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HOUSE BILL 403

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO CRIMINAL LAW; MODIFYING THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR TO ALLOW THREE HOURS FOR THE ADMINISTRATION OF A CHEMICAL TEST TO DETERMINE ALCOHOL CONCENTRATION; PROVIDING FOR THE ADMISSIBILITY OF CHEMICAL TESTS TAKEN MORE THAN THREE HOURS AFTER DRIVING; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; DECLARING AN EMERGENCY.

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

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2005, Chapter 241, Section 5 and by Laws 2005, Chapter 269, Section 5) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE

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1 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

2 A. It is unlawful for a person who is under the
3 influence of intoxicating liquor to drive a vehicle within this
4 state.

5 B. It is unlawful for a person who is under the
6 influence of any drug to a degree that renders ~~[him]~~ the person
7 incapable of safely driving a vehicle to drive a vehicle within
8 this state.

9 C. It is unlawful for:

10 (1) a person ~~[who]~~ to drive a vehicle in this
11 state if the person has an alcohol concentration of eight one
12 hundredths or more in ~~[his]~~ the person's blood or breath ~~[to~~
13 ~~drive a vehicle within this state]~~ within three hours of
14 driving the vehicle and the alcohol concentration results from
15 alcohol consumed before or while driving the vehicle; or

16 (2) a person ~~[who]~~ to drive a commercial motor
17 vehicle in this state if the person has an alcohol
18 concentration of four one hundredths or more in ~~[his]~~ the
19 person's blood or breath ~~[to drive a commercial motor vehicle~~
20 ~~within this state]~~ within three hours of driving the commercial
21 motor vehicle and the alcohol concentration results from
22 alcohol consumed before or while driving the vehicle.

23 D. Aggravated driving while under the influence of
24 intoxicating liquor or drugs consists of a person who:

25 (1) drives a vehicle in this state and has an

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1 alcohol concentration of sixteen one hundredths or more in
2 [~~his~~] the person's blood or breath [~~while driving a vehicle~~
3 ~~within this state~~] within three hours of driving the vehicle
4 and the alcohol concentration results from alcohol consumed
5 before or while driving the vehicle;

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

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

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

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

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1 subsequent convictions.

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

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

25 (2) upon a third conviction, an offender shall

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

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

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

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

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

13 K. Upon any conviction pursuant to this section, an
14 offender shall be required to participate in and complete,
15 within a time specified by the court, an alcohol or drug abuse
16 screening program approved by the department of finance and
17 administration and, if necessary, a treatment program approved
18 by the court. The requirement imposed pursuant to this
19 subsection shall not be suspended, deferred or taken under
20 advisement.

21 L. Upon a second or third conviction pursuant to
22 this section, an offender shall be required to participate in
23 and complete, within a time specified by the court:

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

4 (3) a drug court program approved by the
5 court; or

6 (4) any other substance abuse treatment
7 program approved by the court.

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

10 M. Upon a felony conviction pursuant to this
11 section, the corrections department shall provide substance
12 abuse counseling and treatment to the offender in its custody.
13 While the offender is on probation or parole under its
14 supervision, the corrections department shall also provide
15 substance abuse counseling and treatment to the offender or
16 shall require the offender to obtain substance abuse counseling
17 and treatment.

18 N. Upon a conviction pursuant to this section, an
19 offender shall be required to obtain an ignition interlock
20 license and have an ignition interlock device installed and
21 operating on all motor vehicles driven by the offender,
22 pursuant to rules adopted by the bureau. Unless determined by
23 the sentencing court to be indigent, the offender shall pay all
24 costs associated with having an ignition interlock device
25 installed on the appropriate motor vehicles. The offender

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1 shall operate only those vehicles equipped with ignition
2 interlock devices for:

3 (1) a period of one year, for a first
4 offender;

5 (2) a period of two years, for a second
6 conviction pursuant to this section;

7 (3) a period of three years, for a third
8 conviction pursuant to this section; or

9 (4) the remainder of the offender's life, for
10 a fourth or subsequent conviction pursuant to this section.

11 O. Five years from the date of conviction and every
12 five years thereafter, a fourth or subsequent offender may
13 apply to a district court for removal of the ignition interlock
14 device requirement provided in this section and for restoration
15 of a driver's license. A district court may, for good cause
16 shown, remove the ignition interlock device requirement and
17 order restoration of the license; provided that the offender
18 has not been subsequently convicted of driving a motor vehicle
19 while under the influence of intoxicating liquor or drugs.
20 Good cause may include an alcohol screening and proof from the
21 interlock vendor that the person has not had violations of the
22 interlock device.

23 P. In the case of a first, second or third offense
24 under this section, the magistrate court has concurrent
25 jurisdiction with district courts to try the offender.

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1 Q. A conviction pursuant to a municipal or county
2 ordinance in New Mexico or a law of any other jurisdiction,
3 territory or possession of the United States or of a tribe,
4 when that ordinance or law is equivalent to New Mexico law for
5 driving while under the influence of intoxicating liquor or
6 drugs, and prescribes penalties for driving while under the
7 influence of intoxicating liquor or drugs, shall be deemed to
8 be a conviction pursuant to this section for purposes of
9 determining whether a conviction is a second or subsequent
10 conviction.

11 R. In addition to any other fine or fee that may be
12 imposed pursuant to the conviction or other disposition of the
13 offense under this section, the court may order the offender to
14 pay the costs of any court-ordered screening and treatment
15 programs.

16 S. With respect to this section and notwithstanding
17 any provision of law to the contrary, if an offender's sentence
18 was suspended or deferred in whole or in part and the offender
19 violates any condition of probation, the court may impose any
20 sentence that the court could have originally imposed and
21 credit shall not be given for time served by the offender on
22 probation.

23 T. As used in this section:

24 (1) "bodily injury" means an injury to a
25 person that is not likely to cause death or great bodily harm

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1 to the person, but does cause painful temporary disfigurement
2 or temporary loss or impairment of the functions of any member
3 or organ of the person's body;

4 (2) "commercial motor vehicle" means a motor
5 vehicle or combination of motor vehicles used in commerce to
6 transport passengers or property if the motor vehicle:

7 (a) has a gross combination weight
8 rating of more than twenty-six thousand pounds inclusive of a
9 towed unit with a gross vehicle weight rating of more than ten
10 thousand pounds;

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

13 (c) is designed to transport sixteen or
14 more passengers, including the driver; or

15 (d) is of any size and is used in the
16 transportation of hazardous materials, which requires the motor
17 vehicle to be placarded under applicable law; and

18 (3) "conviction" means an adjudication of
19 guilt and does not include imposition of a sentence."

20 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 518, as amended by Laws 2003, Chapter 51,
22 Section 12 and by Laws 2003, Chapter 90, Section 5) is amended
23 to read:

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

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

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

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

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

14 (a) no presumption shall be made that
15 the person either was or was not under the influence of
16 intoxicating liquor, unless the person is driving a commercial
17 motor vehicle; and

18 (b) the amount of alcohol in the
19 person's blood or breath may be considered with other competent
20 evidence in determining whether the person was under the
21 influence of intoxicating liquor; or

22 (3) an alcohol concentration of four one
23 hundredths or more and the person is driving a commercial
24 vehicle, it shall be presumed that the person is under the
25 influence of intoxicating liquor.

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1 C. The arresting officer shall charge the person
2 tested with a violation of Section 66-8-102 NMSA 1978 when the
3 blood or breath of the person contains an alcohol concentration
4 of:

5 (1) eight one hundredths or more; or

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

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

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

20 [~~E.~~] F. The determination of alcohol concentration
21 shall be based on the grams of alcohol in one hundred
22 milliliters of blood or the grams of alcohol in two hundred ten
23 liters of breath.

24 [~~F.~~] G. The presumptions in Subsection B of this
25 section do not limit the introduction of other competent

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1 evidence concerning whether the person was under the influence
2 of intoxicating liquor.

3 [G.] H. If a person is convicted of driving a motor
4 vehicle while under the influence of intoxicating liquor, the
5 trial judge shall [~~be required to~~] inquire into the past
6 driving record of the person before sentence is entered in the
7 matter."

8 Section 3. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.