

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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:

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

C. Whenever a person is arrested for violation of  
a penalty assessment misdemeanor, the arresting officer shall  
advise the person of the option either to accept the penalty  
assessment and pay it to the court or to appear in court.

The arresting officer, using a uniform non-traffic citation,

1 shall complete the information section, prepare the penalty  
2 assessment and prepare a notice to appear in court specifying  
3 the time and place to appear. The arresting officer shall  
4 have the person sign the citation as a promise either to pay  
5 the penalty assessment as prescribed or to appear in court as  
6 specified, give a copy of the citation to the person and  
7 release the person from custody. An officer shall not accept  
8 custody of payment of any penalty assessment.

9 D. The arresting officer may issue a warning  
10 notice, but shall fill in the information section of the  
11 citation and give a copy to the arrested person after  
12 requiring a signature on the warning notice as an  
13 acknowledgment of receipt. No warning notice issued under  
14 this section shall be used as evidence of conviction for  
15 purposes of Subsection L of this section.

16 E. In order to secure release, the arrested person  
17 must give a written promise to appear in court or to pay the  
18 penalty assessment prescribed or to acknowledge receipt of a  
19 warning notice.

20 F. The magistrate court or metropolitan court in  
21 the county where the alleged violation occurred has  
22 jurisdiction for any case arising from a penalty assessment  
23 misdemeanor issued for violation of a rule of the state parks  
24 division promulgated pursuant to Chapter 16, Article 2  
25 NMSA 1978.

1           G. A penalty assessment citation issued by a law  
2 enforcement officer shall be submitted to the appropriate  
3 magistrate or metropolitan court within three business days  
4 of issuance. If the citation is not submitted within three  
5 business days, it may be dismissed with prejudice.

6           H. It is a misdemeanor for any person to violate a  
7 written promise to pay the penalty assessment or to appear in  
8 court given to an officer upon issuance of a citation  
9 regardless of the disposition of the charge for which the  
10 citation was issued.

11           I. A citation with a written promise to appear in  
12 court or to pay the penalty assessment is a summons. If a  
13 person fails to appear or to pay the penalty assessment by  
14 the appearance date, a warrant for failure to appear may be  
15 issued.

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

18           K. When an alleged violator of a penalty  
19 assessment misdemeanor elects to appear in court rather than  
20 to pay the penalty assessment to the court, no fine imposed  
21 upon later conviction shall exceed the penalty assessment  
22 established for the particular penalty assessment  
23 misdemeanor.

24           L. The penalty assessment for a first violation of  
25 any rule of the state parks division promulgated to

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

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

14 "16-2-32. CRIMINAL OFFENSES--PENALTY.--A person who  
15 commits any of the following acts is guilty of a petty  
16 misdemeanor and shall be sentenced in accordance with the  
17 provisions of Section 31-19-1 NMSA 1978:

18 A. cut, break, injure, destroy, take or remove a  
19 tree, shrub, timber, plant or natural object in any state  
20 park and recreation area, except in areas designated by the  
21 secretary and permitted by rules adopted by the secretary.  
22 Such rules shall only permit the removal of a tree, shrub,  
23 timber, plant or natural object for scientific study or for  
24 noncommercial use by an individual as a souvenir. The  
25 quantity of material authorized for removal from any area

1 shall be strictly regulated by park personnel in order to  
2 minimize resource damage;

3 B. kill, cause to be killed or pursue with intent  
4 to kill a bird or animal in a state park and recreation area,  
5 except in areas designated by the secretary and except in  
6 conformity with the provisions of general law and the rules  
7 of the state game commission;

8 C. take a fish from the waters of a state park and  
9 recreation area, except in conformity with the provisions of  
10 general law and the rules of the state game commission;

11 D. willfully mutilate, injure, deface or destroy  
12 any guidepost, notice, tablet, fence, enclosure or work that  
13 is for the protection or ornamentation of a state park and  
14 recreation area;

15 E. light a fire in a state park and recreation  
16 area, except in those places authorized for fires by the  
17 secretary, or willfully or carelessly permit any fire that is  
18 authorized and that the person has lighted or caused to be  
19 lighted or under the person's charge to spread or extend to  
20 or burn the shrubbery, trees, timber, ornaments or  
21 improvements in a state park and recreation area or leave a  
22 campfire that the person has lighted or that has been left in  
23 the person's charge unattended by a competent person without  
24 extinguishing it;

25 F. place in a state park and recreation area or

1 affix to an object in a state park and recreation area a  
2 word, character or device designed to advertise a business,  
3 profession, article, thing, exhibition, matter or event  
4 without a written license from the secretary permitting the  
5 person to do it; or

6 G. violate a rule adopted by the secretary  
7 pursuant to the provisions of Chapter 16, Article 2 NMSA 1978  
8 when the violation has caused or contributed to the cause of  
9 an accident resulting in injury or death to a person or  
10 disappearance of a person."

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

13 "66-12-23. PENALTIES.--

14 A. Except for penalty provisions provided in  
15 Subsections B through M of this section, a person who  
16 violates a provision of the Boat Act or a rule of the state  
17 parks division of the energy, minerals and natural resources  
18 department promulgated pursuant to that act is guilty of a  
19 petty misdemeanor and shall be sentenced pursuant to the  
20 provisions of Section 31-19-1 NMSA 1978.

21 B. As used in Chapter 66, Article 12 NMSA 1978,  
22 "penalty assessment misdemeanor" means a violation of Section  
23 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or a rule  
24 of the division promulgated pursuant to those sections.

25 C. The term "penalty assessment misdemeanor" does

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.

4 D. Whenever a person is arrested for violation of  
5 a penalty assessment misdemeanor, the arresting officer shall  
6 advise the person of the option either to accept the penalty  
7 assessment and pay it to the court or to appear in court.

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

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

24 F. In order to secure release, the arrested person  
25 must give a written promise to appear in court or to pay the

1 penalty assessment prescribed or to acknowledge receipt of a  
2 warning notice.

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

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

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

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

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



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

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

---