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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;
ESTABLISHING MINIMUM HOURS FOR COMMUNITY SERVICE; 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
OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

1 C. It is unlawful for:

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

8 (2) a person to drive a commercial motor
9 vehicle in this state if the person has an alcohol
10 concentration of four one hundredths or more in the person's
11 blood or breath within three hours of driving the commercial
12 motor vehicle and the alcohol concentration results from
13 alcohol consumed before or while driving the vehicle.

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

16 (1) drives a vehicle in this state and has
17 an alcohol concentration of sixteen one hundredths or more in
18 the person's blood or breath within three hours of driving
19 the vehicle and the alcohol concentration results from
20 alcohol consumed before or while driving the vehicle;

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

25 (3) refused to submit to chemical testing,

1 as provided for in the Implied Consent Act, and in the
2 judgment of the court, based upon evidence of intoxication
3 presented to the court, was under the influence of
4 intoxicating liquor or drugs.

5 E. A person under first conviction pursuant to
6 this section shall be punished, notwithstanding the
7 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
8 not more than ninety days or by a fine of not more than five
9 hundred dollars (\$500), or both; provided that if the
10 sentence is suspended in whole or in part or deferred, the
11 period of probation may extend beyond ninety days but shall
12 not exceed one year. Upon a first conviction pursuant to
13 this section, an offender shall be sentenced to not less than
14 twenty-four hours of community service. In addition, the
15 offender may be required to pay a fine of three hundred
16 dollars (\$300). The offender shall be ordered by the court
17 to participate in and complete a screening program described
18 in Subsection K of this section and to attend a driver
19 rehabilitation program for alcohol or drugs, also known as a
20 "DWI school", approved by the bureau and also may be required
21 to participate in other rehabilitative services as the court
22 shall determine to be necessary. In addition to those
23 penalties, when an offender commits aggravated driving while
24 under the influence of intoxicating liquor or drugs, the
25 offender shall be sentenced to not less than forty-eight

1 consecutive hours in jail. If an offender fails to complete,
2 within a time specified by the court, any community service,
3 screening program, treatment program or DWI school ordered by
4 the court or fails to comply with any other condition of
5 probation, the offender shall be sentenced to not less than
6 an additional forty-eight consecutive hours in jail. Any
7 jail sentence imposed pursuant to this subsection for failure
8 to complete, within a time specified by the court, any
9 community service, screening program, treatment program or
10 DWI school ordered by the court or for aggravated driving
11 while under the influence of intoxicating liquor or drugs
12 shall not be suspended, deferred or taken under advisement.
13 On a first conviction pursuant to this section, any time
14 spent in jail for the offense prior to the conviction for
15 that offense shall be credited to any term of imprisonment
16 fixed by the court. A deferred sentence pursuant to this
17 subsection shall be considered a first conviction for the
18 purpose of determining subsequent convictions.

19 F. A second or third conviction pursuant to this
20 section shall be punished, notwithstanding the provisions of
21 Section 31-18-13 NMSA 1978, by imprisonment for not more than
22 three hundred sixty-four days or by a fine of not more than
23 one thousand dollars (\$1,000), or both; provided that if the
24 sentence is suspended in whole or in part, the period of
25 probation may extend beyond one year but shall not exceed

1 five years. Notwithstanding any provision of law to the
2 contrary for suspension or deferment of execution of a
3 sentence:

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

18 (2) upon a third conviction, an offender
19 shall be sentenced to a jail term of not less than thirty
20 consecutive days, not less than ninety-six hours of community
21 service and a fine of seven hundred fifty dollars (\$750). In
22 addition to those penalties, when an offender commits
23 aggravated driving while under the influence of intoxicating
24 liquor or drugs, the offender shall be sentenced to a jail
25 term of not less than sixty consecutive days. If an offender

1 fails to complete, within a time specified by the court, any
2 community service, screening program or treatment program
3 ordered by the court, the offender shall be sentenced to not
4 less than an additional sixty consecutive days in jail. A
5 penalty imposed pursuant to this paragraph shall not be
6 suspended or deferred or taken under advisement.

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

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

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

25 J. Upon a seventh or subsequent conviction

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

6 K. Upon any conviction pursuant to this section,
7 an offender shall be required to participate in and complete,
8 within a time specified by the court, an alcohol or drug
9 abuse screening program approved by the department of finance
10 and administration and, if necessary, a treatment program
11 approved by the court. The requirement imposed pursuant to
12 this subsection shall not be suspended, deferred or taken
13 under advisement.

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

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

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

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

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

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

3 M. Upon a felony conviction pursuant to this
4 section, the corrections department shall provide substance
5 abuse counseling and treatment to the offender in its
6 custody. While the offender is on probation or parole under
7 its supervision, the corrections department shall also
8 provide substance abuse counseling and treatment to the
9 offender or shall require the offender to obtain substance
10 abuse counseling and treatment.

11 N. Upon a conviction pursuant to this section, an
12 offender shall be required to obtain an ignition interlock
13 license and have an ignition interlock device installed and
14 operating on all motor vehicles driven by the offender,
15 pursuant to rules adopted by the bureau. Unless determined
16 by the sentencing court to be indigent, the offender shall
17 pay all costs associated with having an ignition interlock
18 device installed on the appropriate motor vehicles. The
19 offender shall operate only those vehicles equipped with
20 ignition interlock devices for:

21 (1) a period of one year, for a first
22 offender;

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

25 (3) a period of three years, for a third

1 conviction pursuant to this section; or

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

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

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

20 Q. A conviction pursuant to a municipal or county
21 ordinance in New Mexico or a law of any other jurisdiction,
22 territory or possession of the United States or of a tribe,
23 when that ordinance or law is equivalent to New Mexico law
24 for driving while under the influence of intoxicating liquor
25 or drugs, and prescribes penalties for driving while under

1 the influence of intoxicating liquor or drugs, shall be
2 deemed to be a conviction pursuant to this section for
3 purposes of determining whether a conviction is a second or
4 subsequent conviction.

5 R. In addition to any other fine or fee that may
6 be imposed pursuant to the conviction or other disposition of
7 the offense under this section, the court may order the
8 offender to pay the costs of any court-ordered screening and
9 treatment programs.

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

17 T. As used in this section:

18 (1) "bodily injury" means an injury to a
19 person that is not likely to cause death or great bodily harm
20 to the person, but does cause painful temporary disfigurement
21 or temporary loss or impairment of the functions of any
22 member or organ of the person's body;

23 (2) "commercial motor vehicle" means a motor
24 vehicle or combination of motor vehicles used in commerce to
25 transport passengers or property if the motor vehicle:

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

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

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

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

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

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

18 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
19 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

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

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

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

8 (a) no presumption shall be made that
9 the person either was or was not under the influence of
10 intoxicating liquor, unless the person is driving a
11 commercial motor vehicle; and

12 (b) the amount of alcohol in the
13 person's blood or breath may be considered with other
14 competent evidence in determining whether the person was
15 under the influence of intoxicating liquor; or

16 (3) an alcohol concentration of four one
17 hundredths or more and the person is driving a commercial
18 vehicle, it shall be presumed that the person is under the
19 influence of intoxicating liquor.

20 C. The arresting officer shall charge the person
21 tested with a violation of Section 66-8-102 NMSA 1978 when
22 the blood or breath of the person contains an alcohol
23 concentration of:

24 (1) eight one hundredths or more; or

25 (2) four one hundredths or more if the

1 person is driving a commercial motor vehicle.

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

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

15 F. The determination of alcohol concentration
16 shall be based on the grams of alcohol in one hundred
17 milliliters of blood or the grams of alcohol in two hundred
18 ten liters of breath.

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

23 H. If a person is convicted of driving a motor
24 vehicle while under the influence of intoxicating liquor, the
25 trial judge shall inquire into the past driving record of the

1 person before sentence is entered in the matter."

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

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