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SENATE BILL 387

**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; PROVIDING THAT A SEARCH WARRANT AUTHORIZING CHEMICAL TESTS MAY BE ISSUED BASED UPON A FINDING OF PROBABLE CAUSE THAT THE PERSON DROVE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

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

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in

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1 Section 66-8-107 NMSA 1978, none shall be administered except  
2 when a municipal judge, magistrate or district judge issues a  
3 search warrant authorizing chemical tests as provided in  
4 Section 66-8-107 NMSA 1978 upon finding in a law enforcement  
5 officer's written affidavit that there is probable cause to  
6 believe that the person has driven a motor vehicle while under  
7 the influence of alcohol or a controlled substance [~~thereby~~  
8 ~~causing the death or great bodily injury of another person, or~~  
9 ~~there is probable cause to believe that the person has~~  
10 ~~committed a felony while under the influence of alcohol or a~~  
11 ~~controlled substance and that chemical tests as provided in~~  
12 ~~Section 66-8-107 NMSA 1978 will produce material evidence in a~~  
13 ~~felony prosecution~~].

14 B. 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, upon request, the person refused to submit to a  
20 chemical test after being advised that failure to submit could  
21 result in revocation of the person's privilege to drive, shall  
22 revoke the person's New Mexico driver's license or any  
23 nonresident operating privilege for a period of one year or  
24 until all conditions for license reinstatement are met,  
25 whichever is later.

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1 C. The department, upon receipt of a statement  
2 signed under penalty of perjury from a law enforcement officer  
3 stating the officer's reasonable grounds to believe the  
4 arrested person had been driving a motor vehicle within this  
5 state while under the influence of intoxicating liquor and that  
6 the person submitted to chemical testing pursuant to Section  
7 66-8-107 NMSA 1978 and the test results indicated an alcohol  
8 concentration in the person's blood or breath of eight one  
9 hundredths or more if the person is twenty-one years of age or  
10 older, four one hundredths or more if the person is driving a  
11 commercial motor vehicle or two one hundredths or more if the  
12 person is less than twenty-one years of age, shall revoke the  
13 person's license or permit to drive or ~~[his]~~ the person's  
14 nonresident operating privilege for a period of:

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

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

23 (3) one year or until all conditions for  
24 license reinstatement are met, whichever is later, if the  
25 ~~[person has previously had his]~~ person's license has been

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1       revoked previously pursuant to the provisions of this section,  
2       notwithstanding the provisions of Paragraph (1) of this  
3       subsection.

4               D. The determination of alcohol concentration shall  
5       be based on the grams of alcohol in one hundred milliliters of  
6       blood or the grams of alcohol in two hundred ten liters of  
7       breath.

8               E. If the person subject to the revocation  
9       provisions of this section is a resident or will become a  
10      resident within one year and is without a license to operate a  
11      motor vehicle in this state, the department shall deny the  
12      issuance of a license to [~~him~~] the person for the appropriate  
13      period of time as provided in Subsections B and C of this  
14      section.

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

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SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.