

FORTY-FIFTH LEGISLATURE
FIRST SESSION

March 14, 2001

SENATE FLOOR AMENDMENT number 2 to HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL
277

Amendment sponsored by Senator Michael S. Sanchez

1. On page 1, line 18, strike "12" and insert in lieu thereof "19".

2. On page 11, between lines 21 and 22, insert the following sections:

"Section 12. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST. --

A. A person who carries a loaded concealed handgun shall be deemed to have given consent to chemical tests of his breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was carrying a loaded concealed handgun while under the influence of an intoxicating liquor or drug.

B. A test of breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been carrying a loaded concealed handgun while under the influence of an intoxicating liquor or drug.

Section 13. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF

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REFUSAL NOT WITHDRAWN. -- A person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by Section 12 of the Concealed Handgun Carry Act, and the test designated by the law enforcement officer may be administered.

Section 14. [NEW MATERIAL] ADMINISTRATION OF CHEMICAL TEST--
PAYMENT OF COSTS--ADDITIONAL TESTS. --

A. Only a physician, a licensed professional or practical nurse or a laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person for the purpose of determining its drug or alcohol content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, a licensed professional or practical nurse or a laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to the person tested as soon as it is available from the person performing the test.

D. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under Section 12 of

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the Concealed Handgun Carry Act.

Section 15. [NEW MATERIAL] USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a chemical test may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs.

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

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

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

C. When the blood or breath of the person tested contains an alcohol concentration of eight hundredths or more, the person's concealed handgun license shall be revoked pursuant to the provisions of the Concealed Handgun Carry Act.

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

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

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Section 16. [NEW MATERIAL] REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--GROUNDS FOR REVOCATION OF LICENSE.--

A. If a person under arrest refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 12 of the Concealed Handgun Carry Act, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 12 of the Concealed Handgun Carry Act, upon the judge's finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person was carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person committed a felony while under the influence of intoxicating liquor or drugs and that chemical tests as provided in Section 12 of the Concealed Handgun Carry Act will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs and that, upon his request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of his concealed handgun license, shall revoke the person's concealed handgun license for a period of one year.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs and that the person submitted to chemical testing pursuant to Section 12 of the Concealed Handgun Carry Act and the test results indicated an alcohol concentration of eight hundredths or more in the person's blood or breath, shall

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revoke the person's concealed handgun license for a period of six months.

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

E. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury, as provided in Section 30-25-1 NMSA 1978.

Section 17. [NEW MATERIAL] LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO A HEARING.--On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 12 of the Concealed Handgun Carry Act shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration of eight hundredths or more in the person's blood or breath. Upon serving notice of revocation, the law enforcement officer shall take the person's concealed handgun license. The law enforcement officer shall send the person's concealed handgun license to the department, along with the signed statement required pursuant to Section 16 of the Concealed Handgun Carry Act.

Section 18. [NEW MATERIAL] REVOCATION OF LICENSE--HEARING--HEARING COSTS--REVIEW.--

A. A person whose concealed handgun license is revoked

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may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars (\$25.00). Failure to request a hearing within ten days after the person's concealed handgun license is revoked shall result in forfeiture of the person's right to a hearing. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of the person's request for a hearing. The hearing shall be held in Santa Fe county.

B. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

C. The hearing shall be limited to the issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs;

(2) whether the person was arrested; and either

(3) whether:

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

(b) the law enforcement officer advised the person that the failure to submit to a test could result in revocation of the person's concealed handgun license; or

(4) whether:

(a) the chemical test was administered pursuant to the provisions of the Concealed Handgun Carry Act; and

(b) the test results indicated an alcohol

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concentration of eight hundredths or more in the person's blood or breath.

D. The department shall enter an order sustaining the revocation of the person's concealed handgun license if the department finds that:

(1) the law enforcement officer had reasonable grounds to believe the person was carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs;

(2) the person was arrested; and

(3) the person either refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his concealed handgun license or that a chemical test was administered pursuant to the provisions of the Concealed Handgun Carry Act and the test results indicated an alcohol concentration of eight hundredths or more.

If one or more of the elements set forth in Paragraphs (1) through (3) of this subsection are not found by the department, the person's concealed handgun license shall not be revoked.

E. A person adversely affected by an order of the department may seek review within thirty days in the district court in Santa Fe county. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation of the person's concealed handgun license based on the record of the administrative proceeding."

3. Renumber the succeeding sections accordingly.

4. On page 12, between lines 11 and 12, insert the following section:

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"Section 20. Section 24-1-22 NMSA 1978 (being Laws 1981, Chapter 165, Section 1) is amended to read:

"24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING METHODS-- CERTIFICATION. --

A. The scientific laboratory division of the department of health [and environment department] is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle under the influence of intoxicating liquor or drugs [or alcohol] or believed to be carrying a loaded concealed handgun while under the influence of intoxicating liquor or drugs, and to issue certification for operators and their instructors which shall be subject to termination or revocation at the discretion of the scientific laboratory division. The scientific laboratory division is further authorized to establish or approve quality control measures for alcohol breath testing and to establish or approve standards of training necessary to assure the qualifications of individuals conducting these analyses or collections.

B. The scientific laboratory division [~~will~~] shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

C. All laboratories analyzing breath, blood or urine samples pursuant to the provisions of the Implied Consent Act or the Concealed Handgun Carry Act shall be certified by the scientific laboratory division. The certification shall be granted in accordance with the rules and regulations of the scientific laboratory division and shall be subject to termination or revocation for cause. "".

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5. Renumber the succeeding sections accordingly.

Michael S. Sanchez

Adopted _____ **Not Adopted** _____
(Chief Clerk) **(Chief Clerk)**

Date _____