

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 94

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO STATE PARKS; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978 TO PROVIDE FOR PENALTIES UNDER THE BOAT ACT;
PROVIDING FOR PENALTY ASSESSMENT MISDEMEANORS IN STATE PARKS.

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

SECTION 1. A new section of Chapter 16, Article 2 NMSA
1978 is enacted to read:

"NEW MATERIAL] STATE PARKS DIVISION PENALTY ASSESSMENT
MISDEMEANORS--DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in Chapter 16, Article 2 NMSA 1978,
"penalty assessment misdemeanor" means a violation of any rule
of the state parks division of the energy, minerals and natural
resources department promulgated pursuant to Chapter 16,
Article 2 NMSA 1978.

B. The term "penalty assessment misdemeanor" does
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underscored material = new
[bracketed material] = delete

1 not include a violation that has caused or contributed to the
2 cause of an accident resulting in injury or death to a person
3 or disappearance of a person, nor does it include a violation
4 of Section 16-2-32 NMSA 1978.

5 C. Whenever a person is arrested for violation of a
6 penalty assessment misdemeanor, the arresting officer shall
7 advise the person of the option either to accept the penalty
8 assessment and pay it to the court or to appear in court. The
9 arresting officer, using a uniform non-traffic citation, shall
10 complete the information section, prepare the penalty
11 assessment and prepare a notice to appear in court specifying
12 the time and place to appear. The arresting officer shall have
13 the person sign the citation as a promise either to pay the
14 penalty assessment as prescribed or to appear in court as
15 specified, give a copy of the citation to the person and
16 release the person from custody. An officer shall not accept
17 custody of payment of any penalty assessment.

18 D. The arresting officer may issue a warning
19 notice, but shall fill in the information section of the
20 citation and give a copy to the arrested person after requiring
21 a signature on the warning notice as an acknowledgment of
22 receipt. No warning notice issued under this section shall be
23 used as evidence of conviction for purposes of Subsection L of
24 this section.

25 E. In order to secure release, the arrested person

1 must give a written promise to appear in court or to pay the
2 penalty assessment prescribed or to acknowledge receipt of a
3 warning notice.

4 F. The magistrate court or metropolitan court in
5 the county where the alleged violation occurred has
6 jurisdiction for any case arising from a penalty assessment
7 misdemeanor issued for violation of a rule of the state parks
8 division promulgated pursuant to Chapter 16, Article 2 NMSA
9 1978.

10 G. A penalty assessment citation issued by a law
11 enforcement officer shall be submitted to the appropriate
12 magistrate or metropolitan court within three business days of
13 issuance. If the citation is not submitted within three
14 business days, it may be dismissed with prejudice.

15 H. It is a misdemeanor for any person to violate a
16 written promise to pay the penalty assessment or to appear in
17 court given to an officer upon issuance of a citation
18 regardless of the disposition of the charge for which the
19 citation was issued.

20 I. A citation with a written promise to appear in
21 court or to pay the penalty assessment is a summons. If a
22 person fails to appear or to pay the penalty assessment by the
23 appearance date, a warrant for failure to appear may be issued.

24 J. A written promise to appear in court may be
25 complied with by appearance of counsel.

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1 K. When an alleged violator of a penalty assessment
2 misdemeanor elects to appear in court rather than to pay the
3 penalty assessment to the court, no fine imposed upon later
4 conviction shall exceed the penalty assessment established for
5 the particular penalty assessment misdemeanor.

6 L. The penalty assessment for a first violation of
7 any rule of the state parks division promulgated to Chapter 16,
8 Article 2 NMSA 1978 is thirty dollars (\$30.00). This penalty
9 assessment is in addition to any magistrate or metropolitan
10 court costs as provided in Subsection B of Section 35-6-4 NMSA
11 1978. Upon a second conviction or acceptance of a notice of
12 penalty assessment for violation of any rule of the state parks
13 division promulgated pursuant to Chapter 16, Article 2 NMSA
14 1978, the penalty assessment shall be fifty dollars (\$50.00).
15 Upon a third or subsequent conviction or acceptance of a notice
16 of penalty assessment, the penalty assessment shall be one
17 hundred fifty dollars (\$150)."

18 **SECTION 2.** Section 16-2-32 NMSA 1978 (being Laws 1935,
19 Chapter 57, Section 19, as amended) is amended to read:

20 "16-2-32. CRIMINAL OFFENSES--PENALTY.--A person who
21 commits any of the following acts is guilty of a petty
22 misdemeanor and shall be sentenced in accordance with the
23 provisions of Section 31-19-1 NMSA 1978:

24 A. cut, break, injure, destroy, take or remove a
25 tree, shrub, timber, plant or natural object in any state park

1 and recreation area, except in areas designated by the
2 secretary and permitted by [~~regulations~~] rules adopted by the
3 secretary. Such [~~regulations~~] rules shall only permit the
4 removal of a tree, shrub, timber, plant or natural object for
5 scientific study or for noncommercial use by an individual as a
6 souvenir. The quantity of material authorized for removal from
7 any area shall be strictly regulated by park personnel in order
8 to minimize resource damage;

9 B. kill, cause to be killed or pursue with intent
10 to kill a bird or animal in a state park and recreation area,
11 except in areas designated by the secretary and except in
12 conformity with the provisions of general law and the
13 [~~regulations~~] rules of the state game commission;

14 C. take a fish from the waters of a state park and
15 recreation area, except in conformity with the provisions of
16 general law and the [~~regulations~~] rules of the state game
17 commission;

18 D. willfully mutilate, injure, deface or destroy
19 any guidepost, notice, tablet, fence, enclosure or work that is
20 for the protection or ornamentation of a state park and
21 recreation area;

22 E. light a fire in a state park and recreation
23 area, except in those places authorized for fires by the
24 secretary, or willfully or carelessly permit any fire [~~which~~]
25 that is authorized and that [~~he~~] the person has lighted or

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1 caused to be lighted or under [~~his~~] the person's charge to
2 spread or extend to or burn the shrubbery, trees, timber,
3 ornaments or improvements in a state park and recreation area
4 or leave a campfire that [~~he~~] the person has lighted or that
5 has been left in [~~his~~] the person's charge unattended by a
6 competent person without extinguishing it;

7 F. place in a state park and recreation area or affix
8 to an object in a state park and recreation area a word,
9 character or device designed to advertise a business,
10 profession, article, thing, exhibition, matter or event without
11 a written license from the secretary permitting [~~him~~] the
12 person to do it; or

13 G. violate a rule [~~or regulation~~] adopted by the
14 secretary pursuant to the provisions of Chapter 16, Article 2
15 NMSA 1978 when the violation has caused or contributed to the
16 cause of an accident resulting in injury or death to a person
17 or disappearance of a person."

18 SECTION 3. Section 66-12-23 NMSA 1978 (being Laws 1963,
19 Chapter 45, Section 9, as amended) is amended to read:

20 "66-12-23. PENALTIES.--

21 A. Except for penalty provisions provided in
22 Subsections B through M of this section, a person who violates
23 a provision of the Boat Act or a [~~regulation~~] rule of the state
24 parks division of the energy, minerals and natural resources
25 department promulgated pursuant to that act is guilty of a

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1 petty misdemeanor and shall be sentenced pursuant to the
2 provisions of Section 31-19-1 NMSA 1978.

3 B. As used in Chapter 66, Article 12 NMSA 1978,
4 "penalty assessment misdemeanor" means a violation of Section
5 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or a rule of
6 the division promulgated pursuant to those sections.

7 C. The term "penalty assessment misdemeanor" does not
8 include a violation that has caused or contributed to the cause
9 of an accident resulting in injury or death to a person or
10 disappearance of a person.

11 D. Whenever a person is arrested for violation of a
12 penalty assessment misdemeanor, the arresting officer shall
13 advise the person of the option either to accept the penalty
14 assessment and pay it to the court or to appear in court. The
15 arresting officer, using a uniform non-traffic citation, shall
16 complete the information section, prepare the penalty
17 assessment and prepare a notice to appear in court specifying
18 the time and place to appear. The arresting officer shall have
19 the person sign the citation as a promise either to pay the
20 penalty assessment as prescribed or to appear in court as
21 specified, give a copy of the citation to the person and
22 release the person from custody. An officer shall not accept
23 custody of payment of any penalty assessment.

24 E. The arresting officer may issue a warning notice,
25 but shall fill in the information section of the citation and

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1 give a copy to the arrested person after requiring a signature
2 on the warning notice as an acknowledgment of receipt. No
3 warning notice issued under this section shall be used as
4 evidence of conviction for purposes of Subsection M of this
5 section.

6 F. In order to secure release, the arrested person
7 must give a written promise to appear in court or to pay the
8 penalty assessment prescribed or to acknowledge receipt of a
9 warning notice.

10 G. The magistrate court or metropolitan court in the
11 county where the alleged violation occurred has jurisdiction
12 for any case arising from a penalty assessment misdemeanor
13 issued for violation of Section 66-12-7, 66-12-7.1, 66-12-10 or
14 66-12-14 NMSA 1978 or a rule of the division promulgated
15 pursuant to those sections.

16 H. A penalty assessment citation issued by a law
17 enforcement officer shall be submitted to the appropriate
18 magistrate or metropolitan court within three business days of
19 issuance. If the citation is not submitted within three
20 business days, it may be dismissed with prejudice.

21 I. It is a misdemeanor for any person to violate a
22 written promise to pay the penalty assessment or to appear in
23 court given to an officer upon issuance of a citation
24 regardless of the disposition of the charge for which the
25 citation was issued.

1 J. A citation with a written promise to appear in
2 court or to pay the penalty assessment is a summons. If a
3 person fails to appear or to pay the penalty assessment by the
4 appearance date, a warrant for failure to appear may be issued.

5 K. A written promise to appear in court may be
6 complied with by appearance of counsel.

7 L. When an alleged violator of a penalty assessment
8 misdemeanor elects to appear in court rather than to pay the
9 penalty assessment to the court, no fine imposed upon later
10 conviction shall exceed the penalty assessment established for
11 the particular penalty assessment misdemeanor.

12 M. The penalty assessment for a first violation of
13 Section 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or
14 any rule of the division promulgated pursuant to those sections
15 is thirty dollars (\$30.00). This penalty assessment is in
16 addition to any magistrate or metropolitan court costs as
17 provided in Subsection B of Section 35-6-4 NMSA 1978. Upon a
18 second conviction or acceptance of a notice of penalty
19 assessment for violation of Section 66-12-7, 66-12-7.1,
20 66-12-10 or 66-12-14 NMSA 1978 or any rule of the division
21 promulgated pursuant to those sections, the penalty assessment
22 shall be fifty dollars (\$50.00). Upon a third or subsequent
23 conviction or acceptance of a notice of penalty assessment, the
24 penalty assessment shall be one hundred fifty dollars (\$150)."