

1 HOUSE BILL 271

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Jane E. Powdrell-Culbert

5
6
7
8
9
10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; ENACTING THE DRIVING UNDER THE INFLUENCE OF
13 INTOXICATING LIQUOR OR DRUGS ACT; PRESCRIBING PENALTIES;
14 PROHIBITING A PERSON CONVICTED FOR THE SECOND TIME OR
15 SUBSEQUENT TIMES OF DRIVING UNDER THE INFLUENCE OF INTOXICATING
16 LIQUOR OR DRUGS FROM PURCHASING, POSSESSING OR CONSUMING
17 INTOXICATING LIQUOR; REPEALING SECTION 66-8-102 NMSA 1978
18 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED).

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 66-1-1 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 1) is amended to read:

23 "66-1-1. SHORT TITLE.--~~[Articles 1 through 8 of]~~ Chapter
24 ~~[64 NMSA 1953]~~ 66, Articles 1 through 8A NMSA 1978 may be cited
25 as the "Motor Vehicle Code"."

.204717.2

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 SECTION 2. A new section of the Motor Vehicle Code,
2 Section 66-8A-1 NMSA 1978, is enacted to read:

3 "66-8A-1. [NEW MATERIAL] SHORT TITLE.--Sections 66-8A-1
4 through 66-8A-7 NMSA 1978 may be cited as the "Driving Under
5 the Influence of Intoxicating Liquor or Drugs Act"."

6 SECTION 3. A new section of the Motor Vehicle Code,
7 Section 66-8A-2 NMSA 1978, is enacted to read:

8 "66-8A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
9 Driving Under the Influence of Intoxicating Liquor or Drugs
10 Act:

11 A. "bodily injury" means an injury to a person that
12 is not likely to cause death or great bodily harm to the
13 person, but does cause painful temporary disfigurement or
14 temporary loss or impairment of the functions of any member or
15 organ of the person's body; and

16 B. "commercial motor vehicle" means a motor vehicle
17 or combination of motor vehicles used in commerce to transport
18 passengers or property if the motor vehicle:

19 (1) has a gross combination weight rating of
20 more than twenty-six thousand pounds inclusive of a towed unit
21 with a gross vehicle weight rating of more than ten thousand
22 pounds;

23 (2) has a gross vehicle weight rating of more
24 than twenty-six thousand pounds;

25 (3) is designed to transport sixteen or more

underscoring material = new
~~[bracketed material] = delete~~

1 passengers, including the driver; or

2 (4) is of any size and is used in the
3 transportation of hazardous materials, which requires the motor
4 vehicle to be placarded under applicable law."

5 SECTION 4. A new section of the Motor Vehicle Code,
6 Section 66-8A-3 NMSA 1978, is enacted to read:

7 "66-8A-3. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE OF
8 INTOXICATING LIQUOR OR DRUGS.--

9 A. It is unlawful for a person to drive a:

10 (1) motor vehicle other than a commercial
11 motor vehicle in this state if the person has an alcohol
12 concentration of eight one hundredths or more in the person's
13 blood or breath within three hours of driving the motor vehicle
14 and the alcohol concentration results from alcohol consumed
15 before or while driving the motor vehicle; or

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

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

.204717.2

underscoring material = new
~~[bracketed material] = delete~~

1 SECTION 5. A new section of the Motor Vehicle Code,
2 Section 66-8A-4 NMSA 1978, is enacted to read:

3 "66-8A-4. [NEW MATERIAL] PENALTIES FOR ALL CONVICTIONS--
4 SCREENING AND TREATMENT--IGNITION INTERLOCK--VIOLATIONS OF
5 PROBATION.--

6 A. Upon any conviction pursuant to the Driving
7 Under the Influence of Intoxicating Liquor or Drugs Act, an
8 offender shall be required to participate in and complete,
9 within a time specified by the court, an alcohol or drug abuse
10 screening program and, if necessary, a treatment program,
11 approved by the court.

12 B. Upon a second or third conviction pursuant to
13 the Driving Under the Influence of Intoxicating Liquor or Drugs
14 Act, an offender shall be required to participate in and
15 complete, within a time specified by the court, one of the
16 following treatment programs approved by the court:

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

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

22 (3) a drug court program; or

23 (4) any other substance abuse treatment
24 program.

25 C. Upon a felony conviction pursuant to the Driving

.204717.2

underscoring material = new
~~[bracketed material]~~ = delete

1 Under the Influence of Intoxicating Liquor or Drugs Act, the
2 corrections department shall provide substance abuse counseling
3 and treatment to the offender in its custody. While the
4 offender is on probation or parole under its supervision, the
5 corrections department shall also provide substance abuse
6 counseling and treatment to the offender or shall require the
7 offender to obtain substance abuse counseling and treatment.

8 D. The court may order the offender to pay the
9 costs of any court-ordered screening and treatment programs.

10 E. Upon any conviction pursuant to the Driving
11 Under the Influence of Intoxicating Liquor or Drugs Act, 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 by
16 the bureau to be indigent, the offender shall pay all costs
17 associated with having an ignition interlock device installed
18 on the appropriate motor vehicles. The offender shall operate
19 only those motor vehicles equipped with ignition interlock
20 devices for:

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

23 (2) a period of two years for a second
24 conviction;

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

.204717.2

underscoring material = new
~~[bracketed material] = delete~~

1 conviction; or

2 (4) the remainder of the offender's life for a
3 fourth or subsequent conviction.

4 F. Five years from the date of the last conviction
5 pursuant to the Driving Under the Influence of Intoxicating
6 Liquor or Drugs Act and every five years thereafter, a person
7 convicted of a fourth or subsequent offense who has not been
8 subsequently convicted of driving a motor vehicle under the
9 influence of intoxicating liquor or drugs and who provides
10 proof from the ignition interlock device vendor that the person
11 has not had violations of the ignition interlock device may
12 apply to a district court for removal of the ignition interlock
13 device.

14 G. An offender who obtains an ignition interlock
15 license and installs an ignition interlock device prior to
16 conviction pursuant to the Driving Under the Influence of
17 Intoxicating Liquor or Drugs Act shall be given credit at
18 sentencing for the time period the ignition interlock device
19 has been in use.

20 H. The requirements for alcohol or drug abuse
21 screening and treatment, if necessary, and installation of an
22 ignition interlock device imposed pursuant to this section
23 shall not be suspended, deferred or taken under advisement."

24 SECTION 6. A new section of the Motor Vehicle Code,
25 Section 66-8A-5 NMSA 1978, is enacted to read:

.204717.2

underscored material = new
[bracketed material] = delete

1 "66-8A-5. [NEW MATERIAL] ADDITIONAL PENALTIES FOR FIRST,
2 SECOND OR THIRD CONVICTIONS.--

3 A. In the case of a first, second or third offense
4 pursuant to the Driving Under the Influence of Intoxicating
5 Liquor or Drugs Act, the magistrate court has concurrent
6 jurisdiction with district courts to try the offender.

7 B. In addition to the penalties imposed pursuant to
8 Section 66-8A-4 NMSA 1978, upon a first conviction pursuant to
9 the Driving Under the Influence of Intoxicating Liquor or Drugs
10 Act, an offender shall be subject to the imposition of any or
11 all of the following:

12 (1) imprisonment for not more than ninety
13 days; provided that, if the sentence is suspended in whole or
14 in part or deferred, the period of probation may extend beyond
15 ninety days, but shall not exceed one year, and any time spent
16 imprisoned for the offense prior to the conviction for that
17 offense shall be credited to any term of imprisonment fixed by
18 the court;

19 (2) a fine of not more than eight hundred
20 dollars (\$800);

21 (3) performance of not less than twenty-four
22 hours of community service; or

23 (4) attendance and completion of a driver
24 rehabilitation program for alcohol or drugs, also known as a
25 "DWI school", approved by the bureau.

.204717.2

underscoring material = new
~~[bracketed material] = delete~~

1 C. A deferred sentence pursuant to Subsection B of
2 this section shall be considered a first conviction for the
3 purpose of determining subsequent convictions.

4 D. If a first offender fails to complete, within a
5 time specified by the court, any community service, screening
6 program, treatment program or DWI school ordered by the court
7 or fails to comply with any other condition of probation, the
8 offender shall be sentenced to a term of imprisonment of not
9 less than an additional forty-eight consecutive hours, which
10 shall not be suspended, deferred or taken under advisement.

11 E. In addition to the penalties imposed pursuant to
12 Section 66-8A-4 NMSA 1978, upon a second conviction pursuant to
13 the Driving Under the Influence of Intoxicating Liquor or Drugs
14 Act, an offender shall forfeit the privilege to purchase,
15 possess or consume intoxicating liquor in the state for one
16 year and shall be subject to the imposition of any or all of
17 the following:

18 (1) imprisonment for not less than ninety-six
19 consecutive hours or more than three hundred sixty-four days,
20 ninety-six consecutive hours of which may not be suspended or
21 deferred or taken under advisement;

22 (2) a fine of not less than five hundred
23 dollars (\$500) or more than one thousand dollars (\$1,000); or

24 (3) not less than forty-eight hours of
25 community service.

.204717.2

underscoring material = new
[bracketed material] = delete

1 F. If a person convicted of a second offense under
2 the Driving Under the Influence of Intoxicating Liquor or Drugs
3 Act fails to complete, within a time specified by the court,
4 any community service, screening program or treatment program
5 ordered by the court, the offender shall be sentenced to an
6 additional term of imprisonment of seven consecutive days,
7 which shall not be suspended, deferred or taken under
8 advisement.

9 G. In addition to the penalties imposed pursuant to
10 Section 66-8A-4 NMSA 1978, upon a third conviction pursuant to
11 the Driving Under the Influence of Intoxicating Liquor or Drugs
12 Act, an offender shall forfeit the privilege to purchase,
13 possess or consume intoxicating liquor in the state for life
14 and shall be subject to the imposition of all of the following:

15 (1) imprisonment for not less than thirty
16 consecutive days or more than three hundred sixty-four days,
17 thirty consecutive days of which may not be suspended or
18 deferred or taken under advisement;

19 (2) a fine of not less than seven hundred
20 fifty dollars (\$750) or more than one thousand dollars
21 (\$1,000); and

22 (3) performance of not less than ninety-six
23 hours of community service.

24 H. If a person convicted of a third offense
25 pursuant to the Driving Under the Influence of Intoxicating

underscoring material = new
~~[bracketed material]~~ = delete

1 Liquor or Drugs Act fails to complete, within a time specified
2 by the court, any community service, screening program or
3 treatment program ordered by the court, the offender shall be
4 sentenced to an additional term of imprisonment of sixty
5 consecutive days, which shall not be suspended, deferred or
6 taken under advisement.

7 I. If an offender's sentence pursuant to this
8 section was suspended or deferred in whole or in part and the
9 offender violates any condition of probation:

10 (1) the court may impose any sentence that the
11 court could have originally imposed and credit shall not be
12 given for time served by the offender on probation; and

13 (2) the period of probation may extend beyond
14 one year but shall not exceed five years.

15 J. A conviction pursuant to a municipal or county
16 ordinance in New Mexico or a law of any other jurisdiction,
17 territory or possession of the United States or of an Indian
18 nation, tribe or pueblo when that ordinance or law is
19 equivalent to New Mexico law for driving under the influence of
20 intoxicating liquor or drugs, and prescribes penalties for
21 driving under the influence of intoxicating liquor or drugs,
22 shall be deemed to be a conviction pursuant to this section for
23 purposes of determining whether a conviction is a second or
24 subsequent conviction.

25 K. An offender who has forfeited the privilege to

.204717.2

underscored material = new
[bracketed material] = delete

1 purchase, possess or consume intoxicating liquor in the state
2 shall obtain a new driver's license in the same format as a
3 driver's license issued to a person under twenty-one years of
4 age.

5 L. Ten years from the date of the third conviction
6 pursuant to the Driving Under the Influence of Intoxicating
7 Liquor or Drugs Act, a person who has forfeited the privilege
8 to purchase, possess or consume intoxicating liquor in the
9 state and who has not been subsequently convicted of any crime
10 where the person has been found to have purchased, possessed or
11 consumed intoxicating liquor may apply to a district court for
12 restoration of the privilege to purchase, possess and consume
13 intoxicating liquor in the state.

14 M. If the privilege to purchase, possess or consume
15 intoxicating liquor in the state has been reinstated and a
16 person is convicted of a fourth offense of driving while under
17 the influence of intoxicating liquor or drugs, the privilege to
18 purchase, possess or consume intoxicating liquor in the state
19 shall be revoked and shall not be eligible for reinstatement."

20 SECTION 7. A new section of the Motor Vehicle Code,
21 Section 66-8A-6 NMSA 1978, is enacted to read:

22 "66-8A-6. [NEW MATERIAL] ADDITIONAL PENALTIES FOR FOURTH
23 AND SUBSEQUENT CONVICTIONS--FELONIES.--

24 A. In addition to the penalties imposed pursuant to
25 Section 66-8A-4 NMSA 1978, upon a fourth conviction pursuant to

.204717.2

underscoring material = new
~~[bracketed material] = delete~~

1 the Driving Under the Influence of Intoxicating Liquor or Drugs
2 Act, an offender is guilty of a fourth degree felony and shall
3 be sentenced to a term of imprisonment of eighteen months, six
4 months of which shall not be suspended, deferred or taken under
5 advisement.

6 B. In addition to the penalties imposed pursuant to
7 Section 66-8A-4 NMSA 1978, upon a fifth conviction pursuant to
8 the Driving Under the Influence of Intoxicating Liquor or Drugs
9 Act, an offender is guilty of a fourth degree felony and shall
10 be sentenced to a term of imprisonment of two years, one year
11 of which shall not be suspended, deferred or taken under
12 advisement.

13 C. In addition to the penalties imposed pursuant to
14 Section 66-8A-4 NMSA 1978, upon a sixth conviction pursuant to
15 the Driving Under the Influence of Intoxicating Liquor or Drugs
16 Act, an offender is guilty of a third degree felony and shall
17 be sentenced to a term of imprisonment of thirty months,
18 eighteen months of which shall not be suspended, deferred or
19 taken under advisement.

20 D. In addition to the penalties imposed pursuant to
21 Section 66-8A-4 NMSA 1978, upon a seventh conviction pursuant
22 to the Driving Under the Influence of Intoxicating Liquor or
23 Drugs Act, an offender is guilty of a third degree felony and
24 shall be sentenced to a term of imprisonment of three years,
25 two years of which shall not be suspended, deferred or taken

.204717.2

underscored material = new
[bracketed material] = delete

1 under advisement.

2 E. In addition to the penalties imposed pursuant to
3 Section 66-8A-4 NMSA 1978, upon an eighth or subsequent
4 conviction pursuant to the Driving Under the Influence of
5 Intoxicating Liquor or Drugs Act, an offender is guilty of a
6 second degree felony and shall be sentenced to a term of
7 imprisonment of twelve years, ten years of which shall not be
8 suspended, deferred or taken under advisement.

9 F. If an offender's sentence was suspended or
10 deferred in whole or in part and the offender violates any
11 condition of probation, the court may impose any sentence that
12 the court could have originally imposed and credit shall not be
13 given for time served by the offender on probation."

14 SECTION 8. A new section of the Motor Vehicle Code,
15 Section 66-8A-7 NMSA 1978, is enacted to read:

16 "66-8A-7. [NEW MATERIAL] AGGRAVATED DRIVING UNDER THE
17 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTIES FOR FIRST,
18 SECOND OR THIRD CONVICTIONS.--

19 A. Aggravated driving under the influence of
20 intoxicating liquor or drugs consists of:

21 (1) driving any motor vehicle in this state
22 with an alcohol concentration of sixteen one hundredths or more
23 in the driver's blood or breath within three hours of driving
24 the motor vehicle and the alcohol concentration results from
25 alcohol consumed before or while driving the motor vehicle;

.204717.2

underscoring material = new
~~[bracketed material]~~ = delete

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

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

9 B. In addition to the penalties for a first
10 conviction pursuant to the Driving Under the Influence of
11 Intoxicating Liquor or Drugs Act, when an offender commits a
12 first offense of aggravated driving under the influence of
13 intoxicating liquor or drugs, the offender shall be sentenced
14 to a term of imprisonment of not less than forty-eight
15 consecutive hours, which shall not be suspended, deferred or
16 taken under advisement.

17 C. In addition to the penalties for a second
18 conviction pursuant to the Driving Under the Influence of
19 Intoxicating Liquor or Drugs Act, when an offender commits a
20 second offense of aggravated driving under the influence of
21 intoxicating liquor or drugs, the offender shall be sentenced
22 to a term of imprisonment of not less than ninety-six
23 consecutive hours, which shall not be suspended or deferred or
24 taken under advisement.

25 D. In addition to the penalties for a third

.204717.2

underscored material = new
[bracketed material] = delete

1 conviction pursuant to the Driving Under the Influence of
2 Intoxicating Liquor or Drugs Act, when an offender commits a
3 third offense of aggravated driving under the influence of
4 intoxicating liquor or drugs, the offender shall be sentenced
5 to a term of imprisonment of not less than sixty consecutive
6 days, which shall not be suspended or deferred or taken under
7 advisement.

8 E. If an offender's sentence was suspended or
9 deferred in whole or in part and the offender violates any
10 condition of probation, the court may impose any sentence that
11 the court could have originally imposed and credit shall not be
12 given for time served by the offender on probation."

13 SECTION 9. A new section of Chapter 60, Article 7A NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] SALE TO PROHIBITED PERSON.--It is a
16 violation of the Liquor Control Act for a person to sell or
17 serve alcoholic beverages to or to procure or aid in the
18 procurement of alcoholic beverages for a person who is
19 prohibited from purchasing, possessing or consuming alcoholic
20 beverages pursuant to Section 66-8A-5 NMSA 1978 if the person
21 selling, serving, procuring or aiding in procurement knows or
22 has reason to know that the person is selling, serving,
23 procuring or aiding in procurement of alcoholic beverages for a
24 person who is prohibited from purchasing, possessing or
25 consuming alcoholic beverages pursuant to Section 66-8A-5 NMSA

.204717.2

underscoring material = new
~~[bracketed material] = delete~~

1 1978."

2 SECTION 10. TEMPORARY PROVISION.--All references in law
3 to Section 66-8-102 NMSA 1978 shall be deemed to be references
4 to the Driving Under the Influence of Intoxicating Liquor or
5 Drugs Act.

6 SECTION 11. REPEAL.--Section 66-8-102 NMSA 1978 (being
7 Laws 1953, Chapter 139, Section 54, as amended) is repealed.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25