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HOUSE BILL 49

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

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. DRIVING UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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1 B. 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 C. It is unlawful for:

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

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

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

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

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

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

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

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

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

11 (7) for methamphetamine, one hundred nanograms
12 per milliliter of blood; or

13 (8) for 3,4-methylene dioxymethamphetamine,
14 one hundred nanograms per milliliter of blood.

15 [~~D-~~] E. Aggravated driving under the influence of
16 intoxicating liquor or drugs consists of:

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

22 (2) causing bodily injury to a human being as
23 a result of the unlawful operation of a motor vehicle while
24 driving under the influence of intoxicating liquor or drugs; or

25 (3) refusing to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of
2 the court, based upon evidence of intoxication presented to the
3 court, the driver was under the influence of intoxicating
4 liquor or drugs.

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

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

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

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1 for suspension or deferment of execution of a sentence:

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

16 (2) upon a third conviction, an offender shall
17 be sentenced to a jail term of not less than thirty consecutive
18 days, not less than ninety-six hours of community service and a
19 fine of seven hundred fifty dollars (\$750). In addition to
20 those penalties, when an offender commits aggravated driving
21 under the influence of intoxicating liquor or drugs, the
22 offender shall be sentenced to a jail term of not less than
23 sixty consecutive days. If an offender fails to complete,
24 within a time specified by the court, any community service,
25 screening program or treatment program ordered by the court,

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1 the offender shall be sentenced to not less than an additional
2 sixty consecutive days in jail. A penalty imposed pursuant to
3 this paragraph shall not be suspended or deferred or taken
4 under advisement.

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

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

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

23 [~~J.~~] K. Upon a seventh or subsequent conviction
24 pursuant to this section, an offender is guilty of a third
25 degree felony and, notwithstanding the provisions of Section

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1 31-18-15 NMSA 1978, shall be sentenced to a term of
2 imprisonment of three years, two years of which shall not be
3 suspended, deferred or taken under advisement.

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

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

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

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

20 (3) a drug court program approved by the
21 court; or

22 (4) any other substance abuse treatment
23 program approved by the court.

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

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

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

- 23 (1) a period of one year, for a first
24 [~~offender~~] conviction;
- 25 (2) a period of two years, for a second

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1 conviction [~~pursuant to this section~~];

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

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

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

20 [~~P.~~] Q. An offender who obtains an ignition
21 interlock license and installs an ignition interlock device
22 prior to conviction shall be given credit at sentencing for the
23 time period the ignition interlock device has been in use.

24 [~~Q.~~] R. In the case of a first, second or third
25 offense under this section, the magistrate court has concurrent

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1 jurisdiction with district courts to try the offender.

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

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

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

24 [U-] V. As used in this section:

25 (1) "bodily injury" means an injury to a

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1 person that is not likely to cause death or great bodily harm
2 to the person, but does cause painful temporary disfigurement
3 or temporary loss or impairment of the functions of any member
4 or organ of the person's body; and

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

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

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

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

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

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

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

23 A. The results of a test performed pursuant to the
24 Implied Consent Act may be introduced into evidence in any
25 civil action or criminal action arising out of the acts alleged

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1 to have been committed by the person tested for driving a motor
2 vehicle while under the influence of intoxicating liquor or
3 drugs.

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

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

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

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

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

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

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

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1 ~~of:~~

2 ~~(1) eight one hundredths or more; or~~

3 ~~(2) four one hundredths or more if the person~~
4 ~~is driving a commercial motor vehicle] or a controlled~~

5 substance or metabolite concentration that is unlawful pursuant
6 to the provisions of Section 66-8-102 NMSA 1978.

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

12 E. If the test performed pursuant to the Implied
13 Consent Act is administered more than three hours after the
14 person was driving a vehicle, the test result may be introduced
15 as evidence of the alcohol or drug concentration in the
16 person's blood or breath at the time of the test and the trier
17 of fact shall determine what weight to give the test result for
18 the purpose of determining a violation of Section 66-8-102 NMSA
19 1978.

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

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

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

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

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

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

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

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1 Section 66-8-107 NMSA 1978 will produce material evidence in a
2 felony prosecution.

3 B. The department, upon receipt of a statement
4 signed under penalty of perjury from a law enforcement officer
5 stating the officer's reasonable grounds to believe the
6 arrested person had been driving a motor vehicle within this
7 state while under the influence of intoxicating liquor or drugs
8 and that, upon request, the person refused to submit to a
9 chemical test after being advised that failure to submit could
10 result in revocation of the person's privilege to drive, shall
11 revoke the person's New Mexico driver's license or any
12 nonresident operating privilege for a period of one year or
13 until all conditions for license reinstatement are met,
14 whichever is later.

15 C. 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 drugs
20 and that the person submitted to chemical testing pursuant to
21 Section 66-8-107 NMSA 1978 and the test results indicated an
22 alcohol, a controlled substance or a metabolite concentration
23 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
24 alcohol concentration in the person's blood or breath of [~~eight~~
25 ~~one hundredths or more if the person is twenty-one years of age~~

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

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

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

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

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

24 E. If the person subject to the revocation
25 provisions of this section is a resident or will become a

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1 resident within one year and is without a license to operate a
2 motor vehicle in this state, the department shall deny the
3 issuance of a license to ~~[him]~~ the person for the appropriate
4 period of time as provided in Subsections B and C of this
5 section.

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

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

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

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

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

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1 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
2 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
3 REVIEW.--

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

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

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

23 B. Within ten days after receipt of notice of
24 revocation pursuant to Subsection A of this section, a person
25 whose license or privilege to drive is revoked or denied or the

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

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

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

25 E. The hearing shall be limited to the following

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1 issues:

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

6 (2) whether the person was arrested;

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

9 (4) whether:

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

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

15 (5) whether:

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

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

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underscored material = new
[bracketed material] = delete

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

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

7 (2) the person was arrested;

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

10 (4) either:

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

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

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underscoring material = new
~~[bracketed material]~~ = delete

1 G. If one or more of the elements set forth in
2 Paragraphs (1) through (4) of Subsection F of this section are
3 not found by the department, the person's license shall not be
4 revoked.

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

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

17 SECTION 6. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2011.