

1 SENATE BILL 511

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; REQUIRING LICENSE REVOCATION PURSUANT TO THE IMPLIED
13 CONSENT ACT WHEN THE BLOOD OR BREATH OF A PERSON LESS THAN
14 TWENTY-ONE YEARS OF AGE CONTAINS ANY DETECTABLE ALCOHOL
15 CONCENTRATION; REQUIRING COMMERCIAL DRIVER'S LICENSE
16 DISQUALIFICATION FOR ANY PERSON LESS THAN TWENTY-ONE YEARS OF
17 AGE WHOSE BLOOD OR BREATH TESTED PURSUANT TO THE IMPLIED
18 CONSENT ACT CONTAINS ANY DETECTABLE ALCOHOL CONCENTRATION.

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

21 SECTION 1. Section 66-5-68 NMSA 1978 (being Laws 1989,
22 Chapter 14, Section 17, as amended) is amended to read:

23 "66-5-68. DISQUALIFICATION.--

24 A. The department shall disqualify a person from
25 driving a commercial motor vehicle for at least thirty days if

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1 the federal motor carrier safety administration reports to the
2 division that the person poses an imminent hazard.

3 B. The department shall disqualify a person who
4 holds a commercial driver's license or who is required to hold
5 a commercial driver's license from driving a commercial motor
6 vehicle for a period of not less than one year, which shall run
7 concurrently with any revocation or suspension action for the
8 same offense, if the person:

9 (1) refuses to submit to a chemical test when
10 requested pursuant to the provisions of the Implied Consent
11 Act;

12 (2) is twenty-one years of age or more and
13 submits to chemical testing pursuant to the Implied Consent Act
14 and the test results indicate an alcohol concentration of eight
15 one hundredths or more;

16 (3) submits to chemical testing pursuant to
17 the Implied Consent Act and the test results indicate an
18 alcohol concentration of four one hundredths or more if the
19 person is driving a commercial motor vehicle;

20 (4) is less than twenty-one years of age and
21 submits to chemical testing pursuant to the Implied Consent Act
22 and the test results indicate ~~[an]~~ any detectable alcohol
23 concentration ~~[of two one hundredths or more]~~; or

24 (5) is convicted of a violation of:

25 (a) driving a motor vehicle while under

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1 the influence of intoxicating liquor or drugs in violation of
2 Section 66-8-102 NMSA 1978, an ordinance of a municipality of
3 this state or the law of another state;

4 (b) leaving the scene of an accident
5 involving a commercial motor vehicle driven by the person in
6 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
7 municipality of this state or the law of another state;

8 (c) using a motor vehicle in the
9 commission of a felony;

10 (d) driving a commercial motor vehicle
11 after the driver's commercial driver's license is revoked,
12 suspended, disqualified or canceled for violations while
13 operating a commercial motor vehicle; or

14 (e) causing a fatality in the unlawful
15 operation of a motor vehicle pursuant to Section 66-8-101 NMSA
16 1978.

17 C. The department shall disqualify a person from
18 driving a commercial motor vehicle for a period of not less
19 than three years if any of the violations specified in
20 Subsection B of this section occur while transporting a
21 hazardous material required to be placarded.

22 D. The department shall disqualify a person from
23 driving a commercial motor vehicle for life if convicted of two
24 or more violations of any of the offenses specified in
25 Subsection B of this section, or any combination of those

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1 offenses, arising from two or more separate incidents, but the
2 secretary may issue regulations establishing guidelines,
3 including conditions, under which a disqualification for life
4 under this subsection may be reduced to a period of not less
5 than ten years. This subsection applies only to those offenses
6 committed after July 1, 1989.

7 E. The department shall disqualify a person from
8 driving a commercial motor vehicle for life if the person uses
9 a commercial motor vehicle in the commission of any felony
10 involving the manufacture, distribution or dispensing of a
11 controlled substance or the possession with intent to
12 manufacture, distribute or dispense a controlled substance.

13 F. The department shall disqualify a person from
14 driving a commercial motor vehicle for a period of not less
15 than sixty days if convicted of two serious traffic violations
16 or one hundred twenty days if convicted of three serious
17 traffic violations, if the violations were committed while
18 driving a commercial motor vehicle, arising from separate
19 incidents occurring within a three-year period.

20 G. The department shall disqualify a person from
21 driving a commercial motor vehicle for a period of:

22 (1) not less than one hundred eighty days nor
23 more than two years if the person is convicted of a first
24 violation of an out-of-service order while transporting
25 hazardous materials required to be placarded pursuant to the

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1 federal Hazardous Materials Transportation Act or while
2 operating a motor vehicle designed to transport more than
3 fifteen passengers, including the driver;

4 (2) not more than one year if the person is
5 convicted of a first violation of an out-of-service order; or

6 (3) not less than three years nor more than
7 five years if, during any ten-year period, the person is
8 convicted of any subsequent violations of out-of-service
9 orders, in separate incidents, while transporting hazardous
10 materials required to be placarded pursuant to that act or
11 while operating a motor vehicle designed to transport more than
12 fifteen passengers, including the driver.

13 H. The department shall disqualify a person from
14 driving a commercial motor vehicle for sixty days if:

15 (1) the person has been convicted of two
16 serious traffic violations in separate incidents within a
17 three-year period; and

18 (2) the second conviction results in
19 revocation, cancellation or suspension of the person's
20 commercial driver's license or noncommercial motor vehicle
21 driving privileges for sixty days.

22 I. The department shall disqualify a person from
23 driving a commercial motor vehicle for one hundred twenty days,
24 in addition to any other period of disqualification, if:

25 (1) the person has been convicted of more than

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1 two serious traffic violations within a three-year period; and

2 (2) the third or a subsequent conviction
3 results in the revocation, cancellation or suspension of the
4 person's commercial driver's license or noncommercial motor
5 vehicle driving privileges.

6 J. When a person is disqualified from driving a
7 commercial motor vehicle, any commercial driver's license held
8 by that person is invalidated without a separate proceeding of
9 any kind and the driver is not eligible to apply for a
10 commercial driver's license until the period of time for which
11 the driver was disqualified has elapsed.

12 K. The department shall disqualify a person from
13 driving a commercial motor vehicle for not less than:

14 (1) sixty days if the person is convicted of a
15 first violation of a railroad-highway grade crossing violation;

16 (2) one hundred twenty days if, during any
17 three-year period, the person is convicted of a second
18 railroad-highway grade crossing violation in a separate
19 incident; and

20 (3) one year if, during any three-year period,
21 the person is convicted of a third or subsequent railroad-
22 highway grade crossing violation in a separate incident.

23 L. After disqualifying, suspending, revoking or
24 canceling a commercial driver's license, the department shall,
25 within ten days, update its records to reflect that action.

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1 After disqualifying, suspending, revoking or canceling a
2 nonresident commercial driver's privileges, the department
3 shall, within ten days, notify the licensing authority of the
4 state that issued the commercial driver's license.

5 M. When disqualifying, suspending, revoking or
6 canceling a commercial driver's license, the department shall
7 treat a conviction received in another state in the same manner
8 as if it was received in this state.

9 N. The department shall post and enforce any
10 disqualification sent by the federal motor carrier safety
11 administration to the department that indicates that a
12 commercial motor vehicle driver poses an imminent hazard.

13 O. The federal transportation security
14 administration of the department of homeland security shall
15 provide for an appeal of a disqualification for a commercial
16 driver's license hazardous materials endorsement on the basis
17 of a background check, and the department shall provide to a
18 hazardous materials applicant a copy of the procedures
19 established by the transportation security administration, on
20 request, at the time of application.

21 P. New Mexico shall conform to the federal
22 transportation security administration of the department of
23 homeland security rules and shall "look back" or review a
24 maximum of seven years for a background check."

25 SECTION 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
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1 Chapter 35, Section 518, as amended) is amended to read:

2 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
3 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

4 A. The results of a test performed pursuant to the
5 Implied Consent Act may be introduced into evidence in any
6 civil action or criminal action arising out of the acts alleged
7 to have been committed by the person tested for driving a motor
8 vehicle while under the influence of intoxicating liquor or
9 drugs.

10 B. When the blood or breath of the person tested
11 contains:

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

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

17 (a) no presumption shall be made that
18 the person either was or was not under the influence of
19 intoxicating liquor, unless the person is driving a commercial
20 motor vehicle; and

21 (b) the amount of alcohol in the
22 person's blood or breath may be considered with other competent
23 evidence in determining whether the person was under the
24 influence of intoxicating liquor; or

25 (3) an alcohol concentration of four one

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1 hundredths or more and the person is driving a commercial
2 vehicle, it shall be presumed that the person is under the
3 influence of intoxicating liquor.

4 C. The arresting officer shall charge the person
5 tested with a violation of Section 66-8-102 NMSA 1978 when the
6 blood or breath of the person contains an alcohol concentration
7 of:

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

11 D. When a person is less than twenty-one years of
12 age and the blood or breath of the person contains [~~an~~] any
13 detectable alcohol concentration [~~of two one hundredths or~~
14 ~~more~~], the person's driving privileges shall be revoked
15 pursuant to the 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 alcohol concentration in the person's blood
20 or breath at the time of the test and the trier of fact shall
21 determine what weight to give the test result for the purpose
22 of determining a violation of Section 66-8-102 NMSA 1978.

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

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1 breath.

2 G. The presumptions in Subsection B of this section
3 do not limit the introduction of other competent evidence
4 concerning whether the person was under the influence of
5 intoxicating liquor.

6 H. If a person is convicted of driving a motor
7 vehicle while under the influence of intoxicating liquor, the
8 trial judge shall inquire into the past driving record of the
9 person before sentence is entered in the matter."

10 SECTION 3. Section 66-8-111 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 519, as amended) is amended to read:

12 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
13 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

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

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1 there is probable cause to believe that the person has
2 committed a felony while under the influence of alcohol or a
3 controlled substance and that chemical tests as provided in
4 Section 66-8-107 NMSA 1978 will produce material evidence in a
5 felony prosecution.

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

18 C. The department, upon receipt of a statement
19 signed under penalty of perjury from a law enforcement officer
20 stating the officer's reasonable grounds to believe the
21 arrested person had been driving a motor vehicle within this
22 state while under the influence of intoxicating liquor and that
23 the person submitted to chemical testing pursuant to Section
24 66-8-107 NMSA 1978 and the test results indicated an alcohol
25 concentration in the person's blood or breath of eight one

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1 hundredths or more if the person is twenty-one years of age or
2 older, four one hundredths or more if the person is driving a
3 commercial motor vehicle or [~~two one hundredths or more~~] any
4 detectable alcohol concentration if the person is less than
5 twenty-one years of age, shall revoke the person's license or
6 permit to drive or [~~his~~] the person's nonresident operating
7 privilege for a period of:

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

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

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

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

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1 E. If the person subject to the revocation
2 provisions of this section is a resident or will become a
3 resident within one year and is without a license to operate a
4 motor vehicle in this state, the department shall deny the
5 issuance of a license to [~~him~~] the person for the appropriate
6 period of time as provided in Subsections B and C of this
7 section.

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

19 **SECTION 4.** Section 66-8-112 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,
21 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended
22 to read:

23 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
24 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
25 REVIEW.--

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1 A. The effective date of revocation pursuant to
2 Section 66-8-111 NMSA 1978 is twenty days after notice of
3 revocation or, if the person whose driver's license or
4 privilege to drive is being revoked or denied requests a
5 hearing pursuant to this section, the date that the department
6 issues the order following that hearing. The date of notice of
7 revocation is:

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

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

20 B. Within ten days after receipt of notice of
21 revocation pursuant to Subsection A of this section, a person
22 whose license or privilege to drive is revoked or denied or the
23 person's agent may request a hearing. The hearing request
24 shall be made in writing and shall be accompanied by a payment
25 of twenty-five dollars (\$25.00) or a sworn statement of

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1 indigency on a form provided by the department. A standard for
2 indigency shall be established pursuant to regulations adopted
3 by the department. Failure to request a hearing within ten
4 days shall result in forfeiture of the person's right to a
5 hearing. Any person less than eighteen years of age who fails
6 to request a hearing within ten days shall have notice of
7 revocation sent to [~~his~~] the person's parent, guardian or
8 custodian by the department. A date for the hearing shall be
9 set by the department, if practical, within thirty days after
10 receipt of notice of revocation. The hearing shall be held in
11 the county in which the offense for which the person was
12 arrested took place.

13 C. The department may postpone or continue any
14 hearing on its own motion or upon application from the person
15 and for good cause shown for a period not to exceed ninety days
16 from the date of notice of revocation and provided that the
17 department extends the validity of the temporary license for
18 the period of the postponement or continuation.

19 D. At the hearing, the department or its agent may
20 administer oaths and may issue subpoenas for the attendance of
21 witnesses and the production of relevant books and papers.

22 E. The hearing shall be limited to the following
23 issues:

24 (1) whether the law enforcement officer had
25 reasonable grounds to believe that the person had been driving

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1 a motor vehicle within this state while under the influence of
2 intoxicating liquor or drugs;

3 (2) whether the person was arrested;

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

6 (4) whether:

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

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

12 (5) whether:

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

15 (b) the test results indicated 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~~] any
20 detectable alcohol concentration if the person is less than
21 twenty-one years of age.

22 F. The department shall enter an order sustaining
23 the revocation or denial of the person's license or privilege
24 to drive if the department finds that:

25 (1) the law enforcement officer had reasonable

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1 grounds to believe the driver was driving a motor vehicle while
2 under the influence of intoxicating liquor or drugs;

3 (2) the person was arrested;

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

6 (4) either:

7 (a) the person refused to submit to the
8 test upon request of the law enforcement officer after the law
9 enforcement officer advised [~~him~~] the person that [~~his~~] the
10 person's failure to submit to the test could result in the
11 revocation of [~~his~~] the person's privilege to drive; or

12 (b) that a chemical test was
13 administered pursuant to the provisions of the Implied Consent
14 Act and the test results indicated an alcohol concentration in
15 the person's blood or breath of eight one hundredths or more if
16 the person is twenty-one years of age or older, four one
17 hundredths or more if the person is driving a commercial motor
18 vehicle or [~~two one hundredths or more~~] any detectable alcohol
19 concentration if the person is less than twenty-one years of
20 age.

21 G. If one or more of the elements set forth in
22 Paragraphs (1) through (4) of Subsection F of this section are
23 not found by the department, the person's license shall not be
24 revoked.

25 H. A person adversely affected by an order of the

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1 department may seek review within thirty days in the district
2 court in the county in which the offense for which the person
3 was arrested took place. The district court, upon thirty days'
4 written notice to the department, shall hear the case. On
5 review, it is for the court to determine only whether
6 reasonable grounds exist for revocation or denial of the
7 person's license or privilege to drive based on the record of
8 the administrative proceeding.

9 I. Any person less than eighteen years of age shall
10 have results of [~~his~~] the person's hearing forwarded by the
11 department to [~~his~~] the person's parent, guardian or
12 custodian."

13 SECTION 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2015.