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SENATE BILL 1181

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

ROD ADAIR

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL; REVOKING
LICENSES OF CONVICTED PERSONS LESS THAN TWENTY-ONE YEARS OF AGE;
AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978,
Chapter 35, Section 257, as amended) is amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR
REVOCATION-- HEARING-- REVIEW. --

A. Upon suspension or revocation of license
following conviction or adjudication as a delinquent under any
law, ordinance or regulation relating to motor vehicles, a
person may apply to the director for a license or permit to
drive, limited to use allowing him to engage in gainful
employment, except that no person shall be eligible to apply for

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1 a limited license when the person's license was revoked or
2 suspended pursuant to:

3 (1) the provisions of the Implied Consent Act,
4 except as provided in Subsection B of this section; or

5 (2) an offense for which the person is a
6 subsequent offender as defined in the Motor Vehicle Code.

7 B. A person, except for a person who is less than
8 twenty-one years of age who has had his license revoked for the
9 first time pursuant to the provisions of Paragraph (1) or (2) of
10 Subsection C of Section 66-8-111 NMSA 1978 may apply for and
11 shall receive a limited license or permit thirty days after
12 suspension or revocation of his license if the person provides
13 the director with documentation of the following:

14 (1) that the person is enrolled in an approved
15 DWI school and an approved alcohol screening program;

16 (2) proof of financial responsibility pursuant
17 to the provisions of the Mandatory Financial Responsibility Act;
18 and either

19 (3) proof of gainful employment or gainful
20 self-employment and that the person needs a limited license to
21 travel to and from his place of employment; or

22 (4) that the person is enrolled in school and
23 needs a limited license to travel to and from school.

24 C. Upon receipt of the application, proof of
25 financial responsibility for the future and a hearing as

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1 provided in Subsection D of this section, the director shall
2 issue a limited license or permit to the applicant showing the
3 limitations specified in the approved application, provided that
4 the applicant meets established uniform criteria for limited
5 driving privileges adopted by regulation of the department. For
6 each limited license or permit to drive, the applicant shall pay
7 to the division a fee of forty-five dollars (\$45.00), which
8 shall be transferred to the state highway and transportation
9 department. All money collected under this subsection shall be
10 used for DWI prevention and education programs for elementary
11 and secondary school students. The state highway and
12 transportation department shall coordinate with the department
13 of health to ensure that there is no program duplication. The
14 limited license or permit to drive may be suspended as provided
15 in Section 66-5-30 NMSA 1978.

16 D. The director, within twenty days of receipt of an
17 application for a limited driver's license or permit pursuant to
18 this section, shall afford the applicant a hearing in the county
19 in which the applicant resides, unless the division and the
20 licensee agree that the hearing may be held in some other
21 county. The director may, in his discretion, extend the twenty-
22 day period, provided that the extension is in writing and made
23 no later than fifteen days after receipt of an application.
24 Upon hearing, the director or his duly authorized hearing
25 officer may administer oaths and may issue subpoenas for the

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1 attendance of witnesses and the production of relevant books and
2 papers. The director shall make specific findings as to whether
3 the applicant has shown proof of financial responsibility for
4 the future and meets established uniform criteria for limited
5 driving privileges adopted by regulation of the department. The
6 director shall enter an order either approving or denying the
7 applicant's request for a limited license or permit to drive.
8 If any of the specific findings set forth in this subsection are
9 not found by the director, the applicant's request for a limited
10 license or permit shall not be approved.

11 E. A person adversely affected by an order of the
12 director may seek review within thirty days in the district
13 court in the county in which he resides. The district court,
14 upon thirty days' written notice to the director, shall hear the
15 case. On review, it is for the court to determine only whether
16 the applicant met the requirements in this section for issuance
17 of a limited license or permit to drive.

18 F. A person who is less than twenty-one years of age
19 shall not be issued a limited license if his license has been
20 taken by a law enforcement officer pursuant to the provisions of
21 Section 66-1-111.1 NMSA 1978. "

22 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 518, as amended) is amended to read:

24 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
25 ACTIONS-- LEVELS OF INTOXICATION-- MANDATORY CHARGING. --

. 117350. 1

1 A. The results of a test performed pursuant to the
2 Implied Consent Act may be introduced into evidence in any civil
3 action or criminal action arising out of the acts alleged to
4 have been committed by the person tested for driving a motor
5 vehicle while under the influence of intoxicating liquor or
6 drugs.

7 B. When the blood or breath of the person tested
8 contains:

9 (1) an alcohol concentration of five one-
10 hundredths or less, it shall be presumed that the person was not
11 under the influence of intoxicating liquor; or

12 (2) an alcohol concentration of more than five
13 one-hundredths but less than eight one-hundredths, no
14 presumption shall be made that the person either was or was not
15 under the influence of intoxicating liquor. However, the amount
16 of alcohol in the person's blood may be considered with other
17 competent evidence in determining whether the person was under
18 the influence of intoxicating liquor.

19 C. When the blood or breath of the person tested
20 contains an alcohol concentration of eight one-hundredths or
21 more, the arresting officer shall charge him with a violation of
22 Section 66-8-102 NMSA 1978.

23 D. When a person is less than twenty-one years of
24 age and the blood or breath of the person contains an alcohol
25 concentration of two one-hundredths or more, the person's

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1 driving privileges shall be revoked pursuant to the provisions
2 of the Implied Consent Act until that person reaches his twenty-
3 first birthday. A temporary or limited driver's license shall
4 not be issued pursuant to Section 66-5-35 or Section 66-8-111
5 NMSA 1978 to a minor from whom a law enforcement officer has
6 taken a driver's license or permit.

7 E. The determination of alcohol concentration shall
8 be based on the grams of alcohol in one hundred milliliters of
9 blood or the grams of alcohol in two hundred ten liters of
10 breath.

11 F. The presumptions in Subsection B of this section
12 do not limit the introduction of other competent evidence
13 concerning whether the person was under the influence of
14 intoxicating liquor.

15 G. If a person is convicted of driving a motor
16 vehicle while under the influence of intoxicating liquor, the
17 trial judge shall be required to inquire into the past driving
18 record of the person before sentence is entered in the matter."

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

21 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
22 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING. --
23 On behalf of the department, a law enforcement officer
24 requesting a chemical test or directing the administration of a
25 chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve

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1 immediate written notice of revocation and of right to a hearing
2 on a person who refuses to permit chemical testing or on a
3 person who submits to a chemical test the results of which
4 indicate an alcohol concentration of eight one-hundredths or
5 more in the person's blood or breath if the person is twenty-one
6 years of age or older or an alcohol concentration of two one-
7 hundredths or more in the person's blood or breath if the person
8 is less than twenty-one years of age. Upon serving notice of
9 revocation, the law enforcement officer shall take the license
10 or permit of the driver, if any, and issue a temporary license
11 valid for twenty days or, if the driver requests a hearing
12 pursuant to Section 66-8-112 NMSA 1978, valid until the date the
13 department issues the order following that hearing; provided
14 that no temporary license shall be issued to a driver without a
15 valid license or permit to a driver who is less than twenty-one
16 years of age. The law enforcement officer shall send the
17 person's driver's license to the department along with the
18 signed statement required pursuant to Section 66-8-111 NMSA
19 1978. "

20 Section 4. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 17, 1997
6

7 Mr. President:
8

9 Your FINANCE COMMITTEE, to whom has been referred
10

11 HOUSE BILL 1181, as amended
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
15

16 Respectfully submitted,
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20 _____
21 Ben D. Altamirano, Chairman
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25 Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

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The roll call vote was 6 For 3 Against

Yes: 6

No: Ingle, Lyons, McKibben

Excused: Aragon, Carraro

Absent: None

H1181FC1