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SENATE BILL 9

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

INTRODUCED BY

Peter Wirth

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; MODIFYING REQUIREMENTS FOR  
LICENSING DRIVERS UNDER EIGHTEEN YEARS OF AGE; REQUIRING  
EIGHTEEN MONTHS OF DRIVING WITH A PROVISIONAL LICENSE;  
PROVIDING FOR AN ADDITIONAL THIRTY DAYS OF DRIVING WITH AN  
INSTRUCTION PERMIT OR A PROVISIONAL LICENSE FOR EACH TRAFFIC  
VIOLATION COMMITTED; INCLUDING SEAT BELT LAWS AND THE USE OF  
MOBILE PHONES TO THE LIST OF VIOLATIONS THAT WOULD DELAY THE  
ISSUANCE OF A PROVISIONAL LICENSE OR DRIVER'S LICENSE TO A  
PERSON UNDER AGE EIGHTEEN; RECONCILING MULTIPLE AMENDMENTS TO  
THE SAME SECTION OF LAW IN LAWS 2007.

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

**SECTION 1.** Section 66-5-1.1 NMSA 1978 (being Laws 1999,  
Chapter 175, Section 1) is amended to read:

"66-5-1.1. DEFINITION.--As used in Sections [~~66-5-5~~]

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1 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means [~~a~~  
2 ~~violation of one or more of the following offenses~~]:

3 A. failure to obey traffic-control devices, as  
4 provided in Section 66-7-104 NMSA 1978;

5 B. failure to obey traffic-control signals, as  
6 provided in Section 66-7-105 NMSA 1978;

7 C. speeding, as provided in Section 66-7-301 NMSA  
8 1978;

9 D. failure to yield, as provided in Sections  
10 66-7-328 through 66-7-332.1 NMSA 1978;

11 E. child not in restraint device or seat belt, as  
12 provided in Section 66-7-369 NMSA 1978;

13 F. failure to properly fasten safety belt, as  
14 provided in Section 66-7-372 NMSA 1978;

15 [~~D-~~] G. homicide by vehicle, as provided in Section  
16 66-8-101 NMSA 1978;

17 [~~E-~~] H. injury to pregnant woman by vehicle, as  
18 provided in Section 66-8-101.1 NMSA 1978;

19 [~~F-~~] I. driving while under the influence of  
20 intoxicating liquor or drugs, as provided in Section 66-8-102  
21 NMSA 1978;

22 [~~G-~~] J. refusal to submit to chemical tests, as  
23 provided in Section 66-8-111 NMSA 1978;

24 [~~H-~~] K. reckless driving, as provided in Section  
25 66-8-113 NMSA 1978;

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1           ~~[F.]~~ L. careless driving, as provided in Section  
2 66-8-114 NMSA 1978;

3           ~~[J.]~~ M. racing on highways, as provided in Section  
4 66-8-115 NMSA 1978; ~~[and~~

5           ~~K. failure to yield, as provided in Sections~~  
6 ~~66-7-328 through 66-7-332.1 NMSA 1978]~~ or

7           N. using a mobile communication device while  
8 driving a motor vehicle. As used in this subsection:

9                   (1) "driving" means being in actual physical  
10 control of a motor vehicle on a highway or street, except that  
11 "driving" does not include being lawfully parked; and

12                   (2) "mobile communication device" means a  
13 wireless communication device that is designed to receive and  
14 transmit voice, text or image communication."

15           **SECTION 2.** Section 66-5-5 NMSA 1978 (being Laws 1978,  
16 Chapter 35, Section 227, as amended by Laws 2007, Chapter 316,  
17 Section 1 and by Laws 2007, Chapter 317, Section 1) is amended  
18 to read:

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

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

24                           (1) an instruction permit to a person fifteen  
25 years of age or ~~[over]~~ older who is enrolled in and attending

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1 or has completed a driver education course approved by the  
2 bureau that includes a DWI education and prevention component  
3 [~~approved by the bureau or offered by a public school~~];

4 (2) a provisional license to [~~any~~] a person  
5 fifteen years and six months of age or older:

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

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

13 (3) a driver's license to [~~any~~] a person  
14 [~~sixteen years and six months~~] seventeen years of age or older:

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

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)~~] (c) who has not been adjudicated  
25 for an offense involving the use of alcohol or drugs during

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1 ~~[that period]~~ the eighteen-month period immediately preceding  
2 the application for the driver's license and who has no pending  
3 adjudications alleging an offense involving the use of alcohol  
4 or drugs at the time of application; and

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

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

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

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

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

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

25 D. who is four or more times convicted of driving a

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1 motor vehicle while under the influence of intoxicating liquor  
2 or narcotic drug regardless of whether the convictions are  
3 under the laws or ordinances of this state or any municipality  
4 or county of this state or under the laws or ordinances of any  
5 other state, the District of Columbia or any governmental  
6 subdivision thereof, except as provided in the Ignition  
7 Interlock Licensing Act. Five years from the date of the  
8 fourth conviction and every five years thereafter, the person  
9 may apply to any district court of this state for restoration  
10 of 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. Upon issuance of the order of restoration, a certified  
15 copy shall immediately be forwarded to the division, and if the  
16 person is otherwise qualified for the license applied for, the  
17 four previous convictions shall not prohibit issuance of the  
18 license;

19 E. who was convicted on or after June 17, 2005 of  
20 driving a motor vehicle while under the influence of  
21 intoxicating liquor or drugs pursuant to the laws or ordinances  
22 of any other state, the District of Columbia or any  
23 governmental subdivision thereof, unless the person obtains an  
24 ignition interlock license as provided in the Ignition  
25 Interlock Licensing Act for a period of one year for a first

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1 conviction; a period of two years for a second conviction; a  
2 period of three years for a third conviction; or the remainder  
3 of the offender's life for a fourth or subsequent conviction,  
4 subject to a five-year review as provided in Subsection D of  
5 this section. Upon presentation of proof satisfactory to the  
6 division, the division may credit time spent by a person  
7 operating a motor vehicle with an ignition interlock or  
8 comparable device, as a condition of the person's sentence for  
9 a conviction in another jurisdiction pursuant to this  
10 subsection, against the ignition interlock time requirements  
11 imposed by this subsection. The division shall promulgate  
12 rules necessary for granting credit to persons who participate  
13 in comparable out-of-state programs following a conviction for  
14 driving a motor vehicle while under the influence of  
15 intoxicating liquor or drugs. The requirements of this  
16 subsection shall not apply to a person who applies for a  
17 driver's license ten years or more from the date of the  
18 person's last conviction, except for a person who is subject to  
19 lifetime driver's license revocation for a conviction in  
20 another jurisdiction pursuant to this subsection;

21 F. who has previously been afflicted with or who is  
22 suffering from any mental disability or disease that would  
23 render the person unable to drive a motor vehicle with safety  
24 upon the highways and who has not, at the time of application,  
25 been restored to health;

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1 G. who is required by the Motor Vehicle Code to  
2 take an examination, unless the person has successfully passed  
3 the examination;

4 H. who is required under the laws of this state to  
5 deposit proof of financial responsibility and who has not  
6 deposited the proof;

7 I. when the director has good cause to believe that  
8 the operation of a motor vehicle on the highways by the person  
9 would be inimical to public safety or welfare; or

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

15 SECTION 3. Section 66-5-8 NMSA 1978 (being Laws 1978,  
16 Chapter 35, Section 230, as amended) is amended to read:

17 "66-5-8. PROVISIONAL LICENSES--INSTRUCTION PERMITS--  
18 DRIVER EDUCATION STUDENTS--TEMPORARY LICENSES.--

19 A. A person fifteen years and six months of age or  
20 older ~~[who]~~ may apply to the division for a provisional license  
21 if the person:

22 (1) has completed a driver education course  
23 approved by the bureau that includes a DWI prevention and  
24 education [program approved by the bureau or offered by a  
25 public school, who] component;

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1                   (2) has had an instruction permit for at least  
2 six months [~~and who~~]; provided that thirty days shall be added  
3 to the six months for each traffic violation committed during  
4 the time the person was driving with an instruction permit;

5                   (3) has not been cited for a traffic violation  
6 that is pending at the time of application; and

7                   (4) has successfully completed a practice  
8 driving component [~~may apply to the division for a provisional~~  
9 ~~license~~].

10                  B. Successful completion of a practice driving  
11 component shall include not less than fifty hours of actual  
12 driving by the applicant, including not less than ten hours of  
13 night driving. An applicant for a provisional license who  
14 cannot drive at night due to low nighttime vision may be  
15 exempted from the night driving requirement of this subsection;  
16 provided that the applicant submits to the division an  
17 ophthalmologic or optometric report from a licensed  
18 ophthalmologist or optometrist who attests to the applicant's  
19 visual condition and its effect on the applicant's driving  
20 ability. The applicant's parent or guardian shall certify that  
21 the applicant has completed the practice driving component.

22                  [~~B-~~] C. When operating a motor vehicle, a  
23 provisional licensee may be accompanied by not more than one  
24 passenger under the age of twenty-one who is not a member of  
25 the licensee's immediate family. A provisional license

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1 entitles the licensee, while having the license in [~~his~~] the  
2 licensee's immediate possession, to operate a motor vehicle  
3 upon the public highways between the hours of 5:00 a.m. and  
4 midnight unless the provisional licensee is eligible for a  
5 license restricting driving to daylight hours. A provisional  
6 licensee may drive at any hour unless otherwise restricted as  
7 provided in this subsection if:

8 (1) accompanied by a licensed driver who is  
9 twenty-one years of age or older;

10 (2) required by family necessity as evidenced  
11 by a signed statement of a parent or guardian;

12 (3) required by medical necessity as evidenced  
13 by a signed statement from medical personnel;

14 (4) driving to and from work as evidenced by a  
15 signed statement from the licensee's employer;

16 (5) driving to and from school or a religious  
17 activity as evidenced by a signed statement of a school or  
18 religious official or a parent or guardian; or

19 (6) required due to a medical emergency.

20 [~~G. A provisional license shall not be issued to a~~  
21 ~~person convicted of a traffic violation in the ninety days~~  
22 ~~prior to applying for a provisional license.~~]

23 D. A provisional license shall be in such form as  
24 to be readily distinguishable from an unrestricted driver's  
25 license and shall contain an indication that the licensee may

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1 drive without supervision.

2           ~~[D-]~~ E. A person fifteen years of age or older who  
3 is enrolled in and attending or has completed a driver  
4 education course approved by the bureau that includes a DWI  
5 prevention and education ~~[program approved by the bureau or~~  
6 ~~offered by a public school]~~ component may apply to the division  
7 for an instruction permit. The division, in its discretion  
8 after the applicant has successfully passed all parts of the  
9 examination other than the driving test, may issue to the  
10 applicant an instruction permit. This permit entitles the  
11 applicant, while having the permit in ~~[his]~~ the applicant's  
12 immediate possession, to drive a motor vehicle upon the public  
13 highways ~~[for a period of six months]~~ when accompanied by a  
14 licensed driver who is twenty-one years of age or older, who  
15 has been licensed for at least three years in this state or in  
16 another state and who is occupying a seat beside the driver  
17 except in the event the permittee is operating a motorcycle.

18           ~~[E-]~~ F. A person fifteen years of age or older who  
19 is a student enrolled in and attending a driver education  
20 course that is approved by the bureau ~~[or offered by a public~~  
21 ~~school]~~ and that includes both a DWI education and prevention  
22 component and practice driving component may drive a motor  
23 vehicle on the highways of this state even though ~~[he]~~ the  
24 person has not reached the legal age to be eligible for a  
25 driver's license or a provisional license. In completing the

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1 practice driving component, a person may only operate a motor  
2 vehicle on a public highway if:

3 (1) an approved instructor is occupying a seat  
4 beside the person; or

5 (2) a licensed driver who is twenty-one years  
6 of age or older and who has been licensed for at least three  
7 years in this state or another state is occupying a seat beside  
8 the person.

9 [~~F.~~] G. The division in its discretion may issue a  
10 temporary driver's permit to an applicant for a driver's  
11 license permitting [~~him~~] the applicant to operate a motor  
12 vehicle while the division is completing its investigation and  
13 determination of all facts relative to the applicant's right to  
14 receive a driver's license. The permit shall be in [~~his~~] the  
15 applicant's immediate possession while operating a motor  
16 vehicle, and it shall be invalid when the applicant's license  
17 has been issued or for good cause has been refused.

18 [~~G.~~] H. A holder of an instruction permit for a  
19 motorcycle shall not carry any other passenger while operating  
20 a motorcycle."

21 SECTION 4. Section 66-5-9 NMSA 1978 (being Laws 1978,  
22 Chapter 35, Section 231, as amended) is amended to read:

23 "66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE,  
24 PROVISIONAL LICENSE OR INSTRUCTION PERMIT.--

25 A. An application for an instruction permit,

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1 provisional license or driver's license shall be made upon a  
2 form furnished by the department. An application shall be  
3 accompanied by the proper fee. For permits, provisional  
4 licenses or driver's licenses other than those issued pursuant  
5 to the New Mexico Commercial Driver's License Act, submission  
6 of a complete application with payment of the fee entitles the  
7 applicant to not more than three attempts to pass the  
8 examination within a period of six months from the date of  
9 application.

10 B. An application shall contain the full name,  
11 social security number or individual tax identification number,  
12 date of birth, sex and New Mexico residence address of the  
13 applicant and briefly describe the applicant and indicate  
14 whether the applicant has previously been licensed as a driver  
15 and, if so, when and by what state or country and whether any  
16 such license has ever been suspended or revoked or whether an  
17 application has ever been refused and, if so, the date of and  
18 reason for the suspension, revocation or refusal. For foreign  
19 nationals applying for driver's licenses, the secretary shall  
20 accept the individual taxpayer identification number as a  
21 substitute for a social security number regardless of  
22 immigration status. The secretary is authorized to establish  
23 by regulation other documents that may be accepted as a  
24 substitute for a social security number or an individual tax  
25 identification number.

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1           C. An applicant shall indicate whether [~~he~~] the  
2 applicant has been convicted of driving while under the  
3 influence of intoxicating liquor or drugs in this state or in  
4 any other jurisdiction. Failure to disclose any such  
5 conviction prevents the issuance of a driver's license,  
6 provisional license, temporary license or instruction permit  
7 for a period of one year if the failure to disclose is  
8 discovered by the department prior to issuance. If the  
9 nondisclosure is discovered by the department subsequent to  
10 issuance, the department shall revoke the driver's license,  
11 provisional license, temporary license or instruction permit  
12 for a period of one year. Intentional and willful failure to  
13 disclose, as required in this subsection, is a misdemeanor.

14           D. An applicant [~~less than~~] under eighteen years of  
15 age who is making an application [~~to be granted his~~] for a  
16 first New Mexico driver's license shall submit evidence that  
17 [~~he~~] the applicant has:

18                   (1) successfully completed a driver education  
19 course approved by the bureau that included a DWI prevention  
20 and education [~~program approved by the bureau or offered by a~~  
21 ~~public school~~] component. The bureau may accept verification  
22 of driver education course completion from another state if the  
23 driver education course substantially meets the requirements of  
24 the bureau for a course offered in New Mexico;

25                   (2) had a provisional license for [~~the twelve~~

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1 ~~month]~~ at least the eighteen-month period immediately preceding  
2 the date of the application for the driver's license; provided  
3 that thirty days shall be added to the eighteen-month period  
4 for each traffic violation committed during the time the person  
5 was driving with a provisional license;

6 (3) complied with restrictions on that  
7 license;

8 [~~(4) not been convicted of a traffic violation~~  
9 ~~committed during the ninety days prior to applying for a~~  
10 ~~driver's license;~~

11 ~~(5)]~~ (4) not been cited for a traffic  
12 violation that is pending at the time of [his] application; and

13 [~~(6)]~~ (5) not been adjudicated for an offense  
14 involving the use of alcohol or drugs during the [~~twelve-month]~~  
15 eighteen-month period immediately preceding the date of the  
16 application for the driver's license and that there are no  
17 pending adjudications alleging an offense involving the use of  
18 alcohol or drugs at the time of [his] application.

19 E. An applicant eighteen years of age [~~and~~] or  
20 over, but [~~less than~~] under twenty-five years of age, who is  
21 making an application to be granted [his] a first New Mexico  
22 driver's license shall submit evidence with [his] the  
23 application that [~~he~~] the applicant has successfully completed  
24 a bureau-approved DWI prevention and education program.

25 F. An applicant twenty-five years of age [~~and~~] or

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1 over who has been convicted of driving under the influence of  
2 intoxicating liquor or drugs and who is making an application  
3 to be granted [~~his~~] a first New Mexico driver's license, shall  
4 submit evidence with [~~his~~] the application that [~~he~~] the  
5 applicant has successfully completed a bureau-approved DWI  
6 prevention and education program.

7 G. Whenever an application is received from a  
8 person previously licensed in another jurisdiction, the  
9 department may request a copy of the driver's record from the  
10 other jurisdiction. When received, the driver's record may  
11 become a part of the driver's record in this state with the  
12 same effect as though entered on the driver's record in this  
13 state in the original instance.

14 H. Whenever the department receives a request for a  
15 driver's record from another licensing jurisdiction, the record  
16 shall be forwarded without charge.

17 I. This section does not apply to driver's licenses  
18 issued pursuant to the New Mexico Commercial Driver's License  
19 Act."