.~~] P. Five years from the date of a fourth or
10 subsequent conviction pursuant to this section and every five
11 years thereafter, a fourth or subsequent offender may apply to
12 a district court for restoration of a driver's license and for
13 removal of the ignition interlock device requirement [~~provided~~
14 ~~in this section and for restoration of a driver's license~~], if
15 applicable. A district court may, for good cause shown, remove
16 the ignition interlock device requirement and order restoration
17 of the license; provided that the offender has not been
18 subsequently convicted of driving a motor vehicle while under
19 the influence of intoxicating liquor or drugs. Good cause may
20 include an alcohol screening and proof from the interlock
21 vendor that the person has not had violations of the interlock
22 device.

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

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

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

16 [S-] T. With respect to this section and
17 notwithstanding any provision of law to the contrary, if an
18 offender's sentence was suspended or deferred in whole or in
19 part and the offender violates any condition of probation, the
20 court may impose any sentence that the court could have
21 originally imposed and credit shall not be given for time
22 served by the offender on probation.

23 [T-] U. As used in this section:

24 (1) "bodily injury" means an injury to a
25 person that is not likely to cause death or great bodily harm

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1 to the person, but does cause painful temporary disfigurement
2 or temporary loss or impairment of the functions of any member
3 or organ of the person's body; and

4 (2) "commercial motor vehicle" means a motor
5 vehicle or combination of motor vehicles used in commerce to
6 transport passengers or property if the motor vehicle:

7 (a) has a gross combination weight
8 rating of more than twenty-six thousand pounds inclusive of a
9 towed unit with a gross vehicle weight rating of more than ten
10 thousand pounds;

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

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

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

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

20 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
21 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

22 A. The results of a test performed pursuant to the
23 Implied Consent Act may be introduced into evidence in any
24 civil action or criminal action arising out of the acts alleged
25 to have been committed by the person tested for driving a motor

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1 vehicle while under the influence of intoxicating liquor or
2 drugs.

3 B. When the blood or breath of the person tested
4 contains:

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

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

10 (a) no presumption shall be made that
11 the person either was or was not under the influence of
12 intoxicating liquor, unless the person is driving a commercial
13 motor vehicle; and

14 (b) the amount of alcohol in the
15 person's blood or breath may be considered with other competent
16 evidence in determining whether the person was under the
17 influence of intoxicating liquor; or

18 (3) an alcohol concentration of four one
19 hundredths or more and the person is driving a commercial
20 vehicle, it shall be presumed that the person is under the
21 influence of intoxicating liquor.

22 C. The arresting officer shall charge 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 concentration
25 [~~of:~~

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1 ~~(1) eight one hundredths or more; or~~
2 ~~(2) four one hundredths or more if the person~~
3 ~~is driving a commercial motor vehicle]~~ or a controlled
4 substance or metabolite concentration that is unlawful pursuant
5 to the provisions of Section 66-8-102 NMSA 1978.

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

11 E. If the test performed pursuant to the Implied
12 Consent Act is administered more than three hours after the
13 person was driving a vehicle, the test result may be introduced
14 as evidence of the alcohol or drug concentration in the
15 person's blood or breath at the time of the test and the trier
16 of fact shall determine what weight to give the test result for
17 the purpose of determining a violation of Section 66-8-102 NMSA
18 1978.

19 F. The determination of alcohol concentration shall
20 be based on the grams of alcohol in one hundred milliliters of
21 blood or the grams of alcohol in two hundred ten liters of
22 breath.

23 G. The presumptions in Subsection B of this section
24 do not limit the introduction of other competent evidence
25 concerning whether the person was under the influence of

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1 intoxicating liquor.

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

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

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

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

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1 felony prosecution.

2 B. 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 or drugs
7 and that, upon request, the person refused to submit to a
8 chemical test after being advised that failure to submit could
9 result in revocation of the person's privilege to drive, shall
10 revoke the person's New Mexico driver's license or any
11 nonresident operating privilege for a period of one year or
12 until all conditions for license reinstatement are met,
13 whichever is later.

14 C. The department, upon receipt of a statement
15 signed under penalty of perjury from a law enforcement officer
16 stating the officer's reasonable grounds to believe the
17 arrested person had been driving a motor vehicle within this
18 state while under the influence of intoxicating liquor or drugs
19 and that the person submitted to chemical testing pursuant to
20 Section 66-8-107 NMSA 1978 and the test results indicated an
21 alcohol, a controlled substance or a metabolite concentration
22 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
23 alcohol concentration in the person's blood or breath of [~~eight~~
24 ~~one hundredths or more if the person is twenty-one years of age~~
25 ~~or older, four one hundredths or more if the person is driving~~

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1 ~~a commercial motor vehicle or~~] two one hundredths or more if
2 the person is less than twenty-one years of age, shall revoke
3 the person's license or permit to drive or [~~his~~] nonresident
4 operating privilege for a period of:

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

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

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

19 D. The determination of alcohol concentration shall
20 be based on the grams of alcohol in one hundred milliliters of
21 blood or the grams of alcohol in two hundred ten liters of
22 breath.

23 E. If the person subject to the revocation
24 provisions of this section is a resident or will become a
25 resident within one year and is without a license to operate a

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1 motor vehicle in this state, the department shall deny the
2 issuance of a license to [~~him~~] the person for the appropriate
3 period of time as provided in Subsections B and C of this
4 section.

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

16 Section 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
17 Chapter 72, Section 7, as amended by Laws 2003, Chapter 51,
18 Section 14 and by Laws 2003, Chapter 90, Section 7) is amended
19 to read:

20 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
21 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
22 HEARING.--On behalf of the department, a law enforcement
23 officer requesting a chemical test or directing the
24 administration of a chemical test pursuant to Section 66-8-107
25 NMSA 1978 shall serve immediate written notice of revocation

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1 and of right to a hearing on a person who refuses to permit
2 chemical testing or on a person who submits to a chemical test
3 the results of which indicate an alcohol, a controlled
4 substance or a metabolite concentration that is unlawful
5 pursuant to Section 66-8-102 NMSA 1978 or an alcohol
6 concentration in the person's blood or breath of [~~eight one~~
7 ~~hundredths or more if the person is twenty-one years of age or~~
8 ~~older, four one hundredths or more if the person is driving a~~
9 ~~commercial motor vehicle or~~] two one hundredths or more if the
10 person is less than twenty-one years of age. Upon serving
11 notice of revocation, the law enforcement officer shall take
12 the license or permit of the driver, if any, and issue a
13 temporary license valid for twenty days or, if the driver
14 requests a hearing pursuant to Section 66-8-112 NMSA 1978,
15 valid until the date the department issues the order following
16 that hearing; provided that a temporary license shall not be
17 issued to a driver without a valid license or permit. The law
18 enforcement officer shall send the person's driver's license to
19 the department along with the signed statement required
20 pursuant to Section 66-8-111 NMSA 1978."

21 Section 5. Section 66-8-112 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,
23 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended
24 to read:

25 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO

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1 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
2 REVIEW.--

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

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

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

22 B. Within ten days after receipt of notice of
23 revocation pursuant to Subsection A of this section, a person
24 whose license or privilege to drive is revoked or denied or the
25 person's agent may request a hearing. The hearing request

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

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

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

24 E. The hearing shall be limited to the following
25 issues:

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

5 (2) whether the person was arrested;

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

8 (4) whether:

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

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

14 (5) whether:

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

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

25 F. The department shall enter an order sustaining

.180395.1

underscored material = new
[bracketed material] = delete

1 the revocation or denial of the person's license or privilege
2 to drive if the department finds that:

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

6 (2) the person was arrested;

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

9 (4) either:

10 (a) the person refused to submit to the
11 test upon request of the law enforcement officer after the law
12 enforcement officer advised ~~[him]~~ the person that ~~[his]~~ failure
13 to submit to the test could result in the revocation of ~~[his]~~
14 the person's privilege to drive; or

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

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

.180395.1

underscored material = new
[bracketed material] = delete

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

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

13 I. Any person less than eighteen years of age shall
14 have results of [~~his~~] the hearing forwarded by the department
15 to [~~his~~] the person's parent, guardian or custodian."

16 Section 6. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2010.