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HOUSE BILL 4

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR,  
DRUGS OR ADULT-USE RECREATIONAL CANNABIS; ADDRESSING ROAD  
SAFETY ISSUES RELATED TO LEGALIZATION OF ADULT-USE RECREATIONAL  
CANNABIS; PROVIDING FOR TESTIMONY BY INTERACTIVE VIDEO;  
PROHIBITING DRIVING WITH CERTAIN AMOUNTS OF CONTROLLED  
SUBSTANCES OR METABOLITES IN THE BLOOD; AMENDING THE  
REQUIREMENTS FOR TESTING THE BLOOD OF A PERSON SUSPECTED OF  
OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT CERTAIN MEDICAL  
PROFESSIONALS ARE AUTHORIZED TO WITHDRAW BLOOD IN THE  
PERFORMANCE OF A CHEMICAL BLOOD TEST FOR DRIVING A MOTOR  
VEHICLE OR OPERATING A MOTORBOAT UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS; CLARIFYING THAT THE CHEMICAL  
BLOOD TEST MAY BE FOR DRUGS OR ALCOHOL; PROVIDING FOR IMPLIED  
CONSENT TO A LABORATORY ANALYST'S APPEARANCE BY VIDEO;

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1 PROVIDING THAT THE IGNITION INTERLOCK REQUIREMENT ONLY APPLIES  
2 TO OFFENDERS WITH ALCOHOL CONCENTRATION IN THEIR BLOOD OR  
3 BREATH.

4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. A new section of the Implied Consent Act is  
7 enacted to read:

8 "[NEW MATERIAL] PROCEDURE--VIDEO APPEARANCE.--If a party  
9 subpoenas an analyst to testify at a court proceeding for any  
10 purpose, the analyst may appear by interactive video. An  
11 interactive video appearance shall provide a full and  
12 meaningful opportunity to question and cross-examine the  
13 witness in plain sight and clear hearing of the judge, jury,  
14 all parties and counsel, with the witness able to clearly see  
15 and hear the proceeding."

16 SECTION 2. Section 66-8-102 NMSA 1978 (being Laws 1953,  
17 Chapter 139, Section 54, as amended) is amended to read:

18 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
19 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
20 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

24 B. It is unlawful for a person who is under the  
25 influence of any drug [~~to a degree that renders the person~~

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1 ~~incapable of safely driving a vehicle]~~ to drive a vehicle  
2 within this state.

3 C. It is unlawful for:

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

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

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

22 (1) for amphetamine, one hundred nanograms per  
23 milliliter of blood;

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

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- 1                   (3) for cocaine metabolite, cocaethylene,  
2 fifty nanograms per milliliter of blood;  
3                   (4) for heroin, fifty nanograms per milliliter  
4 of blood;  
5                   (5) for heroin metabolite, morphine, fifty  
6 nanograms per milliliter of blood;  
7                   (6) for heroin metabolite,  
8 6-monoacetylmorphine, ten nanograms per milliliter of blood;  
9                   (7) for the active compound in marijuana,  
10 delta-9-tetrahydrocannabinol, five nanograms per milliliter of  
11 blood;  
12                   (8) for methamphetamine, one hundred nanograms  
13 per milliliter of blood; or  
14                   (9) for 3,4-methylenedioxymethamphetamine, one  
15 hundred nanograms per milliliter of blood.

16                   E. The provisions of Subsections A and B of this  
17 section shall not be construed to make it unlawful to drive a  
18 vehicle if the prohibited concentrations of alcohol, controlled  
19 substances or metabolites are not exceeded as provided in  
20 Subsections C and D of this section. A person who is under the  
21 influence of any drug not named in Subsection D of this section  
22 is subject to the provisions of Subsection B of this section.

23                   ~~[D-]~~ F. Aggravated driving under the influence of  
24 intoxicating liquor or drugs consists of:

- 25                   (1) driving a vehicle in this state with an

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1 alcohol concentration of sixteen one hundredths or more in the  
2 driver's blood or breath within three hours of driving the  
3 vehicle and the alcohol concentration results from alcohol  
4 consumed before or while driving the vehicle;

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

8 (3) refusing to submit to chemical breath  
9 testing, as provided for in the Implied Consent Act, and in the  
10 judgment of the court, based upon evidence of intoxication  
11 presented to the court, the driver was under the influence of  
12 intoxicating liquor or drugs.

13 ~~[E-]~~ G. A first conviction pursuant to this section  
14 shall be punished, notwithstanding the provisions of Section  
15 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
16 days or by a fine of not more than five hundred dollars (\$500),  
17 or both; provided that if the sentence is suspended in whole or  
18 in part or deferred, the period of probation may extend beyond  
19 ninety days but shall not exceed one year. Upon a first  
20 conviction pursuant to this section, an offender shall be  
21 sentenced to not less than twenty-four hours of community  
22 service. In addition, the offender may be required to pay a  
23 fine of three hundred dollars (\$300). The offender shall be  
24 ordered by the court to participate in and complete a screening  
25 program described in Subsection ~~[E]~~ N of this section and to

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1 attend a driver rehabilitation program for alcohol or drugs,  
2 also known as a "DWI school", approved by the bureau and also  
3 may be required to participate in other rehabilitative services  
4 as the court shall determine to be necessary. In addition to  
5 those penalties, when an offender commits aggravated driving  
6 under the influence of intoxicating liquor or drugs, the  
7 offender shall be sentenced to not less than forty-eight  
8 consecutive hours in jail. If an offender fails to complete,  
9 within a time specified by the court, any community service,  
10 screening program, treatment program or DWI school ordered by  
11 the court or fails to comply with any other condition of  
12 probation, the offender shall be sentenced to not less than an  
13 additional forty-eight consecutive hours in jail. Any jail  
14 sentence imposed pursuant to this subsection for failure to  
15 complete, within a time specified by the court, any community  
16 service, screening program, treatment program or DWI school  
17 ordered by the court or for aggravated driving under the  
18 influence of intoxicating liquor or drugs shall not be  
19 suspended, deferred or taken under advisement. On a first  
20 conviction pursuant to this section, any time spent in jail for  
21 the offense prior to the conviction for that offense shall be  
22 credited to any term of imprisonment fixed by the court. A  
23 deferred sentence pursuant to this subsection shall be  
24 considered a first conviction for the purpose of determining  
25 subsequent convictions.

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1           [F-] H. A second or third conviction pursuant to  
2 this section shall be punished, notwithstanding the provisions  
3 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
4 than three hundred sixty-four days or by a fine of not more  
5 than one thousand dollars (\$1,000), or both; provided that if  
6 the sentence is suspended in whole or in part, the period of  
7 probation may extend beyond one year but shall not exceed five  
8 years. Notwithstanding any provision of law to the contrary  
9 for suspension or deferment of execution of a sentence:

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

24                   (2) upon a third conviction, an offender shall  
25 be sentenced to a jail term of not less than thirty consecutive

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1 days, not less than ninety-six hours of community service and a  
2 fine of seven hundred fifty dollars (\$750). In addition to  
3 those penalties, when an offender commits aggravated driving  
4 under the influence of intoxicating liquor or drugs, the  
5 offender shall be sentenced to a jail term of not less than  
6 sixty consecutive days. If an offender fails to complete,  
7 within a time specified by the court, any community service,  
8 screening program or treatment program ordered by the court,  
9 the offender shall be sentenced to not less than an additional  
10 sixty consecutive days in jail. A penalty imposed pursuant to  
11 this paragraph shall not be suspended or deferred or taken  
12 under advisement.

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

19 ~~[H.]~~ J. Upon a fifth conviction pursuant to this  
20 section, an offender is guilty of a fourth degree felony and,  
21 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
22 shall be sentenced to a term of imprisonment of two years, one  
23 year of which shall not be suspended, deferred or taken under  
24 advisement.

25 ~~[I.]~~ K. Upon a sixth conviction pursuant to this

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1 section, an offender is guilty of a third degree felony and,  
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
3 shall be sentenced to a term of imprisonment of thirty months,  
4 eighteen months of which shall not be suspended, deferred or  
5 taken under advisement.

6 ~~[J-]~~ L. Upon a seventh conviction pursuant to this  
7 section, an offender is guilty of a third degree felony and,  
8 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
9 shall be sentenced to a term of imprisonment of three years,  
10 two years of which shall not be suspended, deferred or taken  
11 under advisement.

12 ~~[K-]~~ M. Upon an eighth or subsequent conviction  
13 pursuant to this section, an offender is guilty of a second  
14 degree felony and, notwithstanding the provisions of Section  
15 31-18-15 NMSA 1978, shall be sentenced to a term of  
16 imprisonment of twelve years, ten years of which shall not be  
17 suspended, deferred or taken under advisement.

18 ~~[L-]~~ N. Upon any conviction pursuant to this  
19 section, an offender shall be required to participate in and  
20 complete, within a time specified by the court, an alcohol or  
21 drug abuse screening program approved by the department of  
22 finance and administration and, if necessary, a treatment  
23 program approved by the court. The requirement imposed  
24 pursuant to this subsection shall not be suspended, deferred or  
25 taken under advisement.

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1           ~~[M-]~~ O. Upon a second or third conviction pursuant  
2 to this section, an offender shall be required to participate  
3 in and complete, within a time specified by the court:

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

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

9                   (3) a drug court program approved by the  
10 court; or

11                   (4) any other substance abuse treatment  
12 program approved by the court.

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

15           ~~[N-]~~ P. Upon a felony conviction pursuant to this  
16 section, the corrections department shall provide substance  
17 abuse counseling and treatment to the offender in its custody.  
18 While the offender is on probation or parole under its  
19 supervision, the corrections department shall also provide  
20 substance abuse counseling and treatment to the offender or  
21 shall require the offender to obtain substance abuse counseling  
22 and treatment.

23           ~~[O-]~~ Q. Upon a conviction pursuant to this section,  
24 an offender who had an alcohol concentration as set out in  
25 Subsection C of this section shall be required to obtain an

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1 ignition interlock license and have an ignition interlock  
2 device installed and operating on all motor vehicles driven by  
3 the offender, pursuant to rules adopted by the bureau. Unless  
4 determined by the bureau to be indigent, the offender shall pay  
5 all costs associated with having an ignition interlock device  
6 installed on the appropriate motor vehicles. The offender  
7 shall operate only those vehicles equipped with ignition  
8 interlock devices for:

9 (1) a period of one year, for a first  
10 ~~[offender]~~ conviction;

11 (2) a period of two years, for a second  
12 conviction ~~[pursuant to this section]~~;

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

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

17 ~~[P.]~~ R. Five years from the date of a fourth or  
18 subsequent conviction pursuant to this section and every five  
19 years thereafter, ~~[a fourth or subsequent]~~ an offender may  
20 apply to a district court for restoration of a driver's license  
21 and for removal of the ignition interlock device requirement  
22 ~~[provided in this section and for restoration of a driver's~~  
23 ~~license], if applicable. A district court may, for good cause~~  
24 shown, remove the ignition interlock device requirement and  
25 order restoration of the license; provided that the offender

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1 has not been subsequently convicted of driving a motor vehicle  
2 under the influence of intoxicating liquor or drugs. Good  
3 cause may include an alcohol screening and proof from the  
4 interlock vendor that the person has not had violations of the  
5 interlock device.

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

10 [R-] T. In the case of a first, second or third  
11 offense under this section, the magistrate court has concurrent  
12 jurisdiction with district courts to try the offender.

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

23 [T-] V. In addition to any other fine or fee that  
24 may be imposed pursuant to the conviction or other disposition  
25 of the offense under this section, the court may order the

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1 offender to pay the costs of any court-ordered screening and  
2 treatment programs.

3 [U-] W. With respect to this section and  
4 notwithstanding any provision of law to the contrary, if an  
5 offender's sentence was suspended or deferred in whole or in  
6 part and the offender violates any condition of probation, the  
7 court may impose any sentence that the court could have  
8 originally imposed and credit shall not be given for time  
9 served by the offender on probation.

10 [V-] X. As used in this section:

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

16 (2) "commercial motor vehicle" means a motor  
17 vehicle or combination of motor vehicles used in commerce to  
18 transport passengers or property if the motor vehicle:

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

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

25 (c) is designed to transport sixteen or

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1 more passengers, including the driver; or

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

5 SECTION 3. Section 66-8-103 NMSA 1978 (being Laws 1967,  
6 Chapter 160, Section 1) is amended to read:

7 "66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO  
8 TEST--RELIEF FROM LIABILITY.--Only a physician, licensed  
9 professional or practical nurse, [~~or laboratory technician~~]  
10 emergency medical technician or certified phlebotomist or a  
11 technologist employed by a hospital or physician shall withdraw  
12 blood from [~~any~~] a person in the performance of a [~~blood-~~  
13 ~~alcohol~~] chemical blood test. No such physician, nurse,  
14 technician, phlebotomist or technologist who withdraws blood  
15 from any person in the performance of a [~~blood-alcohol~~]  
16 chemical blood test that has been directed by [~~any~~] a police  
17 officer or by [~~any~~] a judicial or probation officer shall be  
18 held liable in any civil or criminal action for assault,  
19 battery, false imprisonment or any conduct of [~~any~~] a police  
20 officer except for negligence, nor shall [~~any~~] a person  
21 assisting in the performance of [~~such a~~] the test or [~~any~~] a  
22 hospital wherein blood is withdrawn in the performance of [~~such~~  
23 ~~a~~] the test be subject to civil or criminal liability for  
24 assault, battery, false imprisonment or any conduct of [~~any~~] a  
25 police officer except for negligence."

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1           SECTION 4. Section 66-8-104 NMSA 1978 (being Laws 1978,  
2 Chapter 35, Section 512) is amended to read:

3           "66-8-104. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--[~~POLICE,~~  
4 ~~JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO MAKE ARREST OR  
5 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES  
6 [~~AUTHORIZED BY LAW~~].--Nothing in [~~Sections 64-8-103 or 64-8-104~~  
7 ~~NMSA 1953~~] Section 66-8-103 or 66-8-104 NMSA 1978 is intended  
8 to authorize [~~any~~] a police officer or [~~any~~] a judicial or  
9 probation officer to make [~~any~~] an arrest or to direct the  
10 performance of a [~~blood-alcohol~~] chemical blood test except in  
11 the performance of [~~his~~] that person's official duties and as  
12 otherwise authorized by law."

13           SECTION 5. Section 66-8-107 NMSA 1978 (being Laws 1978,  
14 Chapter 35, Section 515, as amended) is amended to read:

15           "66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST--  
16 COURT APPEARANCE BY VIDEO.--

17           A. Any person who operates a motor vehicle within  
18 this state shall be deemed to have given consent, subject to  
19 the provisions of the Implied Consent Act, to chemical tests of  
20 [~~his~~] that person's breath or blood or both, approved by the  
21 scientific laboratory division of the department of health  
22 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
23 determined by a law enforcement officer, or for the purpose of  
24 determining the drug or alcohol content of [~~his~~] the person's  
25 blood if the person is arrested for any offense arising out of

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1 the acts alleged to have been committed while the person was  
2 driving a motor vehicle while under the influence of an  
3 intoxicating liquor or drug.

4 B. A test of blood or breath or both, approved by  
5 the scientific laboratory division of the department of health  
6 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
7 be administered at the direction of a law enforcement officer  
8 having reasonable grounds to believe the person to have been  
9 driving a motor vehicle within this state while under the  
10 influence of intoxicating liquor or drug.

11 C. If a laboratory analyst is subpoenaed to testify  
12 at a court proceeding about chemical testing that the analyst  
13 performed pursuant to this section, the defendant shall be  
14 deemed to have given consent to the analyst's appearance by  
15 means of interactive video."

16 SECTION 6. Section 66-8-110 NMSA 1978 (being Laws 1978,  
17 Chapter 35, Section 518, as amended) is amended to read:

18 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL  
19 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

20 A. The results of a test performed pursuant to the  
21 Implied Consent Act may be introduced into evidence in any  
22 civil action or criminal action arising out of the acts alleged  
23 to have been committed by the person tested for driving a motor  
24 vehicle while under the influence of intoxicating liquor or  
25 drugs.

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1           B. When the blood or breath of the person tested  
2 contains:

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

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

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

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

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

20           C. The arresting officer shall charge the person  
21 tested with a violation of Section 66-8-102 NMSA 1978 when the  
22 blood or breath of the person contains an alcohol concentration  
23 [~~of:~~

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

25                           ~~(2) four one hundredths or more if the person~~

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1 ~~is driving a commercial motor vehicle]~~ or a controlled  
2 substance or metabolite concentration that is unlawful pursuant  
3 to the provisions of Section 66-8-102 NMSA 1978.

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

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

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

21 G. The presumptions in Subsection B of this section  
22 do not limit the introduction of other competent evidence  
23 concerning whether the person was under the influence of  
24 intoxicating liquor.

25 H. If a person is convicted of driving a motor

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1 vehicle while under the influence of intoxicating liquor or  
2 drugs, the trial judge shall inquire into the past driving  
3 record of the person before sentence is entered in the matter."

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

6 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
7 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

25 B. The department, upon receipt of a statement

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

12 C. The department, upon receipt of a statement  
13 signed under penalty of perjury from a law enforcement officer  
14 stating the officer's reasonable grounds to believe the  
15 arrested person had been driving a motor vehicle within this  
16 state while under the influence of intoxicating liquor or drugs  
17 and that the person submitted to chemical testing pursuant to  
18 Section 66-8-107 NMSA 1978 and 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, shall revoke

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1 the person's license or permit to drive or [~~his~~] nonresident  
2 operating privilege for a period of:

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

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

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

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

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

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1 period of time as provided in Subsections B and C of this  
2 section.

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

14 SECTION 8. 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 RIGHT TO  
18 HEARING.--

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

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1 (1) refuses to permit chemical testing; or  
2 (2) submits to a chemical test the results of  
3 which indicate an alcohol, a controlled substance or a  
4 metabolite concentration that is unlawful pursuant to Section  
5 66-8-102 NMSA 1978 or an alcohol concentration in the person's  
6 blood or breath of

7 [~~(a) eight one hundredths or more if the~~  
8 ~~person is twenty-one years of age or older;~~

9 ~~(b) four one hundredths or more if the~~  
10 ~~person is driving a commercial motor vehicle; or~~

11 ~~(c)]~~ two one hundredths or more if the  
12 person is less than twenty-one years of age.

13 B. The written notice of revocation and of a right  
14 to a hearing served on the driver shall be a temporary license  
15 valid for twenty days or, if the driver requests a hearing  
16 pursuant to Section 66-8-112 NMSA 1978, valid until the date  
17 the administrative hearings office issues the order following  
18 that hearing; provided that a written notice of revocation and  
19 right to a hearing shall not be a temporary license for a  
20 driver without any otherwise valid driving privileges in this  
21 state.

22 C. The law enforcement officer shall send to the  
23 department the signed statement required pursuant to Section  
24 66-8-111 NMSA 1978."

25 SECTION 9. Section 66-8-112 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 520, as amended) is amended to read:

2 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--  
3 NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--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 the Administrative Hearings Office Act, the  
9 date that the administrative hearings office issues the order  
10 following that hearing. The date of notice of 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 rules adopted by the  
6 department. Failure to request a hearing within ten days shall  
7 result in forfeiture of the person's right to a hearing. Any  
8 person less than eighteen years of age who fails to request a  
9 hearing within ten days shall have notice of revocation sent to  
10 the person's parent, guardian or custodian by the department.  
11 A date for the hearing shall be set by the administrative  
12 hearings office, if practical, within thirty days after receipt  
13 of notice of revocation. The hearing shall be held in the  
14 county in which the offense for which the person was arrested  
15 took place.

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

23 D. At the hearing, the administrative hearings  
24 office may administer oaths and may issue subpoenas for the  
25 attendance of witnesses and the production of relevant books

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1 and papers.

2 E. The hearing shall be limited to the following  
3 issues:

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

8 (2) whether the person was arrested;

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

11 (4) whether:

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

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

17 (5) whether:

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

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

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1 ~~a commercial motor vehicle or~~] two one hundredths or more if  
2 the person is less than twenty-one years of age.

3 F. The administrative hearings office shall enter  
4 an order sustaining the revocation or denial of the person's  
5 license or privilege to drive if the hearing officer from the  
6 administrative hearings office finds that:

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

10 (2) the person was arrested;

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

13 (4) either:

14 (a) the person refused to submit to the  
15 test upon request of the law enforcement officer after the law  
16 enforcement officer advised the person that the person's  
17 failure to submit to the test could result in the revocation of  
18 the person's privilege to drive; or

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

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1 ~~older, four one hundredths or more if the person is driving a~~  
2 ~~commercial motor vehicle or~~] two one hundredths or more if the  
3 person is less than twenty-one years of age.

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

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

17 I. Any person less than eighteen years of age shall  
18 have results of the person's hearing forwarded by the  
19 administrative hearings office to the person's parent, guardian  
20 or custodian."

21 SECTION 10. Section 66-13-1 NMSA 1978 (being Laws 2003,  
22 Chapter 241, Section 1) is amended to read:

23 "66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~  
24 ~~act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the  
25 "Boating While Intoxicated Act"."

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1           SECTION 11. Section 66-13-6 NMSA 1978 (being Laws 2003,  
2 Chapter 241, Section 6) is amended to read:

3           "66-13-6. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--PERSONS  
4 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL  
5 LIABILITY.--Only a physician, licensed professional or  
6 practical nurse, [~~or laboratory technician~~] emergency medical  
7 technician or certified phlebotomist or a technologist employed  
8 by a hospital or physician shall withdraw blood from a person  
9 in the performance of a [~~blood-alcohol or drug~~] chemical blood  
10 test. A physician, nurse, technician, phlebotomist or  
11 technologist who withdraws blood from a person in the  
12 performance of a [~~blood-alcohol or drug~~] chemical blood test  
13 that has been directed by a law enforcement officer, or by a  
14 judicial or probation officer, shall not be held liable in a  
15 civil or criminal action for assault, battery, false  
16 imprisonment or any conduct of a law enforcement officer,  
17 except for negligence, nor shall a person assisting in the  
18 performance of the test, or a hospital wherein blood is  
19 withdrawn in the performance of the test, be subject to civil  
20 or criminal liability for assault, battery, false imprisonment  
21 or any conduct of a law enforcement officer, except for  
22 negligence."

23           SECTION 12. Section 66-13-7 NMSA 1978 (being Laws 2003,  
24 Chapter 241, Section 7) is amended to read:

25           "66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--[LAW

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1 ~~ENFORCEMENT, JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO  
2 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL  
3 DUTIES ~~[AUTHORIZED BY LAW]~~.--Nothing in the Boating While  
4 Intoxicated Act is intended to authorize a law enforcement  
5 officer, or a judicial or probation officer, to make an arrest  
6 or direct the performance of a ~~[blood-alcohol or drug]~~ chemical  
7 blood test, except in the performance of ~~[his]~~ that officer's  
8 official duties or as otherwise authorized by law."

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