

FIFTY-SECOND LEGISLATURE  
FIRST SESSION, 2015

HB 148/a

March 10, 2015

Mr. President:

Your **PUBLIC AFFAIRS COMMITTEE**, to whom has been referred

**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE HEALTH COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 148**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On pages 1 through 3, strike Section 1 in its entirety and insert in lieu thereof the following sections:

"SECTION 1. A new section of the Motor Vehicle Code is enacted to read:

"[NEW MATERIAL] SMOKING PROHIBITED--VEHICLE WHERE CHILD PRESENT.--

A. It is unlawful for a person to smoke in any motor vehicle when a child is present in the vehicle.

B. As used in this section:

(1) "child" means an individual who is thirteen years of age or younger;

(2) "electronic smoking device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person for smoking through inhalation of vapor or aerosol from the product. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed or sold as an "e-cigarette", "e-cigar", "e-pipe", "e-hookah" or "vape pen" or under any other product name or descriptor;

(3) "motor vehicle" means a self-propelled device in,

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upon or by which any person or property is transported upon land;  
and

(4) "smoking" means:

(a) inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette or pipe or any other lighted or heated tobacco or plant product intended for inhalation, including a hookah or marijuana, whether natural or synthetic, in any manner or in any form;

(b) using an electronic smoking device that creates an aerosol or vapor, in any manner or form; or

(c) using any oral smoking device for the purpose of circumventing the prohibition of smoking established pursuant to this 2015 act."

**SECTION 2.** Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116. PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--  
SCHEDULE OF ASSESSMENTS.--

A. As used in the Motor Vehicle Code, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsections D and E of this section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Improper display of registration plate	66-3-18	\$ 25.00
Failure to notify of change of name or address	66-3-23	25.00

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Lost or damaged registration, plate or title	66-3-24	20.00
Permitting unauthorized minor to drive	66-5-40	50.00
Permitting unauthorized person to drive	66-5-41	25.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including ten miles an hour over the speed limit		15.00
(2) from eleven up to and including fifteen miles an hour over the speed limit		30.00
(3) from sixteen up to and including twenty miles an hour over the speed limit		65.00
(4) from twenty-one up to and including twenty-five miles an hour over the speed limit		100.00
(5) from twenty-six up to and including thirty miles an hour over the speed limit		125.00

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(6) from thirty-one up to and including thirty-five miles an hour over the speed limit		150.00
(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device or seat belt	66-7-369	25.00
Minimum speed	66-7-305	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access violation	66-7-320	10.00

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Controlled access violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-331	10.00
Failure to yield	66-7-332	50.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344 through 66-7-346	10.00
Railroad-highway grade crossing violation	66-7-341 and 66-7-343	150.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize-overweight permit	66-7-413	50.00
Transport of reducible		

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load with special permit more than six miles from a border crossing	66-7-413	100.00
Improper equipment	66-3-801 through 66-3-851	25.00
Improper equipment	66-3-901	20.00
Improper emergency signal	66-3-853 through 66-3-857	10.00
Minor on motorcycle without helmet	66-7-356	300.00
Operation interference	66-7-357	50.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353	5.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing occupied house trailer	66-7-366	5.00
Improper opening of doors	66-7-367	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	5.00
Open container - first violation	66-8-138	25.00

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Texting while driving - first violation	<del>[Section 1 of this 2014 act]</del> <u>66-7-374</u>	25.00
Texting while driving - subsequent violation	<del>[Section 1 of this 2014 act]</del> <u>66-7-374</u>	50.00
<u>Smoking with child present in vehicle</u>	<u>Section 1 of this 2015 act</u>	<u>100.00.</u>

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

D. The penalty assessment for speeding in violation of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit.

E. Upon a second conviction for operation without a permit for excessive size or weight pursuant to Section 66-7-413 NMSA 1978, the penalty assessment shall be two hundred fifty dollars (\$250). Upon a third or subsequent conviction, the penalty assessment shall be five hundred dollars (\$500).

F. Upon a second conviction for transport of a reducible load with a permit for excessive size or weight pursuant to Subsection N of Section 66-7-413 NMSA 1978 more than six miles from a port-of-entry facility on the border with Mexico, the penalty assessment shall be five hundred dollars (\$500). Upon a third or subsequent conviction, the penalty assessment shall be one thousand dollars (\$1,000).

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G. Upon a first conviction for smoking with child present in vehicle pursuant to Section 1 of this 2015 act, the court shall waive the fine if the convicted person completes a smoking cessation course:

(1) either in person or through a web site;

(2) chosen from a list of smoking cessation courses that the court has approved; and

(3) within a time frame that the court specifies."".,

and thence referred to the **JUDICIARY COMMITTEE.**

Respectfully submitted,

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Gerald Ortiz y Pino, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 3 Against

Yes: 5

No: Brandt, Griggs, Kernan

Excused: None

Absent: None



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