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HOUSE BILL 1233

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

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL LAW; MODIFYING THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS TO PROVIDE FOR DIFFERENT UNLAWFUL ALCOHOL CONCENTRATIONS IN RELATION TO DIFFERENT TIME PERIODS; 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:

12 (a) eight one hundredths or more in
13 [~~his~~] the person's blood or breath [~~to drive a vehicle within~~
14 ~~this state~~] at the time of driving the vehicle;

15 (b) nine one hundredths or more in the
16 person's blood or breath within one hour of driving the vehicle
17 and the alcohol concentration results from alcohol consumed
18 before or while driving the vehicle;

19 (c) ten one hundredths or more in the
20 person's blood or breath within two hours of driving the
21 vehicle and the alcohol concentration results from alcohol
22 consumed before or while driving the vehicle; or

23 (d) eleven one hundredths or more in the
24 person's blood or breath within three hours of driving the
25 vehicle and the alcohol concentration results from alcohol

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1 consumed before or while driving the vehicle; or

2 (2) a person ~~[who]~~ to drive a commercial motor
3 vehicle in this state if the person has an alcohol
4 concentration of:

5 (a) four one hundredths or more in [his]
6 the person's blood or breath [to drive a commercial motor
7 vehicle within this state] at the time of driving the
8 commercial motor vehicle;

9 (b) five one hundredths or more in the
10 person's blood or breath within one hour of driving the
11 commercial motor vehicle and the alcohol concentration results
12 from alcohol consumed before or while driving the vehicle;

13 (c) six one hundredths or more in the
14 person's blood or breath within two hours of driving the
15 commercial motor vehicle and the alcohol concentration results
16 from alcohol consumed before or while driving the vehicle; or

17 (d) seven one hundredths or more in the
18 person's blood or breath within three hours of driving the
19 commercial motor vehicle and the alcohol concentration results
20 from alcohol consumed before or while driving the vehicle.

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

23 (1) drives a vehicle in this state and has an
24 alcohol concentration of:

25 (a) sixteen one hundredths or more in

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1 [his] the person's blood or breath [~~while driving a vehicle~~
2 ~~within this state~~] at the time of driving the vehicle;

3 (b) seventeen one hundredths or more in
4 the person's blood or breath within one hour of driving the
5 vehicle and the alcohol concentration results from alcohol
6 consumed before or while driving the vehicle;

7 (c) eighteen one hundredths or more in
8 the person's blood or breath within two hours of driving the
9 vehicle and the alcohol concentration results from alcohol
10 consumed before or while driving the vehicle; or

11 (d) nineteen one hundredths or more in
12 the person's blood or breath within three hours of driving the
13 vehicle and the alcohol concentration results from alcohol
14 consumed before or while driving the vehicle;

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

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

22 E. A person under first conviction pursuant to this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 ninety days or by a fine of not more than five hundred dollars

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1 (\$500), or both; provided that if the sentence is suspended in
2 whole or in part or deferred, the period of probation may
3 extend beyond ninety days but shall not exceed one year. Upon
4 a first conviction pursuant to this section, an offender shall
5 be sentenced to not less than twenty-four hours and not more
6 than forty-eight hours of community service. In addition, the
7 offender may be required to pay a fine of three hundred dollars
8 (\$300). The offender shall be ordered by the court to
9 participate in and complete a screening program described in
10 Subsection K of this section and to attend a driver
11 rehabilitation program for alcohol or drugs, also known as a
12 "DWI school", approved by the bureau and also may be required
13 to participate in other rehabilitative services as the court
14 shall determine to be necessary. 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 not less than forty-eight
18 consecutive hours in jail. If an offender fails to complete,
19 within a time specified by the court, any community service,
20 screening program, treatment program or DWI school ordered by
21 the court or fails to comply with any other condition of
22 probation, the offender shall be sentenced to not less than an
23 additional forty-eight consecutive hours in jail. Any jail
24 sentence imposed pursuant to this subsection for failure to
25 complete, within a time specified by the court, any community

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1 service, screening program, treatment program or DWI school
2 ordered by the court or for aggravated driving while under the
3 influence of intoxicating liquor or drugs shall not be
4 suspended, deferred or taken under advisement. On a first
5 conviction pursuant to this section, any time spent in jail for
6 the offense prior to the conviction for that offense shall be
7 credited to any term of imprisonment fixed by the court. A
8 deferred sentence pursuant to this subsection shall be
9 considered a first conviction for the purpose of determining
10 subsequent convictions.

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

20 (1) upon a second conviction, an offender
21 shall be sentenced to a jail term of not less than ninety-six
22 consecutive hours, forty-eight hours of community service and a
23 fine of five hundred dollars (\$500). In addition to those
24 penalties, when an offender commits aggravated driving while
25 under the influence of intoxicating liquor or drugs, the

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1 offender shall be sentenced to a jail term of not less than
2 ninety-six consecutive hours. If an offender fails to
3 complete, within a time specified by the court, any community
4 service, screening program or treatment program ordered by the
5 court, the offender shall be sentenced to not less than an
6 additional seven consecutive days in jail. A penalty imposed
7 pursuant to this paragraph shall not be suspended or deferred
8 or taken under advisement; and

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

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

4 H. Upon a fifth conviction pursuant to this
5 section, an offender is guilty of a fourth degree felony and,
6 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
7 shall be sentenced to a term of imprisonment of two years, one
8 year of which shall not be suspended, deferred or taken under
9 advisement.

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

16 J. Upon a seventh or subsequent conviction pursuant
17 to this section, an offender is guilty of a third degree felony
18 and, notwithstanding the provisions of Section 31-18-15 NMSA
19 1978, shall be sentenced to a term of imprisonment of three
20 years, two years of which shall not be suspended, deferred or
21 taken under advisement.

22 K. Upon any conviction pursuant to this section, an
23 offender shall be required to participate in and complete,
24 within a time specified by the court, an alcohol or drug abuse
25 screening program approved by the department of finance and

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1 administration and, if necessary, a treatment program approved
2 by the court. The requirement imposed pursuant to this
3 subsection shall not be suspended, deferred or taken under
4 advisement.

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

8 (1) not less than a twenty-eight-day
9 inpatient, residential or in-custody substance abuse treatment
10 program approved by the court;

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

13 (3) a drug court program approved by the
14 court; or

15 (4) any other substance abuse treatment
16 program approved by the court.

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

19 M. Upon a felony conviction pursuant to this
20 section, the corrections department shall provide substance
21 abuse counseling and treatment to the offender in its custody.
22 While the offender is on probation or parole under its
23 supervision, the corrections department shall also provide
24 substance abuse counseling and treatment to the offender or
25 shall require the offender to obtain substance abuse counseling

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1 and treatment.

2 N. Upon a conviction pursuant to this section, an
3 offender shall be required to obtain an ignition interlock
4 license and have an ignition interlock device installed and
5 operating on all motor vehicles driven by the offender,
6 pursuant to rules adopted by the bureau. Unless determined by
7 the sentencing court to be indigent, the offender shall pay all
8 costs associated with having an ignition interlock device
9 installed on the appropriate motor vehicles. The offender
10 shall operate only those vehicles equipped with ignition
11 interlock devices for:

12 (1) a period of one year, for a first
13 offender;

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

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

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

20 O. Five years from the date of conviction and every
21 five years thereafter, a fourth or subsequent offender may
22 apply to a district court for removal of the ignition interlock
23 device requirement provided in this section and for restoration
24 of a driver's license. A district court may, for good cause
25 shown, remove the ignition interlock device requirement and

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1 order restoration of the license; provided that the offender
2 has not been subsequently convicted of driving a motor vehicle
3 while under the influence of intoxicating liquor or drugs.

4 Good cause may include an alcohol screening and proof from the
5 interlock vendor that the person has not had violations of the
6 interlock device.

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

10 Q. A conviction pursuant to a municipal or county
11 ordinance in New Mexico or a law of any other jurisdiction,
12 territory or possession of the United States or of a tribe,
13 when that ordinance or law is equivalent to New Mexico law for
14 driving while under the influence of intoxicating liquor or
15 drugs, and prescribes penalties for driving while under the
16 influence of intoxicating liquor or drugs, shall be deemed to
17 be a conviction pursuant to this section for purposes of
18 determining whether a conviction is a second or subsequent
19 conviction.

20 R. In addition to any other fine or fee that may be
21 imposed pursuant to the conviction or other disposition of the
22 offense under this section, the court may order the offender to
23 pay the costs of any court-ordered screening and treatment
24 programs.

25 S. With respect to this section and notwithstanding

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1 any provision of law to the contrary, if an offender's sentence
2 was suspended or deferred in whole or in part and the offender
3 violates any condition of probation, the court may impose any
4 sentence that the court could have originally imposed and
5 credit shall not be given for time served by the offender on
6 probation.

7 T. As used in this section:

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

13 (2) "commercial motor vehicle" means a motor
14 vehicle or combination of motor vehicles used in commerce to
15 transport passengers or property if the motor vehicle:

16 (a) has a gross combination weight
17 rating of more than twenty-six thousand pounds inclusive of a
18 towed unit with a gross vehicle weight rating of more than ten
19 thousand pounds;

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

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

24 (d) is of any size and is used in the
25 transportation of hazardous materials, which requires the motor

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1 vehicle to be placarded under applicable law; and

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

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

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

10 A. The results of a test performed pursuant to the
11 Implied Consent Act may be introduced into evidence in any
12 civil action or criminal action arising out of the acts alleged
13 to have been committed by the person tested for driving a motor
14 vehicle while under the influence of intoxicating liquor or
15 drugs.

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

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

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

23 (a) no presumption shall be made that
24 the person either was or was not under the influence of
25 intoxicating liquor, unless the person is driving a commercial

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1 motor vehicle; and

2 (b) the amount of alcohol in the
3 person's blood or breath may be considered with other competent
4 evidence in determining whether the person was under the
5 influence of intoxicating liquor; or

6 (3) an alcohol concentration of four one
7 hundredths or more and the person is driving a commercial
8 vehicle, it shall be presumed that the person is under the
9 influence of intoxicating liquor.

10 C. The arresting officer shall charge the person
11 tested with a violation of Section 66-8-102 NMSA 1978 when the
12 blood or breath of the person contains an alcohol concentration
13 of:

14 (1) eight one hundredths or more; or

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

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

22 E. If the test performed pursuant to the Implied
23 Consent Act is administered more than three hours after the
24 person was driving a vehicle, the test result may be introduced
25 as evidence of the alcohol concentration in the person's blood

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1 or breath at the time of the test and the trier of fact shall
2 determine what weight to give the test result for the purpose
3 of determining a violation of Section 66-8-102 NMSA 1978.

4 [E-] F. The determination of alcohol concentration
5 shall be based on the grams of alcohol in one hundred
6 milliliters of blood or the grams of alcohol in two hundred ten
7 liters of breath.

8 [F-] G. The presumptions in Subsection B of this
9 section do not limit the introduction of other competent
10 evidence concerning whether the person was under the influence
11 of intoxicating liquor.

12 [G-] H. If a person is convicted of driving a motor
13 vehicle while under the influence of intoxicating liquor, the
14 trial judge shall [~~be required to~~] inquire into the past
15 driving record of the person before sentence is entered in the
16 matter."

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