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HOUSE BILL 397

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; ENACTING THE DRIVING UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS ACT; PRESCRIBING PENALTIES;
REPEALING SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER
139, SECTION 54, AS AMENDED).

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

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

"66-1-1. SHORT TITLE.--~~[Articles 1 through 8 of]~~ Chapter
~~[64 NMSA 1953]~~ 66, Articles 1 through 8A NMSA 1978 may be cited
as the "Motor Vehicle Code".

SECTION 2. A new section of the Motor Vehicle Code,
Section 66-8A-1 NMSA 1978, is enacted to read:

"66-8A-1. [NEW MATERIAL] SHORT TITLE.--Sections 66-8A-1
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1 through 66-8A-7 NMSA 1978 may be cited as the "Driving Under
2 the Influence of Intoxicating Liquor or Drugs Act".

3 SECTION 3. A new section of the Motor Vehicle Code,
4 Section 66-8A-2 NMSA 1978, is enacted to read:

5 "66-8A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
6 Driving Under the Influence of Intoxicating Liquor or Drugs
7 Act:

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

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

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

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

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

24 (4) 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 4. A new section of the Motor Vehicle Code,
3 Section 66-8A-3 NMSA 1978, is enacted to read:

4 "66-8A-3. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE OF
5 INTOXICATING LIQUOR OR DRUGS.--

6 A. It is unlawful for a person to drive a:

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

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

19 B. It is unlawful for a person who is under the
20 influence of any drug to a degree that renders the person
21 incapable of safely driving a motor vehicle to drive any motor
22 vehicle within this state."

23 SECTION 5. A new section of the Motor Vehicle Code,
24 Section 66-8A-4 NMSA 1978, is enacted to read:

25 "66-8A-4. [NEW MATERIAL] PENALTIES FOR ALL CONVICTIONS--

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1 SCREENING AND TREATMENT--IGNITION INTERLOCK--VIOLATIONS OF
2 PROBATION.--

3 A. Upon any conviction pursuant to the Driving
4 Under the Influence of Intoxicating Liquor or Drugs Act, an
5 offender shall be required to participate in and complete,
6 within a time specified by the court, an alcohol or drug abuse
7 screening program and, if necessary, a treatment program,
8 approved by the court.

9 B. Upon a second or third conviction pursuant to
10 the Driving Under the Influence of Intoxicating Liquor or Drugs
11 Act, an offender shall be required to participate in and
12 complete, within a time specified by the court, one of the
13 following treatment programs approved by the court:

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

17 (2) not less than a ninety-day outpatient
18 treatment program;

19 (3) a drug court program; or

20 (4) any other substance abuse treatment
21 program.

22 C. Upon a felony conviction pursuant to the Driving
23 Under the Influence of Intoxicating Liquor or Drugs Act, the
24 corrections department shall provide substance abuse counseling
25 and treatment to the offender in its custody. While the

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1 offender is on probation or parole under its supervision, the
2 corrections department shall also provide substance abuse
3 counseling and treatment to the offender or shall require the
4 offender to obtain substance abuse counseling and treatment.

5 D. The court may order the offender to pay the
6 costs of any court-ordered screening and treatment programs.

7 E. Upon any conviction pursuant to the Driving
8 Under the Influence of Intoxicating Liquor or Drugs Act, an
9 offender shall be required to obtain an ignition interlock
10 license and have an ignition interlock device installed and
11 operating on all motor vehicles driven by the offender,
12 pursuant to rules adopted by the bureau. Unless determined by
13 the bureau to be indigent, the offender shall pay all costs
14 associated with having an ignition interlock device installed
15 on the appropriate motor vehicles. The offender shall operate
16 only those motor vehicles equipped with ignition interlock
17 devices for:

- 18 (1) a period of one year for a first
19 conviction;
20 (2) a period of two years for a second
21 conviction;
22 (3) a period of three years for a third
23 conviction; or
24 (4) the remainder of the offender's life for a
25 fourth or subsequent conviction.

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1 F. Five years from the date of the last conviction
2 pursuant to the Driving Under the Influence of Intoxicating
3 Liquor or Drugs Act and every five years thereafter, a person
4 convicted of a fourth or subsequent offense who has not been
5 subsequently convicted of driving a motor vehicle under the
6 influence of intoxicating liquor or drugs and who provides
7 proof from the ignition interlock device vendor that the person
8 has not had violations of the ignition interlock device may
9 apply to a district court for removal of the ignition interlock
10 device.

11 G. An offender who obtains an ignition interlock
12 license and installs an ignition interlock device prior to
13 conviction pursuant to the Driving Under the Influence of
14 Intoxicating Liquor or Drugs Act shall be given credit at
15 sentencing for the time period the ignition interlock device
16 has been in use.

17 H. The requirements for alcohol or drug abuse
18 screening and treatment, if necessary, and installation of an
19 ignition interlock device imposed pursuant to this section
20 shall not be suspended, deferred or taken under advisement."

21 SECTION 6. A new section of the Motor Vehicle Code,
22 Section 66-8A-5 NMSA 1978, is enacted to read:

23 "66-8A-5. [NEW MATERIAL] ADDITIONAL PENALTIES FOR FIRST,
24 SECOND OR THIRD CONVICTIONS.--

25 A. In the case of a first, second or third offense

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1 pursuant to the Driving Under the Influence of Intoxicating
2 Liquor or Drugs Act, the magistrate court has concurrent
3 jurisdiction with district courts to try the offender.

4 B. In addition to the penalties imposed pursuant to
5 Section 66-8A-4 NMSA 1978, upon a first conviction pursuant to
6 the Driving Under the Influence of Intoxicating Liquor or Drugs
7 Act, an offender shall be subject to the imposition of any or
8 all of the following:

9 (1) imprisonment for not more than ninety
10 days; provided that, if the sentence is suspended in whole or
11 in part or deferred, the period of probation may extend beyond
12 ninety days, but shall not exceed one year, and any time spent
13 imprisoned for the offense prior to the conviction for that
14 offense shall be credited to any term of imprisonment fixed by
15 the court;

16 (2) a fine of not more than eight hundred
17 dollars (\$800);

18 (3) performance of not less than twenty-four
19 hours of community service; or

20 (4) attendance and completion of a driver
21 rehabilitation program for alcohol or drugs, also known as a
22 "DWI school", approved by the bureau.

23 C. A deferred sentence pursuant to Subsection B of
24 this section shall be considered a first conviction for the
25 purpose of determining subsequent convictions.

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1 D. If a first offender fails to complete, within a
2 time specified by the court, any community service, screening
3 program, treatment program or DWI school ordered by the court
4 or fails to comply with any other condition of probation, the
5 offender shall be sentenced to a term of imprisonment of not
6 less than an additional forty-eight consecutive hours, which
7 shall not be suspended, deferred or taken under advisement.

8 E. In addition to the penalties imposed pursuant to
9 Section 66-8A-4 NMSA 1978, upon a second conviction pursuant to
10 the Driving Under the Influence of Intoxicating Liquor or Drugs
11 Act, an offender shall be subject to the imposition of any or
12 all of the following:

13 (1) imprisonment for not less than ninety-six
14 consecutive hours or more than three hundred sixty-four days,
15 ninety-six consecutive hours of which may not be suspended or
16 deferred or taken under advisement;

17 (2) a fine of not less than five hundred
18 dollars (\$500) or more than one thousand dollars (\$1,000); or

19 (3) not less than forty-eight hours of
20 community service.

21 F. If a person convicted of a second offense under
22 the Driving Under the Influence of Intoxicating Liquor or Drugs
23 Act fails to complete, within a time specified by the court,
24 any community service, screening program or treatment program
25 ordered by the court, the offender shall be sentenced to an

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1 additional term of imprisonment of seven consecutive days,
2 which shall not be suspended, deferred or taken under
3 advisement.

4 G. In addition to the penalties imposed pursuant to
5 Section 66-8A-4 NMSA 1978, upon a third conviction pursuant to
6 the Driving Under the Influence of Intoxicating Liquor or Drugs
7 Act, an offender shall be subject to the imposition of all of
8 the following:

9 (1) imprisonment for not less than thirty
10 consecutive days or more than three hundred sixty-four days,
11 thirty consecutive days of which may not be suspended or
12 deferred or taken under advisement;

13 (2) a fine of not less than seven hundred
14 fifty dollars (\$750) or more than one thousand dollars
15 (\$1,000); and

16 (3) performance of not less than ninety-six
17 hours of community service.

18 H. If a person convicted of a third offense
19 pursuant to the Driving Under the Influence of Intoxicating
20 Liquor or Drugs Act fails to complete, within a time specified
21 by the court, any community service, screening program or
22 treatment program ordered by the court, the offender shall be
23 sentenced to an additional term of imprisonment of sixty
24 consecutive days, which shall not be suspended, deferred or
25 taken under advisement.

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1 I. If an offender's sentence pursuant to this
2 section was suspended or deferred in whole or in part and the
3 offender violates any condition of probation:

4 (1) the court may impose any sentence that the
5 court could have originally imposed and credit shall not be
6 given for time served by the offender on probation; and

7 (2) the period of probation may extend beyond
8 one year but shall not exceed five years.

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

19 SECTION 7. A new section of the Motor Vehicle Code,
20 Section 66-8A-6 NMSA 1978, is enacted to read:

21 "66-8A-6. [NEW MATERIAL] ADDITIONAL PENALTIES FOR FOURTH
22 AND SUBSEQUENT CONVICTIONS--FELONIES.--

23 A. In addition to the penalties imposed pursuant to
24 Section 66-8A-4 NMSA 1978, upon a fourth conviction pursuant to
25 the Driving Under the Influence of Intoxicating Liquor or Drugs

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1 Act, an offender is guilty of a fourth degree felony and shall
2 be sentenced to a term of imprisonment of eighteen months, six
3 months of which shall not be suspended, deferred or taken under
4 advisement.

5 B. In addition to the penalties imposed pursuant to
6 Section 66-8A-4 NMSA 1978, upon a fifth conviction pursuant to
7 the Driving Under the Influence of Intoxicating Liquor or Drugs
8 Act, an offender is guilty of a fourth degree felony and shall
9 be sentenced to a term of imprisonment of two years, one year
10 of which shall not be suspended, deferred or taken under
11 advisement.

12 C. In addition to the penalties imposed pursuant to
13 Section 66-8A-4 NMSA 1978, upon a sixth conviction pursuant to
14 the Driving Under the Influence of Intoxicating Liquor or Drugs
15 Act, an offender is guilty of a third degree felony and shall
16 be sentenced to a term of imprisonment of thirty months,
17 eighteen months of which shall not be suspended, deferred or
18 taken under advisement.

19 D. In addition to the penalties imposed pursuant to
20 Section 66-8A-4 NMSA 1978, upon a seventh conviction pursuant
21 to the Driving Under the Influence of Intoxicating Liquor or
22 Drugs Act, an offender is guilty of a third degree felony and
23 shall be sentenced to a term of imprisonment of three years,
24 two years of which shall not be suspended, deferred or taken
25 under advisement.

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1 E. In addition to the penalties imposed pursuant to
2 Section 66-8A-4 NMSA 1978, upon an eighth or subsequent
3 conviction pursuant to the Driving Under the Influence of
4 Intoxicating Liquor or Drugs Act, an offender is guilty of a
5 second degree felony and shall be sentenced to a term of
6 imprisonment of twelve years, ten years of which shall not be
7 suspended, deferred or taken under advisement.

8 F. If an offender's sentence was suspended or
9 deferred in whole or in part and the offender violates any
10 condition of probation, the court may impose any sentence that
11 the court could have originally imposed and credit shall not be
12 given for time served by the offender on probation."

13 **SECTION 8.** A new section of the Motor Vehicle Code,
14 Section 66-8A-7 NMSA 1978, is enacted to read:

15 "66-8A-7. [NEW MATERIAL] AGGRAVATED DRIVING UNDER THE
16 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTIES FOR FIRST,
17 SECOND OR THIRD CONVICTIONS.--

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

20 (1) driving any motor vehicle in this state
21 with an alcohol concentration of sixteen one hundredths or more
22 in the driver's blood or breath within three hours of driving
23 the motor vehicle and the alcohol concentration results from
24 alcohol consumed before or while driving the motor 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 B. In addition to the penalties for a first
9 conviction pursuant to the Driving Under the Influence of
10 Intoxicating Liquor or Drugs Act, when an offender commits a
11 first offense of aggravated driving under the influence of
12 intoxicating liquor or drugs, the offender shall be sentenced
13 to a term of imprisonment of not less than forty-eight
14 consecutive hours, which shall not be suspended, deferred or
15 taken under advisement.

16 C. In addition to the penalties for a second
17 conviction pursuant to the Driving Under the Influence of
18 Intoxicating Liquor or Drugs Act, when an offender commits a
19 second offense of aggravated driving under the influence of
20 intoxicating liquor or drugs, the offender shall be sentenced
21 to a term of imprisonment of not less than ninety-six
22 consecutive hours, which shall not be suspended or deferred or
23 taken under advisement.

24 D. In addition to the penalties for a third
25 conviction pursuant to the Driving Under the Influence of

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1 Intoxicating Liquor or Drugs Act, when an offender commits a
2 third offense of aggravated driving under the influence of
3 intoxicating liquor or drugs, the offender shall be sentenced
4 to a term of imprisonment of not less than sixty consecutive
5 days, which shall not be suspended or deferred or taken under
6 advisement.

7 E. If an offender's sentence was suspended or
8 deferred in whole or in part and the offender violates any
9 condition of probation, the court may impose any sentence that
10 the court could have originally imposed and credit shall not be
11 given for time served by the offender on probation."

12 SECTION 9. TEMPORARY PROVISION.--All references in law to
13 Section 66-8-102 NMSA 1978 shall be deemed to be references to
14 the Driving Under the Influence of Intoxicating Liquor or Drugs
15 Act.

16 SECTION 10. REPEAL.--Section 66-8-102 NMSA 1978 (being
17 Laws 1953, Chapter 139, Section 54, as amended) is repealed.