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SENATE BILL 238

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Craig W. Brandt

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECOMPILING SECTIONS OF THE MOTOR VEHICLE CODE INTO A NEW ARTICLE OF THAT CODE; REVISING PROVISIONS RELATED TO PENALTIES AND MONITORING DEVICES; CREATING THE DRIVING UNDER THE INFLUENCE TREATMENT FUND AND PROVIDING FOR A DISTRIBUTION TO THE FUND; CLARIFYING THE DISTRIBUTION OF THE LIQUOR EXCISE TAX; MAKING APPROPRIATIONS.

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

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

"66-1-1. SHORT TITLE.--Articles 1 through [8] 8A of Chapter [~~64 NMSA 1953~~] 66 NMSA 1978 may be cited as the "Motor Vehicle Code"."

SECTION 2. A new section of the Motor Vehicle Code,
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1 Section 66-8A-1 NMSA 1978, is enacted to read:

2 "66-8A-1. [NEW MATERIAL] DEFINITIONS.--As used in Chapter
3 66, Article 8A NMSA 1978:

4 A. "alcohol-monitoring ankle bracelet" means a
5 secure alcohol-monitoring device worn on a person's ankle that
6 uses transdermal alcohol monitoring and allows for continuous
7 remote monitoring of the person's alcohol concentration;

8 B. "bodily injury" means an injury to a person that
9 is not likely to cause death or great bodily harm to the person
10 but causes painful temporary disfigurement or temporary loss or
11 impairment of the functions of a member or organ of the
12 person's body;

13 C. "denied" means the division has refused to issue
14 an instruction permit, driver's license or provisional license
15 pursuant to the provisions of Subsection D or E of Section
16 66-5-5 NMSA 1978;

17 D. "ignition interlock device" means a device,
18 approved by the bureau, that prevents the operation of a motor
19 vehicle by an intoxicated or impaired person;

20 E. "ignition interlock license" means a driver's
21 license issued to a person by the department that allows that
22 person to operate a motor vehicle with an ignition interlock
23 device after that person's driving privilege or driver's
24 license has been revoked or denied. The department shall
25 clearly mark an ignition interlock license to distinguish it

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1 from other driver's licenses;

2 F. "revocation" means that the driver's license and
3 privilege to drive a motor vehicle on the public highways are
4 terminated and shall not be renewed or restored, except as
5 provided in the Driving Under the Influence Act;

6 G. "revoked" means the department has terminated a
7 person's driving privilege or driver's license for driving
8 while under the influence of intoxicating liquor or drugs
9 pursuant to the provisions of Section 66-5-29 or 66-8A-33 NMSA
10 1978; and

11 H. "suspension" means that a person's driver's
12 license and privilege to drive a motor vehicle on the public
13 highways are temporarily withdrawn."

14 SECTION 3. A new section of the Motor Vehicle Code,
15 Section 66-8A-2 NMSA 1978, is enacted to read:

16 "66-8A-2. [NEW MATERIAL] SHORT TITLE.--Sections 66-8A-2
17 through 66-8A-27 NMSA 1978 may be cited as the "Driving Under
18 the Influence Act"."

19 SECTION 4. A new section of the Motor Vehicle Code,
20 Section 66-8A-3 NMSA 1978, is enacted to read:

21 "66-8A-3. [NEW MATERIAL] DEFINITION.--As used in the
22 Driving Under the Influence Act, "commercial motor vehicle"
23 means a motor vehicle or combination of motor vehicles used in
24 commerce to transport passengers or property if the motor
25 vehicle:

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1 A. has a gross combination weight rating of more
2 than twenty-six thousand pounds, inclusive of a towed unit with
3 a gross vehicle weight rating of more than ten thousand pounds;

4 B. has a gross vehicle weight rating of more than
5 twenty-six thousand pounds;

6 C. is designed to transport sixteen or more
7 passengers, including the driver; or

8 D. is of any size and is used in the transportation
9 of hazardous materials, which requires the motor vehicle to be
10 placarded under applicable law."

11 SECTION 5. A new section of the Motor Vehicle Code,
12 Section 66-8A-4 NMSA 1978, is enacted to read:

13 "66-8A-4. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE OF
14 INTOXICATING LIQUOR OR DRUGS.--

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

18 B. It is unlawful for a person who is under the
19 influence of a drug to a degree that renders the person
20 incapable of safely driving a vehicle to drive a vehicle within
21 this state."

22 SECTION 6. A new section of the Motor Vehicle Code,
23 Section 66-8A-5 NMSA 1978, is enacted to read:

24 "66-8A-5. [NEW MATERIAL] UNLAWFUL ALCOHOL
25 CONCENTRATIONS.--It is unlawful for a person to drive:

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1 A. a vehicle in this state if the person has an
2 alcohol concentration of eight one hundredths or more in the
3 person's blood or breath within three hours of driving the
4 vehicle and the alcohol concentration results from alcohol
5 consumed before or while driving the vehicle; or

6 B. a commercial motor vehicle in this state if the
7 person has an alcohol concentration of four one hundredths or
8 more in the person's blood or breath within three hours of
9 driving the commercial motor vehicle and the alcohol
10 concentration results from alcohol consumed before or while
11 driving the vehicle."

12 SECTION 7. A new section of the Motor Vehicle Code,
13 Section 66-8A-6 NMSA 1978, is enacted to read:

14 "66-8A-6. [NEW MATERIAL] AGGRAVATED DRIVING UNDER THE
15 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Aggravated driving
16 under the influence of intoxicating liquor or drugs consists
17 of:

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

23 B. causing bodily injury to a human being as a
24 result of the unlawful operation of a motor vehicle while
25 driving under the influence of intoxicating liquor or drugs;

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1 C. refusing to submit to chemical testing, as
2 provided for in the Implied Consent Act, and in the judgment of
3 the court, based upon evidence of intoxication presented to the
4 court, the driver was under the influence of intoxicating
5 liquor or drugs; or

6 D. driving a vehicle with an alcohol concentration
7 of eight one hundredths or more while the person's privilege to
8 drive was revoked for driving under the influence of
9 intoxicating liquor or drugs."

10 SECTION 8. A new section of the Motor Vehicle Code,
11 Section 66-8A-7 NMSA 1978, is enacted to read:

12 "66-8A-7. [NEW MATERIAL] FIRST CONVICTION FOR DRIVING
13 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

14 A. A first conviction for driving under the
15 influence of intoxicating liquor or drugs shall be punished,
16 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
17 by imprisonment for not more than ninety days or by a fine of
18 not more than five hundred dollars (\$500), or both; provided
19 that if the sentence is suspended in whole or in part or
20 deferred, the period of probation may extend beyond ninety days
21 but shall not exceed one year.

22 B. Upon a first conviction pursuant to this
23 section, an offender:

24 (1) shall be sentenced to not less than
25 twenty-four hours of community service; and

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1 (2) may be required to pay a fine of three
2 hundred dollars (\$300).

3 C. The offender shall be ordered by the court to:

4 (1) attend a driver rehabilitation program for
5 alcohol or drugs, also known as a "DWI school", approved by the
6 bureau;

7 (2) participate in and complete a screening
8 program described in Section 66-8A-15 NMSA 1978; and

9 (3) in accordance with the results and
10 recommendations of the screening program, participate in a
11 twenty-eight-day treatment program that is approved by the
12 court and that is an inpatient, residential, in-custody or
13 outpatient program.

14 D. When an offender commits aggravated driving
15 under the influence of intoxicating liquor or drugs as provided
16 in this section, the offender shall:

17 (1) be sentenced to not less than forty-eight
18 consecutive hours in jail; and

19 (2) in accordance with the results and
20 recommendations of the screening program, participate in a
21 ninety-day treatment program approved by the court, twenty-
22 eight days of which shall be in an inpatient, residential or
23 in-custody program.

24 E. If an offender fails to complete, within a time
25 specified by the court, any community service, screening

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1 program, treatment program or DWI school ordered by the court
2 or fails to comply with any other condition of probation, the
3 offender shall be sentenced to not less than an additional
4 forty-eight consecutive hours in jail.

5 F. A jail sentence imposed pursuant to this section
6 for failure to complete, within a time specified by the court,
7 any community service, screening program, treatment program or
8 DWI school ordered by the court or for aggravated driving under
9 the influence of intoxicating liquor or drugs shall not be
10 suspended, deferred or taken under advisement.

11 G. On a first conviction for driving under the
12 influence of intoxicating liquor or drugs, time spent in jail
13 for the offense prior to the conviction for that offense shall
14 be credited to a term of imprisonment fixed by the court. A
15 deferred sentence pursuant to this subsection shall be
16 considered a first conviction for the purpose of determining
17 subsequent convictions."

18 SECTION 9. A new section of the Motor Vehicle Code,
19 Section 66-8A-8 NMSA 1978, is enacted to read:

20 "66-8A-8. [NEW MATERIAL] SECOND CONVICTION FOR DRIVING
21 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

22 A. A second conviction for driving under the
23 influence of intoxicating liquor or drugs shall be punished,
24 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
25 by imprisonment for not more than three hundred sixty-four days

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1 or by a fine of not more than one thousand dollars (\$1,000), or
2 both; provided that if the sentence is suspended in whole or in
3 part, the period of probation may extend beyond one year but
4 shall not exceed five years.

5 B. Notwithstanding any provision of law to the
6 contrary for suspension or deferment of execution of a
7 sentence, upon a second conviction:

8 (1) an offender shall be sentenced to:

9 (a) a jail term of not less than
10 ninety-six consecutive hours;

11 (b) not less than forty-eight hours of
12 community service;

13 (c) a fine of five hundred dollars
14 (\$500); and

15 (d) in accordance with the results and
16 recommendations of the screening program, participate in a
17 ninety-day treatment program approved by the court, twenty-
18 eight days of which shall be in an inpatient, residential or
19 in-custody program;

20 (2) when the offense is aggravated driving
21 under the influence of intoxicating liquor or drugs, the
22 offender shall be sentenced to:

23 (a) a jail term of not less than
24 ninety-six consecutive hours; and

25 (b) in accordance with the results and

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1 recommendations of the screening program, participate in a
2 ninety-day inpatient, residential or in-custody treatment
3 program approved by the court; and

4 (3) if an offender fails to complete, within a
5 time specified by the court, any community service, screening
6 program or treatment program ordered by the court, the offender
7 shall be sentenced to not less than an additional seven
8 consecutive days in jail.

9 C. A penalty imposed pursuant to Subsection B of
10 this section shall not be suspended or deferred or taken under
11 advisement.

12 D. Upon a second conviction for driving under the
13 influence of intoxicating liquor or drugs, in addition to
14 inpatient treatment required pursuant to Subsection B of this
15 section, an offender shall be required to participate in and
16 complete, within a time specified by the court:

17 (1) a drug court program approved by the
18 court; or

19 (2) any other substance abuse treatment
20 program approved by the court.

21 E. The requirements imposed pursuant to Subsection
22 D of this section shall not be suspended, deferred or taken
23 under advisement."

24 SECTION 10. A new section of the Motor Vehicle Code,
25 Section 66-8A-9 NMSA 1978, is enacted to read:

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1 "66-8A-9. [NEW MATERIAL] THIRD CONVICTION FOR DRIVING
2 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

3 A. A third conviction for driving under the
4 influence of intoxicating liquor or drugs shall be punished,
5 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
6 by imprisonment for not more than three hundred sixty-four days
7 or by a fine of not more than one thousand dollars (\$1,000), or
8 both; provided that if the sentence is suspended in whole or in
9 part, the period of probation may extend beyond one year but
10 shall not exceed five years.

11 B. Notwithstanding any provision of law to the
12 contrary for suspension or deferment of execution of a
13 sentence, upon a third conviction:

- 14 (1) an offender shall be sentenced to:
 - 15 (a) a jail term of not less than thirty
 - 16 consecutive days;
 - 17 (b) not less than ninety-six hours of
 - 18 community service;
 - 19 (c) a fine of seven hundred fifty
 - 20 dollars (\$750); and
 - 21 (d) in accordance with the results and
 - 22 recommendations of the screening program, participate in a
 - 23 ninety-day inpatient, residential or in-custody treatment
 - 24 program approved by the court;

25 (2) when the offense is aggravated driving

1 under the influence of intoxicating liquor or drugs, the
2 offender shall be sentenced to:

3 (a) a jail term of not less than sixty
4 consecutive days; and

5 (b) in accordance with the results and
6 recommendations of the screening program, participate in a
7 ninety-day inpatient, residential or in-custody treatment
8 program approved by the court; and

9 (3) 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 sixty
13 consecutive days in jail.

14 C. A penalty imposed pursuant to Subsection B of
15 this section shall not be suspended or deferred or taken under
16 advisement.

17 D. Upon a third conviction for driving under the
18 influence of intoxicating liquor or drugs, in addition to
19 inpatient treatment required pursuant to Subsection B of this
20 section, an offender shall be required to participate in and
21 complete, within a time specified by the court:

22 (1) a drug court program approved by the
23 court; or

24 (2) any other substance abuse treatment
25 program approved by the court.

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1 E. The requirements imposed pursuant to Subsection
2 D of this section shall not be suspended, deferred or taken
3 under advisement."

4 **SECTION 11.** A new section of the Motor Vehicle Code,
5 Section 66-8A-10 NMSA 1978, is enacted to read:

6 "66-8A-10. [NEW MATERIAL] FOURTH CONVICTION FOR DRIVING
7 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
8 fourth conviction for driving under the influence of
9 intoxicating liquor or drugs, an offender is guilty of a fourth
10 degree felony and, notwithstanding the provisions of Section
11 31-18-15 NMSA 1978, shall be sentenced to a term of
12 imprisonment of eighteen months, six months of which shall not
13 be suspended, deferred or taken under advisement."

14 **SECTION 12.** A new section of the Motor Vehicle Code,
15 Section 66-8A-11 NMSA 1978, is enacted to read:

16 "66-8A-11. [NEW MATERIAL] FIFTH CONVICTION FOR DRIVING
17 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
18 fifth conviction for driving under the influence of
19 intoxicating liquor or drugs, an offender is guilty of a fourth
20 degree felony and, notwithstanding the provisions of Section
21 31-18-15 NMSA 1978, shall be sentenced to a term of
22 imprisonment of two years, one year of which shall not be
23 suspended, deferred or taken under advisement."

24 **SECTION 13.** A new section of the Motor Vehicle Code,
25 Section 66-8A-12 NMSA 1978, is enacted to read:

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1 "66-8A-12. [NEW MATERIAL] SIXTH CONVICTION FOR DRIVING
2 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
3 sixth conviction for driving under the influence of
4 intoxicating liquor or drugs, an offender is guilty of a third
5 degree felony and, notwithstanding the provisions of Section
6 31-18-15 NMSA 1978, shall be sentenced to a term of
7 imprisonment of thirty months, eighteen months of which shall
8 not be suspended, deferred or taken under advisement."

9 **SECTION 14.** A new section of the Motor Vehicle Code,
10 Section 66-8A-13 NMSA 1978, is enacted to read:

11 "66-8A-13. [NEW MATERIAL] SEVENTH CONVICTION FOR DRIVING
12 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
13 seventh conviction for driving under the influence of
14 intoxicating liquor or drugs, an offender is guilty of a third
15 degree felony and, notwithstanding the provisions of Section
16 31-18-15 NMSA 1978, shall be sentenced to a term of
17 imprisonment of three years, two years of which shall not be
18 suspended, deferred or taken under advisement."

19 **SECTION 15.** A new section of the Motor Vehicle Code,
20 Section 66-8A-14 NMSA 1978, is enacted to read:

21 "66-8A-14. [NEW MATERIAL] EIGHTH OR SUBSEQUENT CONVICTION
22 FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR
23 DRUGS.--Upon an eighth or subsequent conviction for driving
24 under the influence of intoxicating liquor or drugs, an
25 offender is guilty of a second degree felony and,

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1 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
2 shall be sentenced to a term of imprisonment of twelve years,
3 ten years of which shall not be suspended, deferred or taken
4 under advisement."

5 SECTION 16. A new section of the Motor Vehicle Code,
6 Section 66-8A-15 NMSA 1978, is enacted to read:

7 "66-8A-15. [NEW MATERIAL] ALCOHOL OR DRUG ABUSE SCREENING
8 REQUIRED.--Upon a conviction for driving under the influence of
9 intoxicating liquor or drugs, an offender shall be required to
10 participate in and complete, within a time specified by the
11 court, an alcohol or drug abuse screening program approved by
12 the department of finance and administration and, if necessary,
13 a treatment program approved by the court. The requirement
14 imposed pursuant to this section shall not be suspended,
15 deferred or taken under advisement."

16 SECTION 17. A new section of the Motor Vehicle Code,
17 Section 66-8A-16 NMSA 1978, is enacted to read:

18 "66-8A-16. [NEW MATERIAL] PREVIOUS CONVICTIONS FOR
19 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--
20 PLEA AGREEMENTS.--If, within the previous ten years, an
21 offender has been convicted of driving under the influence of
22 intoxicating liquor or drugs or of an offense in another
23 jurisdiction that is equivalent to driving under the influence
24 of intoxicating liquor or drugs pursuant to New Mexico law, the
25 offender shall not enter into a plea agreement and a prosecutor

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1 shall not negotiate a plea agreement that includes a provision
2 that inaccurately reflects the actual number of the offender's
3 convictions for driving under the influence of intoxicating
4 liquor or drugs or an equivalent offense."

5 SECTION 18. A new section of the Motor Vehicle Code,
6 Section 66-8A-17 NMSA 1978, is enacted to read:

7 "66-8A-17. ~~[NEW MATERIAL]~~ SUBSTANCE ABUSE AND COUNSELING
8 TO BE PROVIDED BY THE CORRECTIONS DEPARTMENT UPON A FELONY
9 CONVICTION.--Upon a felony conviction for driving under the
10 influence of intoxicating liquor or drugs, the corrections
11 department shall provide substance abuse counseling and
12 treatment to the offender in its custody. While the offender
13 is on probation or parole under its supervision, the
14 corrections department shall also provide substance abuse
15 counseling and treatment to the offender or shall require the
16 offender to obtain substance abuse counseling and treatment."

17 SECTION 19. A new section of the Motor Vehicle Code,
18 Section 66-8A-18 NMSA 1978, is enacted to read:

19 "66-8A-18. ~~[NEW MATERIAL]~~ SENTENCING--ALCOHOL-MONITORING
20 ANKLE BRACELET.--

21 A. In lieu of incarceration in a jail or prison, a
22 court may order an offender convicted of driving under the
23 influence of intoxicating liquor or drugs to wear an alcohol-
24 monitoring ankle bracelet for no more than fifty percent of the
25 length of the offender's sentence that the offender would be

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1 required to spend incarcerated.

2 B. The bureau shall pay for costs associated with
3 placing, removing, monitoring and maintaining an alcohol-
4 monitoring ankle bracelet."

5 SECTION 20. A new section of the Motor Vehicle Code,
6 Section 66-8A-19 NMSA 1978, is enacted to read:

7 "66-8A-19. [NEW MATERIAL] IGNITION INTERLOCK
8 REQUIREMENT.--

9 A. Upon a conviction for driving under the
10 influence of intoxicating liquor or drugs, an offender shall be
11 required to obtain an ignition interlock license and have an
12 ignition interlock device installed and operating on all motor
13 vehicles driven by the offender, pursuant to rules adopted by
14 the bureau.

15 B. Unless determined by the bureau to be indigent,
16 the offender shall pay all costs associated with having an
17 ignition interlock device installed on the appropriate motor
18 vehicles. The offender shall operate only those vehicles
19 equipped with ignition interlock devices for:

20 (1) a period of one year for a first offender;

21 (2) a period of two years for a second
22 conviction pursuant to the Driving Under the Influence Act;

23 (3) a period of three years for a third
24 conviction pursuant to the Driving Under the Influence Act; or

25 (4) the remainder of the offender's life for a

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1 fourth or subsequent conviction pursuant to the Driving Under
2 the Influence Act.

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

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

19 SECTION 21. A new section of the Motor Vehicle Code,
20 Section 66-8A-20 NMSA 1978, is enacted to read:

21 "66-8A-20. [NEW MATERIAL] CONVICTIONS IN OTHER
22 JURISDICTIONS.--A conviction pursuant to a municipal or county
23 ordinance in New Mexico, or a law of any other jurisdiction,
24 territory or possession of the United States or of an Indian
25 nation, tribe or pueblo, when that ordinance or law is

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

7 SECTION 22. A new section of the Motor Vehicle Code,
8 Section 66-8A-21 NMSA 1978, is enacted to read:

9 "66-8A-21. [NEW MATERIAL] OFFENDER MAY BE ORDERED TO PAY
10 COSTS OF SCREENING OR TREATMENT.--In addition to any other fine
11 or fee that may be imposed pursuant to the conviction or other
12 disposition of the offense under the Driving Under the
13 Influence Act, the court may order the offender to pay the
14 costs of court-ordered screening and treatment programs."

15 SECTION 23. A new section of the Motor Vehicle Code,
16 Section 66-8A-22 NMSA 1978, is enacted to read:

17 "66-8A-22. [NEW MATERIAL] PROBATION VIOLATION--SUSPENDED
18 OR DEFERRED SENTENCE.--With respect to the Driving Under the
19 Influence Act and notwithstanding any provision of law to the
20 contrary, if an offender's sentence was suspended or deferred
21 in whole or in part and the offender violates any condition of
22 probation, the court may impose any sentence that the court
23 could have originally imposed and credit shall not be given for
24 time served by the offender on probation."

25 SECTION 24. A new section of the Motor Vehicle Code,

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1 Section 66-8A-23 NMSA 1978, is enacted to read:

2 "66-8A-23. [NEW MATERIAL] MAGISTRATE COURT CONCURRENT
3 JURISDICTION.--In the case of a first, second or third offense
4 pursuant to the Driving Under the Influence Act, the magistrate
5 court has concurrent jurisdiction with district courts to try
6 the offender."

7 SECTION 25. Section 66-8-102.1 NMSA 1978 (being Laws
8 1982, Chapter 102, Section 2, as amended by Laws 2003, Chapter
9 51, Section 11 and by Laws 2003, Chapter 90, Section 4) is
10 recompiled as Section 66-8A-24 NMSA 1978 and is amended to
11 read:

12 "66-8A-24. GUILTY PLEAS--LIMITATIONS.--Where the
13 complaint or information alleges a violation of [~~Section~~
14 ~~66-8-102 NMSA 1978]~~ the Driving Under the Influence Act, any
15 plea of guilty thereafter entered in satisfaction of the
16 charges shall include at least a plea of guilty to the
17 violation of one of the [~~subsections of Section 66-8-102 NMSA~~
18 ~~1978]~~ sections of the Driving Under the Influence Act, and no
19 other disposition by plea of guilty to any other charge in
20 satisfaction of the charge shall be authorized if the results
21 of a test performed pursuant to the Implied Consent Act
22 disclose that the blood or breath of the person charged
23 contains an alcohol concentration of:

- 24 A. eight one hundredths or more; or
25 B. four one hundredths or more if the person

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1 charged is driving a commercial motor vehicle."

2 SECTION 26. Section 66-8-102.2 NMSA 1978 (being Laws
3 1993, Chapter 66, Section 16) is recompiled as Section 66-8A-25
4 NMSA 1978 and is amended to read:

5 "66-8A-25. MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL
6 ALCOHOL CONCENTRATION LEVEL FOR DRIVING WHILE UNDER THE
7 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No municipal or
8 county ordinance prohibiting driving while under the influence
9 of intoxicating liquor or drugs shall be enacted that provides
10 for an unlawful alcohol concentration level that is different
11 than the alcohol concentration levels provided in [~~Subsections~~
12 ~~C and D of Section 66-8-102 NMSA 1978~~] Sections 66-8A-5 and
13 Section 66-8A-6 NMSA 1978."

14 SECTION 27. Section 66-8-102.4 NMSA 1978 (being Laws
15 2005, Chapter 269, Section 8) is recompiled as Section 66-8A-26
16 NMSA 1978 and is amended to read:

17 "66-8A-26. UNIFORM POLICE REPORTS AND PROCEDURES FOR DWI
18 ARRESTS.--

19 A. The department of public safety, in
20 collaboration with the [~~motor vehicle~~] division [~~of the~~
21 ~~taxation and revenue department~~] and the [~~traffic safety~~]
22 bureau [~~of the department of transportation~~], shall develop and
23 periodically review and update standard arrest reports and
24 procedures to be used by law enforcement officers when making
25 an arrest for a violation of the [~~provisions of Section~~
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1 ~~66-8-102 NMSA 1978~~] Driving Under the Influence Act or similar
2 municipal or county ordinances.

3 B. A law enforcement officer making an arrest for a
4 violation of the [~~provisions of Section 66-8-102 NMSA 1978~~]
5 Driving Under the Influence Act or of similar municipal or
6 county ordinances shall use the standard arrest reports and
7 procedures developed and approved by the department of public
8 safety in accordance with the provisions of Subsection A of
9 this section."

10 SECTION 28. A new section of the Motor Vehicle Code,
11 Section 66-8A-27 NMSA 1978, is enacted to read:

12 "66-8A-27. [NEW MATERIAL] BLOOD ALCOHOL TESTS DIRECTED BY
13 POLICE, JUDICIAL OR PROBATION OFFICER--PERSONS QUALIFIED TO
14 PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY--ARREST
15 OR TEST ONLY IN PERFORMANCE OF OFFICIAL DUTIES AUTHORIZED BY
16 LAW.--

17 A. Only a physician or licensed professional, or a
18 practical nurse, laboratory technician or technologist employed
19 by a hospital or physician, shall withdraw blood from a person
20 in the performance of a blood alcohol test. No such physician,
21 nurse, technician or technologist who withdraws blood from a
22 person in the performance of a blood alcohol test that has been
23 directed by a police officer, or by a judicial or probation
24 officer, shall be held liable in a civil or criminal action for
25 assault, battery, false imprisonment or the conduct of a police

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1 officer, except for negligence, nor shall a person assisting in
2 the performance of such a test, or a hospital wherein blood is
3 withdrawn in the performance of such a test, be subject to
4 civil or criminal liability for assault, battery, false
5 imprisonment or the conduct of a police officer, except for
6 negligence.

7 B. Nothing in this section is intended to authorize
8 a police officer, or a judicial or probation officer, to make
9 an arrest or to direct the performance of a blood alcohol test,
10 except in the performance of that person's official duties and
11 as otherwise authorized by law."

12 SECTION 29. Section 66-8-105 NMSA 1978 (being Laws 1978,
13 Chapter 35, Section 513) is recompiled as Section 66-8A-28 NMSA
14 1978 and is amended to read:

15 "66-8A-28. IMPLIED CONSENT ACT--SHORT TITLE.--Sections
16 [~~64-8-105 through 64-8-112 NMSA 1953~~] 66-8A-28 through 66-8A-35
17 NMSA 1978 may be cited as the "Implied Consent Act"."

18 SECTION 30. Section 66-8-107 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 515, as amended) is recompiled as Section
20 66-8A-29 NMSA 1978 and is amended to read:

21 "66-8A-29. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

22 A. Any person who operates a motor vehicle within
23 this state shall be deemed to have given consent, subject to
24 the provisions of the Implied Consent Act:

25 (1) to chemical tests of [his] that person's

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1 breath or blood or both that are approved by the scientific
2 laboratory division of the department of health pursuant to the
3 provisions of Section 24-1-22 NMSA 1978 as determined by a law
4 enforcement officer; or

5 (2) for the purpose of determining the drug or
6 alcohol content of [~~his~~] the person's blood if the person is
7 arrested for any offense arising out of the acts alleged to
8 have been committed while the person was driving a motor
9 vehicle while under the influence of an intoxicating liquor or
10 drug.

11 B. A test of blood or breath or both, approved by
12 the scientific laboratory division of the department of health
13 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
14 be administered at the direction of a law enforcement officer
15 having reasonable grounds to believe the person to have been
16 driving a motor vehicle within this state while under the
17 influence of intoxicating liquor or drug."

18 SECTION 31. Section 66-8-108 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 516) is recompiled as Section 66-8A-30 NMSA
20 1978 and is amended to read:

21 "66-8A-30. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT
22 WITHDRAWN.--Any person who is dead, unconscious or otherwise in
23 a condition rendering [~~him~~] the person incapable of refusal
24 shall be deemed not to have withdrawn the consent provided by
25 Section [~~64-8-107 NMSA 1953~~] 66-8A-29 NMSA 1978, and the test

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1 or tests designated by the law enforcement officer may be
2 administered."

3 SECTION 32. Section 66-8-109 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 517, as amended) is recompiled as Section
5 66-8A-31 NMSA 1978 and is amended to read:

6 "66-8A-31. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF
7 COSTS--ADDITIONAL TESTS.--

8 A. Only the persons authorized by Section
9 [~~66-8-103 NMSA 1978~~] 66-8A-27 NMSA 1978 shall withdraw blood
10 from any person for the purpose of determining its alcohol or
11 drug content. This limitation does not apply to the taking of
12 samples of breath.

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

20 C. Upon the request of the person tested, full
21 information concerning the test performed at the direction of
22 the law enforcement officer shall be made available to [~~him~~]
23 the person as soon as it is available from the person
24 performing the test.

25 D. The law enforcement agency represented by the

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1 law enforcement officer at whose direction the chemical test is
2 performed shall pay for the chemical test.

3 E. If a person exercises [~~his~~] the person's right
4 under Subsection B of this section to have a chemical test
5 performed upon [~~him~~] the person by [~~a person~~] someone of [~~his~~]
6 the person's own choosing, the cost of that test shall be paid
7 by the law enforcement agency represented by the law
8 enforcement officer at whose direction a chemical test was
9 administered [~~under Section 66-8-107 NMSA 1978~~] pursuant to
10 Section 66-8A-29 NMSA 1978."

11 SECTION 33. Section 66-8-110 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 518, as amended) is recompiled as Section
13 66-8A-32 NMSA 1978 and is amended to read:

14 "66-8A-32. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
15 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

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

24 (1) an alcohol concentration of less than four
25 one hundredths, it shall be presumed that the person was not

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1 under the influence of intoxicating liquor;

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

4 (a) no presumption shall be made that
5 the person either was or was not under the influence of
6 intoxicating liquor, unless the person is driving a commercial
7 motor vehicle; and

8 (b) the amount of alcohol in the
9 person's blood or breath may be considered with other competent
10 evidence in determining whether the person was under the
11 influence of intoxicating liquor; or

12 (3) an alcohol concentration of four one
13 hundredths or more and the person is driving a commercial
14 vehicle, it shall be presumed that the person is under the
15 influence of intoxicating liquor.

16 C. The arresting officer shall charge the person
17 tested with a violation of [~~Section 66-8-102 NMSA 1978~~] the
18 Driving Under the Influence Act when the blood or breath of the
19 person contains an alcohol concentration of:

20 (1) eight one hundredths or more; or

21 (2) four one hundredths or more if the person
22 is driving a commercial motor vehicle.

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.

3 E. If the test performed pursuant to the Implied
4 Consent Act is administered more than three hours after the
5 person was driving a vehicle, the test result may be introduced
6 as evidence of the alcohol concentration in the person's blood
7 or breath at the time of the test and the trier of fact shall
8 determine what weight to give the test result for the purpose
9 of determining a violation of [~~Section 66-8-102 NMSA 1978~~] the
10 Driving Under the Influence Act.

11 F. The determination of alcohol concentration shall
12 be based on the grams of alcohol in one hundred milliliters of
13 blood or the grams of alcohol in two hundred ten liters of
14 breath.

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

19 H. If a person is convicted of driving a motor
20 vehicle while under the influence of intoxicating liquor, the
21 trial judge shall inquire into the past driving record of the
22 person before sentence is entered in the matter."

23 **SECTION 34.** Section 66-8-111 NMSA 1978 (being Laws 1978,
24 Chapter 35, Section 519, as amended) is recompiled as Section
25 66-8A-33 NMSA 1978 and is amended to read:

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1 "66-8A-33. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
2 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

3 A. If a person under arrest for violation of an
4 offense enumerated in the Motor Vehicle Code or the Driving
5 Under the Influence Act refuses upon request of a law
6 enforcement officer to submit to chemical tests designated by
7 the law enforcement agency as provided in Section [~~66-8-107~~]
8 66-8A-29 NMSA 1978, none shall be administered except when a
9 municipal judge, magistrate or district judge issues a search
10 warrant authorizing chemical tests as provided in Section
11 [~~66-8-107~~] 66-8A-29 NMSA 1978 upon finding in a law enforcement
12 officer's written affidavit that there is probable cause to
13 believe that the person has driven a motor vehicle while under
14 the influence of alcohol or a controlled substance, thereby
15 causing the death or great bodily injury of another person, or
16 there is probable cause to believe that the person has
17 committed a felony while under the influence of alcohol or a
18 controlled substance and that chemical tests as provided in
19 Section [~~66-8-107~~] 66-8A-29 NMSA 1978 will produce material
20 evidence in a felony prosecution.

21 B. The department, upon receipt of a statement
22 signed under penalty of perjury from a law enforcement officer
23 stating the officer's reasonable grounds to believe the
24 arrested person had been driving a motor vehicle within this
25 state while under the influence of intoxicating liquor or drugs

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1 and that, upon request, the person refused to submit to a
2 chemical test after being advised that failure to submit could
3 result in revocation of the person's privilege to drive, shall
4 revoke the person's New Mexico driver's license or any
5 nonresident operating privilege for a period of one year or
6 until all conditions for license reinstatement are met,
7 whichever is later.

8 C. The department, upon receipt of a statement
9 signed under penalty of perjury from a law enforcement officer
10 stating the officer's reasonable grounds to believe the
11 arrested person had been driving a motor vehicle within this
12 state while under the influence of intoxicating liquor and that
13 the person submitted to chemical testing pursuant to Section
14 [~~66-8-107~~] 66-8A-29 NMSA 1978 and the test results indicated 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, shall revoke the
20 person's license or permit to drive or [~~his~~] the person's
21 nonresident operating privilege for a period of:

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

25 (2) one year or until all conditions for

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1 license reinstatement are met, whichever is later, if the
2 person was less than twenty-one years of age at the time of the
3 arrest, notwithstanding any provision of the Children's Code;
4 or

5 (3) one year or until all conditions for
6 license reinstatement are met, whichever is later, if the
7 ~~[person has previously had his]~~ person's license has been
8 revoked previously pursuant to the provisions of this section,
9 notwithstanding the provisions of Paragraph (1) of this
10 subsection.

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

15 E. If the person subject to the revocation
16 provisions of this section is a resident or will become a
17 resident within one year and is without a license to operate a
18 motor vehicle in this state, the department shall deny the
19 issuance of a license to ~~[him]~~ the person for the appropriate
20 period of time as provided in Subsections B and C of this
21 section.

22 F. A statement signed by a law enforcement officer,
23 pursuant to the provisions of Subsection B or C of this
24 section, shall be sworn to by the officer or shall contain a
25 declaration substantially to the effect: "I hereby declare

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1 under penalty of perjury that the information given in this
2 statement is true and correct to the best of my knowledge."
3 The statement may be signed and submitted electronically in a
4 manner and form approved by the department. A law enforcement
5 officer who signs a statement knowing that the statement is
6 untrue in any material issue or matter is guilty of perjury as
7 provided in Section 66-5-38 NMSA 1978."

8 SECTION 35. Section 66-8-111.1 NMSA 1978 (being Laws
9 1984, Chapter 72, Section 7, as amended) is recompiled as
10 Section 66-8A-34 NMSA 1978 and is amended to read:

11 "66-8A-34. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--
12 WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf
13 of the department, a law enforcement officer requesting a
14 chemical test or directing the administration of a chemical
15 test pursuant to Section ~~[66-8-107]~~ 66-8A-29 NMSA 1978 shall
16 serve immediate written notice of revocation and of right to a
17 hearing before the administrative hearings office pursuant to
18 the Implied Consent Act on a person who refuses to permit
19 chemical testing or on a person who submits to a chemical test
20 the results of which indicate an alcohol concentration in the
21 person's blood or breath of eight one hundredths or more if the
22 person is twenty-one years of age or older, four one hundredths
23 or more if the person is driving a commercial motor vehicle or
24 two one hundredths or more if the person is ~~[less]~~ younger than
25 twenty-one years of age. Upon serving notice of revocation,

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1 the law enforcement officer shall take the license or permit of
2 the driver, if any, and issue a temporary license valid for
3 twenty days or, if the driver requests a hearing pursuant to
4 Section [~~66-8-112~~] 66-8A-35 NMSA 1978, valid until the date the
5 administrative hearings office issues the order following that
6 hearing; provided that a temporary license shall not be issued
7 to a driver without a valid license or permit. The law
8 enforcement officer shall send the person's driver's license to
9 the department along with the signed statement required
10 pursuant to Section [~~66-8-111~~] 66-8A-33 NMSA 1978."

11 SECTION 36. Section 66-8-112 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 520, as amended) is recompiled as Section
13 66-8A-35 NMSA 1978 and is amended to read:

14 "66-8A-35. REVOCATION OF LICENSE OR PRIVILEGE TO
15 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
16 REVIEW.--

17 A. The effective date of revocation pursuant to
18 Section [~~66-8-111~~] 66-8A-33 NMSA 1978 is twenty days after
19 notice of revocation or, if the person whose driver's license
20 or privilege to drive is being revoked or denied requests a
21 hearing pursuant to the Administrative Hearings Office Act, the
22 date that the administrative hearings office issues the order
23 following that hearing. The date of notice of revocation is:

24 (1) the date the law enforcement officer
25 serves written notice of revocation and of right to a hearing

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1 pursuant to Section [~~66-8-111.1~~] 66-8A-34 NMSA 1978; or

2 (2) in the event the results of a chemical
3 test cannot be obtained immediately, the date notice of
4 revocation is served by mail by the department. This notice of
5 revocation and of right to a hearing shall be sent by certified
6 mail and shall be deemed to have been served on the date borne
7 by the return receipt showing delivery, refusal of the
8 addressee to accept delivery or attempted delivery of the
9 notice at the address obtained by the arresting law enforcement
10 officer or on file with the department.

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

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1 of notice of revocation. The hearing shall be held in the
2 county in which the offense for which the person was arrested
3 took place.

4 C. The administrative hearings office may postpone
5 or continue any hearing on its own motion or upon application
6 from the person and for good cause shown for a period not to
7 exceed ninety days from the date of notice of revocation and,
8 provided that, upon a continuance, the department shall extend
9 the validity of the temporary license for the period of the
10 postponement or continuation.

11 D. At the hearing, the administrative hearings
12 office may administer oaths and may issue subpoenas for the
13 attendance of witnesses and the production of relevant books
14 and papers.

15 E. The hearing shall be limited to the following
16 issues:

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

21 (2) whether the person was arrested;

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

24 (4) whether:

25 (a) the person refused to submit to a

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1 test upon request of the law enforcement officer; and

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

5 (5) whether:

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

8 (b) the test results indicated an
9 alcohol concentration in the person's blood or breath of eight
10 one hundredths or more if the person is twenty-one years of age
11 or older, four one hundredths or more if the person is driving
12 a commercial motor vehicle or two one hundredths or more if the
13 person is [~~less~~] younger than twenty-one years of age.

14 F. The administrative hearings office shall enter
15 an order sustaining the revocation or denial of the person's
16 license or privilege to drive if the hearing officer from the
17 administrative hearings office finds that:

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

21 (2) the person was arrested;

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

24 (4) either:

25 (a) the person refused to submit to the

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1 test upon request of the law enforcement officer after the law
2 enforcement officer advised the person that the person's
3 failure to submit to the test could result in the revocation of
4 the person's privilege to drive; or

5 (b) that a chemical test was
6 administered pursuant to the provisions of the Implied Consent
7 Act and the test results indicated an alcohol concentration in
8 the person's blood or breath of eight one hundredths or more if
9 the person is twenty-one years of age or older, four one
10 hundredths or more if the person is driving a commercial motor
11 vehicle or two one hundredths or more if the person is [~~less~~
12 younger than twenty-one years of age.

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

17 H. A person adversely affected by an order of the
18 administrative hearings office may seek review within thirty
19 days in the district court in the county in which the offense
20 for which the person was arrested took place. The district
21 court, upon thirty days' written notice to the department,
22 shall hear the case. On review, it is for the court to
23 determine only whether reasonable grounds exist for revocation
24 or denial of the person's license or privilege to drive based
25 on the record of the administrative proceeding.

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1 I. Any person [~~less~~] younger than eighteen years of
2 age shall have results of the person's hearing forwarded by the
3 administrative hearings office to the person's parent, guardian
4 or custodian."

5 SECTION 37. Section 66-5-501 NMSA 1978 (being Laws 2003,
6 Chapter 239, Section 1) is recompiled as Section 66-8A-36 NMSA
7 1978 and is amended to read:

8 "66-8A-36. SHORT TITLE.--Sections [~~1 through 4 of this~~
9 ~~act~~] 66-8A-36 through 66-8A-39 NMSA 1978 may be cited as the
10 "Ignition Interlock Licensing Act"."

11 SECTION 38. Section 66-5-503 NMSA 1978 (being Laws 2003,
12 Chapter 239, Section 3, as amended) is recompiled as Section
13 66-8A-37 NMSA 1978 and is amended to read:

14 "66-8A-37. IGNITION INTERLOCK LICENSE--REQUIREMENTS.--

15 A. A person whose driving privilege or driver's
16 license has been revoked or denied or who has not met the
17 ignition interlock license requirement as a condition of
18 reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply
19 for an ignition interlock license from the [~~division~~]
20 department.

21 B. An applicant for an ignition interlock license
22 shall:

23 (1) provide proof of installation of the
24 ignition interlock device by [~~a traffic safety bureau-approved~~]
25 an ignition interlock installer approved by the bureau on any

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1 vehicle the applicant drives; and

2 (2) sign an affidavit acknowledging that:

3 (a) operation by the applicant of any
4 vehicle that is not equipped with an ignition interlock device
5 is subject to penalties for driving with a revoked license;

6 (b) tampering or interfering with the
7 proper and intended operation of an ignition interlock device
8 may subject the applicant to penalties for driving with a
9 license that was revoked for driving under the influence of
10 intoxicating liquor or drugs or a violation of the Implied
11 Consent Act; and

12 (c) the applicant shall maintain the
13 ignition interlock device and keep up-to-date records in the
14 motor vehicle showing required service and calibrations and be
15 able to provide the records upon request.

16 C. A person who has been convicted of homicide by
17 vehicle or great bodily harm by vehicle while under the
18 influence of intoxicating liquor or drugs, as provided in
19 Section 66-8-101 NMSA 1978, shall not be issued an ignition
20 interlock license unless the person has completed serving the
21 sentence for that crime, including any period of probation and
22 parole."

23 **SECTION 39.** Section 66-5-504 NMSA 1978 (being Laws 2003,
24 Chapter 239, Section 4, as amended) is recompiled as Section
25 66-8A-38 NMSA 1978 and is amended to read:

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1 "66-8A-38. PENALTIES.--

2 A. A person who is issued an ignition interlock
3 license and operates a vehicle that is not equipped with an
4 ignition interlock device is driving with a license that was
5 revoked for driving under the influence of intoxicating liquor
6 or drugs or a violation of the Implied Consent Act and may be
7 subject to the penalties provided in Section 66-5-39 NMSA 1978.

8 B. A person who is issued an ignition interlock
9 license and who knowingly and deliberately tampers or
10 interferes with or causes another to tamper or interfere with
11 the proper and intended operation of an ignition interlock
12 device may be subject to the penalties for driving with a
13 license that was revoked for driving under the influence of
14 intoxicating liquor or drugs or a violation of the Implied
15 Consent Act as provided in Section 66-5-39 NMSA 1978."

16 SECTION 40. Section 66-8-102.3 NMSA 1978 (being Laws
17 2002, Chapter 82, Section 2, as amended) is recompiled as
18 Section 66-8A-39 NMSA 1978 and is amended to read:

19 "66-8A-39. IMPOSING A FEE--INTERLOCK DEVICE FUND
20 CREATED.--

21 A. A fee is imposed on a person convicted of
22 driving under the influence of intoxicating liquor or drugs in
23 violation of [~~Section 66-8-102 NMSA 1978~~] the Driving Under the
24 Influence Act or adjudicated as a delinquent on the basis of
25 Subparagraph (a) of Paragraph (1) of Subsection A of Section

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1 32A-2-3 NMSA 1978 or a person whose driver's license is revoked
2 pursuant to the provisions of the Implied Consent Act, in an
3 amount determined by rule of the [~~traffic safety~~] bureau [~~of~~
4 ~~the department of transportation~~] not to exceed one hundred
5 dollars (\$100) but not less than fifty dollars (\$50.00) for
6 each year the person is required to operate only vehicles
7 equipped with an ignition interlock device in order to ensure
8 the solvency of the interlock device fund. The fee shall not
9 be imposed on an indigent person.

10 B. The "interlock device fund" is created in the
11 state treasury. The fee imposed pursuant to Subsection A of
12 this section shall be collected by the [~~motor vehicle division~~
13 ~~of the taxation and revenue~~] department and deposited in the
14 interlock device fund.

15 C. All money in the interlock device fund is
16 appropriated to the [~~traffic safety~~] bureau [~~of the department~~
17 ~~of transportation~~] to cover part of the costs of installing,
18 removing and leasing ignition interlock devices for indigent
19 people who are required, pursuant to convictions [~~under Section~~
20 ~~66-8-102 NMSA 1978~~] for violations of the Driving Under the
21 Influence Act or adjudications on the basis of Subparagraph (a)
22 of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978
23 or driver's license revocations pursuant to the provisions of
24 the Implied Consent Act or as a condition of parole, to install
25 those devices in their vehicles. Provided that money is

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1 available in the interlock device fund, the [~~traffic safety~~]
2 bureau shall pay, for one vehicle per offender, up to fifty
3 dollars (\$50.00) for the cost of installation, up to fifty
4 dollars (\$50.00) for the cost of removal and up to thirty
5 dollars (\$30.00) monthly for verified active usage of the
6 interlock device. The [~~traffic safety~~] bureau shall not pay
7 any amount above what an offender would be required to pay for
8 the installation, removal or usage of an interlock device.

9 D. Indigency shall be determined by the [~~traffic~~
10 ~~safety~~] bureau based on proof of enrollment in one or more of
11 the following types of public assistance:

- 12 (1) temporary assistance for needy families;
- 13 (2) general assistance;
- 14 (3) the supplemental [~~nutritional~~] nutrition
15 assistance program, also known as "food stamps";
- 16 (4) supplemental security income;
- 17 (5) the federal food distribution program on
18 Indian reservations; or
- 19 (6) other criteria approved by the [~~traffic~~
20 ~~safety~~] bureau.

21 E. Any balance remaining in the interlock device
22 fund shall not revert to the general fund at the end of any
23 fiscal year.

24 F. The interlock device fund shall be administered
25 by the [~~traffic safety~~] bureau [~~of the department of~~

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1 ~~transportation~~]. No more than ten percent of the money in the
2 interlock device fund in any fiscal year shall be expended by
3 the [~~traffic safety~~] bureau [~~of the department of~~
4 ~~transportation~~] for the purpose of administering the fund."

5 SECTION 41. A new section of Motor Vehicle Code, Section
6 66-8A-40 NMSA 1978, is enacted to read:

7 "66-8A-40. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE
8 TREATMENT FUND CREATED.--The "driving under the influence
9 treatment fund" is created as a nonreverting fund in the state
10 treasury. The fund consists of appropriations, distributions
11 and money otherwise accruing to the fund. Money in the fund is
12 appropriated to the department of health to provide for
13 treatment programs provided for in the Driving Under the
14 Influence Act. Money in the fund shall be disbursed on
15 warrants signed by the secretary of finance and administration
16 pursuant to vouchers signed by the secretary of health or the
17 secretary's authorized representative."

18 SECTION 42. Section 66-5-39.1 NMSA 1978 (being Laws 2013,
19 Chapter 163, Section 3) is amended to read:

20 "66-5-39.1. DRIVING WHILE LICENSE REVOKED--PENALTIES.--

21 A. A person who drives a motor vehicle on a public
22 highway of this state at a time when the person's privilege to
23 do so is revoked and who knows or should have known that the
24 person's license was revoked is guilty of a misdemeanor and
25 shall be charged with a violation of this section. Upon

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1 conviction, the person shall be punished, notwithstanding the
2 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
3 not less than four days or more than three hundred sixty-four
4 days or by participation for an equivalent period of time in a
5 certified alternative sentencing program, and there may be
6 imposed in addition a fine of not more than one thousand
7 dollars (\$1,000). When a person pays any or all of the cost of
8 participating in a certified alternative sentencing program,
9 the court may apply that payment as a deduction to any fine
10 imposed by the court.

11 B. Notwithstanding any other provision of law for
12 suspension or deferment of execution of a sentence, if the
13 person's privilege to drive was revoked for driving under the
14 influence of intoxicating liquor or drugs or a violation of the
15 Implied Consent Act, upon conviction pursuant to this section,
16 the person shall be punished by imprisonment for not less than
17 [~~seven~~] thirty consecutive days and shall be fined not less
18 than three hundred dollars (\$300) and not more than one
19 thousand dollars (\$1,000) and the fine and imprisonment shall
20 not be suspended, deferred or taken under advisement. No other
21 disposition by plea of guilty to any other charge in
22 satisfaction of a charge under this section shall be authorized
23 if the person's privilege to drive was revoked for driving
24 under the influence of intoxicating liquor or drugs or a
25 violation of the Implied Consent Act. Any municipal ordinance

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1 prohibiting driving with a revoked license shall provide
2 penalties no less stringent than provided in this section.

3 C. In addition to any other penalties imposed
4 pursuant to this section, when a person is convicted pursuant
5 to the provisions of this section or a municipal ordinance that
6 prohibits driving on a revoked license, the motor vehicle the
7 person was driving shall be immobilized by an immobilization
8 device for thirty days, unless immobilization of the motor
9 vehicle poses an imminent danger to the health, safety or
10 employment of the convicted person's immediate family or the
11 family of the owner of the motor vehicle. The convicted person
12 shall bear the cost of immobilizing the motor vehicle.

13 D. The division, upon receiving a record of the
14 conviction of any person under this section, shall not issue a
15 new license for an additional period of one year from the date
16 the person would otherwise have been entitled to apply for a
17 new license."

18 SECTION 43. Section 7-1-6.40 NMSA 1978 (being Laws 1997,
19 Chapter 182, Section 1, as amended) is amended to read:

20 "7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI
21 GRANT FUND--CERTAIN MUNICIPALITIES--LOTTERY TUITION
22 FUND--DRIVING UNDER THE INFLUENCE TREATMENT FUND.--

23 A. A distribution pursuant to Section 7-1-6.1
24 NMSA 1978 shall be made to the local DWI grant fund in an
25 amount equal to the following percentages of the net receipts
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1 attributable to the liquor excise tax:

2 (1) prior to July 1, 2015, forty-one and one-
3 half percent;

4 (2) from July 1, 2015 through June 30, 2018,
5 forty-six percent; and

6 (3) on and after July 1, 2018, forty-one and
7 one-half percent.

8 B. A distribution pursuant to Section 7-1-6.1
9 NMSA 1978 of twenty thousand seven hundred fifty dollars
10 (\$20,750) monthly from the net receipts attributable to the
11 liquor excise tax shall be made to a municipality that is
12 located in a class A county and that has a population according
13 to the most recent federal decennial census of more than thirty
14 thousand but less than sixty thousand. The distribution
15 pursuant to this subsection shall be used by the municipality
16 only for the provision of alcohol treatment and rehabilitation
17 services for street inebriates.

18 C. ~~[From]~~ Beginning July 1, ~~[2015 through June 30]~~
19 2017, a distribution pursuant to Section 7-1-6.1 NMSA 1978 ~~[of~~
20 ~~thirty-nine percent of the net receipts attributable to the~~
21 ~~liquor excise tax]~~ shall be made to the ~~[lottery tuition]~~
22 driving under the influence treatment fund in an amount equal
23 to thirty-nine percent of the net receipts attributable to the
24 liquor excise tax."

25 SECTION 44. APPROPRIATION.--One million five hundred

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1 thousand dollars (\$1,500,000) is appropriated from the general
2 fund to the driving under the influence treatment fund for
3 expenditure in fiscal year 2018 and subsequent fiscal years to
4 establish administrative procedures and treatment programs to
5 which offenders are sentenced pursuant to the Driving Under the
6 Influence Act. Any unexpended or unencumbered balance
7 remaining at the end of a fiscal year shall not revert to the
8 general fund.

9 SECTION 45. REPEAL.--Sections 66-5-502, 66-8-102,
10 66-8-103 and 66-8-104 NMSA 1978 (being Laws 2003, Chapter 239,
11 Section 2, Laws 1953, Chapter 139, Section 54, Laws 1967,
12 Chapter 160, Section 1 and Laws 1978, Chapter 35, Section 512,
13 as amended) are repealed.

14 SECTION 46. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2017.

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