

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 9

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

AN ACT

RELATING TO YOUTH DRIVING; MODIFYING REQUIREMENTS FOR LICENSING
DRIVERS UNDER EIGHTEEN YEARS OF AGE; 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, THE USE OF MOBILE PHONES AND BUYING,
POSSESSING OR BEING SERVED ALCOHOLIC BEVERAGES 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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underscored material = new
[bracketed material] = delete

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]~~

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; or

15 O. buying, attempting to buy, receiving, possessing
16 or permitting oneself to be served alcoholic beverages, as
17 provided in Subsection C of Section 60-7B-1 NMSA 1978."

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

22 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
23 not issue a driver's license under the Motor Vehicle Code to
24 any person:

25 A. who is under the age of eighteen years, except

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1 the division may, in its discretion, issue:

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

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

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

14 (b) who has successfully completed a
15 practice driving component;

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

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

22 (b) who has complied with restrictions
23 on that license;

24 ~~[(c) who has not been convicted of a~~
25 ~~traffic violation that was committed during the ninety days~~

1 ~~prior to applying for a driver's license;~~ and

2 ~~[(d)]~~ (c) who has not been adjudicated
3 for an offense involving the use of alcohol or drugs during
4 ~~[that period]~~ the twelve-month period immediately preceding the
5 application for the driver's license and who has no pending
6 adjudications alleging an offense involving the use of alcohol
7 or drugs at the time of application; and

8 (4) to ~~[any]~~ a person thirteen years of age or
9 older who passes an examination prescribed by the division, a
10 license restricted to the operation of a motorcycle, provided:

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

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

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

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

25 C. who is an habitual user of narcotic drugs or

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1 alcohol or an habitual user of any drug to a degree that
2 renders the person incapable of safely driving a motor vehicle;

3 D. who is four or more times convicted of driving a
4 motor vehicle while under the influence of intoxicating liquor
5 or narcotic drug regardless of whether the convictions are
6 under the laws or ordinances of this state or any municipality
7 or county of this state or under the laws or ordinances of any
8 other state, the District of Columbia or any governmental
9 subdivision thereof, except as provided in the Ignition
10 Interlock Licensing Act. Five years from the date of the
11 fourth conviction and every five years thereafter, the person
12 may apply to any district court of this state for restoration
13 of the license, and the court, upon good cause being shown, may
14 order restoration of the license applied for; provided that the
15 person has not been subsequently convicted of driving a motor
16 vehicle while under the influence of intoxicating liquor or
17 drugs. Upon issuance of the order of restoration, a certified
18 copy shall immediately be forwarded to the division, and if the
19 person is otherwise qualified for the license applied for, the
20 four previous convictions shall not prohibit issuance of the
21 license;

22 E. who was convicted on or after June 17, 2005 of
23 driving a motor vehicle while under the influence of
24 intoxicating liquor or drugs pursuant to the laws or ordinances
25 of any other state, the District of Columbia or any

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

24 F. who has previously been afflicted with or who is
25 suffering from any mental disability or disease that would

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1 render the person unable to drive a motor vehicle with safety
2 upon the highways and who has not, at the time of application,
3 been restored to health;

4 G. who is required by the Motor Vehicle Code to
5 take an examination, unless the person has successfully passed
6 the examination;

7 H. who is required under the laws of this state to
8 deposit proof of financial responsibility and who has not
9 deposited the proof;

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

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

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

20 "66-5-8. PROVISIONAL LICENSES--INSTRUCTION PERMITS--
21 DRIVER EDUCATION STUDENTS--TEMPORARY LICENSES.--

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

25 (1) has completed a driver education course

1 approved by the bureau that includes a DWI prevention and
2 education [program approved by the bureau or offered by a
3 public school, who] component;

4 (2) has had an instruction permit for at least
5 six months [and who]; provided that thirty days shall be added
6 to the six months for each adjudication or conviction of a
7 traffic violation committed during the time the person was
8 driving with an instruction permit;

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

11 (4) has successfully completed a practice
12 driving component [may apply to the division for a provisional
13 license].

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

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1 ~~[B-]~~ C. When operating a motor vehicle, a
2 provisional licensee may be accompanied by not more than one
3 passenger under the age of twenty-one who is not a member of
4 the licensee's immediate family. A provisional license
5 entitles the licensee, while having the license in ~~[his]~~ the
6 licensee's immediate possession, to operate a motor vehicle
7 upon the public highways between the hours of 5:00 a.m. and
8 midnight unless the provisional licensee is eligible for a
9 license restricting driving to daylight hours. A provisional
10 licensee may drive at any hour unless otherwise restricted as
11 provided in this subsection if:

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

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

16 (3) required by medical necessity as evidenced
17 by a signed statement from medical personnel;

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

20 (5) driving to and from school or a religious
21 activity as evidenced by a signed statement of a school or
22 religious official or a parent or guardian; or

23 (6) required due to a medical emergency.

24 ~~[G. A provisional license shall not be issued to a~~
25 ~~person convicted of a traffic violation in the ninety days~~

1 ~~prior to applying for a provisional license.]~~

2 D. A provisional license shall be in such form as
3 to be readily distinguishable from an unrestricted driver's
4 license and shall contain an indication that the licensee may
5 drive without supervision.

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

22 ~~[E.]~~ F. A person fifteen years of age or older who
23 is a student enrolled in and attending a driver education
24 course that is approved by the bureau ~~[or offered by a public~~
25 ~~school]~~ and that includes both a DWI education and prevention

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1 component and practice driving component may drive a motor
2 vehicle on the highways of this state even though [~~he~~] the
3 person has not reached the legal age to be eligible for a
4 driver's license or a provisional license. In completing the
5 practice driving component, a person may only operate a motor
6 vehicle on a public highway if:

7 (1) an approved instructor is occupying a seat
8 beside the person; or

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

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

22 [~~G-~~] H. A holder of an instruction permit for a
23 motorcycle shall not carry any other passenger while operating
24 a motorcycle."

25 SECTION 4. Section 66-5-9 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 231, as amended) is amended to read:

2 "66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE,
3 PROVISIONAL LICENSE OR INSTRUCTION PERMIT.--

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

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

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1 immigration status. The secretary is authorized to establish
2 by regulation other documents that may be accepted as a
3 substitute for a social security number or an individual tax
4 identification number.

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

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

22 (1) successfully completed a driver education
23 course approved by the bureau that included a DWI prevention
24 and education ~~[program approved by the bureau or offered by a~~
25 ~~public school]~~ component. The bureau may accept verification

1 of driver education course completion from another state if the
2 driver education course substantially meets the requirements of
3 the bureau for a course offered in New Mexico;

4 (2) had a provisional license for at least the
5 twelve-month period immediately preceding the date of the
6 application for the driver's license; provided that thirty days
7 shall be added to the twelve-month period for each adjudication
8 or conviction of a traffic violation committed during the time
9 the person was driving with a provisional license;

10 (3) complied with restrictions on that
11 license;

12 [~~(4)~~] ~~not been convicted of a traffic violation~~
13 ~~committed during the ninety days prior to applying for a~~
14 ~~driver's license;~~

15 ~~(5)]~~ (4) not been cited for a traffic
16 violation that is pending at the time of [~~his~~] application; and

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

23 E. An applicant eighteen years of age [~~and~~] or
24 over, but [~~less than~~] under twenty-five years of age, who is
25 making an application to be granted [~~his~~] a first New Mexico

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1 driver's license shall submit evidence with [~~his~~] the
2 application that [~~he~~] the applicant has successfully completed
3 a bureau-approved DWI prevention and education program.

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

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

18 H. Whenever the department receives a request for a
19 driver's record from another licensing jurisdiction, the record
20 shall be forwarded without charge.

21 I. This section does not apply to driver's licenses
22 issued pursuant to the New Mexico Commercial Driver's License
23 Act."