

1 SENATE BILL 131

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Joseph Cervantes

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7
8 ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9
10 AN ACT

11 RELATING TO TRAFFIC CITATIONS; PROVIDING FOR REMITTANCE OF
12 PENALTY ASSESSMENTS TO THE COURTS; ALLOWING PERSONS CHARGED
13 WITH TRAFFIC CITATIONS TO PAY THE PENALTY ASSESSMENT ANYTIME
14 BEFORE APPEARANCE IN COURT; PROVIDING THAT A UNIFORM TRAFFIC
15 CITATION IS A SUMMONS; REQUIRING THAT TRAFFIC CITATIONS BE
16 SUBMITTED TO THE APPROPRIATE COURT WITHIN THREE DAYS OF
17 ISSUANCE; CREATING A FUND; IMPOSING A FEE ON PENALTY ASSESSMENT
18 MISDEMEANORS; MAKING AN APPROPRIATION.

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

21 SECTION 1. [NEW MATERIAL] TRAFFIC CITATION ADMINISTRATION
22 FUND--CREATED--PURPOSE.--

23 A. The "traffic citation administration fund" is
24 created in the state treasury for appropriation by the
25 legislature to the administrative office of the courts for the

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1 administration and processing of traffic citations in the
2 courts, including the funding of full-time-equivalent positions
3 dedicated to the administration and processing of traffic
4 citations. The fund consists of traffic citation
5 administration fees collected pursuant to Sections 35-6-1 and
6 66-8-116.3 NMSA 1978 and any appropriations, gifts, grants and
7 donations. Income from the fund shall be credited to the fund,
8 and money in the fund shall not revert or be transferred to any
9 other fund at the end of a fiscal year.

10 B. Payments from the traffic citation
11 administration fund shall be made upon vouchers issued and
12 signed by the director of the administrative office of the
13 courts upon warrants drawn by the secretary of finance and
14 administration.

15 SECTION 2. Section 35-6-1 NMSA 1978 (being Laws 1968,
16 Chapter 62, Section 92, as amended) is amended to read:

17 "35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF
18 "CONVICTED".--

19 A. Magistrate judges, including metropolitan court
20 judges, shall assess and collect and shall not waive, defer or
21 suspend the following costs:

22 docket fee, criminal actions under Section 29-5-1 NMSA
23 1978 \$ 1.00;
24 docket fee, to be collected prior to docketing any other
25 criminal action, except as provided in Subsection B

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1 of Section 35-6-3 NMSA 1978 20.00.
2 Proceeds from this docket fee shall be transferred
3 to the administrative office of the courts for
4 deposit in the court facilities fund;
5 docket fee, twenty dollars (\$20.00) of which shall be
6 deposited in the court automation fund and fifteen
7 dollars (\$15.00) of which shall be deposited in the
8 civil legal services fund, to be collected prior to
9 docketing any civil action, except as provided in
10 Subsection A of Section 35-6-3 NMSA 1978 . . 72.00;
11 jury fee, to be collected from the party demanding trial
12 by jury in any civil action at the time the demand
13 is filed or made 25.00;
14 copying fee, for making and certifying copies of any
15 records in the court, for each page copied by
16 photographic process 0.50.
17 Proceeds from this copying fee shall be transferred
18 to the administrative office of the courts for
19 deposit in the court facilities fund; and
20 copying fee, for computer-generated or electronically
21 transferred copies, per page 1.00.
22 Proceeds from this copying fee shall be transferred
23 to the administrative office of the courts for
24 deposit in the court automation fund.

25 Except as otherwise specifically provided by law, docket

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1 fees shall be paid into the court facilities fund.

2 B. Except as otherwise provided by law, no other
3 costs or fees shall be charged or collected in the magistrate
4 or metropolitan court.

5 C. The magistrate or metropolitan court may grant
6 free process to any party in any civil proceeding or special
7 statutory proceeding upon a proper showing of indigency. The
8 magistrate or metropolitan court may deny free process if it
9 finds that the complaint on its face does not state a cause of
10 action.

11 D. As used in this subsection, "convicted" means the
12 defendant has been found guilty of a criminal charge by the
13 magistrate or metropolitan judge, either after trial, a plea of
14 guilty or a plea of nolo contendere. Magistrate judges,
15 including metropolitan court judges, shall assess and collect
16 and shall not waive, defer or suspend the following costs:

17 (1) corrections fee, to be collected upon
18 conviction from persons convicted of violating any provision of
19 the Motor Vehicle Code involving the operation of a motor
20 vehicle, convicted of a crime constituting a misdemeanor or a
21 petty misdemeanor or convicted of violating any ordinance that
22 may be enforced by the imposition of a term of imprisonment as
23 follows:

- 24 in a county with a metropolitan court \$10.00;
- 25 in a county without a metropolitan court 20.00;

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1 (2) court automation fee, to be collected upon
2 conviction from persons convicted of violating any provision of
3 the Motor Vehicle Code involving the operation of a motor
4 vehicle, convicted of a crime constituting a misdemeanor or a
5 petty misdemeanor or convicted of violating any ordinance that
6 may be enforced by the imposition of a term of
7 imprisonment 10.00;

8 (3) traffic safety fee, to be collected upon
9 conviction from persons convicted of violating any provision of
10 the Motor Vehicle Code involving the operation of a motor
11 vehicle 3.00;

12 (4) judicial education fee, to be collected upon
13 conviction from persons convicted of operating a motor vehicle
14 in violation of the Motor Vehicle Code, convicted of a crime
15 constituting a misdemeanor or a petty misdemeanor or convicted
16 of violating any ordinance punishable by a term of
17 imprisonment 3.00;

18 (5) jury and witness fee, to be collected upon
19 conviction from persons convicted of operating a motor vehicle
20 in violation of the Motor Vehicle Code, convicted of a crime
21 constituting a misdemeanor or a petty misdemeanor or convicted
22 of violating any ordinance punishable by a term of
23 imprisonment 5.00;

24 (6) brain injury services fee, to be collected
25 upon conviction from persons convicted of violating any

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1 provision of the Motor Vehicle Code involving the operation of
2 a motor vehicle 5.00;

3 [~~and~~]

4 (7) court facilities fee, to be collected upon
5 conviction from persons convicted of violating any provision of
6 the Motor Vehicle Code involving the operation of a motor
7 vehicle, convicted of a crime constituting a misdemeanor or a
8 petty misdemeanor or convicted of violating any ordinance that
9 may be enforced by the imposition of a term of imprisonment as
10 follows:

11 in a county with a metropolitan court 24.00;

12 in any other county 10.00;

13 and

14 (8) traffic citation administration fee, to be
15 collected upon conviction from persons convicted of a penalty
16 assessment misdemeanor 4.00.

17 E. Metropolitan court judges shall assess and collect
18 and shall not waive, defer or suspend as costs a mediation fee
19 not to exceed five dollars (\$5.00) for the docketing of small
20 claims and criminal actions specified by metropolitan court
21 rule. Proceeds of the mediation fee shall be deposited into
22 the metropolitan court mediation fund."

23 SECTION 3. Section 35-7-4 NMSA 1978 (being Laws 1968,
24 Chapter 62, Section 99, as amended) is amended to read:

25 "35-7-4. MAGISTRATE ADMINISTRATION--MONTHLY

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1 REMITTANCES.--Each magistrate court shall pay to the
2 administrative office of the courts, not later than the date
3 each month established by regulation of the director of the
4 administrative office, the amount of all fines, forfeitures and
5 costs collected by the court during the previous month, except
6 for amounts disbursed in accordance with law. The
7 administrative office shall return to each magistrate court a
8 written receipt itemizing all money received. The
9 administrative office shall deposit the amount of all fines and
10 forfeitures with the state treasurer for credit to the current
11 school fund. The administrative office shall deposit the
12 amount of all costs, except all costs collected pursuant to
13 Subsections D and E of Section 35-6-1 NMSA 1978, for credit to
14 the general fund. The amount of all costs collected pursuant
15 to Subsections D and E of Section 35-6-1 NMSA 1978 shall be
16 credited as follows:

17 A. the amount of all costs collected pursuant to
18 Paragraph (1) of Subsection D of Section 35-6-1 NMSA 1978 for
19 credit to the local government corrections fund;

20 B. the amount of all costs collected pursuant to
21 Paragraph (2) of Subsection D of Section 35-6-1 NMSA 1978 for
22 credit to the court automation fund;

23 C. the amount of all costs collected pursuant to
24 Paragraph (3) of Subsection D of Section 35-6-1 NMSA 1978 for
25 credit to the traffic safety education and enforcement fund;

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1 D. the amount of all costs collected pursuant to
2 Paragraph (4) of Subsection D of Section 35-6-1 NMSA 1978 for
3 credit to the judicial education fund;

4 E. the amount of all costs collected pursuant to
5 Paragraph (5) of Subsection D of Section 35-6-1 NMSA 1978 for
6 credit to the jury and witness fee fund;

7 F. the amount of all costs collected pursuant to
8 Paragraph (6) of Subsection D of Section 35-6-1 NMSA 1978 for
9 credit to the brain injury services fund;

10 G. the amount of all costs collected pursuant to
11 Paragraph (7) of Subsection D of Section 35-6-1 NMSA 1978 for
12 credit to the court facilities fund; ~~and~~

13 H. the amount of all costs collected pursuant to
14 Paragraph (8) of Subsection D of Section 35-6-1 NMSA 1978 for
15 credit to the traffic citation administration fund; and

16 ~~[H.]~~ I. the amount of all costs collected pursuant to
17 Subsection E of Section 35-6-1 NMSA 1978 for credit to the
18 metropolitan court mediation fund."

19 SECTION 4. Section 35-7-13 NMSA 1978 (being Laws 2010,
20 Chapter 7, Section 1) is amended to read:

21 "35-7-13. MAGISTRATE COURTS OPERATIONS FUND--CREATED--
22 PURPOSE--TERMINATION OF FUND.--The "magistrate courts
23 operations fund" is created in the state treasury for
24 appropriation by the legislature for the operations of
25 magistrate courts. The fund consists of magistrate courts

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1 operations fees collected pursuant to Section 66-8-116.3 NMSA
2 1978 and any appropriations, gifts, grants and donations.
3 Income from the fund shall be credited to the fund. Money in
4 the fund at the end of fiscal years 2010, 2011, 2012 and 2013
5 shall not revert to any other fund. Balances remaining in the
6 fund at the end of fiscal year 2014 shall ~~revert~~ be
7 transferred to the ~~[general]~~ traffic citation administration
8 fund, and the magistrate courts operations fund shall be
9 dissolved on July 1, 2014."

10 SECTION 5. Section 66-5-30 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 252, as amended) is amended to read:

12 "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE
13 LICENSE.--

14 A. The division is authorized to suspend the
15 instruction permit, driver's license or provisional license of
16 a driver without preliminary hearing upon a showing by its
17 records or other sufficient evidence, including information
18 provided to the state pursuant to an intergovernmental
19 agreement authorized by Section 66-5-27.1 NMSA 1978, that the
20 licensee:

21 (1) has been convicted of an offense for which
22 mandatory revocation of license is required upon conviction;

23 (2) has been convicted as a driver in an
24 accident resulting in the death or personal injury of another
25 or serious property damage;

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1 (3) has been convicted with such frequency of
2 offenses against traffic laws or rules governing motor vehicles
3 as to indicate a disrespect for traffic laws and a disregard
4 for the safety of other persons on the highways;

5 (4) is an habitually reckless or negligent
6 driver of a motor vehicle;

7 (5) is incompetent to drive a motor vehicle;

8 (6) has permitted an unlawful or fraudulent use
9 of the license;

10 (7) has been convicted of an offense in another
11 state or tribal jurisdiction that if committed within this
12 state's jurisdiction would be grounds for suspension or
13 revocation of the license;

14 (8) has violated provisions stipulated by a
15 district court in limitation of certain driving privileges;

16 (9) has failed to fulfill a signed promise to
17 appear or notice to appear in court as evidenced by notice from
18 a state court or tribal court, whenever appearance is required
19 by law or by the court as a consequence of a charge or
20 conviction under the Motor Vehicle Code or pursuant to the laws
21 of the tribe;

22 (10) has failed to pay a penalty assessment
23 within thirty days of the date of issuance by ~~[the state or]~~ a
24 tribe; ~~[or]~~

25 (11) has failed to pay a penalty assessment

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1 within the time frame as ordered by the court; or

2 [~~(11)~~] (12) has accumulated seven points, but
3 less than eleven points, and when the division has received a
4 recommendation from a municipal or magistrate judge that the
5 license be suspended for a period not to exceed three months.

6 B. Upon suspending the license of a person as
7 authorized in this section, the division shall immediately
8 notify the licensee in writing and upon [~~his~~] the licensee's
9 request shall afford [~~him~~] the licensee an opportunity for a
10 hearing as early as practicable within not to exceed twenty
11 days, not counting Saturdays, Sundays and legal holidays, after
12 receipt of the request in the county wherein the licensee
13 resides unless the division and the licensee agree that the
14 hearing may be held in some other county; provided that the
15 hearing request is received within twenty days from the date
16 that the suspension was deposited in the United States mail.
17 The director may, in [~~his~~] the director's discretion, extend
18 the twenty-day period. Upon the hearing, the director or [~~his~~]
19 the director's duly authorized agent may administer oaths and
20 may issue subpoenas for the attendance of witnesses and the
21 production of relevant books and papers and may require a
22 reexamination of the licensee. Upon the hearing, the division
23 shall either rescind its order of suspension or, good cause
24 appearing therefor, may continue, modify or extend the
25 suspension of the license or revoke the license."

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1 SECTION 6. Section 66-8-116.3 NMSA 1978 (being Laws 1989,
2 Chapter 318, Section 35 and Laws 1989, Chapter 319, Section 14
3 and also Laws 1989, Chapter 320, Section 5, as amended) is
4 amended to read:

5 "66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL
6 FEES.--In addition to the penalty assessment established for
7 each penalty assessment misdemeanor, there shall be assessed:

8 A. in a county without a metropolitan court, twenty
9 dollars (\$20.00) to help defray the costs of local government
10 corrections;

11 B. a court automation fee of ten dollars (\$10.00);

12 C. a traffic safety fee of three dollars (\$3.00),
13 which shall be credited to the traffic safety education and
14 enforcement fund;

15 D. a judicial education fee of three dollars (\$3.00),
16 which shall be credited to the judicial education fund;

17 E. a jury and witness fee of five dollars (\$5.00),
18 which shall be credited to the jury and witness fee fund;

19 F. a juvenile adjudication fee of one dollar (\$1.00),
20 which shall be credited to the juvenile adjudication fund;

21 G. a brain injury services fee of five dollars
22 (\$5.00), which shall be credited to the brain injury services
23 fund;

24 H. a court facilities fee as follows:
25 in a county with a metropolitan court \$24.00;

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1 in any other county 10.00;

2 [~~and~~]

3 I. until May 31, 2014, a magistrate courts operations
4 fee of four dollars (\$4.00), which shall be credited to the
5 magistrate courts operations fund; and

6 J. a traffic citation administration fee of four
7 dollars (\$4.00), which shall be credited to the traffic
8 citation administration fund."

9 SECTION 7. Section 66-8-119 NMSA 1978 (being Laws 1968,
10 Chapter 62, Section 159, as amended) is amended to read:

11 "66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

12 A. The [~~division~~] administrative office of the courts
13 shall remit all penalty assessment receipts, except receipts
14 collected pursuant to Subsections A through I of Section
15 66-8-116.3 NMSA 1978, to the state treasurer for credit to the
16 general fund.

17 B. The [~~division~~] administrative office of the courts
18 shall remit all penalty assessment fee receipts collected
19 pursuant to:

20 (1) Subsection A of Section 66-8-116.3 NMSA 1978
21 to the state treasurer for credit to the local government
22 corrections fund;

23 (2) Subsection B of Section 66-8-116.3 NMSA 1978
24 to the state treasurer for credit to the court automation fund;

25 (3) Subsection C of Section 66-8-116.3 NMSA 1978

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1 to the state treasurer for credit to the traffic safety
2 education and enforcement fund;

3 (4) Subsection D of Section 66-8-116.3 NMSA 1978
4 to the state treasurer for credit to the judicial education
5 fund;

6 (5) Subsection E of Section 66-8-116.3 NMSA 1978
7 to the state treasurer for credit to the jury and witness fee
8 fund;

9 (6) Subsection F of Section 66-8-116.3 NMSA 1978
10 to the state treasurer for credit to the juvenile adjudication
11 fund;

12 (7) Subsection G of Section 66-8-116.3 NMSA 1978
13 to the state treasurer for credit to the brain injury services
14 fund;

15 (8) Subsection H of Section 66-8-116.3 NMSA 1978
16 to the state treasurer for credit to the court facilities fund;
17 [~~and~~]

18 (9) Subsection I of Section 66-8-116.3 NMSA 1978
19 to the state treasurer for credit to the magistrate courts
20 operations fund; and

21 (10) Subsection J of Section 66-8-116.3 NMSA
22 1978 to the state treasurer for credit to the traffic citation
23 administration fund."

24 SECTION 8. Section 66-8-123 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 531, as amended) is amended to read:

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1 "66-8-123. CONDUCT OF ARRESTING OFFICER--NOTICES BY
2 CITATION.--

3 A. Except as provided in Section 66-8-122 NMSA 1978,
4 unless a penalty assessment or warning notice is given,
5 whenever a person is arrested for any violation of the Motor
6 Vehicle Code or other law relating to motor vehicles punishable
7 as a misdemeanor, the arresting officer, using the uniform
8 traffic citation, shall complete the information section and
9 prepare a notice to appear in court, specifying the time and
10 place to appear, have the arrested person sign the agreement to
11 appear as specified, give a copy of the citation to the
12 arrested person and release ~~[him]~~ the person from custody.

13 B. Whenever a person is arrested for violation of a
14 penalty assessment misdemeanor, ~~[and elects to pay the penalty~~
15 ~~assessment, the arresting officer, using the uniform traffic~~
16 ~~citation, shall complete the information section and prepare~~
17 ~~the penalty assessment notice indicating the amount of the~~
18 ~~penalty assessment, have the arrested person sign the agreement~~
19 ~~to pay the amount prescribed, give a copy of the citation along~~
20 ~~with a business reply envelope addressed to the motor vehicle~~
21 ~~division Santa Fe to the arrested person and release him from~~
22 ~~custody. No officer shall accept custody or payment of any~~
23 ~~penalty assessment. If the arrested person declines to accept~~
24 ~~a penalty assessment notice, the officer shall issue a notice~~
25 ~~to appear]~~ the arresting officer shall advise the person of the

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1 option either to accept the penalty assessment and pay it to
2 the court or to appear in court. The arresting officer, using
3 the uniform traffic citation, shall complete the information
4 section, prepare the penalty assessment notice indicating the
5 amount of the penalty assessment and prepare a notice to appear
6 in court specifying the time and place to appear. The
7 arresting officer shall have the person sign the citation as a
8 promise either to pay the penalty assessment as prescribed or
9 to appear in court as specified, give a copy of the citation to
10 the person and release the person from custody. An officer
11 shall not accept custody or payment of any penalty assessment.

12 C. The arresting officer may issue a warning notice,
13 but shall fill in the information section of the uniform
14 traffic citation and give a copy to the arrested person after
15 requiring [~~his~~] a signature on the warning notice as an
16 acknowledgment of receipt. No warning notice issued under this
17 section shall be used as evidence of conviction for purposes of
18 suspension or revocation of license under Section 66-5-30 NMSA
19 1978.

20 D. In order to secure [~~his~~] release, the arrested
21 person must give [~~his~~] a written promise to appear in court or
22 to pay the penalty assessment prescribed or acknowledge receipt
23 of a warning notice.

24 E. A penalty assessment citation issued by a law
25 enforcement officer shall be submitted to the appropriate

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1 magistrate or metropolitan court within three business days of
2 issuance. If the citation is not submitted within three
3 business days, it may be dismissed with prejudice.

4 ~~[E.]~~ F. Any officer violating this section is guilty
5 of a misconduct in office and is subject to removal.

6 ~~[F.]~~ G. A law enforcement officer who arrests a
7 person without a warrant for a misdemeanor violation of the
8 Motor Carrier Act, the Criminal Code, the Liquor Control Act or
9 other New Mexico law may use the uniform traffic citation,
10 issued pursuant to procedures outlined in Subsections B through
11 E of Section 31-1-6 NMSA 1978, [~~Subsections B through E~~] in
12 lieu of taking ~~[him]~~ the person to jail."

13 SECTION 9. Section 66-8-126 NMSA 1978 (being Laws 1978,
14 Chapter 35, Section 534) is amended to read:

15 "66-8-126. FAILURE TO OBEY NOTICE TO APPEAR--SUMMONS--
16 WARRANT.--

17 A. It is a misdemeanor for any person to violate
18 ~~[his]~~ a written promise to pay the penalty assessment or to
19 appear in court given to an officer upon issuance of a uniform
20 traffic citation regardless of the disposition of the charge
21 for which the citation was issued.

22 B. A uniform traffic citation with a written promise
23 to appear in court or to pay the penalty assessment is a
24 summons. If a person fails to appear or to pay the penalty
25 assessment by the appearance date, a warrant for failure to

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1 appear may be issued.

2 [B-] C. A written promise to appear in court may be
3 complied with by appearance of counsel."

4 SECTION 10. Section 66-8-128 NMSA 1978 (being Laws 1978,
5 Chapter 35, Section 536, as amended) is amended to read:

6 "66-8-128. UNIFORM TRAFFIC CITATION.--

7 A. The department shall prepare a uniform traffic
8 citation containing at least the following information:

9 (1) an information section, serially numbered
10 and containing spaces for the name, email, telephone number,
11 physical address, [~~and~~] mailing address, city and state of the
12 individual charged; the individual's physical description, age
13 and sex; the registration number, year and state of the vehicle
14 involved and its make and type; the state and number of the
15 individual's driver's license; the specific section number and
16 common name of the offense charged under the NMSA 1978 or local
17 law; the date and time of arrest; the arresting officer's
18 signature and identification number; and the conditions
19 existing at the time of the violation; and

20 (2) a notice to appear [~~and~~
21 ~~(3)~~] in court or to pay a penalty assessment
22 [~~notice~~] with a place for the signature of the violator
23 agreeing to appear in court or to pay the penalty assessment
24 prescribed.

25 B. The department shall prescribe how the uniform

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1 traffic citation form may be used as a warning notice.

2 C. The department shall prescribe the size and number
3 of copies of the paper version of the uniform traffic citation
4 and the disposition of each copy. The department may also
5 prescribe one or more electronic versions of the uniform
6 traffic citation, and these electronic versions may be used in
7 the issuance of citations.

8 D. Any entity that wishes to submit uniform traffic
9 citations required to be submitted to the department by
10 electronic means shall secure the prior permission of the
11 department."

12 SECTION 11. Section 66-8-131 NMSA 1978 (being Laws 1961,
13 Chapter 213, Section 10, as amended) is amended to read:

14 "66-8-131. UNIFORM TRAFFIC CITATION IS COMPLAINT.--The
15 uniform traffic citation used as a notice to appear is a
16 summons and a valid complaint, though not verified."

17 SECTION 12. APPROPRIATION.--Five hundred thousand dollars
18 (\$500,000) is appropriated from the general fund to the
19 administrative office of the courts for expenditure in fiscal
20 years 2014 and 2015 for the purchase of equipment and
21 information technology infrastructure necessary for use in
22 traffic citation administration and collection. Any unexpended
23 or unencumbered balance remaining at the end of fiscal year
24 2015 shall revert to the general fund.

25 SECTION 13. REPEAL.--Section 66-8-117 NMSA 1978 (being
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1 Laws 1978, Chapter 35, Section 525, as amended) is repealed.

2 SECTION 14. EFFECTIVE DATE.--

3 A. The effective date of the provisions of Sections 1
4 through 3, 5 through 11 and 13 of this act is July 1, 2014.

5 B. The effective date of the provisions of Sections 4
6 and 12 of this act is July 1, 2013.

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