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HOUSE BILL 306

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF DRUGS; PROHIBITING  
DRIVING WITH CERTAIN AMOUNTS OF CONTROLLED SUBSTANCES OR  
METABOLITES IN THE BLOOD; CLARIFYING THAT THE IGNITION  
INTERLOCK REQUIREMENT APPLIES ONLY TO PERSONS CONVICTED OF  
DRIVING UNDER THE INFLUENCE OF ALCOHOL.

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) 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.

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

5           C. It is unlawful for:

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

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

18           D. It is unlawful for a person to drive a vehicle  
19 in this state if the person has the following amount or more of  
20 a controlled substance or metabolite in the person's blood  
21 within three hours of driving the vehicle and the controlled  
22 substance or metabolite concentration results from consumption  
23 of a controlled substance before or while driving the vehicle:

24                 (1) for amphetamine, one hundred nanograms per  
25 milliliter of blood;

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1                   (2) for cocaine, fifty nanograms per  
2 milliliter of blood;

3                   (3) for cocaine metabolite, benzoylecgonine or  
4 cocaethylene, fifty nanograms per milliliter of blood;

5                   (4) for heroin, fifty nanograms per milliliter  
6 of blood;

7                   (5) for heroin metabolite, morphine, fifty  
8 nanograms per milliliter of blood;

9                   (6) for heroin metabolite, 6-monoacetyl  
10 morphine, ten nanograms per milliliter of blood;

11                   (7) for the active compound in marijuana,  
12 delta-9-tetrahydrocannabinol, two nanograms per milliliter of  
13 blood;

14                   (8) for marijuana metabolite, 11-nor-9-  
15 carboxy-delta-9-tetrahydrocannabinol, five nanograms per  
16 milliliter of blood; or

17                   (9) for methamphetamine, one hundred nanograms  
18 per milliliter of blood.

19                   [~~D.~~] E. Aggravated driving while under the  
20 influence of intoxicating liquor or drugs consists of a person  
21 who:

22                   (1) drives a vehicle in this state and has an  
23 alcohol concentration of sixteen 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;

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

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

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

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

23 ~~[F.]~~ G. A second or third conviction pursuant to  
24 this section shall be punished, notwithstanding the provisions  
25 of Section 31-18-13 NMSA 1978, by imprisonment for not more

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1 than three hundred sixty-four days or by a fine of not more  
2 than one thousand dollars (\$1,000), or both; provided that if  
3 the sentence is suspended in whole or in part, the period of  
4 probation may extend beyond one year but shall not exceed five  
5 years. Notwithstanding any provision of law to the contrary  
6 for suspension or deferment of execution of a sentence:

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

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

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

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

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

22 ~~[I.]~~ J. Upon a sixth conviction pursuant to this  
23 section, an offender is guilty of a third degree felony and,  
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
25 shall be sentenced to a term of imprisonment of thirty months,

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1 eight months of which shall not be suspended, deferred or  
2 taken under advisement.

3 ~~[J-]~~ K. Upon a seventh or subsequent conviction  
4 pursuant to this section, 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 three years, two years of which shall not be  
8 suspended, deferred or taken under advisement.

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

17 ~~[L-]~~ M. Upon a second or third conviction pursuant  
18 to this section, an offender shall be required to participate  
19 in and complete, within a time specified by the court:

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

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

25 (3) a drug court program approved by the

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1 court; or

2 (4) any other substance abuse treatment  
3 program approved by the court.

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

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

14 [N-] O. Upon a conviction [~~pursuant to~~] for driving  
15 under the influence of intoxicating liquor or for having an  
16 unlawful alcohol concentration in the blood or breath as  
17 provided in this section, an offender shall be required to  
18 obtain an ignition interlock license and have an ignition  
19 interlock device installed and operating on all motor vehicles  
20 driven by the offender, pursuant to rules adopted by the  
21 bureau. Unless determined by the sentencing court to be  
22 indigent, the offender shall pay all costs associated with  
23 having an ignition interlock device installed on the  
24 appropriate motor vehicles. The offender shall operate only  
25 those vehicles equipped with ignition interlock devices for:

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1 (1) a period of one year, for a first  
2 [~~offender~~] conviction;

3 (2) a period of two years, for a second  
4 conviction [~~pursuant to this section~~];

5 (3) a period of three years, for a third  
6 conviction [~~pursuant to this section~~]; or

7 (4) the remainder of the offender's life, for  
8 a fourth or subsequent conviction. [~~pursuant to this section.~~

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

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

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

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

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

23           [T-] U. 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; and

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."

18 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,  
19 Chapter 35, Section 518, as amended) is amended to read:

20 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL  
21 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

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1 vehicle while under the influence of intoxicating liquor or  
2 drugs.

3 B. When the blood or breath of the person tested  
4 contains:

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

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

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

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

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

22 (4) a controlled substance or metabolite in  
23 the person's blood in an amount that is unlawful pursuant to  
24 Section 66-8-102 NMSA 1978, it shall be presumed that the  
25 person is under the influence of drugs.

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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] or the presence of a~~  
8 controlled substance or metabolite that is unlawful pursuant to  
9 the provisions of Section 66-8-102 NMSA 1978.

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

15 E. If the test performed pursuant to the Implied  
16 Consent Act is administered more than three hours after the  
17 person was driving a vehicle, the test result may be introduced  
18 as evidence of the alcohol or drugs concentration in the  
19 person's blood or breath at the time of the test and the trier  
20 of fact shall determine what weight to give the test result for  
21 the purpose of determining a violation of Section 66-8-102 NMSA  
22 1978.

23 F. The determination of alcohol concentration shall  
24 be based on the grams of alcohol in one hundred milliliters of  
25 blood or the grams of alcohol in two hundred ten liters of

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1 breath.

2 G. The presumptions in Subsection B of this section  
3 do not limit the introduction of other competent evidence  
4 concerning whether the person was under the influence of  
5 intoxicating liquor.

6 H. If a person is convicted of driving a motor  
7 vehicle while under the influence of intoxicating liquor or  
8 drugs, the trial judge shall inquire into the past driving  
9 record of the person before sentence is entered in the matter."

10 Section 3. Section 66-8-111 NMSA 1978 (being Laws 1978,  
11 Chapter 35, Section 519, as amended) is amended to read:

12 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
13 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

14 A. If a person under arrest for violation of an  
15 offense enumerated in the Motor Vehicle Code refuses upon  
16 request of a law enforcement officer to submit to chemical  
17 tests designated by the law enforcement agency as provided in  
18 Section 66-8-107 NMSA 1978, none shall be administered except  
19 when a municipal judge, magistrate or district judge issues a  
20 search warrant authorizing chemical tests as provided in  
21 Section 66-8-107 NMSA 1978 upon finding in a law enforcement  
22 officer's written affidavit that there is probable cause to  
23 believe that the person has driven a motor vehicle while under  
24 the influence of alcohol or a controlled substance, thereby  
25 causing the death or great bodily injury of another person, or

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1 there is probable cause to believe that the person has  
2 committed a felony while under the influence of alcohol or a  
3 controlled substance and that chemical tests as provided in  
4 Section 66-8-107 NMSA 1978 will produce material evidence in a  
5 felony prosecution.

6 B. The department, upon receipt of a statement  
7 signed under penalty of perjury from a law enforcement officer  
8 stating the officer's reasonable grounds to believe the  
9 arrested person had been driving a motor vehicle within this  
10 state while under the influence of intoxicating liquor or drugs  
11 and that, upon request, the person refused to submit to a  
12 chemical test after being advised that failure to submit could  
13 result in revocation of the person's privilege to drive, shall  
14 revoke the person's New Mexico driver's license or any  
15 nonresident operating privilege for a period of one year or  
16 until all conditions for license reinstatement are met,  
17 whichever is later.

18 C. The department, upon receipt of a statement  
19 signed under penalty of perjury from a law enforcement officer  
20 stating the officer's reasonable grounds to believe the  
21 arrested person had been driving a motor vehicle within this  
22 state while under the influence of intoxicating liquor or drugs  
23 and that the person submitted to chemical testing pursuant to  
24 Section 66-8-107 NMSA 1978 and the test results indicated an  
25 alcohol concentration that is unlawful pursuant to Section

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1 66-8-102 NMSA 1978 or the presence of a controlled substance or  
2 metabolite in the blood that is unlawful pursuant to Section  
3 66-8-102 NMSA 1978 or an alcohol concentration in the person's  
4 blood or breath of [~~eight one hundredths or more if the person~~  
5 ~~is twenty-one years of age or older, four one hundredths or~~  
6 ~~more if the person is driving a commercial motor vehicle or]~~  
7 two one hundredths or more if the person is less than twenty-  
8 one years of age, shall revoke the person's license or permit  
9 to drive or [his] the person's nonresident operating privilege  
10 for a period of:

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

14 (2) one year or until all conditions for  
15 license reinstatement are met, whichever is later, if the  
16 person was less than twenty-one years of age at the time of the  
17 arrest, notwithstanding any provision of the Children's Code;  
18 or

19 (3) one year or until all conditions for  
20 license reinstatement are met, whichever is later, if the  
21 [~~person has previously had his~~] person's license has been  
22 revoked previously pursuant to the provisions of this section,  
23 notwithstanding the provisions of Paragraph (1) of this  
24 subsection.

25 D. The determination of alcohol concentration shall

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1 be based on the grams of alcohol in one hundred milliliters of  
2 blood or the grams of alcohol in two hundred ten liters of  
3 breath.

4 E. If the person subject to the revocation  
5 provisions of this section is a resident or will become a  
6 resident within one year and is without a license to operate a  
7 motor vehicle in this state, the department shall deny the  
8 issuance of a license to ~~[him]~~ the person for the appropriate  
9 period of time as provided in Subsections B and C of this  
10 section.

11 F. A statement signed by a law enforcement officer,  
12 pursuant to the provisions of Subsection B or C of this  
13 section, shall be sworn to by the officer or shall contain a  
14 declaration substantially to the effect: "I hereby declare  
15 under penalty of perjury that the information given in this  
16 statement is true and correct to the best of my knowledge."  
17 The statement may be signed and submitted electronically in a  
18 manner and form approved by the department. A law enforcement  
19 officer who signs a statement, knowing that the statement is  
20 untrue in any material issue or matter, is guilty of perjury as  
21 provided in Section 66-5-38 NMSA 1978."

22 Section 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,  
23 Chapter 72, Section 7, as amended by Laws 2003, Chapter 51,  
24 Section 14 and by Laws 2003, Chapter 90, Section 7) is amended  
25 to read:

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1 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
2 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
3 HEARING.--On behalf of the department, a law enforcement  
4 officer requesting a chemical test or directing the  
5 administration of a chemical test pursuant to Section 66-8-107  
6 NMSA 1978 shall serve immediate written notice of revocation  
7 and of right to a hearing on a person who refuses to permit  
8 chemical testing or on a person who submits to a chemical test  
9 the results of which indicate an alcohol concentration that is  
10 unlawful pursuant to Section 66-8-102 NMSA 1978 or the presence  
11 of a controlled substance or metabolite in the blood that is  
12 unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol  
13 concentration in the person's blood or breath of [~~eight one~~  
14 ~~hundredths or more if the person is twenty-one years of age or~~  
15 ~~older, four one hundredths or more if the person is driving a~~  
16 ~~commercial motor vehicle or~~] two one hundredths or more if the  
17 person is less than twenty-one years of age. Upon serving  
18 notice of revocation, the law enforcement officer shall take  
19 the license or permit of the driver, if any, and issue a  
20 temporary license valid for twenty days or, if the driver  
21 requests a hearing pursuant to Section 66-8-112 NMSA 1978,  
22 valid until the date the department issues the order following  
23 that hearing; provided that a temporary license shall not be  
24 issued to a driver without a valid license or permit. The law  
25 enforcement officer shall send the person's driver's license to  
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1 the department along with the signed statement required  
2 pursuant to Section 66-8-111 NMSA 1978."

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

7 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
8 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
9 REVIEW.--

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

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

20 (2) in the event the results of a chemical  
21 test cannot be obtained immediately, the date notice of  
22 revocation is served by mail by the department. This notice of  
23 revocation and of right to a hearing shall be sent by certified  
24 mail and shall be deemed to have been served on the date borne  
25 by the return receipt showing delivery, refusal of the

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1 addressee to accept delivery or attempted delivery of the  
2 notice at the address obtained by the arresting law enforcement  
3 officer or on file with the department.

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

22 C. The department may postpone or continue any  
23 hearing on its own motion or upon application from the person  
24 and for good cause shown for a period not to exceed ninety days  
25 from the date of notice of revocation and provided that the

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1 department extends the validity of the temporary license for  
2 the period of the postponement or continuation.

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

6 E. The hearing shall be limited to the following  
7 issues:

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

12 (2) whether the person was arrested;

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

15 (4) whether:

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

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

21 (5) whether:

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

24 (b) the test results indicated an  
25 alcohol concentration that is unlawful pursuant to Section

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1 66-8-102 NMSA 1978 or the presence of a controlled substance or  
2 metabolite in the blood that is unlawful pursuant to Section  
3 66-8-102 NMSA 1978 or an alcohol concentration in the person's  
4 blood or breath of [~~eight one hundredths or more if the person~~  
5 ~~is twenty-one years of age or older, four one hundredths or~~  
6 ~~more if the person is driving a commercial motor vehicle or]~~  
7 two one hundredths or more if the person is less than twenty-  
8 one years of age.

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

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

15 (2) the person was arrested;

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

18 (4) either:

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

24 (b) that a chemical test was  
25 administered pursuant to the provisions of the Implied Consent

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1 Act and the test results indicated an alcohol concentration  
2 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or the  
3 presence of a controlled substance or metabolite in the blood  
4 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an  
5 alcohol concentration in the person's blood or breath of [~~eight~~  
6 ~~one hundredths or more if the person is twenty-one years of age~~  
7 ~~or older, four one hundredths or more if the person is driving~~  
8 ~~a commercial motor vehicle or~~] two one hundredths or more if  
9 the person is less than twenty-one years of age.

10 G. If one or more of the elements set forth in  
11 Paragraphs (1) through (4) of Subsection F of this section are  
12 not found by the department, the person's license shall not be  
13 revoked.

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

23 I. Any person less than eighteen years of age shall  
24 have results of [~~his~~] the person's hearing forwarded by the  
25 department to [~~his~~] the person's parent, guardian or

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custodian."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.