

1 SENATE BILL 460

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

3 INTRODUCED BY

4 George K. Munoz

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9  
10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
12 MANDATING LIFETIME LOSS OF LICENSE UPON FIFTH AND SUBSEQUENT  
13 CONVICTIONS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 66-5-5 NMSA 1978 (being Laws 1978,  
17 Chapter 35, Section 227, as amended) is amended to read:

18 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall  
19 not issue a driver's license under the Motor Vehicle Code to  
20 any person:

21 A. who is under the age of eighteen years, except  
22 the division may, in its discretion, issue:

23 (1) an instruction permit to a person fifteen  
24 years of age or older who is enrolled in and attending or has  
25 completed a driver education course approved by the bureau that

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1 includes a DWI education and prevention component;

2 (2) a provisional license to a person fifteen  
3 years and six months of age or older:

4 (a) who has completed a driver education  
5 course approved by the bureau or offered by a public school  
6 that includes a DWI education and prevention component and has  
7 had an instruction permit for at least six months as provided  
8 in Section 66-5-8 NMSA 1978; and

9 (b) who has successfully completed a  
10 practice driving component;

11 (3) a driver's license to a person sixteen  
12 years and six months of age or older:

13 (a) who has had a provisional license  
14 for at least a twelve-month period immediately preceding the  
15 date of the application for the driver's license as provided in  
16 Section 66-5-9 NMSA 1978;

17 (b) who has complied with restrictions  
18 on that license; and

19 (c) who has not been adjudicated for an  
20 offense involving the use of alcohol or drugs during the  
21 twelve-month period immediately preceding the application for  
22 the driver's license and who has no pending adjudications  
23 alleging an offense involving the use of alcohol or drugs at  
24 the time of application; and

25 (4) to a person thirteen years of age or older

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1 who passes an examination prescribed by the division, a license  
2 restricted to the operation of a motorcycle, provided:

3 (a) the motorcycle is not in excess of  
4 one hundred cubic centimeters displacement;

5 (b) no holder of an initial license may  
6 carry any other passenger while driving a motorcycle; and

7 (c) the director approves and certifies  
8 motorcycles as not in excess of one hundred cubic centimeters  
9 displacement and by rule provides for a method of  
10 identification of such motorcycles by all law enforcement  
11 officers;

12 B. whose license or driving privilege has been  
13 suspended or denied, during the period of suspension or denial,  
14 or to any person whose license has been revoked, except as  
15 provided in Section 66-5-32 NMSA 1978 and the Ignition  
16 Interlock Licensing Act;

17 C. who is an habitual user of narcotic drugs or  
18 alcohol or an habitual user of any drug to a degree that  
19 renders the person incapable of safely driving a motor vehicle;

20 D. who is four [~~or more~~] times convicted of driving  
21 a motor vehicle while under the influence of intoxicating  
22 liquor or narcotic drug regardless of whether the convictions  
23 are under the laws or ordinances of this state or any  
24 municipality or county of this state or under the laws or  
25 ordinances of any other state, the District of Columbia or any

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1 governmental subdivision thereof, except as provided in the  
2 Ignition Interlock Licensing Act. Five years from the date of  
3 the fourth conviction and every five years thereafter, the  
4 person may apply to any district court of this state for  
5 restoration of the license, and the court, upon good cause  
6 being shown, may order restoration of the license applied for;  
7 provided that the person has not been subsequently convicted of  
8 driving a motor vehicle while under the influence of  
9 intoxicating liquor or drugs. Upon issuance of the order of  
10 restoration, a certified copy shall immediately be forwarded to  
11 the division, and if the person is otherwise qualified for the  
12 license applied for, the four previous convictions shall not  
13 prohibit issuance of the license;

14 E. who was convicted on or after June 17, 2005 of  
15 driving a motor vehicle while under the influence of  
16 intoxicating liquor or drugs pursuant to the laws or ordinances  
17 of any other state, the District of Columbia or any  
18 governmental subdivision thereof, unless the person obtains an  
19 ignition interlock license as provided in the Ignition  
20 Interlock Licensing Act for a period of one year for a first  
21 conviction; a period of two years for a second conviction; a  
22 period of three years for a third conviction; or the remainder  
23 of the offender's life for a fourth ~~[or subsequent]~~ conviction,  
24 subject to a five-year review as provided in Subsection D of  
25 this section. Upon presentation of proof satisfactory to the

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1 division, the division may credit time spent by a person  
2 operating a motor vehicle with an ignition interlock or  
3 comparable device, as a condition of the person's sentence for  
4 a conviction in another jurisdiction pursuant to this  
5 subsection, against the ignition interlock time requirements  
6 imposed by this subsection. The division shall promulgate  
7 rules necessary for granting credit to persons who participate  
8 in comparable out-of-state programs following a conviction for  
9 driving a motor vehicle while under the influence of  
10 intoxicating liquor or drugs. The requirements of this  
11 subsection shall not apply to a person who applies for a  
12 driver's license ten years or more from the date of the  
13 person's last conviction, except for a person who is subject to  
14 lifetime driver's license revocation for a conviction in  
15 another jurisdiction pursuant to this subsection;

16 F. who is five or more times convicted of driving a  
17 motor vehicle while under the influence of intoxicating liquor  
18 or drugs regardless of whether the convictions are under the  
19 laws or ordinances of this state or any municipality or county  
20 of this state or under the laws or ordinances of any other  
21 state, the District of Columbia or any governmental subdivision  
22 thereof;

23 [~~F-~~] G. who has previously been afflicted with or  
24 who is suffering from any mental disability or disease that  
25 would render the person unable to drive a motor vehicle with

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1 safety upon the highways and who has not, at the time of  
2 application, been restored to health;

3 ~~[G.]~~ H. who is required by the Motor Vehicle Code  
4 to take an examination, unless the person has successfully  
5 passed the examination;

6 ~~[H.]~~ I. who is required under the laws of this  
7 state to deposit proof of financial responsibility and who has  
8 not deposited the proof;

9 ~~[I.]~~ J. when the director has good cause to believe  
10 that the operation of a motor vehicle on the highways by the  
11 person would be inimical to public safety or welfare; or

12 ~~[J.]~~ K. as a motorcycle driver who is less than  
13 eighteen years of age and who has not presented a certificate  
14 or other evidence of having successfully completed a motorcycle  
15 driver education program licensed or offered in conformance  
16 with rules of the bureau."

17 **SECTION 2.** Section 66-5-29 NMSA 1978 (being Laws 1978,  
18 Chapter 35, Section 251, as amended) is amended to read:

19 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

20 A. The division shall immediately revoke the  
21 driving privilege or driver's license of a driver upon  
22 receiving a record of the driver's adjudication as a delinquent  
23 for or conviction of any of the following offenses, whether the  
24 offense is under any state law or local ordinance, when the  
25 conviction or adjudication has become final:

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1 (1) manslaughter or negligent homicide  
2 resulting from the operation of a motor vehicle;

3 (2) any offense rendering a person a "first  
4 offender" as defined in the Motor Vehicle Code;

5 (3) any offense rendering a person a  
6 "subsequent offender" as defined in the Motor Vehicle Code;

7 (4) any felony in the commission of which a  
8 motor vehicle is used;

9 (5) failure to stop and render aid as required  
10 under the laws of this state in the event of a motor vehicle  
11 accident resulting in the death or personal injury of another;

12 (6) perjury or the making of a false affidavit  
13 or statement under oath to the division under the Motor Vehicle  
14 Code or under any other law relating to the ownership or  
15 operation of motor vehicles; or

16 (7) conviction or forfeiture of bail not  
17 vacated upon three charges of reckless driving committed within  
18 a period of twelve months.

19 B. Except as provided in the Ignition Interlock  
20 Licensing Act and in Subsection C, D, E or F of this section, a  
21 person whose driving privilege or driver's license has been  
22 revoked under this section shall not be entitled to apply for  
23 or receive a new license until one year from the date that the  
24 conviction is final and all rights to an appeal have been  
25 exhausted.

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1 C. A person who upon adjudication as a delinquent  
2 for driving while under the influence of intoxicating liquor or  
3 drugs or a conviction pursuant to Section 66-8-102 NMSA 1978 is  
4 subject to revocation of the driving privilege or driver's  
5 license under this section for an offense pursuant to which the  
6 person was also subject to revocation of the driving privilege  
7 or driver's license pursuant to Section 66-8-111 NMSA 1978  
8 shall have the person's driving privilege or driver's license  
9 revoked for that offense for a combined period of time equal  
10 to:

11 (1) one year for a first offender; or

12 (2) for a subsequent offender:

13 (a) two years for a second conviction;

14 (b) three years for a third conviction;

15 [~~or~~]

16 (c) the remainder of the offender's life  
17 for a fourth [~~or subsequent~~] conviction, subject to a five-year  
18 review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978;

19 or

20 (d) the remainder of the offender's life  
21 for a fifth or subsequent conviction.

22 D. The division shall apply the license revocation  
23 provisions of Subsection C of this section and the provisions  
24 of Subsection D of Section 66-5-5 NMSA 1978 to a person who was  
25 three or more times convicted of driving a motor vehicle under

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1 the influence of intoxicating liquor or drugs and who has a  
2 driver's license revocation pursuant to the law in effect prior  
3 to June 17, 2005, upon the request of the person and if the  
4 person has had an ignition interlock license for three years or  
5 more and has proof from the ignition interlock vendor of no  
6 violations of the ignition interlock device in the previous six  
7 months.

8 E. Upon receipt of an order from a court pursuant  
9 to Section 32A-2-19 NMSA 1978 or Subsection G of Section  
10 32A-2-22 NMSA 1978, the division shall revoke the driver's  
11 license or driving privileges for a period of time in  
12 accordance with these provisions.

13 F. Upon receipt from a district court of a record  
14 of conviction for the offense of shooting at or from a motor  
15 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or  
16 of a conviction for a conspiracy or an attempt to commit that  
17 offense, the division shall revoke the driver's license or  
18 driving privileges of the convicted person. A person whose  
19 driver's license or driving privilege has been revoked pursuant  
20 to the provisions of this subsection shall not be entitled to  
21 apply for or receive any new driver's license or driving  
22 privilege until one year from the date that the conviction is  
23 final and all rights to an appeal have been exhausted."

24 SECTION 3. Section 66-8-102 NMSA 1978 (being Laws 1953,  
25 Chapter 139, Section 54, as amended) is amended to read:

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1 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
2 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
3 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

4 A. It is unlawful for a person who is under the  
5 influence of intoxicating liquor to drive a vehicle within this  
6 state.

7 B. It is unlawful for a person who is under the  
8 influence of any drug to a degree that renders the person  
9 incapable of safely driving a vehicle to drive a vehicle within  
10 this state.

11 C. It is unlawful for:

12 (1) a person to drive a vehicle in this state  
13 if the person has an alcohol concentration of eight one  
14 hundredths or more in the person's blood or breath within three  
15 hours of driving the vehicle and the alcohol concentration  
16 results from alcohol consumed before or while driving the  
17 vehicle; or

18 (2) a person to drive a commercial motor  
19 vehicle in this state if the person has an alcohol  
20 concentration of four one hundredths or more in the person's  
21 blood or breath within three hours of driving the commercial  
22 motor vehicle and the alcohol concentration results from  
23 alcohol consumed before or while driving the vehicle.

24 D. Aggravated driving under the influence of  
25 intoxicating liquor or drugs consists of:

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1 (1) driving a vehicle in this state with an  
2 alcohol concentration of sixteen one hundredths or more in the  
3 driver's blood or breath within three hours of driving the  
4 vehicle and the alcohol concentration results from alcohol  
5 consumed before or while driving the vehicle;

6 (2) causing bodily injury to a human being as  
7 a result of the unlawful operation of a motor vehicle while  
8 driving under the influence of intoxicating liquor or drugs; or

9 (3) refusing to submit to chemical testing, as  
10 provided for in the Implied Consent Act, and in the judgment of  
11 the court, based upon evidence of intoxication presented to the  
12 court, the driver was under the influence of intoxicating  
13 liquor or drugs.

14 E. A first conviction pursuant to this section  
15 shall be punished, notwithstanding the provisions of Section  
16 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
17 days or by a fine of not more than five hundred dollars (\$500),  
18 or both; provided that if the sentence is suspended in whole or  
19 in part or deferred, the period of probation may extend beyond  
20 ninety days but shall not exceed one year. Upon a first  
21 conviction pursuant to this section, an offender shall be  
22 sentenced to not less than twenty-four hours of community  
23 service. In addition, the offender may be required to pay a  
24 fine of three hundred dollars (\$300). The offender shall be  
25 ordered by the court to participate in and complete a screening

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1 program described in Subsection K of this section and to attend  
2 a driver rehabilitation program for alcohol or drugs, also  
3 known as a "DWI school", approved by the bureau and also may be  
4 required to participate in other rehabilitative services as the  
5 court shall determine to be necessary. In addition to those  
6 penalties, when an offender commits aggravated driving under  
7 the influence of intoxicating liquor or drugs, the offender  
8 shall be sentenced to not less than forty-eight consecutive  
9 hours in jail. If an offender fails to complete, within a time  
10 specified by the court, any community service, screening  
11 program, treatment program or DWI school ordered by the court  
12 or fails to comply with any other condition of probation, the  
13 offender shall be sentenced to not less than an additional  
14 forty-eight consecutive hours in jail. Any jail sentence  
15 imposed pursuant to this subsection for failure to complete,  
16 within a time specified by the court, any community service,  
17 screening program, treatment program or DWI school ordered by  
18 the court or for aggravated driving under the influence of  
19 intoxicating liquor or drugs shall not be suspended, deferred  
20 or taken under advisement. On a first conviction pursuant to  
21 this section, any time spent in jail for the offense prior to  
22 the conviction for that offense shall be credited to any term  
23 of imprisonment fixed by the court. A deferred sentence  
24 pursuant to this subsection shall be considered a first  
25 conviction for the purpose of determining subsequent

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1 convictions.

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

11 (1) upon a second conviction, an offender  
12 shall be sentenced to a jail term of not less than ninety-six  
13 consecutive hours, not less than forty-eight hours of community  
14 service and a fine of five hundred dollars (\$500). In addition  
15 to those penalties, when an offender commits aggravated driving  
16 under the influence of intoxicating liquor or drugs, the  
17 offender shall be sentenced to a jail term of not less than  
18 ninety-six consecutive hours. If an offender fails to  
19 complete, within a time specified by the court, any community  
20 service, screening program or treatment program ordered by the  
21 court, the offender shall be sentenced to not less than an  
22 additional seven consecutive days in jail. A penalty imposed  
23 pursuant to this paragraph shall not be suspended or deferred  
24 or taken under advisement; and

25 (2) upon a third conviction, an offender shall

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

14 G. Upon a fourth conviction pursuant to this  
15 section, an offender is guilty of a fourth degree felony and,  
16 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
17 shall be sentenced to a term of imprisonment of eighteen  
18 months, six months of which shall not be suspended, deferred or  
19 taken under advisement.

20 H. Upon a fifth conviction pursuant to this  
21 section, an offender is guilty of a fourth degree felony and,  
22 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
23 shall be sentenced to a term of imprisonment of two years, one  
24 year of which shall not be suspended, deferred or taken under  
25 advisement.

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1 I. Upon a sixth conviction pursuant to this  
2 section, an offender is guilty of a third degree felony and,  
3 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
4 shall be sentenced to a term of imprisonment of thirty months,  
5 eighteen months of which shall not be suspended, deferred or  
6 taken under advisement.

7 J. Upon a seventh or subsequent conviction pursuant  
8 to this section, an offender is guilty of a third degree felony  
9 and, notwithstanding the provisions of Section 31-18-15 NMSA  
10 1978, shall be sentenced to a term of imprisonment of three  
11 years, two years of which shall not be suspended, deferred or  
12 taken under advisement.

13 K. Upon any conviction pursuant to this section, an  
14 offender shall be required to participate in and complete,  
15 within a time specified by the court, an alcohol or drug abuse  
16 screening program approved by the department of finance and  
17 administration and, if necessary, a treatment program approved  
18 by the court. The requirement imposed pursuant to this  
19 subsection shall not be suspended, deferred or taken under  
20 advisement.

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

24 (1) not less than a twenty-eight-day  
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

4 (3) a drug court program approved by the  
5 court; or

6 (4) any other substance abuse treatment  
7 program approved by the court.

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

10 M. Upon a felony conviction pursuant to this  
11 section, the corrections department shall provide substance  
12 abuse counseling and treatment to the offender in its custody.  
13 While the offender is on probation or parole under its  
14 supervision, the corrections department shall also provide  
15 substance abuse counseling and treatment to the offender or  
16 shall require the offender to obtain substance abuse counseling  
17 and treatment.

18 N. Upon a conviction pursuant to this section, an  
19 offender shall be required to obtain an ignition interlock  
20 license and have an ignition interlock device installed and  
21 operating on all motor vehicles driven by the offender,  
22 pursuant to rules adopted by the [~~traffic safety~~] bureau.  
23 Unless determined by the bureau to be indigent, the offender  
24 shall pay all costs associated with having an ignition  
25 interlock device installed on the appropriate motor vehicles.

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1 The offender shall operate only those vehicles equipped with  
2 ignition interlock devices for:

3 (1) a period of one year, for a first  
4 offender;

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

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

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

11 O. Five years from the date of conviction and every  
12 five years thereafter, a fourth ~~[or subsequent]~~ offender may  
13 apply to a district court for removal of the ignition interlock  
14 device requirement provided in this section and for restoration  
15 of a driver's license. A district court may, for good cause  
16 shown, remove the ignition interlock device requirement and  
17 order restoration of the license; provided that the offender  
18 has not been subsequently convicted of driving a motor vehicle  
19 under the influence of intoxicating liquor or drugs. Good  
20 cause may include an alcohol screening and proof from the  
21 interlock vendor that the person has not had violations of the  
22 interlock device.

23 P. An offender who obtains an ignition interlock  
24 license and installs an ignition interlock device prior to  
25 conviction shall be given credit at sentencing for the time

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1 period the ignition interlock device has been in use.

2 Q. In the case of a first, second or third offense  
3 under this section, the magistrate court has concurrent  
4 jurisdiction with district courts to try the offender.

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

14 S. In addition to any other fine or fee that may be  
15 imposed pursuant to the conviction or other disposition of the  
16 offense under this section, the court may order the offender to  
17 pay the costs of any court-ordered screening and treatment  
18 programs.

19 T. With respect to this section and notwithstanding  
20 any provision of law to the contrary, if an offender's sentence  
21 was suspended or deferred in whole or in part and the offender  
22 violates any condition of probation, the court may impose any  
23 sentence that the court could have originally imposed and  
24 credit shall not be given for time served by the offender on  
25 probation.

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1 U. As used in this section:

2 (1) "bodily injury" means an injury to a  
3 person that is not likely to cause death or great bodily harm  
4 to the person, but does cause painful temporary disfigurement  
5 or temporary loss or impairment of the functions of any member  
6 or organ of the person's body; and

7 (2) "commercial motor vehicle" means a motor  
8 vehicle or combination of motor vehicles used in commerce to  
9 transport passengers or property if the motor vehicle:

10 (a) has a gross combination weight  
11 rating of more than twenty-six thousand pounds inclusive of a  
12 towed unit with a gross vehicle weight rating of more than ten  
13 thousand pounds;

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

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

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

21 SECTION 4. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2013.

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