

1 SENATE BILL 26

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; AMENDING THE REQUIREMENTS FOR TESTING THE BLOOD OF A
13 PERSON SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE
14 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; CHANGING PROCEDURES
15 FOR THE ISSUANCE OF TEMPORARY LICENSES.
16

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

18 SECTION 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
19 Chapter 139, Section 54, as amended) is amended to read:
20 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
21 OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
22 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

25 B. It is unlawful for a person who is under the influence of

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1 any drug to a degree that renders the person incapable of
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for:

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

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

15 D. Aggravated driving under the influence of intoxicating
16 liquor or drugs consists of:

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

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

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

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

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

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

25 Notwithstanding any provision of law to the contrary for

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1 suspension or deferment of execution of a sentence:
2 (1) upon a second conviction, an offender shall be sentenced
3 to a jail term of not less than ninety-six consecutive hours,
4 not less than forty-eight hours of community service and a fine
5 of five hundred dollars (\$500). In addition to those
6 penalties, when an offender commits aggravated driving under
7 the influence of intoxicating liquor or drugs, the offender
8 shall be sentenced to a jail term of not less than ninety-six
9 consecutive hours. If an offender fails to complete, within a
10 time specified by the court, any community service, screening
11 program or treatment program ordered by the court, the offender
12 shall be sentenced to not less than an additional seven
13 consecutive days in jail. A penalty imposed pursuant to this
14 paragraph shall not be suspended or deferred or taken under
15 advisement; and
16 (2) upon a third conviction, an offender shall be sentenced to
17 a jail term of not less than thirty consecutive days, not less
18 than ninety-six hours of community service and a fine of seven
19 hundred fifty dollars (\$750). In addition to those penalties,
20 when an offender commits aggravated driving under the influence
21 of intoxicating liquor or drugs, the offender shall be
22 sentenced to a jail term of not less than sixty consecutive
23 days. If an offender fails to complete, within a time
24 specified by the court, any community service, screening
25 program or treatment program ordered by the court, the offender

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

4 K. Upon an eighth or subsequent conviction pursuant to this
5 section, an offender is guilty of a second degree felony and,
6 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
7 shall be sentenced to a term of imprisonment of twelve years,
8 ten years of which shall not be suspended, deferred or taken
9 under advisement.

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

18 M. Upon a second or third conviction pursuant to this section,
19 an offender shall be required to participate in and complete,
20 within a time specified by the court:

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

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

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to this section; or

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

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

Q. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use.

R. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

S. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that

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1 ordinance or law is equivalent to New Mexico law for driving
2 under the influence of intoxicating liquor or drugs, and
3 prescribes penalties for driving under the influence of
4 intoxicating liquor or drugs, shall be deemed to be a
5 conviction pursuant to this section for purposes of determining
6 whether a conviction is a second or subsequent conviction.

7 T. In addition to any other fine or fee that may be imposed
8 pursuant to the conviction or other disposition of the offense
9 under this section, the court may order the offender to pay the
10 costs of any court-ordered screening and treatment programs.

11 U. With respect to this section and notwithstanding any
12 provision of law to the contrary, if an offender's sentence was
13 suspended or deferred in whole or in part and the offender
14 violates any condition of probation, the court may impose any
15 sentence that the court could have originally imposed and
16 credit shall not be given for time served by the offender on
17 probation.

18 V. As used in this section:

19 (1) "bodily injury" means an injury to a person that is not
20 likely to cause death or great bodily harm to the person, but
21 does cause painful temporary disfigurement or temporary loss or
22 impairment of the functions of any member or organ of the
23 person's body; and

24 (2) "commercial motor vehicle" means a motor vehicle or
25 combination of motor vehicles used in commerce to transport

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- 1 passengers or property if the motor vehicle:
- 2 (a) has a gross combination weight rating of more than twenty-
- 3 six thousand pounds inclusive of a towed unit with a gross
- 4 vehicle weight rating of more than ten thousand pounds;
- 5 (b) has a gross vehicle weight rating of more than twenty-six
- 6 thousand pounds;
- 7 (c) is designed to transport sixteen or more passengers,
- 8 including the driver; or
- 9 (d) is of any size and is used in the transportation of
- 10 hazardous materials, which requires the motor vehicle to be
- 11 placarded under applicable law."

12 **SECTION 2.** Section 66-8-111 NMSA 1978 (being Laws 1978,

13 Chapter 35, Section 519, as amended) is amended to read:

14 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--

15 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

16 A. If a person under arrest for violation of an offense

17 enumerated in the Motor Vehicle Code refuses upon request of a

18 law enforcement officer to submit to chemical tests designated

19 by the law enforcement agency as provided in Section 66-8-107

20 NMSA 1978, none shall be administered except when a municipal

21 judge, magistrate or district judge issues a search warrant

22 authorizing chemical tests as provided in Section 66-8-107 NMSA

23 1978 upon finding in a law enforcement officer's written

24 affidavit that there is probable cause to believe that the

25 person has driven a motor vehicle while under the influence of

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1 alcohol or a controlled substance [~~thereby causing the death or~~
2 ~~great bodily injury of another person, or there is probable~~
3 ~~cause to believe that the person has committed a felony while~~
4 ~~under the influence of alcohol or a controlled substance and~~
5 ~~that chemical tests as provided in Section 66-8-107 NMSA 1978~~
6 ~~will produce material evidence in a felony prosecution].~~

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

18 C. The department, upon receipt of a statement signed under
19 penalty of perjury from a law enforcement officer stating the
20 officer's reasonable grounds to believe the arrested person had
21 been driving a motor vehicle within this state while under the
22 influence of intoxicating liquor and that the person submitted
23 to chemical testing pursuant to Section 66-8-107 NMSA 1978 and
24 the test results indicated an alcohol concentration in the
25 person's blood or breath of eight one hundredths or more if the

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

6 for a period of:

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

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

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

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

22 E. If the person subject to the revocation provisions of this
23 section is a resident or will become a resident within one year
24 and is without a license to operate a motor vehicle in this
25 state, the department shall deny the issuance of a license to

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1 [him] the person for the appropriate period of time as provided
2 in Subsections B and C of this section.

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

14 SECTION 3. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
15 Chapter 72, Section 7, as amended) is amended to read:

16 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
17 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND OF RIGHT TO A
18 HEARING.--

19 A. On behalf of the department, a law enforcement officer
20 requesting a chemical test or directing the administration of a
21 chemical test pursuant to [~~Section~~] Sections 66-8-107 and
22 66-8-111 NMSA 1978 shall serve immediate written notice of
23 revocation and of right to a hearing before the administrative
24 hearings office pursuant to the Implied Consent Act on a person
25 who:

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