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HOUSE BILL 432

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Jason C. Harper

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING FOR ADMISSION INTO EVIDENCE OF TESTS
ADMINISTERED PURSUANT TO THE IMPLIED CONSENT ACT WITHOUT
TESTIMONY OF THE ANALYST; PROVIDING A PROCEDURE FOR CRIMINAL
TRIALS; PROVIDING FOR TESTIMONY BY INTERACTIVE VIDEO; PROVIDING
FOR IMPLIED CONSENT TO A LABORATORY ANALYST'S APPEARANCE BY
VIDEO.

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

SECTION 1. A new section of the Implied Consent Act is
enacted to read:

"[NEW MATERIAL] CERTIFIED REPORTS OF TESTS--ADMISSION INTO
EVIDENCE--PROCEDURE--VIDEO APPEARANCE.--

A. Except as provided in Subsection B of this
section, a certified report of the findings and analysis of a

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1 test administered pursuant to the Implied Consent Act shall be
2 received into evidence in any court proceeding with the same
3 force and effect as if the individual who conducted the
4 analysis had testified in person.

5 B. Before a certified report is used in lieu of
6 analyst testimony in a criminal trial, a copy of the report
7 shall be served upon the opposing party at least twenty-one
8 days prior to trial with a notice that the report is proposed
9 to be introduced as an exhibit at trial without an analyst's
10 testimony. If the opposing party objects to the absence of an
11 analyst's testimony, the opposing party may serve a written
12 objection, within seven days of receipt of the report, on both
13 the laboratory that produced the report and the offering party.
14 If an objection is timely served, the report shall not be
15 introduced without analyst testimony. If an objection is not
16 timely served or if no objection is made, the report may be
17 received into evidence at trial without analyst testimony.
18 Certified proof of any service required by this subsection
19 shall be filed with the court. In the event of a continuance,
20 a notice or objection that has been timely provided shall be
21 deemed effective and binding upon the parties for any
22 subsequent trial date.

23 C. If a party subpoenas an analyst to testify at a
24 court proceeding for any purpose, the analyst may appear by
25 interactive video. An interactive video appearance shall

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1 provide a full and meaningful opportunity to question and
2 cross-examine the witness in plain sight and clear hearing of
3 the judge, jury, all parties and counsel, with the witness able
4 to clearly see and hear the proceeding."

5 SECTION 2. Section 66-8-107 NMSA 1978 (being Laws 1978,
6 Chapter 35, Section 515, as amended) is amended to read:

7 "66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST--
8 COURT APPEARANCE BY VIDEO.--

9 A. Any person who operates a motor vehicle within
10 this state shall be deemed to have given consent, subject to
11 the provisions of the Implied Consent Act, to chemical tests of
12 [~~his~~] that person's breath or blood or both, approved by the
13 scientific laboratory division of the department of health
14 pursuant to the provisions of Section 24-1-22 NMSA 1978 as
15 determined by a law enforcement officer, or for the purpose of
16 determining the drug or alcohol content of [~~his~~] the person's
17 blood if the person is arrested for any offense arising out of
18 the acts alleged to have been committed while the person was
19 driving a motor vehicle while under the influence of an
20 intoxicating liquor or drug.

21 B. A test of blood or breath or both, approved by
22 the scientific laboratory division of the department of health
23 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
24 be administered at the direction of a law enforcement officer
25 having reasonable grounds to believe the person to have been

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1 driving a motor vehicle within this state while under the
2 influence of intoxicating liquor or drug.

3 C. If a laboratory analyst is subpoenaed to testify
4 at a court proceeding about chemical testing that the analyst
5 performed pursuant to this section, the defendant shall be
6 deemed to have given consent to the analyst's appearance by
7 means of interactive video."

8 SECTION 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2013.