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HOUSE BILL 10

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY CONVICTION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS SHALL BE TREATED IN THE SAME MANNER AS ANY OTHER FELONY WHEN SENTENCING A HABITUAL OFFENDER; INCREASING THE REQUIREMENTS TO BE MET FOR REMOVAL OF AN IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S LICENSE; REQUIRING HOME BREATHALYZER DEVICES AND ALLOWING ELECTRONIC MONITORING DEVICES FOR AN OFFENDER UNDER HOUSE ARREST; PROVIDING ASSISTANCE FOR HOME BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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

SECTION 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC

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1 SENTENCE.--

2 A. A person convicted of a noncapital felony in
3 this state [~~whether within the Criminal Code or the Controlled~~
4 ~~Substances Act or not~~], including a conviction for a felony
5 pursuant to Section 66-8-102 NMSA 1978, who has incurred one
6 prior felony conviction that was part of a separate transaction
7 or occurrence or conditional discharge under Section 31-20-13
8 NMSA 1978 is a habitual offender and [~~his~~] that person's basic
9 sentence shall be increased by one year. The sentence imposed
10 pursuant to this subsection shall not be suspended or deferred,
11 unless the court makes a specific finding that the prior felony
12 conviction and the instant felony conviction are both for
13 nonviolent felony offenses and that justice will not be served
14 by imposing a mandatory sentence of imprisonment and that there
15 are substantial and compelling reasons, stated on the record,
16 for departing from the sentence imposed pursuant to this
17 subsection.

18 B. A person convicted of a noncapital felony in
19 this state [~~whether within the Criminal Code or the Controlled~~
20 ~~Substances Act or not~~], including a conviction for a felony
21 pursuant to Section 66-8-102 NMSA 1978, who has incurred two
22 prior felony convictions that were parts of separate
23 transactions or occurrences or conditional discharge under
24 Section 31-20-13 NMSA 1978 is a habitual offender and [~~his~~]
25 that person's basic sentence shall be increased by four years.

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1 The sentence imposed by this subsection shall not be suspended
2 or deferred.

3 C. A person convicted of a noncapital felony in
4 this state [~~whether within the Criminal Code or the Controlled~~
5 ~~Substances Act or not~~], including a conviction for a felony
6 pursuant to Section 66-8-102 NMSA 1978, who has incurred three
7 or more prior felony convictions that were parts of separate
8 transactions or occurrences or conditional discharge under
9 Section 31-20-13 NMSA 1978 is a habitual offender and [~~his~~]
10 that person's basic sentence shall be increased by eight years.
11 The sentence imposed by this subsection shall not be suspended
12 or deferred.

13 D. As used in this section, "prior felony
14 conviction" means:

15 (1) a conviction, when less than ten years
16 have passed prior to the instant felony conviction since the
17 person completed serving [~~his~~] a sentence or period of
18 probation or parole for the prior felony, whichever is later,
19 for a prior felony committed within New Mexico [~~whether within~~
20 ~~the Criminal Code or not, but not~~], including a conviction for
21 a felony pursuant to the provisions of Section 66-8-102 NMSA
22 1978; or

23 (2) a prior felony, when less than ten years
24 have passed prior to the instant felony conviction since the
25 person completed serving [~~his~~] a sentence or period of

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1 probation or parole for the prior felony, whichever is later,
2 for which the person was convicted other than an offense
3 triable by court martial if:

4 (a) the conviction was rendered by a
5 court of another state, the United States, a territory of the
6 United States or the commonwealth of Puerto Rico;

7 (b) the offense was punishable, at the
8 time of conviction, by death or a maximum term of imprisonment
9 of more than one year; or

10 (c) the offense would have been
11 classified as a felony in this state at the time of conviction.

12 E. As used in this section, "nonviolent felony
13 offense" means application of force, threatened use of force or
14 a deadly weapon was not used by the offender in the commission
15 of the offense."

16 SECTION 2. Section 66-5-33.1 NMSA 1978 (being Laws 1985,
17 Chapter 47, Section 1, as amended) is amended to read:

18 "66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR
19 REGISTRATION--IGNITION INTERLOCK--FEE.--

20 A. Whenever a driver's license or registration is
21 suspended or revoked and an application has been made for its
22 reinstatement, compliance with all appropriate provisions of
23 the Motor Vehicle Code and the payment of a fee of twenty-five
24 dollars (\$25.00) is a prerequisite to the reinstatement of any
25 license or registration.

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1 B. If a driver's license was revoked for driving
2 while under the influence of intoxicating liquor or drugs, for
3 aggravated driving while under the influence of intoxicating
4 liquor or drugs or pursuant to the Implied Consent Act, the
5 following are required to reinstate the driver's license:

6 (1) an additional fee of seventy-five dollars
7 (\$75.00);

8 (2) completion of the license revocation
9 period;

10 (3) satisfaction of any court-ordered ignition
11 interlock requirements; ~~and~~

12 (4) a minimum of six months of driving with an
13 ignition interlock [~~license~~] with no attempts to circumvent or
14 tamper with the ignition interlock device;

15 (5) evidence that the ignition interlock
16 device has recorded no more than two tests at a level greater
17 than five one hundredths alcohol concentration during the six
18 months prior to reinstatement of the unrestricted driver's
19 license; and

20 (6) evidence of at least one ignition
21 interlock test during each of twenty-four weeks during the six
22 months.

23 C. The department may reinstate the driving
24 privileges of an out-of-state resident without the requirement
25 that the person obtain an ignition interlock license for a

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1 minimum of six months, if the following conditions are met:

2 (1) the license revocation period is
3 completed;

4 (2) satisfactory proof is presented to the
5 department that the person is no longer a resident of New
6 Mexico; and

7 (3) the license reinstatement fee is paid.

8 D. Fees collected pursuant to Subsection B of this
9 section are appropriated to the local governments road fund.
10 The department shall maintain an accounting of the fees
11 collected and shall report that amount upon request to the
12 legislature."

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

15 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
16 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
17 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

18 A. It is unlawful for a person who is under the
19 influence of intoxicating liquor to drive a vehicle within this
20 state.

21 B. It is unlawful for a person who is under the
22 influence of any drug to a degree that renders the person
23 incapable of safely driving a vehicle to drive a vehicle within
24 this state.

25 C. It is unlawful for:

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

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

13 D. Aggravated driving under the influence of
14 intoxicating liquor or drugs consists of:

15 (1) driving a vehicle in this state with an
16 alcohol concentration of sixteen one hundredths or more in the
17 driver's blood or breath within three hours of driving the
18 vehicle and the alcohol concentration results from alcohol
19 consumed before or while driving the vehicle;

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

23 (3) refusing to submit to chemical testing, as
24 provided for in the Implied Consent Act, and in the judgment of
25 the court, based upon evidence of intoxication presented to the

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1 court, the driver was under the influence of intoxicating
2 liquor or drugs.

3 E. A first conviction pursuant to this section
4 shall be punished, notwithstanding the provisions of Section
5 31-18-13 NMSA 1978, by imprisonment for not more than ninety
6 days or by a fine of not more than five hundred dollars (\$500),
7 or both; provided that if the sentence is suspended in whole or
8 in part or deferred, the period of probation may extend beyond
9 ninety days but shall not exceed one year. Upon a first
10 conviction pursuant to this section, an offender shall be
11 sentenced to not less than twenty-four hours of community
12 service. In addition, the offender may be required to pay a
13 fine of three hundred dollars (\$300). The offender shall be
14 ordered by the court to participate in and complete a screening
15 program described in Subsection K of this section and to attend
16 a driver rehabilitation program for alcohol or drugs, also
17 known as a "DWI school", approved by the bureau and also may be
18 required to participate in other rehabilitative services as the
19 court shall determine to be necessary. In addition to those
20 penalties, when an offender commits aggravated driving under
21 the influence of intoxicating liquor or drugs, the offender
22 shall be sentenced to not less than forty-eight consecutive
23 hours in jail. If an offender fails to complete, within a time
24 specified by the court, any community service, screening
25 program, treatment program or DWI school ordered by the court

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1 or fails to comply with any other condition of probation, the
2 offender shall be sentenced to not less than an additional
3 forty-eight consecutive hours in jail. Any jail sentence
4 imposed pursuant to this subsection for failure to complete,
5 within a time specified by the court, any community service,
6 screening program, treatment program or DWI school ordered by
7 the court or for aggravated driving under the influence of
8 intoxicating liquor or drugs shall not be suspended, deferred
9 or taken under advisement. On a first conviction pursuant to
10 this section, any time spent in jail for the offense prior to
11 the conviction for that offense shall be credited to any term
12 of imprisonment fixed by the court. A deferred sentence
13 pursuant to this subsection shall be considered a first
14 conviction for the purpose of determining subsequent
15 convictions.

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

25 (1) upon a second conviction, an offender

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1 shall be sentenced to a jail term of not less than ninety-six
2 consecutive hours, not less than forty-eight hours of community
3 service and a fine of five hundred dollars (\$500). In addition
4 to 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 ninety-six consecutive hours. If an offender fails to
8 complete, within a time specified by the court, any community
9 service, screening program or treatment program ordered by the
10 court, the offender shall be sentenced to not less than an
11 additional seven consecutive days in jail. A penalty imposed
12 pursuant to this paragraph shall not be suspended or deferred
13 or taken under advisement; and

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

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1 this paragraph shall not be suspended or deferred or taken
2 under advisement.

3 G. Upon a fourth 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 eighteen
7 months, six months of which shall not be suspended, deferred or
8 taken under advisement.

9 H. Upon a fifth conviction pursuant to this
10 section, an offender is guilty of a fourth degree felony and,
11 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
12 shall be sentenced to a term of imprisonment of two years, one
13 year of which shall not be suspended, deferred or taken under
14 advisement.

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

21 J. Upon a seventh or subsequent conviction pursuant
22 to this section, an offender is guilty of a third degree felony
23 and, notwithstanding the provisions of Section 31-18-15 NMSA
24 1978, shall be sentenced to a term of imprisonment of three
25 years, two years of which shall not be suspended, deferred or

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1 taken under advisement.

2 K. Upon any conviction pursuant to this section, an
3 offender shall be required to participate in and complete,
4 within a time specified by the court, an alcohol or drug abuse
5 screening program approved by the department of finance and
6 administration and, if necessary, a treatment program approved
7 by the court. The requirement imposed pursuant to this
8 subsection shall not be suspended, deferred or taken under
9 advisement.

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

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

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

18 (3) a drug court program approved by the
19 court; or

20 (4) any other substance abuse treatment
21 program approved by the court.

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

24 M. Upon a felony conviction pursuant to this
25 section, the corrections department shall provide substance

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1 abuse counseling and treatment to the offender in its custody.
2 While the offender is on probation or parole under its
3 supervision, the corrections department shall also provide
4 substance abuse counseling and treatment to the offender or
5 shall require the offender to obtain substance abuse counseling
6 and treatment.

7 N. Upon a conviction pursuant to this section, an
8 offender shall be required to obtain an ignition interlock
9 license and have an ignition interlock device installed and
10 operating on all motor vehicles driven by the offender,
11 pursuant to rules adopted by the traffic safety bureau. Unless
12 determined by the bureau to be indigent, the offender shall pay
13 all costs associated with having an ignition interlock device
14 installed on the appropriate motor vehicles. The offender
15 shall operate only those vehicles equipped with ignition
16 interlock devices for:

17 (1) a period of one year, for a first
18 offender;

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

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

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

25 O. Five years from the date of conviction and every

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1 five years thereafter, a fourth or subsequent offender may
2 apply to a district court for removal of the ignition interlock
3 device requirement provided in this section and for restoration
4 of a driver's license. A district court may, for good cause
5 shown, remove the ignition interlock device requirement and
6 order restoration of the license; provided that the offender
7 has not been subsequently convicted of driving a motor vehicle
8 under the influence of intoxicating liquor or drugs. Good
9 cause may include an alcohol screening and proof from the
10 interlock vendor that the person has not had violations of the
11 interlock device.

12 P. If an offender receives a sentence of
13 incarceration for driving under the influence of intoxicating
14 liquor or drugs and is ordered to serve the sentence under
15 house arrest, where house arrest is available, the court shall
16 order the offender to obtain a home breathalyzer device that
17 identifies the person giving the sample and to provide morning
18 and evening breath samples for the duration of the house
19 arrest, pursuant to rules adopted by the bureau.

20 Q. As a condition of house arrest, the court may
21 also require an offender to be monitored by an electronic
22 monitoring device, as approved by the bureau, placed on the
23 offender's person. The offender shall pay any costs associated
24 with the house arrest program as ordered by the court, unless
25 determined to be indigent by the bureau.

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1 ~~[P-]~~ R. An offender who obtains an ignition
2 interlock license and installs an ignition interlock device
3 prior to conviction shall be given credit at sentencing for the
4 time period the ignition interlock device has been in use.

5 ~~[Q-]~~ S. In the case of a first, second or third
6 offense under this section, the magistrate court has concurrent
7 jurisdiction with district courts to try the offender.

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

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

23 ~~[T-]~~ V. With respect to this section and
24 notwithstanding any provision of law to the contrary, if an
25 offender's sentence was suspended or deferred in whole or in

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

5 ~~[U-]~~ W. As used in this section:

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

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

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

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

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

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

25 (3) "electronic monitoring device" means an

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1 active or passive global-positioning-system-enabled device
2 capable of recording and transmitting an offender's location at
3 all times or at designated intervals or a radio frequency
4 device capable of monitoring an offender's location."

5 SECTION 4. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
6 Chapter 82, Section 2, as amended) is amended to read:

7 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
8 CREATED.--

9 A. A fee is imposed on a person convicted of
10 driving under the influence of intoxicating liquor or drugs in
11 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
12 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
13 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
14 driver's license is revoked pursuant to the provisions of the
15 Implied Consent Act, in an amount determined by rule of the
16 traffic safety bureau of the department of transportation not
17 to exceed one hundred dollars (\$100) but not less than fifty
18 dollars (\$50.00) for each year the person is required to
19 operate only vehicles equipped with an ignition interlock
20 device or to use a home breathalyzer device in order to ensure
21 the solvency of the interlock device fund. The fee shall not
22 be imposed on an indigent person.

23 B. The "interlock device fund" is created in the
24 state treasury. The fee imposed pursuant to Subsection A of
25 this section shall be collected by the motor vehicle division

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1 of the taxation and revenue department and deposited in the
2 interlock device fund.

3 C. All money in the interlock device fund is
4 appropriated to the traffic safety bureau of the department of
5 transportation to cover part of the costs of installing,
6 removing and leasing ignition interlock devices or leasing home
7 breathalyzer devices for indigent people who are required,
8 pursuant to convictions under Section 66-8-102 NMSA 1978 or
9 adjudications on the basis of Subparagraph (a) of Paragraph (1)
10 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's
11 license revocations pursuant to the provisions of the Implied
12 Consent Act or as a condition of parole, to install [~~these~~]
13 ignition interlock devices in their vehicles or to use a home
14 breathalyzer device. Provided that money is available in the
15 interlock device fund, the traffic safety bureau shall pay:

16 (1) for one vehicle per offender, up to fifty
17 dollars (\$50.00) for the cost of installation, up to fifty
18 dollars (\$50.00) for the cost of removal and up to thirty
19 dollars (\$30.00) monthly for verified active usage of the
20 interlock device; or

21 (2) up to thirty dollars (\$30.00) monthly
22 toward the lease and use of a home breathalyzer device.

23 D. The traffic safety bureau shall not pay any
24 amount above what an offender would be required to pay for the
25 installation, removal or usage of an interlock device or for

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1 the lease of a home breathalyzer device.

2 [~~D-~~] E. Indigency shall be determined by the
3 traffic safety bureau based on proof of enrollment in one or
4 more of the following types of public assistance:

- 5 (1) temporary assistance for needy families;
- 6 (2) general assistance;
- 7 (3) the supplemental [~~nutritional~~] nutrition
8 assistance program, also known as "food stamps";
- 9 (4) supplemental security income;
- 10 (5) the federal food distribution program on
11 Indian reservations; or
- 12 (6) other criteria approved by the traffic
13 safety bureau.

14 [~~E-~~] F. Any balance remaining in the interlock
15 device fund shall not revert to the general fund at the end of
16 any fiscal year.

17 [~~F-~~] G. The interlock device fund shall be
18 administered by the traffic safety bureau of the department of
19 transportation. No more than ten percent of the money in the
20 interlock device fund in any fiscal year shall be expended by
21 the traffic safety bureau of the department of transportation
22 for the purpose of administering the fund."

23 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is July 1, 2014.