

HOUSE BILL 567

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR AN ADDITIONAL ORAL FLUID TEST TO DETERMINE IF A PERSON WAS DRIVING UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR DRUG.

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

SECTION 1. Section 66-8-107 NMSA 1978 (being Laws 1978, Chapter 35, Section 515, as amended) is amended to read:

"66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

A. Any person who operates a motor vehicle within this state shall be deemed to have given consent, subject to the provisions of the Implied Consent Act, to chemical tests of [his] that person's breath, [or] blood or [both] oral fluid or any combination thereof, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, as determined by a law

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1 enforcement officer or for the purpose of determining the drug
2 or alcohol content of [~~his~~] the person's breath, blood or oral
3 fluid if the person is arrested for any offense arising out of
4 the acts alleged to have been committed while the person was
5 driving a motor vehicle while under the influence of an
6 intoxicating liquor or drug.

7 B. A test of blood, [~~or~~] breath or [~~both~~] oral
8 fluid, approved by the scientific laboratory division of the
9 department of health pursuant to the provisions of Section
10 24-1-22 NMSA 1978, shall be administered at the direction of a
11 law enforcement officer having reasonable grounds to believe
12 the person to have been driving a motor vehicle within this
13 state while under the influence of an intoxicating liquor or
14 drug."

15 SECTION 2. Section 66-8-109 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 517, as amended) is amended to read:

17 "66-8-109. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF
18 COSTS--ADDITIONAL TESTS.--

19 A. Only the persons authorized by Section 66-8-103
20 NMSA 1978 shall withdraw blood from any person for the purpose
21 of determining its alcohol or drug content. This limitation
22 does not apply to the taking of samples of breath or to the
23 testing of oral fluid.

24 B. The person tested shall be advised by the law
25 enforcement officer of the person's right to be given an

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1 opportunity to arrange for a physician, licensed professional
2 or practical nurse or laboratory technician or technologist who
3 is employed by a hospital or physician of ~~[his]~~ the person's
4 own choosing to perform a chemical test in addition to any test
5 performed at the direction of a law enforcement officer.

6 C. Upon the request of the person tested, full
7 information concerning the test performed at the direction of
8 the law enforcement officer shall be made available to ~~[him]~~
9 the person as soon as it is available from the person
10 performing the test.

11 D. The law enforcement agency represented by the
12 law enforcement officer at whose direction ~~[the]~~ a chemical
13 test is performed shall pay for the chemical test.

14 E. If a person exercises ~~[his]~~ the person's right
15 under Subsection B of this section to have a chemical test
16 performed upon ~~[him]~~ the person by a person of ~~[his]~~ the
17 person's own choosing, the cost of that test shall be paid by
18 the law enforcement agency represented by the law enforcement
19 officer at whose direction a chemical test was administered
20 under Section 66-8-107 NMSA 1978."

21 SECTION 3. Section 66-8-110 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 518, as amended) is amended to read:

23 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
24 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

25 A. The results of a test performed pursuant to the

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1 Implied Consent Act may be introduced into evidence in any
2 civil action or criminal action arising out of the acts alleged
3 to have been committed by the person tested for driving a motor
4 vehicle while under the influence of intoxicating liquor or
5 drugs.

6 B. When the blood, [~~or~~] breath or oral fluid of the
7 person tested contains:

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

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

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

17 (b) the amount of alcohol in the
18 person's blood, [~~or~~] breath or oral fluid may be considered
19 with other competent evidence in determining whether the person
20 was under the influence of intoxicating liquor; [~~or~~]

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

25 (4) a controlled substance, it shall be

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1 presumed that the person is under the influence of drugs.

2 C. The arresting officer shall charge the person
3 tested with a violation of Section 66-8-102 NMSA 1978 when the
4 blood, [~~or~~] breath or oral fluid of the person contains the
5 presence of a controlled substance or contains an alcohol
6 concentration of:

7 (1) eight one hundredths or more; or

8 (2) four one hundredths or more if the person
9 is driving a commercial motor vehicle.

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

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

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

3 G. The determination of the presence of a
4 controlled substance shall be based on a test of a person's
5 blood or oral fluid that shows the blood or oral fluid contains
6 the controlled substance.

7 [~~G.~~] H. The presumptions in Subsection B of this
8 section do not limit the introduction of other competent
9 evidence concerning whether the person was under the influence
10 of intoxicating liquor.

11 [~~H.~~] I. If a person is convicted of driving a motor
12 vehicle while under the influence of intoxicating liquor, the
13 trial judge shall inquire into the past driving record of the
14 person before sentence is entered in the matter."

15 SECTION 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
16 Chapter 72, Section 7, as amended) is amended to read:

17 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
18 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
19 HEARING.--

20 A. On behalf of the department, a law enforcement
21 officer requesting a chemical test or directing the
22 administration of a chemical test pursuant to Section 66-8-107
23 NMSA 1978 shall serve immediate written notice of revocation
24 and of right to a hearing before the administrative hearings
25 office pursuant to the Implied Consent Act on a person who:

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1 (1) refuses to permit chemical testing; [~~or~~]
2 (2) submits to a chemical test the results of
3 which indicate an alcohol concentration in the person's blood
4 or breath of:

5 (a) eight one hundredths or more if the
6 person is twenty-one years of age or older;

7 (b) four one hundredths or more if the
8 person is driving a commercial motor vehicle; or

9 (c) two one hundredths or more if the
10 person is less than twenty-one years of age; or

11 (3) submits to a chemical test, the results of
12 which indicate the presence of a controlled substance.

13 B. The written notice of revocation and of a right
14 to a hearing served on the driver shall be a temporary license
15 valid for twenty days or, if the driver requests a hearing
16 pursuant to Section 66-8-112 NMSA 1978, valid until the date
17 the administrative hearings office issues the order following
18 that hearing; provided that a written notice of revocation and
19 right to a hearing shall not be a temporary license for a
20 driver without any otherwise valid driving privileges in this
21 state.

22 C. The law enforcement officer shall send to the
23 department the signed statement required pursuant to Section
24 66-8-111 NMSA 1978."

25 SECTION 5. Section 66-8-111 NMSA 1978 (being Laws 1978,
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1 Chapter 35, Section 519, as amended) is amended to read:

2 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
3 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

21 B. The department, upon receipt of a statement
22 signed under penalty of perjury from a law enforcement officer
23 stating the officer's reasonable grounds to believe the
24 arrested person had been driving a motor vehicle within this
25 state while under the influence of intoxicating liquor or drugs

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1 and that, upon request, the person refused to submit to a
2 chemical test after being advised that failure to submit could
3 result in revocation of the person's privilege to drive, shall
4 revoke the person's New Mexico driver's license or any
5 nonresident operating privilege for a period of one year or
6 until all conditions for license reinstatement are met,
7 whichever is later.

8 C. The department, upon receipt of a statement
9 signed under penalty of perjury from a law enforcement officer
10 stating the officer's reasonable grounds to believe the
11 arrested person had been driving a motor vehicle within this
12 state while under the influence of intoxicating liquor or a
13 controlled substance and that the person submitted to chemical
14 testing pursuant to Section 66-8-107 NMSA 1978 and the test
15 results indicated the presence of a controlled substance or an
16 alcohol concentration in the person's blood or breath of eight
17 one hundredths or more if the person is twenty-one years of age
18 or older, four one hundredths or more if the person is driving
19 a commercial motor vehicle or two one hundredths or more if the
20 person is less than twenty-one years of age, shall revoke the
21 person's license or permit to drive or ~~[his]~~ the person's
22 nonresident operating privilege for a period of:

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

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

6 (3) one year or until all conditions for
7 license reinstatement are met, whichever is later, if the
8 ~~[person has previously had his]~~ person's license has been
9 revoked previously pursuant to the provisions of this section,
10 notwithstanding the provisions of Paragraph (1) of this
11 subsection.

12 D. The determination of alcohol concentration shall
13 be based on the grams of alcohol in one hundred milliliters of
14 blood or the grams of alcohol in two hundred ten liters of
15 breath.

16 E. The determination of the presence of a
17 controlled substance shall be based on a test of blood or oral
18 fluid that shows the blood or oral fluid contains the
19 controlled substance.

20 ~~[E.]~~ F. If the person subject to the revocation
21 provisions of this section is a resident or will become a
22 resident within one year and is without a license to operate a
23 motor vehicle in this state, the department shall deny the
24 issuance of a license to ~~[him]~~ the person for the appropriate
25 period of time as provided in Subsections B and C of this

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1 section.

2 [F-] G. A statement signed by a law enforcement
3 officer, pursuant to the provisions of Subsection B or C of
4 this section, shall be sworn to by the officer or shall contain
5 a declaration substantially to the effect: "I hereby declare
6 under penalty of perjury that the information given in this
7 statement is true and correct to the best of my knowledge."
8 The statement may be signed and submitted electronically in a
9 manner and form approved by the department. A law enforcement
10 officer who signs a statement knowing that the statement is
11 untrue in any material issue or matter is guilty of perjury as
12 provided in Section 66-5-38 NMSA 1978."

13 SECTION 6. Section 66-8-112 NMSA 1978 (being Laws 1978,
14 Chapter 35, Section 520, as amended) is amended to read:

15 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
16 NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

17 A. The effective date of revocation pursuant to
18 Section 66-8-111 NMSA 1978 is twenty days after notice of
19 revocation or, if the person whose driver's license or
20 privilege to drive is being revoked or denied requests a
21 hearing pursuant to the Administrative Hearings Office Act, the
22 date that the administrative hearings office issues the order
23 following that hearing. The date of notice of revocation is:

24 (1) the date the law enforcement officer
25 serves written notice of revocation and of right to a hearing

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1 pursuant to Section 66-8-111.1 NMSA 1978; or

2 (2) in the event the results of a chemical
3 test cannot be obtained immediately, the date notice of
4 revocation is served by mail by the department. This notice of
5 revocation and of right to a hearing shall be sent by certified
6 mail and shall be deemed to have been served on the date borne
7 by the return receipt showing delivery, refusal of the
8 addressee to accept delivery or attempted delivery of the
9 notice at the address obtained by the arresting law enforcement
10 officer or on file with the department.

11 B. Within ten days after receipt of notice of
12 revocation pursuant to Subsection A of this section, a person
13 whose license or privilege to drive is revoked or denied or the
14 person's agent may request a hearing. The hearing request
15 shall be made in writing and shall be accompanied by a payment
16 of twenty-five dollars (\$25.00) or a sworn statement of
17 indigency on a form provided by the department. A standard for
18 indigency shall be established pursuant to rules adopted by the
19 department. Failure to request a hearing within ten days shall
20 result in forfeiture of the person's right to a hearing. Any
21 person less than eighteen years of age who fails to request a
22 hearing within ten days shall have notice of revocation sent to
23 the person's parent, guardian or custodian by the department.
24 A date for the hearing shall be set by the administrative
25 hearings office, if practical, within thirty days after receipt

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1 of notice of revocation. The hearing shall be held in the
2 county in which the offense for which the person was arrested
3 took place.

4 C. The administrative hearings office may postpone
5 or continue any hearing on its own motion or upon application
6 from the person and for good cause shown for a period not to
7 exceed ninety days from the date of notice of revocation and,
8 provided that, upon a continuance, the department shall extend
9 the validity of the temporary license for the period of the
10 postponement or continuation.

11 D. At the hearing, the administrative hearings
12 office may administer oaths and may issue subpoenas for the
13 attendance of witnesses and the production of relevant books
14 and papers.

15 E. The hearing shall be limited to the following
16 issues:

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

21 (2) whether the person was arrested;

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

24 (4) whether:

25 (a) the person refused to submit to a

1 test upon request of the law enforcement officer; and

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

5 (5) whether:

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

8 (b) the test results indicated: 1) the
9 presence of a controlled substance; or 2) an alcohol
10 concentration in the person's blood or breath of eight one
11 hundredths or more if the person is twenty-one years of age or
12 older, four one hundredths or more if the person is driving a
13 commercial motor vehicle or two one hundredths or more if the
14 person is less than twenty-one years of age.

15 F. The administrative hearings office shall enter
16 an order sustaining the revocation or denial of the person's
17 license or privilege to drive if the hearing officer from the
18 administrative hearings office finds that:

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

22 (2) the person was arrested;

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

25 (4) either:

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1 (a) the person refused to submit to the
2 test upon request of the law enforcement officer after the law
3 enforcement officer advised the person that the person's
4 failure to submit to the test could result in the revocation of
5 the person's privilege to drive; or

6 (b) that a chemical test was
7 administered pursuant to the provisions of the Implied Consent
8 Act and the test results indicated: 1) the presence of a
9 controlled substance; or 2) an alcohol concentration in the
10 person's blood or breath of eight one hundredths or more if the
11 person is twenty-one years of age or older, four one hundredths
12 or more if the person is driving a commercial motor vehicle or
13 two one hundredths or more if the person is less than twenty-
14 one years of age.

15 G. If one or more of the elements set forth in
16 Paragraphs (1) through (4) of Subsection F of this section are
17 not found by the hearing officer, the person's license shall
18 not be revoked.

19 H. A person adversely affected by an order of the
20 administrative hearings office may seek review within thirty
21 days in the district court in the county in which the offense
22 for which the person was arrested took place. The district
23 court, upon thirty days' written notice to the department,
24 shall hear the case. On review, it is for the court to
25 determine only whether reasonable grounds exist for revocation

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1 or denial of the person's license or privilege to drive based
2 on the record of the administrative proceeding.

3 I. Any person less than eighteen years of age shall
4 have results of the person's hearing forwarded by the
5 administrative hearings office to the person's parent, guardian
6 or custodian."

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