

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 151

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

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; REQUIRING CERTAIN MINIMUM ALCOHOL CONCENTRATION
LEVELS IN THE BLOOD OR BREATH FOR CONVICTION; REMOVING THE
SLIGHTEST IMPAIRMENT STANDARD.

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
state.~~

underscored material = new
[bracketed material] = delete

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

5 ~~[G. It is unlawful for]~~ B. Driving under the
6 influence of intoxicating liquor is unlawful and consists of:

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

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

19 ~~[D.]~~ C. Aggravated driving ~~[while]~~ under the
20 influence of intoxicating liquor or drugs consists of ~~[a person~~
21 ~~who]~~:

22 (1) ~~[drives]~~ driving a vehicle in this state
23 ~~[and has]~~ with an alcohol concentration of sixteen one
24 hundredths or more in the ~~[person's]~~ driver's blood or breath
25 within three hours of driving the vehicle and the alcohol

.180126.2

underscored material = new
[bracketed material] = delete

1 concentration results from alcohol consumed before or while
2 driving the vehicle;

3 (2) [~~has caused~~] causing bodily injury to a
4 human being as a result of the unlawful operation of a motor
5 vehicle while driving under the influence of intoxicating
6 liquor or drugs; or

7 (3) [~~refused~~] refusing to submit to chemical
8 testing, as provided for in the Implied Consent Act, and in the
9 judgment of the court, based upon evidence of intoxication
10 presented to the court, the driver was under the influence of
11 intoxicating liquor or drugs to a degree that rendered the
12 driver incapable of safely driving a vehicle.

13 [~~E.~~] D. A [~~person under~~] first conviction pursuant
14 to this section shall be punished, notwithstanding the
15 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
16 not more than ninety days or by a fine of not more than five
17 hundred dollars (\$500), or both; provided that if the sentence
18 is suspended in whole or in part or deferred, the period of
19 probation may extend beyond ninety days but shall not exceed
20 one year. Upon a first conviction pursuant to this section, an
21 offender shall be sentenced to not less than twenty-four hours
22 of community service. In addition, the offender may be
23 required to pay a fine of three hundred dollars (\$300). The
24 offender shall be ordered by the court to participate in and
25 complete a screening program described in Subsection [~~K~~] J of

.180126.2

underscoring material = new
[bracketed material] = delete

1 this section and to attend a driver rehabilitation program for
2 alcohol or drugs, also known as a "DWI school", approved by the
3 bureau and also may be required to participate in other
4 rehabilitative services as the court shall determine to be
5 necessary. In addition to those penalties, when an offender
6 commits aggravated driving while under the influence of
7 intoxicating liquor or drugs, the offender shall be sentenced
8 to not less than forty-eight consecutive hours in jail. If an
9 offender fails to complete, within a time specified by the
10 court, any community service, screening program, treatment
11 program or DWI school ordered by the court or fails to comply
12 with any other condition of probation, the offender shall be
13 sentenced to not less than an additional forty-eight
14 consecutive hours in jail. Any jail sentence imposed pursuant
15 to this subsection for failure to complete, within a time
16 specified by the court, any community service, screening
17 program, treatment program or DWI school ordered by the court
18 or for aggravated driving while under the influence of
19 intoxicating liquor or drugs shall not be suspended, deferred
20 or taken under advisement. On a first conviction pursuant to
21 this section, any time spent in jail for the offense prior to
22 the conviction for that offense shall be credited to any term
23 of imprisonment fixed by the court. A deferred sentence
24 pursuant to this subsection shall be considered a first
25 conviction for the purpose of determining subsequent

.180126.2

underscored material = new
[bracketed material] = delete

1 convictions.

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

11 (1) upon a second conviction, an offender
12 shall be sentenced to a jail term of not less than ninety-six
13 consecutive hours, not less than forty-eight hours of community
14 service and a fine of five hundred dollars (\$500). In addition
15 to 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 a jail term of not less than
18 ninety-six consecutive hours. If an offender fails to
19 complete, within a time specified by the court, any community
20 service, screening program or treatment program ordered by the
21 court, the offender shall be sentenced to not less than an
22 additional seven consecutive days in jail. A penalty imposed
23 pursuant to this paragraph shall not be suspended or deferred
24 or taken under advisement; and

25 (2) upon a third conviction, an offender shall

.180126.2

underscored material = new
[bracketed material] = delete

1 be sentenced to a jail term of not less than thirty consecutive
2 days, not less than ninety-six hours of community service and a
3 fine of seven hundred fifty dollars (\$750). In addition to
4 those penalties, when an offender commits aggravated driving
5 while under the influence of intoxicating liquor or drugs, the
6 offender shall be sentenced to a jail term of not less than
7 sixty consecutive days. If an offender fails to complete,
8 within a time specified by the court, any community service,
9 screening program or treatment program ordered by the court,
10 the offender shall be sentenced to not less than an additional
11 sixty consecutive days in jail. A penalty imposed pursuant to
12 this paragraph shall not be suspended or deferred or taken
13 under advisement.

14 ~~[G.]~~ F. Upon a fourth 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 eighteen
18 months, six months of which shall not be suspended, deferred or
19 taken under advisement.

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

.180126.2

underscored material = new
[bracketed material] = delete

1 ~~[F.]~~ H. Upon a sixth conviction pursuant to this
2 section, an offender is guilty of a third degree felony and,
3 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
4 shall be sentenced to a term of imprisonment of thirty months,
5 eighteen months of which shall not be suspended, deferred or
6 taken under advisement.

7 ~~[G.]~~ I. Upon a seventh or subsequent conviction
8 pursuant to this section, an offender is guilty of a third
9 degree felony and, notwithstanding the provisions of Section
10 31-18-15 NMSA 1978, shall be sentenced to a term of
11 imprisonment of three years, two years of which shall not be
12 suspended, deferred or taken under advisement.

13 ~~[K.]~~ J. Upon any conviction pursuant to this
14 section, an offender shall be required to participate in and
15 complete, within a time specified by the court, an alcohol or
16 drug abuse screening program approved by the department of
17 finance and administration and, if necessary, a treatment
18 program approved by the court. The requirement imposed
19 pursuant to this subsection shall not be suspended, deferred or
20 taken under advisement.

21 ~~[L.]~~ K. Upon a second or third conviction pursuant
22 to this section, an offender shall be required to participate
23 in and complete, within a time specified by the court:

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

.180126.2

underscored material = new
[bracketed material] = delete

1 program approved by the court;

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

4 (3) a drug court program approved by the
5 court; or

6 (4) any other substance abuse treatment
7 program approved by the court.

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

10 ~~[M.]~~ L. Upon a felony conviction pursuant to this
11 section, the corrections department shall provide substance
12 abuse counseling and treatment to the offender in its custody.
13 While the offender is on probation or parole under its
14 supervision, the corrections department shall also provide
15 substance abuse counseling and treatment to the offender or
16 shall require the offender to obtain substance abuse counseling
17 and treatment.

18 ~~[N.]~~ M. Upon a conviction pursuant to this section,
19 an offender shall be required to obtain an ignition interlock
20 license and have an ignition interlock device installed and
21 operating on all motor vehicles driven by the offender,
22 pursuant to rules adopted by the bureau. Unless determined by
23 the sentencing court to be indigent, the offender shall pay all
24 costs associated with having an ignition interlock device
25 installed on the appropriate motor vehicles. The offender

.180126.2

underscored material = new
[bracketed material] = delete

1 shall operate only those vehicles equipped with ignition
2 interlock devices for:

3 (1) a period of one year, for a first
4 offender;

5 (2) a period of two years, for a second
6 conviction pursuant to this section;

7 (3) a period of three years, for a third
8 conviction pursuant to this section; or

9 (4) the remainder of the offender's life, for
10 a fourth or subsequent conviction pursuant to this section.

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

23 [~~P.~~] O. 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.

.180126.2

underscored material = new
[bracketed material] = delete

1 [Q-] P. 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-] Q. 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-] R. 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-] S. 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

.180126.2

underscored material = new
[bracketed material] = delete

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

.180126.2

underscored material = new
[bracketed material] = delete

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 ~~G.]~~ B. The arresting officer shall charge the
23 person tested with a violation of Section 66-8-102 NMSA 1978
24 when the blood or breath of the person contains an alcohol
25 concentration of:

.180126.2

underscored material = new
[bracketed material] = delete

- 1 (1) eight one hundredths or more;
2 (2) four one hundredths or more if the person
3 is driving a commercial motor vehicle.

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

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

17 ~~[F.]~~ E. The determination of alcohol concentration
18 shall be based on the grams of alcohol in one hundred
19 milliliters of blood or the grams of alcohol in two hundred ten
20 liters of breath.

21 ~~[G. The presumptions in Subsection B of this~~
22 ~~section do not limit the introduction of other competent~~
23 ~~evidence concerning whether the person was under the influence~~
24 ~~of intoxicating liquor.~~

25 ~~H.]~~ F. If a person is convicted of driving a motor

underscoring material = new
[bracketed material] = delete

1 vehicle while under the influence of intoxicating liquor, the
2 trial judge shall inquire into the past driving record of the
3 person before sentence is entered in the matter."

4 Section 3. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2010.

6 - 14 -
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25