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SENATE BILL 532

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Mark Moores

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; DECLARING MOTOR VEHICLES DRIVEN BY REPEAT OFFENDERS OF THE DRIVING UNDER THE INFLUENCE LAWS A PUBLIC NUISANCE; PROVIDING FOR SEIZURE OF CERTAIN VEHICLES; PROVIDING A HEARING PROCESS FOR VEHICLES IN CUSTODY; PROVIDING FOR FORFEITURE OF CERTAIN VEHICLES; PROVIDING FOR DISPOSITION OF FORFEITED VEHICLES.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Motor Vehicle Nuisance Act".

**SECTION 2.** [NEW MATERIAL] PURPOSE OF ACT.--The purpose of the Motor Vehicle Nuisance Act is to reduce the risk of loss of life, serious bodily injury and emotional harm to innocent

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1 people on and near roadways when offenders of the driving while  
2 under the influence of intoxicating liquor or drugs laws who  
3 have not been deterred by lesser sanctions continue to drive  
4 while under the influence.

5 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
6 Motor Vehicle Nuisance Act:

7 A. "conviction" or "convicted" means that a person  
8 has been found guilty in the trial court whether by a plea of  
9 guilty or nolo contendere or otherwise and whether the sentence  
10 is deferred or suspended;

11 B. "crime" means driving under the influence of  
12 intoxicating liquor or drugs or aggravated driving under the  
13 influence of intoxicating liquor or drugs pursuant to Section  
14 66-8-102 NMSA 1978 or a violation of the Implied Consent Act;

15 C. "law enforcement agency" means the employer of a  
16 law enforcement officer that has made a seizure of a motor  
17 vehicle;

18 D. "law enforcement officer" means a state or  
19 municipal police officer, county sheriff, deputy sheriff,  
20 conservation officer, motor transportation officer or other  
21 state employee authorized by state law to enforce criminal  
22 statutes, but excludes correctional officers;

23 E. "owner" means a person who has a legal or  
24 equitable ownership interest; and

25 F. "secured party" means a person with a security

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1 or other protected interest in property, whether arising by  
2 security agreement, lien, lease or otherwise; the purpose of  
3 which interest is to secure the payment of a debt or protect a  
4 potential debt owed to the secured party.

5 SECTION 4. [NEW MATERIAL] MOTOR VEHICLE NUISANCE.--A  
6 motor vehicle is a public nuisance when it is operated by a  
7 person who is arrested for driving under the influence of  
8 intoxicating liquor or drugs or a violation of the Implied  
9 Consent Act and that person has been previously convicted for  
10 driving under the influence of intoxicating liquor or drugs or  
11 aggravated driving while under the influence of intoxicating  
12 liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or a  
13 violation of the Implied Consent Act.

14 SECTION 5. [NEW MATERIAL] MOTOR VEHICLES SUBJECT TO  
15 SEIZURE.--A law enforcement officer may temporarily seize a  
16 motor vehicle when that officer has probable cause to believe  
17 that it is a public nuisance.

18 SECTION 6. [NEW MATERIAL] CUSTODY OF VEHICLE--  
19 INTERMEDIARY HEARING.--

20 A. A law enforcement agency may retain custody of a  
21 motor vehicle seized by a law enforcement officer if:

22 (1) at the time the vehicle was seized, the  
23 law enforcement officer issued written notice of forfeiture and  
24 the right to a hearing; and either

25 (2) the right to a revocation hearing pursuant

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1 to Section 66-8-112 NMSA 1978 may be exercised; or

2 (3) a revocation hearing is pending.

3 B. The matter of probable cause that the motor  
4 vehicle is a public nuisance shall be addressed in a revocation  
5 hearing if the right to a hearing is exercised.

6 SECTION 7. [NEW MATERIAL] MOTOR VEHICLES SUBJECT TO  
7 FORFEITURE--COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

8 A. A law enforcement agency may subject to  
9 forfeiture a motor vehicle that has been seized when probable  
10 cause that it is a public nuisance has been found in a  
11 revocation hearing pursuant to Section 66-8-102 NMSA 1978 or  
12 the person from whom it was seized fails to exercise the right  
13 to a hearing.

14 B. Within sixty days of making a seizure, the law  
15 enforcement agency shall file a complaint of forfeiture or  
16 return the motor vehicle to the person from whom it was seized.

17 A complaint of forfeiture shall include:

18 (1) a description of the motor vehicle seized;

19 (2) the date and place of seizure;

20 (3) the name and address of the law

21 enforcement agency making the seizure;

22 (4) the specific statutory and factual grounds  
23 for the seizure; and

24 (5) the names of persons known to the law

25 enforcement agency who may claim an interest in the motor

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1 vehicle set forth in both the caption and the complaint and the  
2 basis for each person's alleged interest.

3 C. The complaint shall be served upon the person  
4 from whom the motor vehicle was seized, the person's attorney  
5 of record and all persons known or reasonably believed by the  
6 law enforcement agency to claim an interest in the motor  
7 vehicle. A copy of the complaint shall be published no less  
8 than three times in a newspaper of general circulation in the  
9 district of the court having jurisdiction.

10 SECTION 8. [NEW MATERIAL] COURT HEARING AND  
11 DETERMINATION.--

12 A. A claim to the motor vehicle shall be filed by  
13 way of answer to the complaint of forfeiture and shall be filed  
14 within thirty days of the date of service of the complaint.

15 B. A forfeiture shall be subject to a civil in rem  
16 proceeding. The district courts have jurisdiction over  
17 forfeiture proceedings. Venue for a forfeiture proceeding is  
18 in the same jurisdiction in which venue lies for the charge of  
19 the crime that underlies the allegation that the motor vehicle  
20 is a public nuisance.

21 C. The court shall enter a judgment of forfeiture  
22 and the motor vehicle shall be forfeited to the state if the  
23 state proves by clear and convincing evidence that:

- 24 (1) the motor vehicle is a public nuisance;  
25 and

1 (2) the owner has been convicted of the crime  
2 that underlies the allegation that the motor vehicle is a  
3 public nuisance.

4 SECTION 9. [NEW MATERIAL] DISPOSITION OF FORFEITED  
5 PROPERTY.--

6 A. Unless the state's possession of a motor vehicle  
7 is illegal or a different disposition is specifically provided  
8 for by law and except as provided in Subsection C of this  
9 section, a forfeited motor vehicle shall be sold at public sale  
10 by the law enforcement agency in possession of the motor  
11 vehicle. All proceeds of the sale shall be distributed:

12 (1) first, to pay reasonable expenses incurred  
13 for storage, protection and sale of the motor vehicle;

14 (2) second, any remaining balance to pay  
15 restitution to or on behalf of victims, if any, of the crime;  
16 and

17 (3) third, any remaining balance to the  
18 general fund of the governing body of the seizing law  
19 enforcement agency to be used for drug and alcohol abuse  
20 treatment services, for drug and alcohol prevention and  
21 education programs, for other substance abuse demand-reduction  
22 initiatives or for enforcing driving under the influence of  
23 intoxicating liquor or drugs laws or narcotics law violations.

24 B. A motor vehicle shall not be forfeited to the  
25 state if a secured party has an ownership interest in the motor

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1 vehicle unless, at the forfeiture proceeding, the state proves  
2 by clear and convincing evidence that the secured party knew or  
3 should have known that the person from whom the motor vehicle  
4 was seized was under the influence of intoxicating liquor or  
5 drugs while driving.

6 C. If, at the forfeiture proceeding, the state  
7 proves by clear and convincing evidence that the person  
8 convicted of the crime is a co-owner of the motor vehicle but  
9 fails to prove that the other co-owner knew or should have  
10 known of the crime, at the option of the co-owner not convicted  
11 of the crime:

12 (1) the co-owner not convicted of the crime  
13 may buy the forfeited interest from the law enforcement agency  
14 at a private sale for the fair market value. Proceeds received  
15 by the state from the sale shall be disposed of in accordance  
16 with this section;

17 (2) the law enforcement agency shall sell the  
18 entire ownership interest at a public sale pursuant to  
19 Subsection A of this section except that the proceeds shall  
20 first be used to purchase the ownership interest, at fair  
21 market value, of the co-owner not convicted of the crime; or

22 (3) the law enforcement agency shall sell only  
23 the forfeited interest at a public sale pursuant to Subsection  
24 A of this section and the purchaser will become a co-owner with  
25 the co-owner not convicted of the crime.

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1           D. The law enforcement agency shall notify all  
2 known co-owners of a forfeited motor vehicle that were not  
3 convicted of the crime not less than thirty days before a  
4 proposed public sale of the motor vehicle. If, within the  
5 thirty days, the co-owners notify the law enforcement agency of  
6 an option made pursuant to Subsection C of this section, the  
7 law enforcement agency shall make the sale pursuant to the  
8 option selected. If no option is selected by the co-owners or  
9 if all of the co-owners not convicted of the crime cannot agree  
10 on one option, then the sale shall be made pursuant to  
11 Paragraph (3) of Subsection C of this section.

12           **SECTION 10. [NEW MATERIAL] SAFEKEEPING OF SEIZED MOTOR**  
13 **VEHICLES PENDING DISPOSITION.--**

14           A. A seized motor vehicle shall be removed to a  
15 place designated by the district court or held in the custody  
16 of a law enforcement agency.

17           B. A seized motor vehicle shall be kept by the  
18 custodian in a manner to protect it from theft or damage and,  
19 if ordered by the district court, insured against those risks.

20           **SECTION 11. [NEW MATERIAL] POLITICAL SUBDIVISION ELECTION**  
21 **TO ENFORCE.--**Notwithstanding the provisions of the Motor  
22 Vehicle Nuisance Act, an ordinance of a home rule municipality  
23 or other political subdivision of the state that provides for  
24 the seizure or forfeiture of a motor vehicle in effect on the  
25 effective date of that act shall continue in force and effect

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1 until repealed.

2 SECTION 12. Section 66-8-111.1 NMSA 1978 (being Laws  
3 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter  
4 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is  
5 amended to read:

6 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
7 DEPARTMENT--WRITTEN NOTICE OF REVOCATION OR FORFEITURE AND  
8 RIGHT TO HEARING.--On behalf of the department, a law  
9 enforcement officer requesting a chemical test or directing the  
10 administration of a chemical test pursuant to Section 66-8-107  
11 NMSA 1978 shall serve immediate written notice of revocation  
12 and, if applicable, forfeiture and of right to a hearing on a  
13 person who refuses to permit chemical testing or on a person  
14 who submits to a chemical test the results of which indicate an  
15 alcohol concentration in the person's blood or breath of eight  
16 one hundredths or more if the person is twenty-one years of age  
17 or older, four one hundredths or more if the person is driving  
18 a commercial motor vehicle or two one hundredths or more if the  
19 person is less than twenty-one years of age. Upon serving  
20 notice of revocation, the law enforcement officer shall take  
21 the license or permit of the driver, if any, and issue a  
22 temporary license valid for twenty days or, if the driver  
23 requests a hearing pursuant to Section 66-8-112 NMSA 1978,  
24 valid until the date the department issues the order following  
25 that hearing; provided that a temporary license shall not be

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1 issued to a driver without a valid license or permit. The law  
2 enforcement officer shall send the person's driver's license to  
3 the department along with the signed statement required  
4 pursuant to Section 66-8-111 NMSA 1978."

5 SECTION 13. Section 66-8-112 NMSA 1978 (being Laws 1978,  
6 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
7 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
8 to read:

9 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
10 DRIVE--FORFEITURE OF A MOTOR VEHICLE--NOTICE--EFFECTIVE  
11 DATE--HEARING--HEARING COSTS--REVIEW.--

12 A. The effective date of revocation pursuant to  
13 Section 66-8-111 NMSA 1978 is twenty days after notice of  
14 revocation or, if the person whose driver's license or  
15 privilege to drive is being revoked or denied requests a  
16 hearing pursuant to this section, the date that the department  
17 issues the order following that hearing. The date of notice of  
18 revocation is:

19 (1) the date the law enforcement officer  
20 serves written notice of revocation and of right to a hearing  
21 pursuant to Section 66-8-111.1 NMSA 1978; or

22 (2) in the event the results of a chemical  
23 test cannot be obtained immediately, the date notice of  
24 revocation is served by mail by the department. This notice of  
25 revocation and of right to a hearing shall be sent by certified

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1 mail and shall be deemed to have been served on the date borne  
2 by the return receipt showing delivery, refusal of the  
3 addressee to accept delivery or attempted delivery of the  
4 notice at the address obtained by the arresting law enforcement  
5 officer or on file with the department.

6 B. Within ten days after receipt of notice of  
7 revocation pursuant to Subsection A of this section, a person  
8 whose license or privilege to drive is revoked or denied or the  
9 person's agent may request a hearing. The hearing request  
10 shall be made in writing and shall be accompanied by a payment  
11 of twenty-five dollars (\$25.00) or a sworn statement of  
12 indigency on a form provided by the department. A standard for  
13 indigency shall be established pursuant to regulations adopted  
14 by the department. Failure to request a hearing within ten  
15 days shall result in forfeiture of the person's right to a  
16 hearing. Any person less than eighteen years of age who fails  
17 to request a hearing within ten days shall have notice of  
18 revocation sent to [~~his~~] the person's parent, guardian or  
19 custodian by the department. A date for the hearing shall be  
20 set by the department, if practical, within thirty days after  
21 receipt of notice of revocation. The hearing shall be held in  
22 the county in which the offense for which the person was  
23 arrested took place.

24 C. The department may postpone or continue any  
25 hearing on its own motion or upon application from the person

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1 and for good cause shown for a period not to exceed ninety days  
2 from the date of notice of revocation and provided that the  
3 department extends the validity of the temporary license for  
4 the period of the postponement or continuation.

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

8 E. The hearing shall be limited to the following  
9 issues:

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

14 (2) whether the person was arrested;

15 (3) whether the person has a prior conviction  
16 for driving while under the influence of intoxicating liquor or  
17 drugs or a violation of the Implied Consent Act;

18 [~~3~~] (4) whether this hearing is held no  
19 later than ninety days after notice of revocation; and either

20 [~~4~~] (5) whether:

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

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

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1                    [~~5~~] (6) whether:

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

4                    (b) the test results indicated an  
5 alcohol concentration in the person's blood or breath of eight  
6 one hundredths or more if the person is twenty-one years of age  
7 or older, four one hundredths or more if the person is driving  
8 a commercial motor vehicle or two one hundredths or more if the  
9 person is less than twenty-one years of age.

10                   F. The department shall enter an order sustaining  
11 the revocation or denial of the person's license or privilege  
12 to drive if the department finds that:

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

16                    (2) the person was arrested;

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

19                    (4) either:

20                    (a) the person refused to submit to the  
21 test upon request of the law enforcement officer after the law  
22 enforcement officer advised [~~him~~] the person that [~~his~~] the  
23 person's failure to submit to the test could result in the  
24 revocation of [~~his~~] the person's privilege to drive; or

25                    (b) that a chemical test was

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1 administered pursuant to the provisions of the Implied Consent  
2 Act and the test results indicated an alcohol concentration in  
3 the person's blood or breath of eight one hundredths or more if  
4 the person is twenty-one years of age or older, four one  
5 hundredths or more if the person is driving a commercial motor  
6 vehicle or two one hundredths or more if the person is less  
7 than twenty-one years of age.

8 G. If one or more of the elements set forth in  
9 Paragraphs (1) through (4) of Subsection F of this section are  
10 not found by the department, the person's license shall not be  
11 revoked and the law enforcement agency shall return the motor  
12 vehicle, if seized.

13 H. The department may enter an order subjecting the  
14 motor vehicle to forfeiture if the department also enters an  
15 order sustaining the revocation or denial of the person's  
16 license or privilege to drive and finds that the person has a  
17 prior conviction for driving while under the influence of  
18 intoxicating liquor or drugs or a violation of the Implied  
19 Consent Act.

20 [~~H.~~] I. A person adversely affected by an order of  
21 the department may seek review within thirty days in the  
22 district court in the county in which the offense for which the  
23 person was arrested took place. The district court, upon  
24 thirty days' written notice to the department, shall hear the  
25 case. On review, it is for the court to determine only whether

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