

1 HOUSE BILL 255

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Elizabeth "Liz" Thomson

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; INCREASING THE REQUIREMENTS FOR REMOVAL OF AN
13 IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S
14 LICENSE; PROVIDING THAT PERSONS WHO DO NOT OBTAIN AN IGNITION
15 INTERLOCK DEVICE AND LICENSE SHALL BE REQUIRED TO PARTICIPATE
16 IN A SOBRIETY MONITORING PROGRAM; PROVIDING ASSISTANCE FOR
17 SOBRIETY MONITORING DEVICES FROM THE INTERLOCK DEVICE FUND.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 66-5-33.1 NMSA 1978 (being Laws 1985,
21 Chapter 47, Section 1, as amended) is amended to read:

22 "66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR
23 REGISTRATION--IGNITION INTERLOCK--SOBRIETY MONITORING--FEE.--

24 A. Whenever a driver's license or registration is
25 suspended or revoked and an application has been made for its

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1 reinstatement, compliance with all appropriate provisions of
2 the Motor Vehicle Code and the payment of a fee of twenty-five
3 dollars (\$25.00) is a prerequisite to the reinstatement of any
4 license or registration.

5 B. If a driver's license was revoked for driving
6 while under the influence of intoxicating liquor or drugs, for
7 aggravated driving while under the influence of intoxicating
8 liquor or drugs or pursuant to the Implied Consent Act, the
9 following are required to reinstate the driver's license:

10 (1) an additional fee of seventy-five dollars
11 (\$75.00);

12 (2) completion of the license revocation
13 period;

14 (3) satisfaction of any court-ordered ignition
15 interlock or sobriety monitoring requirements; [~~and~~]

16 (4) a minimum of six months of driving with an
17 ignition interlock license with no attempts to circumvent or
18 tamper with the ignition interlock device or a minimum of six
19 months of successful participation in a court-supervised
20 sobriety monitoring program pursuant to Subsection R of Section
21 66-8-102 NMSA 1978; and

22 (5) no more than two ignition interlock or
23 sobriety monitoring tests at a level greater than five one
24 hundredths alcohol concentration during the most recent six
25 months of ignition interlock or sobriety monitoring device

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1 verified active usage, as determined by the bureau, prior to
2 reinstatement of the unrestricted driver's license.

3 C. The department may reinstate the driving
4 privileges of an out-of-state resident without the requirement
5 that the person obtain an ignition interlock license for a
6 minimum of six months, if the following conditions are met:

7 (1) the license revocation period is
8 completed;

9 (2) satisfactory proof is presented to the
10 department that the person is no longer a resident of New
11 Mexico; and

12 (3) the license reinstatement fee is paid.

13 D. Fees collected pursuant to Subsection B of this
14 section are appropriated to the local governments road fund.
15 The department shall maintain an accounting of the fees
16 collected and shall report that amount upon request to the
17 legislature."

18 SECTION 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
19 Chapter 139, Section 54, as amended) is amended to read:

20 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
21 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
22 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

23 A. It is unlawful for a person who is under the
24 influence of intoxicating liquor to drive a vehicle within this
25 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. Aggravated driving under the influence of
19 intoxicating liquor or drugs consists of:

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

25 (2) causing bodily injury to a human being as

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1 a result of the unlawful operation of a motor vehicle while
2 driving under the influence of intoxicating liquor or drugs; or
3 (3) refusing to submit to chemical testing, as
4 provided for in the Implied Consent Act, and in the judgment of
5 the court, based upon evidence of intoxication presented to the
6 court, the driver was under the influence of intoxicating
7 liquor or drugs.

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

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

21 F. A second or third conviction pursuant to this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 three hundred sixty-four days or by a fine of not more than one
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of
2 probation may extend beyond one year but shall not exceed five
3 years. Notwithstanding any provision of law to the contrary
4 for suspension or deferment of execution of a sentence:

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

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

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

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

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

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

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

7 K. Upon an eighth or subsequent conviction pursuant
8 to this section, an offender is guilty of a second degree
9 felony and, notwithstanding the provisions of Section 31-18-15
10 NMSA 1978, shall be sentenced to a term of imprisonment of
11 twelve years, ten years of which shall not be suspended,
12 deferred or taken under advisement.

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

21 M. Upon a second or third conviction pursuant to
22 this section, an offender shall be required to participate in
23 and complete, within a time specified by the court:

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

4 (3) a drug court program approved by the
5 court; or

6 (4) any other substance abuse treatment
7 program approved by the court.

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

10 N. Upon a felony conviction pursuant to this
11 section, the corrections department shall provide substance
12 abuse counseling and treatment to the offender in its custody.
13 While the offender is on probation or parole under its
14 supervision, the corrections department shall also provide
15 substance abuse counseling and treatment to the offender or
16 shall require the offender to obtain substance abuse counseling
17 and treatment.

18 O. Upon a conviction pursuant to this section, an
19 offender shall be required to obtain an ignition interlock
20 license and have an ignition interlock device installed and
21 operating on all motor vehicles driven by the offender,
22 pursuant to rules adopted by the bureau. Unless determined by
23 the bureau to be indigent, the offender shall pay all costs
24 associated with having an ignition interlock device installed
25 on the appropriate motor vehicles. The offender shall operate

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1 only those vehicles equipped with ignition interlock devices
2 for:

3 (1) a period of one year, for a first
4 offender;

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

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

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

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

23 Q. An offender who obtains an ignition interlock
24 license and installs an ignition interlock device prior to
25 conviction shall be given credit at sentencing for the time

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1 period the ignition interlock device has been in use.

2 R. An offender who has not installed an ignition
3 interlock device and has not obtained an ignition interlock
4 license shall be required to participate in a bureau-approved
5 sobriety monitoring program for the same period as the ignition
6 interlock requirement in Subsection O of this section or until
7 the end of the period of supervision by the court in the
8 matter, whichever is shorter. The sobriety monitoring program
9 shall include the use of a sobriety monitoring device that
10 identifies the person giving the sample, pursuant to rules
11 adopted by the bureau. Sobriety shall be monitored at least
12 twice daily. Unless determined by the bureau to be indigent,
13 the offender shall pay all costs associated with sobriety
14 monitoring. Upon the offender installing an ignition interlock
15 device and obtaining an ignition interlock license, the court
16 may suspend the sobriety monitoring requirements. The time
17 spent successfully maintaining sobriety shall be credited
18 toward the time required in Subsection O of this section to
19 have the ignition interlock device and license and shall be
20 credited to the six-month interlock requirement pursuant to
21 Section 66-5-33.1 NMSA 1978.

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

25 [~~S-~~] T. A conviction pursuant to a municipal or

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

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

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

22 ~~[V.]~~ W. As used in this section:

23 (1) "bodily injury" means an injury to a
24 person that is not likely to cause death or great bodily harm
25 to the person, but does cause painful temporary disfigurement

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1 or temporary loss or impairment of the functions of any member
2 or organ of the person's body; and

3 (2) "commercial motor vehicle" means a motor
4 vehicle or combination of motor vehicles used in commerce to
5 transport passengers or property if the motor vehicle:

6 (a) has a gross combination weight
7 rating of more than twenty-six thousand pounds inclusive of a
8 towed unit with a gross vehicle weight rating of more than ten
9 thousand pounds;

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

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

14 (d) is of any size and is used in the
15 transportation of hazardous materials, which requires the motor
16 vehicle to be placarded under applicable law."

17 **SECTION 3.** Section 66-8-102.3 NMSA 1978 (being Laws 2002,
18 Chapter 82, Section 2, as amended) is amended to read:

19 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
20 CREATED.--

21 A. A fee is imposed on a person convicted of
22 driving under the influence of intoxicating liquor or drugs in
23 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
24 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
25 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose

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1 driver's license is revoked pursuant to the provisions of the
2 Implied Consent Act, in an amount determined by rule of the
3 [~~traffic safety~~] bureau [~~of the department of transportation~~]
4 not to exceed one hundred dollars (\$100) but not less than
5 fifty dollars (\$50.00) for each year the person is required to
6 operate only vehicles equipped with an ignition interlock
7 device or to use a sobriety monitoring device in order to
8 ensure the solvency of the interlock device fund. The fee
9 shall not be imposed on an indigent person.

10 B. The "interlock device fund" is created in the
11 state treasury. The ignition interlock device fee imposed
12 pursuant to Subsection A of this section shall be collected by
13 the motor vehicle division of the [~~taxation and revenue~~]
14 department and deposited in the interlock device fund. The
15 sobriety monitoring device fee imposed pursuant to Subsection A
16 of this section shall be collected by the courts and deposited
17 in the interlock device fund.

18 C. All money in the interlock device fund is
19 appropriated to the [~~traffic safety~~] bureau [~~of the department~~
20 ~~of transportation~~] to cover part of the costs of installing,
21 removing and leasing ignition interlock devices or leasing
22 sobriety monitoring devices for indigent people who are
23 required, pursuant to convictions under Section 66-8-102 NMSA
24 1978 or adjudications on the basis of Subparagraph (a) of
25 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or
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1 driver's license revocations pursuant to the provisions of the
2 Implied Consent Act or as a condition of parole, to install
3 ~~[these]~~ ignition interlock devices in their vehicles or to use
4 a sobriety monitoring device. Provided that money is available
5 in the interlock device fund, the ~~[traffic safety]~~ bureau shall
6 pay:

7 (1) for one vehicle per offender, up to fifty
8 dollars (\$50.00) for the cost of installation, up to fifty
9 dollars (\$50.00) for the cost of removal and up to thirty
10 dollars (\$30.00) monthly for verified active usage of the
11 interlock device; or

12 (2) up to thirty dollars (\$30.00) monthly
13 toward the lease and use of a sobriety monitoring device.

14 D. The ~~[traffic safety]~~ bureau shall not pay any
15 amount above what an offender would be required to pay for the
16 installation, removal or usage of an interlock device or for
17 the lease of a sobriety monitoring device.

18 ~~[D-]~~ E. Indigency shall be determined by the
19 ~~[traffic safety]~~ bureau based on proof of enrollment in one or
20 more of the following types of public assistance:

- 21 (1) temporary assistance for needy families;
22 (2) general assistance;
23 (3) the supplemental ~~[nutritional]~~ nutrition
24 assistance program, also known as "food stamps";
25 (4) supplemental security income;

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1 (5) the federal food distribution program on
2 Indian reservations; or

3 (6) other criteria approved by the [~~traffic~~
4 ~~safety~~] bureau.

5 [~~E.~~] F. Any balance remaining in the interlock
6 device fund shall not revert to the general fund at the end of
7 any fiscal year.

8 [~~F.~~] G. The interlock device fund shall be
9 administered by the [~~traffic safety~~] bureau [~~of the department~~
10 ~~of transportation~~]. No more than ten percent of the money in
11 the interlock device fund in any fiscal year shall be expended
12 by the [~~traffic safety~~] bureau [~~of the department of~~
13 ~~transportation~~] for the purpose of administering the fund."

14 SECTION 4. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2018.