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HOUSE BILL 502

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR REVOCATION OF DRIVER'S LICENSE AND ALLOWING IGNITION INTERLOCK LICENSES AFTER CONVICTION; INCREASING PENALTIES FOR DWI OFFENDERS; REQUIRING IMPOUNDMENT OR IMMOBILIZATION OF THE VEHICLE OF A DWI OFFENDER AFTER CONVICTION.

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

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

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

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

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1 (1) an instruction permit to a person fifteen
2 years of age or over who is enrolled in and attending or has
3 completed a driver education course that includes a DWI
4 education and prevention component approved by the bureau or
5 offered by a public school;

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

8 (a) who has completed a driver education
9 course approved by the bureau or offered by a public school
10 that includes a DWI education and prevention component and has
11 had an instruction permit for at least six months; and

12 (b) who has successfully completed a
13 practice driving component;

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

16 (a) who has had a provisional license
17 for the twelve-month period immediately preceding the date of
18 the application for the driver's license;

19 (b) who has complied with restrictions
20 on that license;

21 (c) who has not been convicted of a
22 traffic violation that was committed during the ninety days
23 prior to applying for a driver's license; and

24 (d) who has not been adjudicated for an
25 offense involving the use of alcohol or drugs during that

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1 period and who has no pending adjudications alleging an offense
2 involving the use of alcohol or drugs at the time of his
3 application; and

4 (4) to any person thirteen years of age or
5 older who passes an examination prescribed by the division, a
6 license restricted to the operation of a motorcycle, provided:

7 (a) the ~~[motor]~~ motorcycle is not in
8 excess of one hundred cubic centimeters displacement;

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

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

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

21 C. who is an habitual drunkard, an habitual user of
22 narcotic drugs or an habitual user of any drug to a degree that
23 renders ~~[him]~~ the person incapable of safely driving a motor
24 vehicle;

25 D. who ~~[within any ten-year period]~~ is ~~[three~~

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1 ~~times]~~ convicted of driving a motor vehicle while under the
2 influence of intoxicating liquor or ~~[narcotic drug regardless~~
3 ~~of whether the convictions are under the laws or ordinances of~~
4 ~~this state or any municipality or county of this state or under~~
5 ~~the laws or ordinances of any other state, the District of~~
6 ~~Columbia or any governmental subdivision thereof, except as~~
7 ~~provided in the Ignition Interlock Licensing Act. Ten years~~
8 ~~after being so convicted for the third time, the person may~~
9 ~~apply to any district court of this state for restoration of~~
10 ~~the license, and the court, upon good cause being shown, may~~
11 ~~order restoration of the license applied for; provided that the~~
12 ~~person has not been subsequently convicted of driving a motor~~
13 ~~vehicle while under the influence of intoxicating liquor or~~
14 ~~drugs in the ten-year period prior to his request for~~
15 ~~restoration of his license. Upon issuance of the order of~~
16 ~~restoration, a certified copy shall immediately be forwarded to~~
17 ~~the division, and if the person is otherwise qualified for the~~
18 ~~license applied for, the three previous convictions shall not~~
19 ~~prohibit issuance of the license applied for. Should the~~
20 ~~person be subsequently once convicted of driving a motor~~
21 ~~vehicle while under the influence of intoxicating liquor or~~
22 ~~drugs, the division shall revoke his license for five years,~~
23 ~~after which time he may apply for restoration of his license as~~
24 ~~provided in this subsection] drugs pursuant to the provisions~~
25 of Section 66-8-102 NMSA 1978, except as provided in the

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1 Ignition Interlock Licensing Act;

2 E. who has previously been afflicted with or who is
3 suffering from any mental disability or disease that would
4 render [~~him~~] the person unable to drive a motor vehicle with
5 safety upon the highways and who has not, at the time of
6 application, been restored to health;

7 F. who is required by the Motor Vehicle Code to
8 take an examination, unless [~~he~~] the person has successfully
9 passed the examination;

10 G. who is required under the laws of this state to
11 deposit proof of financial responsibility and who has not
12 deposited the proof;

13 H. when the director has good cause to believe that
14 the operation of a motor vehicle on the highways by the person
15 would be inimical to public safety or welfare; or

16 I. as a motorcycle driver who is less than eighteen
17 years of age and who has not presented a certificate or other
18 evidence of having successfully completed a motorcycle driver
19 education program licensed or offered in conformance with rules
20 of the bureau."

21 Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 251, as amended) is amended to read:

23 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

24 A. The division shall immediately revoke the
25 instruction permit, driver's license or provisional license of

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1 a driver upon receiving a record of the driver's adjudication
2 as a delinquent for or conviction of any of the following
3 offenses, whether the offense is under any state law or local
4 ordinance, when the conviction or adjudication has become
5 final:

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

8 (2) any offense rendering a person a "first
9 offender" as defined in the Motor Vehicle Code [~~if that person~~
10 ~~does not attend a driver rehabilitation program pursuant to~~
11 ~~Subsection E of Section 66-8-102 NMSA 1978~~];

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

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

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

19 (6) perjury or the making of a false affidavit
20 or statement under oath to the division under the Motor Vehicle
21 Code or under any other law relating to the ownership or
22 operation of motor vehicles; or

23 (7) conviction or forfeiture of bail not
24 vacated upon three charges of reckless driving committed within
25 a period of twelve months.

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1 B. Except as provided in the Ignition Interlock
2 Licensing Act, a person whose license has been revoked under
3 this section, except as provided in Subsection C, D, ~~[E]~~ E or
4 F of this section, shall not be entitled to apply for or
5 receive a new license until the expiration of one year from the
6 date of the last application on which the revoked license was
7 surrendered to and received by the division, if no appeal is
8 filed, or one year from the date that the revocation is final
9 and ~~[he has exhausted his]~~ all rights to an appeal have been
10 exhausted.

11 C. A person who upon adjudication as a delinquent
12 or conviction is subject to license revocation under this
13 section for an offense pursuant to which ~~[he]~~ the person was
14 also subject to license revocation pursuant to Section 66-8-111
15 NMSA 1978 shall have his license revoked for that offense for a
16 combined period of time equal to one year.

17 D. Upon receipt of an order from a court pursuant
18 to Section 32A-2-19 NMSA 1978 or Subsection G of Section
19 32A-2-22 NMSA 1978, the division shall revoke the driver's
20 license or driving privileges for a period of time in
21 accordance with these provisions.

22 E. Upon receipt from a district court of a record
23 of conviction for the offense of shooting at or from a motor
24 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
25 of a conviction for a conspiracy or an attempt to commit that

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1 offense, the division shall revoke the driver's [~~licenses~~]
2 license or driving privileges of the convicted person. A
3 person whose license or privilege has been revoked pursuant to
4 the provisions of this subsection shall not be entitled to
5 apply for or receive any new license or privilege until the
6 expiration of one year from the date of the last application on
7 which the revoked license was surrendered to and received by
8 the division, if no appeal is filed, or one year from the date
9 that the revocation is final and [~~the person has exhausted his~~]
10 all rights to an appeal have been exhausted.

11 F. Except as provided in the Ignition Interlock
12 Licensing Act, the division shall not restore the instruction
13 permit, driver's license or provisional license of a first or
14 subsequent offender as defined in the Motor Vehicle Code."

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

17 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
18 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
19 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

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1 C. It is unlawful for:

2 (1) a person who has an alcohol concentration
3 of eight one hundredths or more in his blood or breath to drive
4 a vehicle within this state; or

5 (2) a person who has an alcohol concentration
6 of four one hundredths or more in his blood or breath to drive
7 a commercial motor vehicle within this state.

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

10 (1) has an alcohol concentration of sixteen
11 one hundredths or more in his blood or breath while driving a
12 vehicle within this state;

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

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

20 ~~[E. A person under first conviction pursuant to~~
21 ~~this section shall be punished, notwithstanding the provisions~~
22 ~~of Section 31-18-13 NMSA 1978, by imprisonment for not more~~
23 ~~than ninety days or by a fine of not more than five hundred~~
24 ~~dollars (\$500), or both; provided that if the sentence is~~
25 ~~suspended in whole or in part or deferred, the period of~~

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

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1 ~~sentence imposed pursuant to this subsection for failure to~~
2 ~~complete, within a time specified by the court, any community~~
3 ~~service, screening program, treatment program or DWI school~~
4 ~~ordered by the court or for aggravated driving while under the~~
5 ~~influence of intoxicating liquor or drugs shall not be~~
6 ~~suspended, deferred or taken under advisement. On a first~~
7 ~~conviction pursuant to this section, any time spent in jail for~~
8 ~~the offense prior to the conviction for that offense shall be~~
9 ~~credited to any term of imprisonment fixed by the court. A~~
10 ~~deferred sentence pursuant to this subsection shall be~~
11 ~~considered a first conviction for the purpose of determining~~
12 ~~subsequent convictions.~~

13 F.] E. A [~~second~~] first or [~~third~~] second
14 conviction pursuant to this section shall be punished,
15 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
16 by imprisonment for not more than three hundred sixty-four days
17 or by a fine of not more than [~~one thousand dollars (\$1,000)~~]
18 two thousand five hundred dollars (\$2,500), or both; provided
19 that if the sentence is suspended in whole or in part, the
20 period of probation may extend beyond one year but shall not
21 exceed five years. Notwithstanding any provision of law to the
22 contrary for suspension or deferment of execution of a
23 sentence:

24 (1) upon a [~~second~~] first conviction, an
25 offender shall be sentenced to a jail term of not less than

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1 ~~[ninety-six]~~ thirty consecutive ~~[hours, forty-eight]~~ days, one
2 hundred twenty hours of community service and a fine of ~~[five~~
3 ~~hundred dollars (\$500)]~~ one thousand dollars (\$1,000). In
4 addition to those penalties, when an offender commits
5 aggravated driving while under the influence of intoxicating
6 liquor or drugs, the offender shall be sentenced to a jail term
7 of not less than ~~[ninety-six]~~ sixty consecutive ~~[hours]~~ days.
8 If an offender fails to complete, within a time specified by
9 the court, any community service, screening program or
10 treatment program ordered by the court, the offender shall be
11 sentenced to not less than an additional ~~[seven]~~ sixty
12 consecutive days in jail. A penalty imposed pursuant to this
13 paragraph shall not be suspended or deferred or taken under
14 advisement; and

15 (2) upon a ~~[third]~~ second conviction, an
16 offender shall be sentenced to a jail term of not less than
17 ~~[thirty]~~ ninety consecutive days, one hundred sixty-eight hours
18 of community service and a fine of ~~[seven hundred fifty dollars~~
19 ~~(\$750)]~~ two thousand dollars (\$2,000). In addition to those
20 penalties, when an offender commits aggravated driving while
21 under the influence of intoxicating liquor or drugs, the
22 offender shall be sentenced to a jail term of not less than
23 ~~[sixty]~~ one hundred eighty consecutive days. If an offender
24 fails to complete, within a time specified by the court, any
25 screening program or treatment program ordered by the court,

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1 the offender shall be sentenced to not less than an additional
2 [~~sixty~~] one hundred eighty consecutive days in jail. A penalty
3 imposed pursuant to this paragraph shall not be suspended or
4 deferred or taken under advisement.

5 ~~[G. Upon a fourth conviction pursuant to this~~
6 ~~section, an offender is guilty of a fourth degree felony and,~~
7 ~~notwithstanding the provisions of Section 31-18-15 NMSA 1978,~~
8 ~~shall be sentenced to a term of imprisonment of eighteen~~
9 ~~months, six months of which shall not be suspended, deferred or~~
10 ~~taken under advisement.~~

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

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

23 ~~J.]~~ F. Upon a [~~seventh~~] third or subsequent
24 conviction pursuant to this section, an offender is guilty of a
25 third degree felony and, notwithstanding the provisions of

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1 Section 31-18-15 NMSA 1978, shall be sentenced to a term of
2 imprisonment of three years, two years of which shall not be
3 suspended, deferred or taken under advisement.

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

12 ~~[L.]~~ H. Upon a ~~[second or third]~~ conviction
13 pursuant to this section, an offender shall be required to
14 participate in and complete, within a time specified by the
15 court:

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

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

21 (3) a drug court program approved by the
22 court; or

23 (4) any other substance abuse treatment
24 program approved by the court.

25 The requirement imposed pursuant to this subsection shall

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1 not be suspended, deferred or taken under advisement.

2 ~~[M.]~~ I. Upon a felony conviction pursuant to this
3 section, the corrections department shall provide substance
4 abuse counseling and treatment to the offender in its custody.
5 While the offender is on probation or parole under its
6 supervision, the corrections department shall also provide
7 substance abuse counseling and treatment to the offender or
8 shall require the offender to obtain substance abuse counseling
9 and treatment.

10 ~~[N.]~~ ~~Upon a first conviction for aggravated driving~~
11 ~~while under the influence of intoxicating liquor or drugs~~
12 ~~pursuant to the provisions of Subsection D of this section, as~~
13 ~~a condition of probation, an offender shall be required to have~~
14 ~~an ignition interlock device installed and operating for a~~
15 ~~period of one year on all motor vehicles driven by the~~
16 ~~offender, pursuant to rules adopted by the bureau. Unless~~
17 ~~determined by the sentencing court to be indigent, the offender~~
18 ~~shall pay all costs associated with having an ignition~~
19 ~~interlock device installed on the appropriate motor vehicles.~~
20 ~~If an offender drives a motor vehicle that does not have an~~
21 ~~ignition interlock device installed on the motor vehicle, the~~
22 ~~offender may be in violation of the terms and conditions of his~~
23 ~~probation.~~

24 ~~O.~~ ~~Upon a first conviction for driving while under~~
25 ~~the influence of intoxicating liquor or drugs pursuant to the~~

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1 ~~provisions of Subsection A, B or C of this section, as a~~
2 ~~condition of probation, an offender may be required to have an~~
3 ~~ignition interlock device installed and operating for a period~~
4 ~~of one year 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. If an offender~~
9 ~~drives a motor vehicle that does not have an ignition interlock~~
10 ~~device installed on the motor vehicle, the offender may be in~~
11 ~~violation of the terms and conditions of his probation.~~

12 ~~P. Upon any subsequent conviction pursuant to this~~
13 ~~section, as a condition of probation, a subsequent offender~~
14 ~~shall be required to have an ignition interlock device~~
15 ~~installed and operating for a period of at least one year on~~
16 ~~all motor vehicles driven by the subsequent offender, pursuant~~
17 ~~to rules adopted by the bureau. Unless determined by the~~
18 ~~sentencing court to be indigent, the subsequent offender shall~~
19 ~~pay all costs associated with having an ignition interlock~~
20 ~~device installed on the appropriate motor vehicles. If a~~
21 ~~subsequent offender drives a motor vehicle that does not have~~
22 ~~an ignition interlock device installed on the motor vehicle,~~
23 ~~the subsequent offender may be in violation of the terms and~~
24 ~~conditions of his probation.]~~

25 J. Upon a conviction for driving while under the

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1 influence of intoxicating liquor or drugs pursuant to the
2 provisions of this section, the offender's driver's license
3 shall be revoked and driving privileges shall be denied.
4 Within twenty-four hours of conviction, the court shall provide
5 the division with proof of the conviction. Upon receipt of
6 proof of conviction from the court, the division shall revoke
7 or deny the offender's driver's license or driving privileges.
8 Nothing in this section shall prohibit the offender from
9 applying for an ignition interlock license pursuant to the
10 Ignition Interlock Licensing Act.

11 [Q-] K. In the case of a first or second [~~or third~~]
12 offense under this section, the magistrate court has concurrent
13 jurisdiction with district courts to try the offender.

14 [R-] L. A conviction pursuant to a municipal or
15 county ordinance in New Mexico or a law of any other
16 jurisdiction, territory or possession of the United States or
17 of a tribe, when that ordinance or law is equivalent to New
18 Mexico law for driving while under the influence of
19 intoxicating liquor or drugs, and prescribes penalties for
20 driving while under the influence of intoxicating liquor or
21 drugs, shall be deemed to be a conviction pursuant to this
22 section for purposes of determining whether a conviction is a
23 second or subsequent conviction.

24 [S-] M. In addition to any other fine or fee that
25 may be imposed pursuant to the conviction or other disposition

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1 of the offense under this section, the court may order the
2 offender to pay the costs of any court-ordered screening and
3 treatment programs.

4 N. In addition to any other penalties imposed
5 pursuant to the provisions of this section, upon a first or
6 second conviction pursuant to this section, the motor vehicle
7 the person was driving at the time of the offense shall be
8 impounded or immobilized by an immobilization device for sixty
9 days. Upon a third conviction, the motor vehicle the person
10 was driving at the time of the offense shall be impounded or
11 immobilized by an immobilization device for one hundred twenty
12 days. This subsection shall not apply when impoundment or
13 immobilization of the motor vehicle poses an imminent danger to
14 the health, safety or employment of the convicted person's
15 immediate family or the family of the owner of the motor
16 vehicle.

17 [~~F.~~] O. As used in this section:

18 (1) "bodily injury" means an injury to a
19 person that is not likely to cause death or great bodily harm
20 to the person, but does cause painful temporary disfigurement
21 or temporary loss or impairment of the functions of any member
22 or organ of the person's body;

23 (2) "commercial motor vehicle" means a motor
24 vehicle or combination of motor vehicles used in commerce to
25 transport passengers or property if the motor vehicle:

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1 (a) has a gross combination weight
2 rating of more than twenty-six thousand pounds inclusive of a
3 towed unit with a gross vehicle weight rating of more than ten
4 thousand pounds;

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

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

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

12 (3) "conviction" means an adjudication of
13 guilt and does not include imposition of a sentence."

14 Section 4. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2005.