

## IMPLIED CONSENT ACT

(Current as of June 1, 2018, check for updates thereafter at  
<http://public.nmcompcomm.us/NMPublic/gateway.dll/?f=templates&fn=default.htm>)

### **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 [[66-8-105](#) NMSA 1978], to chemical tests of his breath or blood or both, 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 enforcement officer, or for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

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

**History:** 1953 Comp., § 64-8-107, enacted by Laws 1978, ch. 35, § 515; 1979, ch. 71, § 8; 1985, ch. 178, § 3; 1985, ch. 187, § 1; 1993, ch. 66, § 9.

### **66-8-108. Consent of person incapable of refusal not withdrawn.**

Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by [Section 66-8-107](#) NMSA 1978, and the test or tests designated by the law enforcement officer may be administered.

**History:** 1953 Comp., § 64-8-108, enacted by Laws 1978, ch. 35, § 516.

### **66-8-109. Administration of chemical test; payment of costs; additional tests.**

A. Only the persons authorized by [Section 66-8-103](#) NMSA 1978 shall withdraw blood from any person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under [Section 66-8-107](#) NMSA 1978.

**History:** 1953 Comp., § 64-8-109, enacted by Laws 1978, ch. 35, § 517; 1993, ch. 66, § 10.

**66-8-110. Use of tests in criminal actions or civil actions; levels of intoxication; mandatory charging.**

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

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

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

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

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

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

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

C. The arresting officer shall charge the person tested with a violation of Section [66-8-102](#) NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

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

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

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

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

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

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

History: 1953 Comp., § 64-8-110, enacted by Laws 1978, ch. 35, § 518; 1979, ch. 71, § 9; 1982, ch. 102, § 3; 1983, ch. 76, § 3; 1984, ch. 72, § 5; 1993, ch. 66, § 11; 2003, ch. 51, § 12; 2003, ch. 90, § 5; 2007, ch. 322, § 2.

**66-8-111. Refusal to submit to chemical tests; testing; grounds for revocation of license or privilege to drive.**

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code [[66-1-1](#) NMSA 1978] refuses upon request of a law enforcement officer to submit to chemical

tests designated by the law enforcement agency as provided in Section [66-8-107](#) NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section [66-8-107](#) NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section [66-8-107](#) NMSA 1978 will produce material evidence in a felony prosecution.

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

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

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

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code [32A-1-1NMSA 1978]; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

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

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

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

**History:** 1953 Comp., § 64-8-111, enacted by Laws 1978, ch. 35, § 519; 1979, ch. 71, § 10; 1979, ch. 73, § 1; 1984, ch. 72, § 6; 1985, ch. 178, § 4; 1985, ch. 187, § 2; 1991, ch. 245, § 3; 1993, ch. 66, § 12; 2003, ch. 51, § 13; 2003, ch. 90, § 6; 2005, ch. 269, § 7.

**66-8-111.1. Law enforcement officer agent for department; written notice of revocation and right to hearing.**

On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section [66-8-107](#) NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing before the administrative hearings office pursuant to the Implied Consent Act on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section [66-8-112](#) NMSA 1978, valid until the date the administrative hearings office issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section [66-8-111](#) NMSA 1978.

History: 1978 Comp., § 66-8-111.1, enacted by Laws 1984, ch. 72, § 7; 1985, ch. 178, § 5; 1985, ch. 187, § 3; 1991, ch. 245, § 4; 1993, ch. 66, § 13; 2003, ch. 51, § 14; 2003, ch. 90, § 7; 2015, ch. 73, § 34.

**66-8-112. Revocation of license or privilege to drive; notice; effective date; hearing; hearing costs; review.**

A. The effective date of revocation pursuant to Section [66-8-111](#) NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to the Administrative Hearings Office Act [Chapter [7](#), Article [1B](#) NMSA 1978], the date that the administrative hearings office issues the order following that hearing. The date of notice of revocation is:

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

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

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars (\$25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to rules adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's

right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to the person's parent, guardian or custodian by the department. A date for the hearing shall be set by the administrative hearings office, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

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

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

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

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

(2) whether the person was arrested;

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

(4) whether:

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

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

(5) whether:

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

(b) the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

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

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

(2) the person was arrested;

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

(4) either:

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

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one

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

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

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

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

History: 1953 Comp., § 64-8-112, enacted by Laws 1978, ch. 35, § 520; 1979, ch. 71, § 11; 1984, ch. 72, § 8; 1985, ch. 178, § 6; 1985, ch. 187, § 4; 1991, ch. 245, § 5; 1993, ch. 66, § 14; 2003, ch. 51, § 15; 2003, ch. 90, § 8; 2015, ch. 73, § 35.