

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 215

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Roberto "Bobby" J. Gonzales

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO THE MOTOR VEHICLE CODE; ELIMINATING COMMERCIAL DRIVER'S LICENSE TEST WAIVER AUTHORITY; MAKING PENALTIES UNIFORM FOR IMPROPERLY LICENSED DRIVERS OF COMMERCIAL VEHICLES; MAKING THE DEFINITION OF A CONVICTION UNIFORM THROUGHOUT THE MOTOR VEHICLE CODE; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Section 1. Section 66-5-60 NMSA 1978 (being Laws 1989, Chapter 14, Section 9, as amended) is amended to read:

"66-5-60. COMMERCIAL DRIVER'S LICENSE--QUALIFICATIONS--STANDARDS.--

A. The division shall not issue a commercial driver's license to a person unless that person can establish that New Mexico is the person's state of domicile and has

.170642.2SA

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 passed a knowledge and skills test for driving a commercial
2 motor vehicle and, for related endorsements, has passed a
3 medical fitness test and has satisfied any other requirements
4 of the New Mexico Commercial Driver's License Act.

5 B. The division may authorize a person, including
6 an agency of this or another state, an employer, a private
7 driver-training facility or other private institution or a
8 department, agency or instrumentality of local government to
9 administer the skills test specified by this section.

10 ~~[G. The director may waive the requirement of any~~
11 ~~test specified in this section for a commercial driver's~~
12 ~~license applicant who complies with the other provisions of the~~
13 ~~New Mexico Commercial Driver's License Act through any~~
14 ~~pertinent rules, regulations or contractual agreements with the~~
15 ~~public education department, other governments or private~~
16 ~~entities.~~

17 ~~D.]~~ C. A commercial driver's license applicant
18 shall not take a test specified in this section more than three
19 times within one year.

20 ~~[E.]~~ D. If the department determines that a
21 commercial driver's license applicant has committed an offense
22 in taking a test specified in this section, the division shall
23 not issue a commercial driver's license to that applicant
24 within one year of the department's determination."

25 Section 2. Section 66-5-68 NMSA 1978 (being Laws 1989,

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 Chapter 14, Section 17, as amended) is amended to read:

2 "66-5-68. DISQUALIFICATION.--

3 A. The department shall disqualify a person from
4 driving a commercial motor vehicle for at least thirty days if
5 the federal motor carrier safety administration reports to the
6 division that the person poses an imminent hazard.

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

13 (1) refuses to submit to a chemical test when
14 requested pursuant to the provisions of the Implied Consent
15 Act;

16 (2) is twenty-one years of age or more and
17 submits to chemical testing pursuant to the Implied Consent Act
18 and the test results indicate an alcohol concentration of eight
19 one hundredths or more;

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

24 (4) is less than twenty-one years of age and
25 submits to chemical testing pursuant to the Implied Consent Act

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 and the test results indicate an alcohol concentration of two
2 one hundredths or more; or

3 (5) is convicted of a violation of:

4 (a) driving a motor vehicle while under
5 the influence of intoxicating liquor or drugs in violation of
6 Section 66-8-102 NMSA 1978, an ordinance of a municipality of
7 this state or the law of another state;

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

12 (c) using a motor vehicle in the
13 commission of a felony;

14 (d) driving a commercial motor vehicle
15 after the driver's commercial driver's license is revoked,
16 suspended, disqualified or canceled for violations while
17 operating a commercial motor vehicle; or

18 (e) causing a fatality in the unlawful
19 operation of a motor vehicle pursuant to Section 66-8-101 NMSA
20 1978.

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

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 D. The department shall disqualify a person from
2 driving a commercial motor vehicle for life if convicted of two
3 or more violations of any of the offenses specified in
4 Subsection B of this section, or any combination of those
5 offenses, arising from two or more separate incidents, but the
6 secretary may issue regulations establishing guidelines,
7 including conditions, under which a disqualification for life
8 under this subsection may be reduced to a period of not less
9 than ten years. This subsection applies only to those offenses
10 committed after July 1, 1989.

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

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

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

.170642.2SA

underscored material = new
[bracketed material] = delete

1 (1) not less than one hundred eighty days nor
2 more than two years if the person is convicted of a first
3 violation of an out-of-service order while transporting
4 hazardous materials required to be placarded pursuant to the
5 federal Hazardous Materials Transportation Act or while
6 operating a motor vehicle designed to transport more than
7 fifteen passengers, including the driver [~~The department shall~~
8 ~~disqualify a person from driving a commercial motor vehicle for~~
9 ~~a period of~~];

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

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

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

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

24 (2) the second conviction results in
25 revocation, cancellation or suspension of the person's

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 commercial driver's license or noncommercial motor vehicle
2 driving privileges for sixty days.

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

6 (1) the person has been convicted of more than
7 two serious traffic violations within a three-year period; and

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

12 J. When a person is disqualified from driving a
13 commercial motor vehicle, any commercial driver's license held
14 by that person is invalidated without a separate proceeding of
15 any kind and the driver is not eligible to apply for a
16 commercial driver's license until the period of time for which
17 the driver was disqualified has elapsed.

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

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

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

.170642.2SA

underscoring material = new
[bracketed material] = delete

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

4 L. After disqualifying, suspending, revoking or
5 canceling a commercial driver's license, the department shall,
6 within ten days, update its records to reflect that action.
7 After disqualifying, suspending, revoking or canceling a
8 nonresident commercial driver's privileges, the department
9 shall, within ten days, notify the licensing authority of the
10 state that issued the commercial driver's license.

11 M. When disqualifying, suspending, revoking or
12 canceling a commercial driver's license, the department shall
13 treat a conviction received in another state in the same manner
14 as if it was received in this state.

15 N. The department shall post and enforce any
16 disqualification sent by the federal motor carrier safety
17 administration to the department that indicates that a
18 commercial motor vehicle driver poses an imminent hazard.

19 O. The federal transportation security
20 administration of the department of homeland security shall
21 provide for an appeal of a disqualification for a commercial
22 driver's license hazardous materials endorsement on the basis
23 of a background check, and the department shall provide to a
24 hazardous materials applicant a copy of the procedures
25 established by the transportation security administration, on

.170642.2SA

underscored material = new
[bracketed material] = delete

1 request, at the time of application.

2 P. New Mexico shall conform to the federal
3 transportation security administration of the department of
4 homeland security rules and shall "look back" or review a
5 maximum of seven years for a background check."

6 Section 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
7 Chapter 139, Section 54, as amended by Laws 2007, Chapter 321,
8 Section 10 and by Laws 2007, Chapter 322, Section 1) is amended
9 to read:

10 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
11 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
12 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

13 A. It is unlawful for a person who is under the
14 influence of intoxicating liquor to drive a vehicle within this
15 state.

16 B. It is unlawful for a person who is under the
17 influence of any drug to a degree that renders the person
18 incapable of safely driving a vehicle to drive a vehicle within
19 this state.

20 C. It is unlawful for:

21 (1) a person to drive a vehicle in this state
22 if the person has an alcohol concentration of eight one
23 hundredths or more in the person's blood or breath within three
24 hours of driving the vehicle and the alcohol concentration
25 results from alcohol consumed before or while driving the

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 vehicle; or

2 (2) a person to drive a commercial motor
3 vehicle in this state if the person has an alcohol
4 concentration of four one hundredths or more in the person's
5 blood or breath within three hours of driving the commercial
6 motor vehicle and the alcohol concentration results from
7 alcohol consumed before or while driving the vehicle.

8 D. Aggravated driving while under the influence of
9 intoxicating liquor or drugs consists of a person who:

10 (1) drives a vehicle in this state and has an
11 alcohol concentration of sixteen one hundredths or more in the
12 person's blood or breath within three hours of driving the
13 vehicle and the alcohol concentration results from alcohol
14 consumed before or while driving the vehicle;

15 (2) has caused bodily injury to a human being
16 as a result of the unlawful operation of a motor vehicle while
17 driving under the influence of intoxicating liquor or drugs; or

18 (3) refused to submit to chemical testing, as
19 provided for in the Implied Consent Act, and in the judgment of
20 the court, based upon evidence of intoxication presented to the
21 court, was under the influence of intoxicating liquor or drugs.

22 E. A person under first conviction pursuant to this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 ninety days or by a fine of not more than five hundred dollars

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 (\$500), or both; provided that if the sentence is suspended in
2 whole or in part or deferred, the period of probation may
3 extend beyond ninety days but shall not exceed one year. Upon
4 a first conviction pursuant to this section, an offender shall
5 be sentenced to not less than twenty-four hours of community
6 service. In addition, the offender may be required to pay a
7 fine of three hundred dollars (\$300). The offender shall be
8 ordered by the court to participate in and complete a screening
9 program described in Subsection K of this section and to attend
10 a driver rehabilitation program for alcohol or drugs, also
11 known as a "DWI school", approved by the bureau and also may be
12 required to participate in other rehabilitative services as the
13 court shall determine to be necessary. In addition to those
14 penalties, when an offender commits aggravated driving while
15 under the influence of intoxicating liquor or drugs, the
16 offender shall be sentenced to not less than forty-eight
17 consecutive hours in jail. If an offender fails to complete,
18 within a time specified by the court, any community service,
19 screening program, treatment program or DWI school ordered by
20 the court or fails to comply with any other condition of
21 probation, the offender shall be sentenced to not less than an
22 additional forty-eight consecutive hours in jail. Any jail
23 sentence imposed pursuant to this subsection for failure to
24 complete, within a time specified by the court, any community
25 service, screening program, treatment program or DWI school

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 ordered by the court or for aggravated driving while under the
2 influence of intoxicating liquor or drugs shall not be
3 suspended, deferred or taken under advisement. On a first
4 conviction pursuant to this section, any time spent in jail for
5 the offense prior to the conviction for that offense shall be
6 credited to any term of imprisonment fixed by the court. A
7 deferred sentence pursuant to this subsection shall be
8 considered a first conviction for the purpose of determining
9 subsequent convictions.

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

19 (1) upon a second conviction, an offender
20 shall be sentenced to a jail term of not less than ninety-six
21 consecutive hours, not less than forty-eight hours of community
22 service and a fine of five hundred dollars (\$500). In addition
23 to those penalties, when an offender commits aggravated driving
24 while under the influence of intoxicating liquor or drugs, the
25 offender shall be sentenced to a jail term of not less than

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 ninety-six consecutive hours. If an offender fails to
2 complete, within a time specified by the court, any community
3 service, screening program or treatment program ordered by the
4 court, the offender shall be sentenced to not less than an
5 additional seven consecutive days in jail. A penalty imposed
6 pursuant to this paragraph shall not be suspended or deferred
7 or taken under advisement; and

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

22 G. Upon a fourth conviction pursuant to this
23 section, an offender is guilty of a fourth degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of eighteen

.170642.2SA

underscoring material = new
[bracketed material] = delete

1 months, six months of which shall not be suspended, deferred or
2 taken under advisement.

3 H. Upon a fifth conviction pursuant to this
4 section, an offender is guilty of a fourth degree felony and,
5 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
6 shall be sentenced to a term of imprisonment of two years, one
7 year of which shall not be suspended, deferred or taken under
8 advisement.

9 I. Upon a sixth conviction pursuant to this
10 section, an offender is guilty of a third degree felony and,
11 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
12 shall be sentenced to a term of imprisonment of thirty months,
13 eighteen months of which shall not be suspended, deferred or
14 taken under advisement.

15 J. Upon a seventh or subsequent conviction pursuant
16 to this section, an offender is guilty of a third degree felony
17 and, notwithstanding the provisions of Section 31-18-15 NMSA
18 1978, shall be sentenced to a term of imprisonment of three
19 years, two years of which shall not be suspended, deferred or
20 taken under advisement.

21 K. Upon any conviction pursuant to this section, an
22 offender shall be required to participate in and complete,
23 within a time specified by the court, an alcohol or drug abuse
24 screening program approved by the department of finance and
25 administration and, if necessary, a treatment program approved

.170642.2SA

1 by the court. The requirement imposed pursuant to this
2 subsection shall not be suspended, deferred or taken under
3 advisement.

4 L. Upon a second or third conviction pursuant to
5 this section, an offender shall be required to participate in
6 and complete, within a time specified by the court:

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

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

12 (3) a drug court program approved by the
13 court; or

14 (4) any other substance abuse treatment
15 program approved by the court.

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

18 M. Upon a felony conviction pursuant to this
19 section, the corrections department shall provide substance
20 abuse counseling and treatment to the offender in its custody.
21 While the offender is on probation or parole under its
22 supervision, the corrections department shall also provide
23 substance abuse counseling and treatment to the offender or
24 shall require the offender to obtain substance abuse counseling
25 and treatment.

underscoring material = new
[bracketed material] = delete

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

11 (1) a period of one year, for a first
12 offender;

13 (2) a period of two years, for a second
14 conviction pursuant to this section;

15 (3) a period of three years, for a third
16 conviction pursuant to this section; or

17 (4) the remainder of the offender's life, for
18 a fourth or subsequent conviction pursuant to this section.

19 O. Five years from the date of conviction and every
20 five years thereafter, a fourth or subsequent offender may
21 apply to a district court for removal of the ignition interlock
22 device requirement provided in this section and for restoration
23 of a driver's license. 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

.170642.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 has not been subsequently convicted of driving a motor vehicle
2 while under the influence of intoxicating liquor or drugs.

3 Good 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 P. In the case of a first, second or third offense
7 under this section, the magistrate court has concurrent
8 jurisdiction with district courts to try the offender.

9 Q. A conviction pursuant to a municipal or county
10 ordinance in New Mexico or a law of any other jurisdiction,
11 territory or possession of the United States or of a tribe,
12 when that ordinance or law is equivalent to New Mexico law for
13 driving while under the influence of intoxicating liquor or
14 drugs, and prescribes penalties for driving while under the
15 influence of intoxicating liquor or drugs, shall be deemed to
16 be a conviction pursuant to this section for purposes of
17 determining whether a conviction is a second or subsequent
18 conviction.

19 R. In addition to any other fine or fee that may be
20 imposed pursuant to the conviction or other disposition of the
21 offense under this section, the court may order the offender to
22 pay the costs of any court-ordered screening and treatment
23 programs.

24 S. With respect to this section and notwithstanding
25 any provision of law to the contrary, if an offender's sentence

.170642.2SA

underscored material = new
[bracketed material] = delete

1 was suspended or deferred in whole or in part and the offender
2 violates any condition of probation, the court may impose any
3 sentence that the court could have originally imposed and
4 credit shall not be given for time served by the offender on
5 probation.

6 T. As used in this section:

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

12 (2) "commercial motor vehicle" means a motor
13 vehicle or combination of motor vehicles used in commerce to
14 transport passengers or property if the motor vehicle:

15 (a) has a gross combination weight
16 rating of more than twenty-six thousand pounds inclusive of a
17 towed unit with a gross vehicle weight rating of more than ten
18 thousand pounds;

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

21 (c) is designed to transport sixteen or
22 more passengers, including the driver; or

23 (d) is of any size and is used in the
24 transportation of hazardous materials, which requires the motor
25 vehicle to be placarded under applicable law."

.170642.2SA