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HOUSE BILL 4

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR,
DRUGS OR ADULT-USE RECREATIONAL CANNABIS; ADDRESSING ROAD
SAFETY ISSUES RELATED TO LEGALIZATION OF ADULT-USE RECREATIONAL
CANNABIS; PROVIDING FOR TESTIMONY BY INTERACTIVE VIDEO;
PROHIBITING DRIVING WITH CERTAIN AMOUNTS OF CONTROLLED
SUBSTANCES OR METABOLITES IN THE BLOOD; AMENDING THE
REQUIREMENTS FOR TESTING THE BLOOD OF A PERSON SUSPECTED OF
OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT CERTAIN MEDICAL
PROFESSIONALS ARE AUTHORIZED TO WITHDRAW BLOOD IN THE
PERFORMANCE OF A CHEMICAL BLOOD TEST FOR DRIVING A MOTOR
VEHICLE OR OPERATING A MOTORBOAT UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS; CLARIFYING THAT THE CHEMICAL
BLOOD TEST MAY BE FOR DRUGS OR ALCOHOL; PROVIDING FOR IMPLIED
CONSENT TO A LABORATORY ANALYST'S APPEARANCE BY VIDEO;

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1 PROVIDING THAT THE IGNITION INTERLOCK REQUIREMENT ONLY APPLIES
2 TO OFFENDERS WITH ALCOHOL CONCENTRATION IN THEIR BLOOD OR
3 BREATH.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

8 "[NEW MATERIAL] PROCEDURE--VIDEO APPEARANCE.--If a party
9 subpoenas an analyst to testify at a court proceeding for any
10 purpose, the analyst may appear by interactive video. An
11 interactive video appearance shall provide a full and
12 meaningful opportunity to question and cross-examine the
13 witness in plain sight and clear hearing of the judge, jury,
14 all parties and counsel, with the witness able to clearly see
15 and hear the proceeding."

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

18 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
19 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
20 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

21 A. It is unlawful for a person who is under the
22 influence of intoxicating liquor to drive a vehicle within this
23 state.

24 B. It is unlawful for a person who is under the
25 influence of any drug [~~to a degree that renders the person~~

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1 ~~incapable of safely driving a vehicle~~] to drive a vehicle
2 within this state.

3 C. It is unlawful for:

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

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

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

22 (1) for amphetamine, one hundred nanograms per
23 milliliter of blood;

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

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- 1 (3) for cocaine metabolite, cocaethylene,
2 fifty nanograms per milliliter of blood;
3 (4) for heroin, fifty nanograms per milliliter
4 of blood;
5 (5) for heroin metabolite, morphine, fifty
6 nanograms per milliliter of blood;
7 (6) for heroin metabolite,
8 6-monoacetylmorphine, ten nanograms per milliliter of blood;
9 (7) for the active compound in marijuana,
10 delta-9-tetrahydrocannabinol, five nanograms per milliliter of
11 blood;
12 (8) for methamphetamine, one hundred nanograms
13 per milliliter of blood; or
14 (9) for 3,4-methylenedioxymethamphetamine, one
15 hundred nanograms per milliliter of blood.

16 E. The provisions of Subsections A and B of this
17 section shall not be construed to make it unlawful to drive a
18 vehicle if the prohibited concentrations of alcohol, controlled
19 substances or metabolites are not exceeded as provided in
20 Subsections C and D of this section. A person who is under the
21 influence of any drug not named in Subsection D of this section
22 is subject to the provisions of Subsection B of this section.

23 ~~[D.]~~ F. Aggravated driving under the influence of
24 intoxicating liquor or drugs consists of:

- 25 (1) driving a vehicle in this state with an

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1 alcohol concentration of sixteen one hundredths or more in the
2 driver's blood or breath within three hours of driving the
3 vehicle and the alcohol concentration results from alcohol
4 consumed before or while driving the vehicle;

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

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

13 ~~[E-]~~ G. A first conviction pursuant to this section
14 shall be punished, notwithstanding the provisions of Section
15 31-18-13 NMSA 1978, by imprisonment for not more than ninety
16 days or by a fine of not more than five hundred dollars (\$500),
17 or both; provided that if the sentence is suspended in whole or
18 in part or deferred, the period of probation may extend beyond
19 ninety days but shall not exceed one year. Upon a first
20 conviction pursuant to this section, an offender shall be
21 sentenced to not less than twenty-four hours of community
22 service. In addition, the offender may be required to pay a
23 fine of three hundred dollars (\$300). The offender shall be
24 ordered by the court to participate in and complete a screening
25 program described in Subsection ~~[E]~~ N of this section and to

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

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1 [F-] H. A second or third conviction pursuant to
2 this section shall be punished, notwithstanding the provisions
3 of Section 31-18-13 NMSA 1978, by imprisonment for not more
4 than three hundred sixty-four days or by a fine of not more
5 than one thousand dollars (\$1,000), or both; provided that if
6 the sentence is suspended in whole or in part, the period of
7 probation may extend beyond one year but shall not exceed five
8 years. Notwithstanding any provision of law to the contrary
9 for suspension or deferment of execution of a sentence:

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

24 (2) upon a third conviction, an offender shall
25 be sentenced to a jail term of not less than thirty consecutive

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1 days, not less than ninety-six hours of community service and a
2 fine of seven hundred fifty dollars (\$750). In addition to
3 those penalties, when an offender commits aggravated driving
4 under the influence of intoxicating liquor or drugs, the
5 offender shall be sentenced to a jail term of not less than
6 sixty consecutive days. If an offender fails to complete,
7 within a time specified by the court, any community service,
8 screening program or treatment program ordered by the court,
9 the offender shall be sentenced to not less than an additional
10 sixty consecutive days in jail. A penalty imposed pursuant to
11 this paragraph shall not be suspended or deferred or taken
12 under advisement.

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

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

25 ~~[I.]~~ K. Upon a sixth conviction pursuant to this

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1 section, an offender is guilty of a third degree felony and,
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
3 shall be sentenced to a term of imprisonment of thirty months,
4 eighteen months of which shall not be suspended, deferred or
5 taken under advisement.

6 ~~[J.]~~ L. Upon a seventh conviction pursuant to this
7 section, an offender is guilty of a third degree felony and,
8 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
9 shall be sentenced to a term of imprisonment of three years,
10 two years of which shall not be suspended, deferred or taken
11 under advisement.

12 ~~[K.]~~ M. Upon an eighth or subsequent conviction
13 pursuant to this section, an offender is guilty of a second
14 degree felony and, notwithstanding the provisions of Section
15 31-18-15 NMSA 1978, shall be sentenced to a term of
16 imprisonment of twelve years, ten years of which shall not be
17 suspended, deferred or taken under advisement.

18 ~~[L.]~~ N. Upon any conviction pursuant to this
19 section, an offender shall be required to participate in and
20 complete, within a time specified by the court, an alcohol or
21 drug abuse screening program approved by the department of
22 finance and administration and, if necessary, a treatment
23 program approved by the court. The requirement imposed
24 pursuant to this subsection shall not be suspended, deferred or
25 taken under advisement.

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1 ~~[M.]~~ O. Upon a second or third conviction pursuant
2 to this section, an offender shall be required to participate
3 in and complete, within a time specified by the court:

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

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

9 (3) a drug court program approved by the
10 court; or

11 (4) any other substance abuse treatment
12 program approved by the court.

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

15 ~~[N.]~~ P. Upon a felony conviction pursuant to this
16 section, the corrections department shall provide substance
17 abuse counseling and treatment to the offender in its custody.
18 While the offender is on probation or parole under its
19 supervision, the corrections department shall also provide
20 substance abuse counseling and treatment to the offender or
21 shall require the offender to obtain substance abuse counseling
22 and treatment.

23 ~~[O.]~~ Q. Upon a conviction pursuant to this section,
24 an offender who had an alcohol concentration as set out in
25 Subsection C of this section shall be required to obtain an

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1 ignition interlock license and have an ignition interlock
2 device installed and operating on all motor vehicles driven by
3 the offender, pursuant to rules adopted by the bureau. Unless
4 determined by the bureau to be indigent, the offender shall pay
5 all costs associated with having an ignition interlock device
6 installed on the appropriate motor vehicles. The offender
7 shall operate only those vehicles equipped with ignition
8 interlock devices for:

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

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

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

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

17 ~~[P.]~~ R. Five years from the date of a fourth or
18 subsequent conviction pursuant to this section and every five
19 years thereafter, ~~[a fourth or subsequent]~~ an offender may
20 apply to a district court for restoration of a driver's license
21 and for removal of the ignition interlock device requirement
22 ~~[provided in this section and for restoration of a driver's~~
23 license], if applicable. A district court may, for good cause
24 shown, remove the ignition interlock device requirement and
25 order restoration of the license; provided that the offender

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1 has not been subsequently convicted of driving a motor vehicle
2 under the influence of intoxicating liquor or drugs. Good
3 cause may include an alcohol screening and proof from the
4 interlock vendor that the person has not had violations of the
5 interlock device.

6 [Q.] S. An offender who obtains an ignition
7 interlock license and installs an ignition interlock device
8 prior to conviction shall be given credit at sentencing for the
9 time period the ignition interlock device has been in use.

10 [R.] T. In the case of a first, second or third
11 offense under this section, the magistrate court has concurrent
12 jurisdiction with district courts to try the offender.

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

23 [T.] V. In addition to any other fine or fee that
24 may be imposed pursuant to the conviction or other disposition
25 of the offense under this section, the court may order the

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1 offender to pay the costs of any court-ordered screening and
2 treatment programs.

3 [U-] W. With respect to this section and
4 notwithstanding any provision of law to the contrary, if an
5 offender's sentence was suspended or deferred in whole or in
6 part and the offender violates any condition of probation, the
7 court may impose any sentence that the court could have
8 originally imposed and credit shall not be given for time
9 served by the offender on probation.

10 [V-] X. As used in this section:

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

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

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

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

25 (c) is designed to transport sixteen or

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1 more passengers, including the driver; or

2 (d) 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 3. Section 66-8-103 NMSA 1978 (being Laws 1967,
6 Chapter 160, Section 1) is amended to read:

7 "66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO
8 TEST--RELIEF FROM LIABILITY.--Only a physician, licensed
9 professional or practical nurse, [~~or laboratory technician~~]
10 emergency medical technician or certified phlebotomist or a
11 technologist employed by a hospital or physician shall withdraw
12 blood from [~~any~~] a person in the performance of a [~~blood-~~
13 ~~alcohol~~] chemical blood test. No such physician, nurse,
14 technician, phlebotomist or technologist who withdraws blood
15 from any person in the performance of a [~~blood-alcohol~~]
16 chemical blood test that has been directed by [~~any~~] a police
17 officer or by [~~any~~] a judicial or probation officer shall be
18 held liable in any civil or criminal action for assault,
19 battery, false imprisonment or any conduct of [~~any~~] a police
20 officer except for negligence, nor shall [~~any~~] a person
21 assisting in the performance of [~~such a~~] the test or [~~any~~] a
22 hospital wherein blood is withdrawn in the performance of [~~such~~
23 ~~a~~] the test be subject to civil or criminal liability for
24 assault, battery, false imprisonment or any conduct of [~~any~~] a
25 police officer except for negligence."

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1 SECTION 4. Section 66-8-104 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 512) is amended to read:

3 "66-8-104. ~~[BLOOD-ALCOHOL]~~ CHEMICAL BLOOD TESTS--~~[POLICE,~~
4 ~~JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO MAKE ARREST OR
5 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES
6 ~~[AUTHORIZED BY LAW].--~~Nothing in ~~[Sections 64-8-103 or 64-8-104~~
7 ~~NMSA 1953]~~ Section 66-8-103 or 66-8-104 NMSA 1978 is intended
8 to authorize ~~[any]~~ a police officer or ~~[any]~~ a judicial or
9 probation officer to make ~~[any]~~ an arrest or to direct the
10 performance of a ~~[blood-alcohol]~~ chemical blood test except in
11 the performance of ~~[his]~~ that person's official duties and as
12 otherwise authorized by law."

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

15 "66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST--
16 COURT APPEARANCE BY VIDEO.--

17 A. Any person who operates a motor vehicle within
18 this state shall be deemed to have given consent, subject to
19 the provisions of the Implied Consent Act, to chemical tests of
20 ~~[his]~~ that person's breath or blood or both, approved by the
21 scientific laboratory division of the department of health
22 pursuant to the provisions of Section 24-1-22 NMSA 1978 as
23 determined by a law enforcement officer, or for the purpose of
24 determining the drug or alcohol content of ~~[his]~~ the person's
25 blood if the person is arrested for any offense arising out of

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1 the acts alleged to have been committed while the person was
2 driving a motor vehicle while under the influence of an
3 intoxicating liquor or drug.

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

11 C. If a laboratory analyst is subpoenaed to testify
12 at a court proceeding about chemical testing that the analyst
13 performed pursuant to this section, the defendant shall be
14 deemed to have given consent to the analyst's appearance by
15 means of interactive video."

16 SECTION 6. Section 66-8-110 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 518, as amended) is amended to read:

18 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
19 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

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1 B. When the blood or breath of the person tested
2 contains:

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

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

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

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

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

20 C. The arresting officer shall charge the person
21 tested with a violation of Section 66-8-102 NMSA 1978 when the
22 blood or breath of the person contains an alcohol concentration
23 [~~of:~~

24 ~~(1) eight one hundredths or more; or~~

25 ~~(2) four one hundredths or more if the person~~

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1 ~~is driving a commercial motor vehicle]~~ or a controlled
2 substance or metabolite concentration that is unlawful pursuant
3 to the provisions of Section 66-8-102 NMSA 1978.

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

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

17 F. The determination of alcohol concentration shall
18 be based on the grams of alcohol in one hundred milliliters of
19 blood or the grams of alcohol in two hundred ten liters of
20 breath.

21 G. The presumptions in Subsection B of this section
22 do not limit the introduction of other competent evidence
23 concerning whether the person was under the influence of
24 intoxicating liquor.

25 H. If a person is convicted of driving a motor

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1 vehicle while under the influence of intoxicating liquor or
2 drugs, the trial judge shall inquire into the past driving
3 record of the person before sentence is entered in the matter."

4 SECTION 7. Section 66-8-111 NMSA 1978 (being Laws 1978,
5 Chapter 35, Section 519, as amended) is amended to read:

6 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
7 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

25 B. The department, upon receipt of a statement

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

12 C. The department, upon receipt of a statement
13 signed under penalty of perjury from a law enforcement officer
14 stating the officer's reasonable grounds to believe the
15 arrested person had been driving a motor vehicle within this
16 state while under the influence of intoxicating liquor or drugs
17 and that the person submitted to chemical testing pursuant to
18 Section 66-8-107 NMSA 1978 and the test results indicated an
19 alcohol, a controlled substance or a metabolite concentration
20 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
21 alcohol concentration in the person's blood or breath of [~~eight~~
22 ~~one hundredths or more if the person is twenty-one years of age~~
23 ~~or older, four one hundredths or more if the person is driving~~
24 ~~a commercial motor vehicle or~~] two one hundredths or more if
25 the person is less than twenty-one years of age, shall revoke

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1 the person's license or permit to drive or [~~his~~] nonresident
2 operating privilege for a period of:

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

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

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

17 D. The determination of alcohol concentration shall
18 be based on the grams of alcohol in one hundred milliliters of
19 blood or the grams of alcohol in two hundred ten liters of
20 breath.

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

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1 period of time as provided in Subsections B and C of this
2 section.

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

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

16 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
17 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
18 HEARING.--

19 A. On behalf of the department, a law enforcement
20 officer requesting a chemical test or directing the
21 administration of a chemical test pursuant to [Section]
22 Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate
23 written notice of revocation and of right to a hearing before
24 the administrative hearings office pursuant to the Implied
25 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, a controlled substance or a
4 metabolite concentration that is unlawful pursuant to Section
5 66-8-102 NMSA 1978 or an alcohol concentration in the person's
6 blood or breath of

7 ~~[(a) eight one hundredths or more if the~~
8 ~~person is twenty-one years of age or older;~~

9 ~~(b) four one hundredths or more if the~~
10 ~~person is driving a commercial motor vehicle; or~~

11 ~~(c)] two one hundredths or more if the~~
12 person is less than twenty-one years of age.

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 9. Section 66-8-112 NMSA 1978 (being Laws 1978,
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1 Chapter 35, Section 520, as amended) is amended to read:

2 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
3 NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

4 A. The effective date of revocation pursuant to
5 Section 66-8-111 NMSA 1978 is twenty days after notice of
6 revocation or, if the person whose driver's license or
7 privilege to drive is being revoked or denied requests a
8 hearing pursuant to the Administrative Hearings Office Act, the
9 date that the administrative hearings office issues the order
10 following that hearing. The date of notice of revocation is:

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

14 (2) in the event the results of a chemical
15 test cannot be obtained immediately, the date notice of
16 revocation is served by mail by the department. This notice of
17 revocation and of right to a hearing shall be sent by certified
18 mail and shall be deemed to have been served on the date borne
19 by the return receipt showing delivery, refusal of the
20 addressee to accept delivery or attempted delivery of the
21 notice at the address obtained by the arresting law enforcement
22 officer or on file with the department.

23 B. Within ten days after receipt of notice of
24 revocation pursuant to Subsection A of this section, a person
25 whose license or privilege to drive is revoked or denied or the

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1 person's agent may request a hearing. The hearing request
2 shall be made in writing and shall be accompanied by a payment
3 of twenty-five dollars (\$25.00) or a sworn statement of
4 indigency on a form provided by the department. A standard for
5 indigency shall be established pursuant to rules adopted by the
6 department. Failure to request a hearing within ten days shall
7 result in forfeiture of the person's right to a hearing. Any
8 person less than eighteen years of age who fails to request a
9 hearing within ten days shall have notice of revocation sent to
10 the person's parent, guardian or custodian by the department.
11 A date for the hearing shall be set by the administrative
12 hearings office, if practical, within thirty days after receipt
13 of notice of revocation. The hearing shall be held in the
14 county in which the offense for which the person was arrested
15 took place.

16 C. The administrative hearings office may postpone
17 or continue any hearing on its own motion or upon application
18 from the person and for good cause shown for a period not to
19 exceed ninety days from the date of notice of revocation and,
20 provided that, upon a continuance, the department shall extend
21 the validity of the temporary license for the period of the
22 postponement or continuation.

23 D. At the hearing, the administrative hearings
24 office may administer oaths and may issue subpoenas for the
25 attendance of witnesses and the production of relevant books

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1 and papers.

2 E. The hearing shall be limited to the following
3 issues:

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

8 (2) whether the person was arrested;

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

11 (4) whether:

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

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

17 (5) whether:

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

20 (b) the test results indicated an
21 alcohol, a controlled substance or a metabolite concentration
22 that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an
23 alcohol concentration in the person's blood or breath of ~~[eight~~
24 ~~one hundredths or more if the person is twenty-one years of age~~
25 ~~or older, four one hundredths or more if the person is driving~~

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1 ~~a commercial motor vehicle or~~] two one hundredths or more if
2 the person is less than twenty-one years of age.

3 F. The administrative hearings office shall enter
4 an order sustaining the revocation or denial of the person's
5 license or privilege to drive if the hearing officer from the
6 administrative hearings office finds that:

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

10 (2) the person was arrested;

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

13 (4) either:

14 (a) the person refused to submit to the
15 test upon request of the law enforcement officer after the law
16 enforcement officer advised the person that the person's
17 failure to submit to the test could result in the revocation of
18 the person's privilege to drive; or

19 (b) that a chemical test was
20 administered pursuant to the provisions of the Implied Consent
21 Act and the test results indicated an alcohol, a controlled
22 substance or a metabolite concentration that is unlawful
23 pursuant to Section 66-8-102 NMSA 1978 or an alcohol
24 concentration in the person's blood or breath of [~~eight one~~
25 ~~hundredths or more if the person is twenty-one years of age or~~

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1 ~~older, four one hundredths or more if the person is driving a~~
2 ~~commercial motor vehicle or~~] two one hundredths or more if the
3 person is less than twenty-one years of age.

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

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

17 I. Any person less than eighteen years of age shall
18 have results of the person's hearing forwarded by the
19 administrative hearings office to the person's parent, guardian
20 or custodian."

21 SECTION 10. Section 66-13-1 NMSA 1978 (being Laws 2003,
22 Chapter 241, Section 1) is amended to read:

23 "66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~
24 ~~act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the
25 "Boating While Intoxicated Act"."

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1 SECTION 11. Section 66-13-6 NMSA 1978 (being Laws 2003,
2 Chapter 241, Section 6) is amended to read:

3 "66-13-6. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--PERSONS
4 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL
5 LIABILITY.--Only a physician, licensed professional or
6 practical nurse, [~~or laboratory technician~~] emergency medical
7 technician or certified phlebotomist or a technologist employed
8 by a hospital or physician shall withdraw blood from a person
9 in the performance of a [~~blood-alcohol or drug~~] chemical blood
10 test. A physician, nurse, technician, phlebotomist or
11 technologist who withdraws blood from a person in the
12 performance of a [~~blood-alcohol or drug~~] chemical blood test
13 that has been directed by a law enforcement officer, or by a
14 judicial or probation officer, shall not be held liable in a
15 civil or criminal action for assault, battery, false
16 imprisonment or any conduct of a law enforcement officer,
17 except for negligence, nor shall a person assisting in the
18 performance of the test, or a hospital wherein blood is
19 withdrawn in the performance of the test, be subject to civil
20 or criminal liability for assault, battery, false imprisonment
21 or any conduct of a law enforcement officer, except for
22 negligence."

23 SECTION 12. Section 66-13-7 NMSA 1978 (being Laws 2003,
24 Chapter 241, Section 7) is amended to read:

25 "66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--[LAW

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1 ~~ENFORCEMENT, JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO
2 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL
3 DUTIES ~~[AUTHORIZED BY LAW]~~.--Nothing in the Boating While
4 Intoxicated Act is intended to authorize a law enforcement
5 officer, or a judicial or probation officer, to make an arrest
6 or direct the performance of a ~~[blood-alcohol or drug]~~ chemical
7 blood test, except in the performance of ~~[his]~~ that officer's
8 official duties or as otherwise authorized by law."