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SENATE BILL 306

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; REQUIRING HOME BREATHALYZER DEVICES FOR A CONVICTED
OFFENDER WHO DOES NOT OWN A MOTOR VEHICLE AND IS UNABLE TO HAVE
AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING ASSISTANCE
FOR HOME BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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. Aggravated driving under the influence of
19 intoxicating liquor or drugs consists of:

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

25 (2) causing bodily injury to a human being as

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1 a result of the unlawful operation of a motor vehicle while
2 driving under the influence of intoxicating liquor or drugs; or
3 (3) refusing to submit to chemical testing, as
4 provided for in the Implied Consent Act, and in the judgment of
5 the court, based upon evidence of intoxication presented to the
6 court, the driver was under the influence of intoxicating
7 liquor or drugs.

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

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1 the influence of intoxicating liquor or drugs, the offender
2 shall be sentenced to not less than forty-eight consecutive
3 hours in jail. If an offender fails to complete, within a time
4 specified by the court, any community service, screening
5 program, treatment program or DWI school ordered by the court
6 or fails to comply with any other condition of probation, the
7 offender shall be sentenced to not less than an additional
8 forty-eight consecutive hours in jail. Any jail sentence
9 imposed pursuant to this subsection for failure to complete,
10 within a time specified by the court, any community service,
11 screening program, treatment program or DWI school ordered by
12 the court or for aggravated driving 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. A second or third conviction pursuant to this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 three hundred sixty-four days or by a fine of not more than one
25 thousand dollars (\$1,000), or both; provided that if the

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

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

15 L. Upon a second or third conviction pursuant to
16 this section, an offender shall be required to participate in
17 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. 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. Upon a conviction pursuant to this section, an
13 offender shall be required to obtain an ignition interlock
14 license and have an ignition interlock device installed and
15 operating on all motor vehicles driven by the offender,
16 pursuant to rules adopted by the traffic safety bureau. Unless
17 determined by the bureau to be indigent, the offender shall pay
18 all costs associated with having an ignition interlock device
19 installed on the appropriate motor vehicles. The offender
20 shall operate only those vehicles equipped with ignition
21 interlock devices for:

22 (1) a period of one year, for a first
23 offender;

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

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

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

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

17 P. If an offender states under oath that the
18 offender does not own a motor vehicle or have access to a motor
19 vehicle and is therefore unable to have an ignition interlock
20 device installed pursuant to Subsection N of this section, the
21 court shall order the offender to obtain a home breathalyzer
22 device that identifies the person giving the sample and to
23 provide morning and evening breath samples for the period of
24 time provided in Subsections N and O of this section. The
25 offender shall pay all costs associated with the home

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1 breathalyzer device, unless determined to be indigent by the
2 bureau.

3 [P-] Q. An offender who obtains an ignition
4 interlock license and installs an ignition interlock device
5 prior to conviction shall be given credit at sentencing for the
6 time period the ignition interlock device has been in use.

7 [Q-] R. In the case of a first, second or third
8 offense under this section, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender.

10 [R-] S. A conviction pursuant to a municipal or
11 county ordinance in New Mexico or a law of any other
12 jurisdiction, territory or possession of the United States or
13 of a tribe, when that ordinance or law is equivalent to New
14 Mexico law for driving under the influence of intoxicating
15 liquor or drugs, and prescribes penalties for driving under the
16 influence of intoxicating liquor or drugs, shall be deemed to
17 be a conviction pursuant to this section for purposes of
18 determining whether a conviction is a second or subsequent
19 conviction.

20 [S-] T. In addition to any other fine or fee that
21 may be imposed pursuant to the conviction or other disposition
22 of the offense under this section, the court may order the
23 offender to pay the costs of any court-ordered screening and
24 treatment programs.

25 [T-] U. With respect to this section and

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1 notwithstanding any provision of law to the contrary, if an
2 offender's sentence was suspended or deferred in whole or in
3 part and the offender violates any condition of probation, the
4 court may impose any sentence that the court could have
5 originally imposed and credit shall not be given for time
6 served by the offender on probation.

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

8 (1) "bodily injury" means an injury to a
9 person that is not likely to cause death or great bodily harm
10 to the person, but does cause painful temporary disfigurement
11 or temporary loss or impairment of the functions of any member
12 or organ of the person's body; and

13 (2) "commercial motor vehicle" means a motor
14 vehicle or combination of motor vehicles used in commerce to
15 transport passengers or property if the motor vehicle:

16 (a) has a gross combination weight
17 rating of more than twenty-six thousand pounds inclusive of a
18 towed unit with a gross vehicle weight rating of more than ten
19 thousand pounds;

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

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

24 (d) is of any size and is used in the
25 transportation of hazardous materials, which requires the motor

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1 vehicle to be placarded under applicable law."

2 SECTION 2. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
3 Chapter 82, Section 2, as amended) is amended to read:

4 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
5 CREATED.--

6 A. A fee is imposed on a person convicted of
7 driving under the influence of intoxicating liquor or drugs in
8 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
9 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
10 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
11 driver's license is revoked pursuant to the provisions of the
12 Implied Consent Act, in an amount determined by rule of the
13 traffic safety bureau of the department of transportation not
14 to exceed one hundred dollars (\$100) but not less than fifty
15 dollars (\$50.00) for each year the person is required to
16 operate only vehicles equipped with an ignition interlock
17 device or to use a home breathalyzer device in order to ensure
18 the solvency of the interlock device fund. The fee shall not
19 be imposed on an indigent person.

20 B. The "interlock device fund" is created in the
21 state treasury. The fee imposed pursuant to Subsection A of
22 this section shall be collected by the motor vehicle division
23 of the taxation and revenue department and deposited in the
24 interlock device fund.

25 C. All money in the interlock device fund is

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1 appropriated to the traffic safety bureau of the department of
2 transportation to cover part of the costs of installing,
3 removing and leasing ignition interlock devices or leasing home
4 breathalyzer devices for indigent people who are required,
5 pursuant to convictions under Section 66-8-102 NMSA 1978 or
6 adjudications on the basis of Subparagraph (a) of Paragraph (1)
7 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's
8 license revocations pursuant to the provisions of the Implied
9 Consent Act or as a condition of parole, to install [~~these~~]
10 ignition interlock devices in their vehicles or to use a home
11 breathalyzer device. Provided that money is available in the
12 interlock device fund, the traffic safety bureau shall pay:

13 (1) for one vehicle per offender, up to fifty
14 dollars (\$50.00) for the cost of installation, up to fifty
15 dollars (\$50.00) for the cost of removal and up to thirty
16 dollars (\$30.00) monthly for verified active usage of the
17 interlock device; or

18 (2) up to thirty dollars (\$30.00) monthly
19 toward the lease and use of a home breathalyzer device.

20 D. The traffic safety bureau shall not pay any
21 amount above what an offender would be required to pay for the
22 installation, removal or usage of an interlock device or for
23 the lease of a home breathalyzer device.

24 [~~D.~~] E. Indigency shall be determined by the
25 traffic safety bureau based on proof of enrollment in one or

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- 1 more of the following types of public assistance:
- 2 (1) temporary assistance for needy families;
 - 3 (2) general assistance;
 - 4 (3) the supplemental [~~nutritional~~] nutrition
 - 5 assistance program, also known as "food stamps";
 - 6 (4) supplemental security income;
 - 7 (5) the federal food distribution program on
 - 8 Indian reservations; or
 - 9 (6) other criteria approved by the traffic
 - 10 safety bureau.

11 [~~E-~~] F. Any balance remaining in the interlock
12 device fund shall not revert to the general fund at the end of
13 any fiscal year.

14 [~~F-~~] G. The interlock device fund shall be
15 administered by the traffic safety bureau of the department of
16 transportation. No more than ten percent of the money in the
17 interlock device fund in any fiscal year shall be expended by
18 the traffic safety bureau of the department of transportation
19 for the purpose of administering the fund."

20 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2011.