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SENATE BILL 428

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO COMMERCIAL DRIVER'S LICENSES; DEFINING TEXTING WHILE DRIVING AS A SERIOUS TRAFFIC VIOLATION; DISQUALIFYING A PERSON FROM DRIVING A COMMERCIAL VEHICLE FOR LIFE IF CONVICTED OF USING ANY MOTOR VEHICLE IN THE COMMISSION OF CERTAIN FELONIES; PROHIBITING THE USE OF A HANDHELD MOBILE COMMUNICATION DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE; ADDING A PENALTY.

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

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

"[NEW MATERIAL] USE OF A HANDHELD MOBILE COMMUNICATION DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE.--

A. A person shall not use a handheld mobile communication device for any purpose while driving a commercial

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1 motor vehicle, as defined in Subsection D of Section 66-5-54
2 NMSA 1978, except to summon medical or other emergency help or
3 unless that device is an amateur radio and the driver holds a
4 valid amateur radio operator license issued by the federal
5 communications commission. This prohibition is a separate
6 prohibition than the prohibition on texting while driving
7 pursuant to Section 66-7-374 NMSA 1978.

8 B. The provisions of this section shall not be
9 construed as authorizing the seizure or forfeiture of a
10 handheld mobile communication device. Unless otherwise
11 provided by law, the handheld mobile communication device used
12 in the violation of the provisions of this section is not
13 subject to search by a law enforcement officer during a traffic
14 stop made pursuant to the provisions of this section.

15 C. As used in this section:

16 (1) "driving" means being in actual physical
17 control of a motor vehicle on a highway or street and includes
18 being temporarily stopped because of traffic, a traffic light
19 or stop sign or otherwise; but "driving" excludes operating a
20 motor vehicle when the vehicle has pulled over to the side of
21 or off of an active roadway and has stopped at a location in
22 which it can safely remain stationary;

23 (2) "handheld mobile communication device"
24 means a wireless communication device that is designed to
25 receive and transmit text or image messages; but "handheld

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1 mobile communication device" excludes global positioning or
2 navigation systems, devices that are physically or
3 electronically integrated into a motor vehicle and
4 voice-operated or hands-free devices that allow the user to
5 compose, send or read a text message without the use of a hand,
6 except to activate, deactivate or initiate a feature or
7 function; and

8 (3) "text message" means a digital communication
9 transmitted or intended to be transmitted between communication
10 devices and includes electronic mail, an instant message, a
11 text or image communication and a command or request to an
12 internet site; but "text message" excludes communications
13 through the use of a computer-aided dispatch service by law
14 enforcement or rescue personnel."

15 SECTION 2. Section 66-5-54 NMSA 1978 (being Laws 1989,
16 Chapter 14, Section 3, as amended) is amended to read:

17 "66-5-54. DEFINITIONS.--As used in the New Mexico
18 Commercial Driver's License Act:

19 A. "commerce" means:

20 (1) trade, traffic or transportation within
21 the jurisdiction of the United States between a place in New
22 Mexico and a place outside of New Mexico, including a place
23 outside of the United States; and

24 (2) trade, traffic or transportation in the
25 United States that affects any trade, traffic or transportation

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1 described in Paragraph (1) of this subsection;

2 B. "commercial driver's license holder" means an
3 individual to whom a license has been issued by a state or
4 other jurisdiction, in accordance with the standards found in
5 49 C.F.R. part 383, as amended or renumbered, that authorizes
6 the individual to operate a commercial motor vehicle;

7 C. "commercial driver's license information system"
8 means the information system created pursuant to the federal
9 Commercial Motor Vehicle Safety Act of 1986 that contains
10 information pertaining to operators of commercial motor
11 vehicles;

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

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

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

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

23 (4) is of any size and is used in the
24 transportation of hazardous materials, as hazardous materials
25 are defined in 49 C.F.R. part 383.5;

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E. "conviction" means:

(1) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law by:

- (a) a court of original jurisdiction; or
- (b) an authorized administrative

tribunal;

(2) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(3) a plea of guilty or nolo contendere accepted by the court;

(4) the payment of a fine or court cost;

(5) a violation of a condition of release without bail, regardless of whether the payment is rebated, suspended or probated;

(6) an assignment to a diversion program or a driver improvement school; or

(7) a conditional discharge as provided in Section 31-20-13 NMSA 1978;

F. "director" means the director of the ~~[motor vehicle]~~ division of the department;

G. "disqualification" means:

(1) a suspension, revocation or cancellation of a commercial driver's license by the state or jurisdiction that issued the commercial driver's license;

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1 (2) a withdrawal of a person's privileges to
2 drive a commercial motor vehicle by a state or other
3 jurisdiction as the result of a violation of state or local law
4 relating to motor vehicle control other than a parking, vehicle
5 weight or vehicle defect violation; and

6 (3) a determination by the federal motor
7 carrier safety administration that a person is not qualified to
8 operate a motor vehicle;

9 H. "division" means the motor vehicle division of
10 the department;

11 I. "driving a commercial motor vehicle while under
12 the influence of alcohol" means:

13 (1) driving a commercial motor vehicle while
14 the driver has an alcohol concentration in the driver's blood
15 or breath of four one hundredths or more;

16 (2) driving a commercial motor vehicle while
17 the driver is under the influence of intoxicating liquor; or

18 (3) refusal to submit to chemical tests
19 administered pursuant to Section 66-8-107 NMSA 1978;

20 J. "employee" means an operator of a commercial
21 motor vehicle, including full-time, regularly employed drivers;
22 casual, intermittent or occasional drivers; leased drivers; and
23 independent owner-operator contractors, while in the course of
24 operating a commercial motor vehicle, who is either directly
25 employed by or under lease to an employer;

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1 K. "employer" means a person, including the United
2 States, a state and a political subdivision of a state or their
3 agencies or instrumentalities, that owns or leases a commercial
4 motor vehicle or assigns employees to operate such a vehicle;

5 L. "fatality" means the death of a person as a
6 result of a motor vehicle accident;

7 M. "gross combination weight rating" means the
8 value specified by the manufacturer as the loaded weight of a
9 combination vehicle. In the absence of a value specified by
10 the manufacturer, gross combination weight rating shall be
11 determined by adding the gross vehicle weight rating of the
12 power unit and the total weight of the towed unit or units and
13 any load thereon;

14 N. "gross vehicle weight rating" means the value
15 specified by the manufacturer as the loaded weight of a single
16 vehicle;

17 O. "imminent hazard" means a condition that
18 presents a substantial likelihood that death, serious illness,
19 severe personal injury or a substantial endangerment to health,
20 property or the environment will occur before the reasonable
21 foreseeable completion date of a formal proceeding to lessen
22 the risk of that death, illness, injury or endangerment;

23 P. "noncommercial motor vehicle" means a motor
24 vehicle or combination of motor vehicles that is not a
25 commercial motor vehicle;

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1 Q. "nonresident commercial driver's license" means
2 a commercial driver's license issued by another state to a
3 person domiciled in that state or by a foreign country to a
4 person domiciled in that country;

5 R. "out-of-service order" means a declaration by an
6 authorized enforcement officer of a federal, state, Canadian,
7 Mexican or local jurisdiction that a driver, a commercial motor
8 vehicle or a motor carrier operation is temporarily prohibited
9 from operating;

10 S. "railroad-highway grade crossing violation"
11 means a violation of a provision of Section 66-7-341 or
12 66-7-343 NMSA 1978 or a violation of federal or local law or
13 rule pertaining to stopping at or crossing a railroad-highway
14 grade crossing;

15 T. "serious traffic violation" means conviction of
16 any of the following if committed when operating a motor
17 vehicle:

18 (1) speed of fifteen miles or more per hour
19 above the posted limits;

20 (2) reckless driving as defined by Section
21 66-8-113 NMSA 1978 or a municipal ordinance or the law of
22 another state;

23 (3) homicide by vehicle, as defined in Section
24 66-8-101 NMSA 1978;

25 (4) injury to pregnant woman by vehicle as

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1 defined in Section 66-8-101.1 NMSA 1978 or a municipal
2 ordinance or the law of another state;

3 (5) any other violation of law relating to
4 motor vehicle traffic control, other than a parking violation,
5 that the secretary determines by regulation to be a serious
6 traffic violation. "Serious traffic violation" does not
7 include a vehicle weight or vehicle defect violation;

8 (6) improper or erratic lane changes in
9 violation of Section 66-7-317 NMSA 1978;

10 (7) following another vehicle too closely in
11 violation of Section 66-7-318 NMSA 1978;

12 (8) texting while driving in violation of
13 Section 66-7-374 NMSA 1978 or a municipal ordinance;

14 (9) use of a handheld mobile communication
15 device while driving a commercial motor vehicle in violation of
16 Section 1 of this 2015 act or a municipal ordinance;

17 [~~(8)~~] (10) directly or indirectly causing
18 death or great bodily injury to a human being in the unlawful
19 operation of a motor vehicle in violation of Section 66-8-101
20 NMSA 1978;

21 [~~(9)~~] (11) driving a commercial motor vehicle
22 without possession of a commercial driver's license in
23 violation of Section 66-5-59 NMSA 1978;

24 [~~(10)~~] (12) driving a commercial motor vehicle
25 without the proper class of commercial driver's license and

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1 endorsements pursuant to Section 66-5-65 NMSA 1978 and the
2 Motor Carrier Safety Act for the specific vehicle group
3 operated or for the passengers or type of cargo transported; or
4 [~~(11)~~] (13) driving a commercial motor vehicle
5 without obtaining a commercial driver's license in violation of
6 Section 66-5-59 NMSA 1978; and

7 U. "state of domicile" means the state in which a
8 person has a true, fixed and permanent home and principal
9 residence and to which the person has the intention of
10 returning whenever the person has been absent from that state."

11 SECTION 3. Section 66-5-68 NMSA 1978 (being Laws 1989,
12 Chapter 14, Section 17, as amended) is amended to read:

13 "66-5-68. DISQUALIFICATION.--

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

18 B. The department shall disqualify a person who
19 holds a commercial driver's license or who is required to hold
20 a commercial driver's license from driving a commercial motor
21 vehicle for a period of not less than one year, which shall run
22 concurrently with any revocation or suspension action for the
23 same offense, if the person:

24 (1) refuses to submit to a chemical test when
25 requested pursuant to the provisions of the Implied Consent

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1 Act;

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

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

10 (4) is less than twenty-one years of age and
11 submits to chemical testing pursuant to the Implied Consent Act
12 and the test results indicate an alcohol concentration of two
13 one hundredths or more; or

14 (5) is convicted of a violation of:

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

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

23 (c) using a motor vehicle in the
24 commission of a felony;

25 (d) driving a commercial motor vehicle

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1 after the driver's commercial driver's license is revoked,
2 suspended, disqualified or canceled for violations while
3 operating a commercial motor vehicle; or

4 (e) causing a fatality in the unlawful
5 operation of a motor vehicle pursuant to Section 66-8-101 NMSA
6 1978.

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

12 D. The department shall disqualify a person from
13 driving a commercial motor vehicle for life if convicted of two
14 or more violations of any of the offenses specified in
15 Subsection B of this section, or any combination of those
16 offenses, arising from two or more separate incidents, but the
17 secretary may issue regulations establishing guidelines,
18 including conditions, under which a disqualification for life
19 under this subsection may be reduced to a period of not less
20 than ten years. This subsection applies only to those offenses
21 committed after July 1, 1989.

22 E. The department shall disqualify a person from
23 driving a commercial motor vehicle for life if the person [~~uses~~
24 ~~a commercial~~] is convicted of using a motor vehicle in the
25 commission of any felony involving the manufacture,

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1 distribution or dispensing of a controlled substance or the
2 possession with intent to manufacture, distribute or dispense a
3 controlled substance.

4 F. The department shall disqualify a person from
5 driving a commercial motor vehicle for a period of not less
6 than sixty days if convicted of two serious traffic violations
7 or one hundred twenty days if convicted of three serious
8 traffic violations, if the violations were committed while
9 driving a commercial motor vehicle, arising from separate
10 incidents occurring within a three-year period.

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

13 (1) not less than one hundred eighty days nor
14 more than two years if the person is convicted of a first
15 violation of an out-of-service order while transporting
16 hazardous materials required to be placarded pursuant to the
17 federal Hazardous Materials Transportation Act or while
18 operating a motor vehicle designed to transport more than
19 fifteen passengers, including the driver;

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

22 (3) not less than three years nor more than
23 five years if, during any ten-year period, the person is
24 convicted of any subsequent violations of out-of-service
25 orders, in separate incidents, while transporting hazardous

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1 materials required to be placarded pursuant to that act or
2 while operating a motor vehicle designed to transport more than
3 fifteen passengers, including the driver.

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

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

9 (2) the second conviction results in
10 revocation, cancellation or suspension of the person's
11 commercial driver's license or noncommercial motor vehicle
12 driving privileges for sixty days.

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

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

18 (2) the third or a subsequent conviction
19 results in the revocation, cancellation or suspension of the
20 person's commercial driver's license or noncommercial motor
21 vehicle driving privileges.

22 J. When a person is disqualified from driving a
23 commercial motor vehicle, any commercial driver's license held
24 by that person is invalidated without a separate proceeding of
25 any kind and the driver is not eligible to apply for a

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1 commercial driver's license until the period of time for which
2 the driver was disqualified has elapsed.

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

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

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

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

14 L. After disqualifying, suspending, revoking or
15 canceling a commercial driver's license, the department shall,
16 within ten days, update its records to reflect that action.
17 After disqualifying, suspending, revoking or canceling a
18 nonresident commercial driver's privileges, the department
19 shall, within ten days, notify the licensing authority of the
20 state that issued the commercial driver's license.

21 M. When disqualifying, suspending, revoking or
22 canceling a commercial driver's license, the department shall
23 treat a conviction received in another state in the same manner
24 as if it was received in this state.

25 N. The department shall post and enforce any

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1 disqualification sent by the federal motor carrier safety
2 administration to the department that indicates that a
3 commercial motor vehicle driver poses an imminent hazard.

4 O. The federal transportation security
5 administration of the department of homeland security shall
6 provide for an appeal of a disqualification for a commercial
7 driver's license hazardous materials endorsement on the basis
8 of a background check, and the department shall provide to a
9 hazardous materials applicant a copy of the procedures
10 established by the transportation security administration, on
11 request, at the time of application.

12 P. New Mexico shall conform to the federal
13 transportation security administration of the department of
14 homeland security rules and shall "look back" or review a
15 maximum of seven years for a background check."

16 SECTION 4. Section 66-8-116 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 524, as amended) is amended to read:

18 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--
19 DEFINITION--SCHEDULE OF ASSESSMENTS.--

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

25 COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY

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		ASSESSMENT
1		
2	Improper display of	
3	registration plate	66-3-18 \$ 25.00
4	Failure to notify of	
5	change of name or address	66-3-23 25.00
6	Lost or damaged registration,	
7	plate or title	66-3-24 20.00
8	Permitting unauthorized	
9	minor to drive	66-5-40 50.00
10	Permitting unauthorized	
11	person to drive	66-5-41 25.00
12	Failure to obey sign	66-7-104 10.00
13	Failure to obey signal	66-7-105 10.00
14	Speeding	66-7-301
15	(1) up to and including	
16	ten miles an hour	
17	over the speed limit	15.00
18	(2) from eleven up to	
19	and including fifteen	
20	miles an hour	
21	over the speed limit	30.00
22	(3) from sixteen up to	
23	and including twenty	
24	miles an hour over the	
25	speed limit	65.00

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1	(4) from twenty-one up to		
2	and including twenty-five		
3	miles an hour		
4	over the speed limit		100.00
5	(5) from twenty-six up to		
6	and including thirty		
7	miles an hour over the		
8	speed limit		125.00
9	(6) from thirty-one up to		
10	and including thirty-five		
11	miles an hour over the		
12	speed limit		150.00
13	(7) more than thirty-five		
14	miles an hour over the		
15	speed limit		200.00
16	Unfastened safety belt	66-7-372	25.00
17	Child not in restraint device		
18	or seat belt	66-7-369	25.00
19	Minimum speed	66-7-305	10.00
20	Speeding	66-7-306	15.00
21	Improper starting	66-7-324	10.00
22	Improper backing	66-7-354	10.00
23	Improper lane	66-7-308	10.00
24	Improper lane	66-7-313	10.00
25	Improper lane	66-7-316	10.00

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1	Improper lane	66-7-317	10.00
2	Improper lane	66-7-319	10.00
3	Improper passing	66-7-309 through 66-7-312	10.00
4	Improper passing	66-7-315	10.00
5	Controlled access		
6	violation	66-7-320	10.00
7	Controlled access		
8	violation	66-7-321	10.00
9	Improper turning	66-7-322	10.00
10	Improper turning	66-7-323	10.00
11	Improper turning	66-7-325	10.00
12	Following too closely	66-7-318	10.00
13	Failure to yield	66-7-328 through 66-7-331	10.00
14	Failure to yield	66-7-332	50.00
15	Failure to yield	66-7-332.1	25.00
16	Pedestrian violation	66-7-333	10.00
17	Pedestrian violation	66-7-340	10.00
18	Failure to stop	66-7-342 and 66-7-344	
19		through 66-7-346	10.00
20	Railroad-highway grade		
21	crossing violation	66-7-341 and 66-7-343	150.00
22	Passing school bus	66-7-347	100.00
23	Failure to signal	66-7-325 through 66-7-327	10.00
24	Failure to secure load	66-7-407	100.00
25	Operation without oversize-		

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1	overweight permit	66-7-413	50.00
2	Transport of reducible		
3	load with special		
4	permit more than six miles		
5	from a border crossing	66-7-413	100.00
6	Improper equipment	66-3-801	
7		through 66-3-851	25.00
8	Improper equipment	66-3-901	20.00
9	Improper emergency		
10	signal	66-3-853 through 66-3-857	10.00
11	Minor on motorcycle		
12	without helmet	66-7-356	300.00
13	Operation interference	66-7-357	50.00
14	Littering	66-7-364	300.00
15	Improper parking	66-7-349 through 66-7-352	
16		and 66-7-353	5.00
17	Improper parking	66-3-852	5.00
18	Failure to dim lights	66-3-831	10.00
19	Riding in or towing		
20	occupied house trailer	66-7-366	5.00
21	Improper opening of doors	66-7-367	5.00
22	No slow-moving vehicle		
23	emblem or flashing		
24	amber light	66-3-887	5.00
25	Open container - first		

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1 violation 66-8-138 25.00

2 Texting while driving - [~~Section 1 of this~~
3 first violation ~~2014 act~~] 66-7-374 25.00

4 Texting while driving - [~~Section 1 of this~~
5 subsequent violation ~~2014 act~~] 66-7-374 50.00

6 Using a handheld mobile

7 communication device

8 while driving a Section 1 of this

9 commercial motor vehicle 2015 act 25.00.

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

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

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

25 E. Upon a second conviction for operation without a

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1 permit for excessive size or weight pursuant to Section
2 66-7-413 NMSA 1978, the penalty assessment shall be two hundred
3 fifty dollars (\$250). Upon a third or subsequent conviction,
4 the penalty assessment shall be five hundred dollars (\$500).

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

12 SECTION 5. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2015.