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HOUSE BILL 197

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Antonio Lujan

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING TEXTING WHILE DRIVING;
PROVIDING THAT TEXTING WHILE DRIVING THAT RESULTS IN DEATH OR
GREAT BODILY HARM IS HOMICIDE BY VEHICLE OR GREAT BODILY HARM
BY VEHICLE; PROVIDING PENALTIES.

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

SECTION 1. A new section of Chapter 66, Article 8 NMSA
1978 is enacted to read:

"[NEW MATERIAL] TEXTING WHILE DRIVING.--

A. Texting while driving consists of reading,
typing or sending a text message on a mobile communication
device while driving a motor vehicle.

B. Whoever commits texting while driving is guilty
of a misdemeanor and, notwithstanding the provisions of Section
31-18-13 NMSA 1978, shall be punished:

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1 (1) upon a first conviction, by imprisonment
2 for not less than five days nor more than ninety days, or by a
3 fine of not less than twenty-five dollars (\$25.00) nor more
4 than one hundred dollars (\$100), or both; and

5 (2) upon a second or subsequent conviction, by
6 imprisonment for not less than ten days nor more than six
7 months, or by a fine of not less than fifty dollars (\$50.00)
8 nor more than one thousand dollars (\$1,000), or both.

9 C. Upon conviction pursuant to this section, the
10 director may suspend the license or permit to drive and any
11 nonresident operating privilege for up to ninety days.

12 D. The provisions of this section do not apply to:

13 (1) a driver of a law enforcement or emergency
14 vehicle if required by the driver's official duties; or

15 (2) using a mobile communication device for
16 the purpose of reporting an emergency or to report a driver
17 suspected of being under the influence of intoxicating liquor
18 or drugs.

19 E. As used in this section:

20 (1) "driving" means being in actual physical
21 control of a motor vehicle on a highway or street, but
22 "driving" does not include being lawfully parked;

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

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1 device" does not include a global positioning or navigation
2 system or a device that is physically or electronically
3 integrated into the motor vehicle; and

4 (3) "text message" means a digital
5 communication transmitted or intended to be transmitted to a
6 communication device and includes electronic mail, an instant
7 message, a text or image communication or any command or
8 request to an internet site."

9 SECTION 2. Section 66-8-101 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 509, as amended) is amended to read:

11 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY
12 VEHICLE.--

13 A. Homicide by vehicle is the killing of a human
14 being in the unlawful operation of a motor vehicle.

15 B. Great bodily harm by vehicle is the injuring of
16 a human being, to the extent defined in Section 30-1-12 NMSA
17 1978, in the unlawful operation of a motor vehicle.

18 C. A person who commits homicide by vehicle or
19 great bodily harm by vehicle while under the influence of
20 intoxicating liquor or while under the influence of any drug or
21 while violating Section 66-8-113 NMSA 1978 or Section 1 of this
22 2011 act is guilty of a third degree felony and shall be
23 sentenced pursuant to the provisions of Section 31-18-15 NMSA
24 1978, provided that violation of speeding laws as set forth in
25 the Motor Vehicle Code shall not per se be a basis for

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1 violation of Section 66-8-113 NMSA 1978.

2 D. A person who commits homicide by vehicle or
3 great bodily harm by vehicle while under the influence of
4 intoxicating liquor or while under the influence of any drug,
5 as provided in Subsection C of this section, and who has
6 incurred a prior DWI conviction within ten years of the
7 occurrence for which ~~[he]~~ the person is being sentenced under
8 this section shall have ~~[his]~~ the person's basic sentence
9 increased by four years for each prior DWI conviction.

10 E. For the purposes of this section, "prior DWI
11 conviction" means:

12 (1) a prior conviction under Section 66-8-102
13 NMSA 1978; or

14 (2) a prior conviction in New Mexico or any
15 other jurisdiction, territory or possession of the United
16 States, including a tribal jurisdiction, when the criminal act
17 is driving under the influence of alcohol or drugs.

18 F. A person who willfully operates a motor vehicle
19 in violation of Subsection C of Section 30-22-1 NMSA 1978 and
20 directly or indirectly causes the death of or great bodily harm
21 to a human being is guilty of a third degree felony and shall
22 be sentenced pursuant to the provisions of Section 31-18-15
23 NMSA 1978."

24 SECTION 3. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2011.

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