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AN ACT

RELATING TO COMMERCIAL DRIVER'S LICENSES; PROHIBITING THE USE OF A HANDHELD MOBILE COMMUNICATION DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE; DEFINING TEXTING WHILE DRIVING AND USE OF A HANDHELD MOBILE COMMUNICATION DEVICE AS SERIOUS TRAFFIC VIOLATIONS; DISQUALIFYING A PERSON FROM DRIVING A COMMERCIAL MOTOR VEHICLE FOR LIFE IF CONVICTED OF USING ANY MOTOR VEHICLE IN THE COMMISSION OF CERTAIN FELONIES; ADDING A PENALTY ASSESSMENT MISDEMEANOR.

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

SECTION 1. A new section of the Motor Vehicle Code is enacted to read:

"USE OF A HANDHELD MOBILE COMMUNICATION DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE.--

A. A person shall not use a handheld mobile communication device for any purpose while driving a commercial motor vehicle except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the federal communications commission. This prohibition is a separate prohibition from the prohibition on texting while driving pursuant to Section 66-7-374 NMSA 1978.

B. The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a

1 handheld mobile communication device. Unless otherwise
2 provided by law, the handheld mobile communication device
3 used in the violation of the provisions of this section is
4 not subject to search by a law enforcement officer during a
5 traffic stop made pursuant to the provisions of this section.

6 C. As used in this section:

7 (1) "commercial motor vehicle" means a motor
8 vehicle or combination of motor vehicles used in commerce to
9 transport passengers or property if the motor vehicle:

10 (a) has a gross combination weight
11 rating of more than twenty-six thousand pounds inclusive of a
12 towed unit with a gross vehicle weight rating of more than
13 ten thousand pounds;

14 (b) has a gross vehicle weight rating
15 of more than twenty-six thousand pounds;

16 (c) is designed to transport sixteen or
17 more passengers, including the driver; or

18 (d) is of any size and is used in the
19 transportation of hazardous materials as provided in 49 CFR
20 Part 383.5;

21 (2) "driving" means being in actual physical
22 control of a commercial motor vehicle on a highway or street
23 and includes being temporarily stopped because of traffic, a
24 traffic light or stop sign or otherwise; but "driving"
25 excludes a commercial motor vehicle when the vehicle has

1 pulled over to the side of or off of an active roadway and
2 has stopped at a location in which it can safely remain
3 stationary;

4 (3) "handheld mobile communication device"
5 means a wireless communication device that is designed to
6 receive and transmit text, voice or image messages; provided,
7 however, that "handheld mobile communication device" excludes
8 global positioning or navigation systems; citizen band radios
9 with a handheld microphone operated by a single button or
10 lever; devices that are physically or electronically
11 integrated into a commercial motor vehicle; and
12 voice-operated or hands-free devices that allow the user to
13 compose, send or read a text message or talk without the use
14 of a hand, except to activate, deactivate or initiate a
15 feature or function; and

16 (4) "text message" means a digital
17 communication transmitted or intended to be transmitted
18 between communication devices and includes electronic mail,
19 an instant message, a text or image communication and a
20 command or request to an internet site; but "text message"
21 excludes communications through the use of a computer-aided
22 dispatch service by law enforcement or rescue personnel."

23 SECTION 2. Section 66-5-54 NMSA 1978 (being Laws 1989,
24 Chapter 14, Section 3, as amended) is amended to read:

25 "66-5-54. DEFINITIONS.--As used in the New Mexico

1 Commercial Driver's License Act:

2 A. "commerce" means:

3 (1) trade, traffic or transportation within
4 the jurisdiction of the United States between a place in New
5 Mexico and a place outside of New Mexico, including a place
6 outside of the United States; and

7 (2) trade, traffic or transportation in the
8 United States that affects any trade, traffic or
9 transportation described in Paragraph (1) of this subsection;

10 B. "commercial driver's license holder" means an
11 individual to whom a license has been issued by a state or
12 other jurisdiction, in accordance with the standards found in
13 49 CFR Part 383, as amended or renumbered, that authorizes
14 the individual to operate a commercial motor vehicle;

15 C. "commercial driver's license information
16 system" means the information system created pursuant to the
17 federal Commercial Motor Vehicle Safety Act of 1986 that
18 contains information pertaining to operators of commercial
19 motor vehicles;

20 D. "commercial motor vehicle" means a motor
21 vehicle or combination of motor vehicles used in commerce to
22 transport passengers or property if the motor vehicle:

23 (1) has a gross combination weight rating of
24 more than twenty-six thousand pounds inclusive of a towed
25 unit with a gross vehicle weight rating of more than ten

1 thousand pounds;

2 (2) has a gross vehicle weight rating of
3 more than twenty-six thousand pounds;

4 (3) is designed to transport sixteen or more
5 passengers, including the driver; or

6 (4) is of any size and is used in the
7 transportation of hazardous materials, as provided in 49 CFR
8 Part 383.5;

9 E. "conviction" means:

10 (1) an unvacated adjudication of guilt or a
11 determination that a person has violated or failed to comply
12 with the law by:

13 (a) a court of original jurisdiction;
14 or

15 (b) an authorized administrative
16 tribunal;

17 (2) an unvacated forfeiture of bail or
18 collateral deposited to secure a person's appearance in
19 court;

20 (3) a plea of guilty or nolo contendere
21 accepted by the court;

22 (4) the payment of a fine or court cost;

23 (5) a violation of a condition of release
24 without bail, regardless of whether the payment is rebated,
25 suspended or probated;

1 (6) an assignment to a diversion program or
2 a driver improvement school; or

3 (7) a conditional discharge as provided in
4 Section 31-20-13 NMSA 1978;

5 F. "director" means the director of the motor
6 vehicle division of the department;

7 G. "disqualification" means:

8 (1) a suspension, revocation or cancellation
9 of a commercial driver's license by the state or jurisdiction
10 that issued the commercial driver's license;

11 (2) a withdrawal of a person's privileges to
12 drive a commercial motor vehicle by a state or other
13 jurisdiction as the result of a violation of state or local
14 law relating to motor vehicle control other than a parking,
15 vehicle weight or vehicle defect violation; and

16 (3) a determination by the federal motor
17 carrier safety administration that a person is not qualified
18 to operate a motor vehicle;

19 H. "division" means the motor vehicle division of
20 the department;

21 I. "driving a commercial motor vehicle while under
22 the influence of alcohol" means:

23 (1) driving a commercial motor vehicle while
24 the driver has an alcohol concentration in the driver's blood
25 or breath of four one hundredths or more;

1 (2) driving a commercial motor vehicle while
2 the driver is under the influence of intoxicating liquor; or

3 (3) refusal to submit to chemical tests
4 administered pursuant to Section 66-8-107 NMSA 1978;

5 J. "employee" means an operator of a commercial
6 motor vehicle, including full-time, regularly employed
7 drivers; casual, intermittent or occasional drivers; leased
8 drivers; and independent owner-operator contractors, while in
9 the course of operating a commercial motor vehicle, who is
10 either directly employed by or under lease to an employer;

11 K. "employer" means a person, including the United
12 States, a state and a political subdivision of a state or
13 their agencies or instrumentalities, that owns or leases a
14 commercial motor vehicle or assigns employees to operate such
15 a vehicle;

16 L. "fatality" means the death of a person as a
17 result of a motor vehicle accident;

18 M. "gross combination weight rating" means the
19 value specified by the manufacturer as the loaded weight of a
20 combination vehicle. In the absence of a value specified by
21 the manufacturer, gross combination weight rating shall be
22 determined by adding the gross vehicle weight rating of the
23 power unit and the total weight of the towed unit or units
24 and any load thereon;

25 N. "gross vehicle weight rating" means the value

1 specified by the manufacturer as the loaded weight of a
2 single vehicle;

3 O. "imminent hazard" means a condition that
4 presents a substantial likelihood that death, serious
5 illness, severe personal injury or a substantial endangerment
6 to health, property or the environment will occur before the
7 reasonable foreseeable completion date of a formal proceeding
8 to lessen the risk of that death, illness, injury or
9 endangerment;

10 P. "noncommercial motor vehicle" means a motor
11 vehicle or combination of motor vehicles that is not a
12 commercial motor vehicle;

13 Q. "nonresident commercial driver's license" means
14 a commercial driver's license issued by another state to a
15 person domiciled in that state or by a foreign country to a
16 person domiciled in that country;

17 R. "out-of-service order" means a declaration by
18 an authorized enforcement officer of a federal, state,
19 Canadian, Mexican or local jurisdiction that a driver, a
20 commercial motor vehicle or a motor carrier operation is
21 temporarily prohibited from operating;

22 S. "railroad-highway grade crossing violation"
23 means a violation of a provision of Section 66-7-341 or
24 66-7-343 NMSA 1978 or a violation of federal or local law,
25 ordinance or rule pertaining to stopping at or crossing a

1 railroad-highway grade crossing;

2 T. "serious traffic violation" means conviction of
3 any of the following if committed when operating a motor
4 vehicle:

5 (1) speed of fifteen miles or more per hour
6 above the posted limits;

7 (2) reckless driving as defined by Section
8 66-8-113 NMSA 1978 or a municipal ordinance or the law of
9 another state;

10 (3) homicide by vehicle, as defined in
11 Section 66-8-101 NMSA 1978;

12 (4) injury to pregnant women by vehicle as
13 defined in Section 66-8-101.1 NMSA 1978 or a municipal
14 ordinance or the law of another state;

15 (5) any other violation of law relating to
16 motor vehicle traffic control, other than a parking
17 violation, that the secretary determines by regulation to be
18 a serious traffic violation. "Serious traffic violation"
19 does not include a vehicle weight or vehicle defect
20 violation;

21 (6) improper or erratic lane changes in
22 violation of Section 66-7-317 NMSA 1978;

23 (7) following another vehicle too closely in
24 violation of Section 66-7-318 NMSA 1978;

25 (8) texting while driving in violation of

1 Section 66-7-374 NMSA 1978 or a municipal ordinance;

2 (9) use of a handheld mobile communication
3 device while driving a commercial motor vehicle in violation
4 of Section 1 of this 2016 act or a municipal ordinance;

5 (10) directly or indirectly causing death or
6 great bodily injury to a human being in the unlawful
7 operation of a motor vehicle in violation of Section 66-8-101
8 NMSA 1978;

9 (11) driving a commercial motor vehicle
10 without possession of a commercial driver's license in
11 violation of Section 66-5-59 NMSA 1978;

12 (12) driving a commercial motor vehicle
13 without the proper class of commercial driver's license and
14 endorsements pursuant to Section 66-5-65 NMSA 1978 and the
15 Motor Carrier Safety Act for the specific vehicle group
16 operated or for the passengers or type of cargo transported;
17 or

18 (13) driving a commercial motor vehicle
19 without obtaining a commercial driver's license in violation
20 of Section 66-5-59 NMSA 1978; and

21 U. "state of domicile" means the state in which a
22 person has a true, fixed and permanent home and principal
23 residence and to which the person has the intention of
24 returning whenever the person has been absent from that
25 state."

1 SECTION 3. Section 66-5-68 NMSA 1978 (being Laws 1989,
2 Chapter 14, Section 17, as amended) is amended to read:

3 "66-5-68. DISQUALIFICATION.--

4 A. The department shall disqualify a person from
5 driving a commercial motor vehicle for at least thirty days
6 if the federal motor carrier safety administration reports to
7 the division that the person poses an imminent hazard.

8 B. The department shall disqualify a person who
9 holds a commercial driver's license or who is required to
10 hold a commercial driver's license from driving a commercial
11 motor vehicle for a period of not less than one year, which
12 shall run concurrently with any revocation or suspension
13 action for the same offense, if the person:

14 (1) refuses to submit to a chemical test
15 when requested pursuant to the provisions of the Implied
16 Consent Act;

17 (2) is twenty-one years of age or more and
18 submits to chemical testing pursuant to the Implied Consent
19 Act and the test results indicate an alcohol concentration of
20 eight one hundredths or more;

21 (3) submits to chemical testing pursuant to
22 the Implied Consent Act and the test results indicate an
23 alcohol concentration of four one hundredths or more if the
24 person is driving a commercial motor vehicle;

25 (4) is less than twenty-one years of age and

1 submits to chemical testing pursuant to the Implied Consent
2 Act and the test results indicate an alcohol concentration of
3 two one hundredths or more; or

4 (5) is convicted of a violation of:

5 (a) driving a motor vehicle while under
6 the influence of intoxicating liquor or drugs in violation of
7 Section 66-8-102 NMSA 1978, an ordinance of a municipality of
8 this state or the law of another state;

9 (b) leaving the scene of an accident
10 involving a commercial motor vehicle driven by the person in
11 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
12 municipality of this state or the law of another state;

13 (c) using a motor vehicle in the
14 commission of a felony;

15 (d) driving a commercial motor vehicle
16 after the driver's commercial driver's license is revoked,
17 suspended, disqualified or canceled for violations while
18 operating a commercial motor vehicle; or

19 (e) causing a fatality in the unlawful
20 operation of a motor vehicle pursuant to Section 66-8-101
21 NMSA 1978.

22 C. The department shall disqualify a person from
23 driving a commercial motor vehicle for a period of not less
24 than three years if any of the violations specified in
25 Subsection B of this section occur while transporting a

1 hazardous material required to be placarded.

2 D. The department shall disqualify a person from
3 driving a commercial motor vehicle for life if convicted of
4 two or more violations of any of the offenses specified in
5 Subsection B of this section, or any combination of those
6 offenses, arising from two or more separate incidents, but
7 the secretary may issue rules establishing guidelines,
8 including conditions, under which a disqualification for life
9 under this subsection may be reduced to a period of not less
10 than ten years. This subsection applies only to those
11 offenses committed after July 1, 1989.

12 E. The department shall disqualify a person from
13 driving a commercial motor vehicle for life if the person is
14 convicted of using a motor vehicle in the commission of any
15 felony involving the manufacture, distribution or dispensing
16 of a controlled substance.

17 F. The department shall disqualify a person from
18 driving a commercial motor vehicle for a period of not less
19 than sixty days if convicted of two serious traffic
20 violations or one hundred twenty days if convicted of three
21 serious traffic violations, if the violations were committed
22 while driving a commercial motor vehicle, arising from
23 separate incidents occurring within a three-year period.

24 G. The department shall disqualify a person from
25 driving a commercial motor vehicle for a period of:

1 (1) not less than one hundred eighty days
2 nor more than two years if the person is convicted of a first
3 violation of an out-of-service order while transporting
4 hazardous materials required to be placarded pursuant to the
5 federal Hazardous Materials Transportation Act or while
6 operating a motor vehicle designed to transport more than
7 fifteen passengers, including the driver;

8 (2) not more than one year if the person is
9 convicted of a first violation of an out-of-service order; or

10 (3) not less than three years nor more than
11 five years if, during any ten-year period, the person is
12 convicted of any subsequent violations of out-of-service
13 orders, in separate incidents, while transporting hazardous
14 materials required to be placarded pursuant to that act or
15 while operating a motor vehicle designed to transport more
16 than fifteen passengers, including the driver.

17 H. The department shall disqualify a person from
18 driving a commercial motor vehicle for sixty days if:

19 (1) the person has been convicted of two
20 serious traffic violations in separate incidents within a
21 three-year period; and

22 (2) the second conviction results in
23 revocation, cancellation or suspension of the person's
24 commercial driver's license or noncommercial motor vehicle
25 driving privileges for sixty days.

1 I. The department shall disqualify a person from
2 driving a commercial motor vehicle for one hundred twenty
3 days, in addition to any other period of disqualification,
4 if:

5 (1) the person has been convicted of more
6 than two serious traffic violations within a three-year
7 period; and

8 (2) the third or a subsequent conviction
9 results in the revocation, cancellation or suspension of the
10 person's commercial driver's license or noncommercial motor
11 vehicle driving privileges.

12 J. When a person is disqualified from driving a
13 commercial motor vehicle, any commercial driver's license
14 held by that person is invalidated without a separate
15 proceeding of any kind and the driver is not eligible to
16 apply for a commercial driver's license until the period of
17 time for which the driver was disqualified has elapsed.

18 K. The department shall disqualify a person from
19 driving a commercial motor vehicle for not less than:

20 (1) sixty days if the person is convicted of
21 a first violation of a railroad-highway grade crossing
22 violation;

23 (2) one hundred twenty days if, during any
24 three-year period, the person is convicted of a second
25 railroad-highway grade crossing violation in a separate

1 incident; and

2 (3) one year if, during any three-year
3 period, the person is convicted of a third or subsequent
4 railroad-highway grade crossing violation in a separate
5 incident.

6 L. After disqualifying, suspending, revoking or
7 canceling a commercial driver's license, the department
8 shall, within ten days, update its records to reflect that
9 action. After disqualifying, suspending, revoking or
10 canceling a nonresident commercial driver's privileges, the
11 department shall, within ten days, notify the licensing
12 authority of the state that issued the commercial driver's
13 license.

14 M. When disqualifying, suspending, revoking or
15 canceling a commercial driver's license, the department shall
16 treat a conviction received in another state in the same
17 manner as if it was received in this state.

18 N. The department shall post and enforce any
19 disqualification sent by the federal motor carrier safety
20 administration to the department that indicates that a
21 commercial motor vehicle driver poses an imminent hazard.

22 O. The federal transportation security
23 administration of the department of homeland security shall
24 provide for an appeal of a disqualification for a commercial
25 driver's license hazardous materials endorsement on the basis

1 of a background check, and the department shall provide to a
2 hazardous materials applicant a copy of the procedures
3 established by the transportation security administration, on
4 request, at the time of application.

5 P. New Mexico shall conform to the federal
6 transportation security administration of the department of
7 homeland security rules and shall "look back" or review a
8 maximum of seven years for a background check."

9 SECTION 4. Section 66-8-116 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 524, as amended) is amended to read:

11 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--
12 DEFINITION--SCHEDULE OF ASSESSMENTS.--

13 A. As used in the Motor Vehicle Code, "penalty
14 assessment misdemeanor" means violation of any of the
15 following listed sections of the NMSA 1978 for which, except
16 as provided in Subsections D and E of this section, the
17 listed penalty assessment is established:

18 COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
		ASSESSMENT
19		
20 Improper display of		
21 registration plate	66-3-18	\$ 25.00
22 Failure to notify of		
23 change of name or address	66-3-23	25.00
24 Lost or damaged registration,		
25 plate or title	66-3-24	20.00

1	Permitting unauthorized		
2	minor to drive	66-5-40	50.00
3	Permitting unauthorized		
4	person to drive	66-5-41	25.00
5	Failure to obey sign	66-7-104	10.00
6	Failure to obey signal	66-7-105	10.00
7	Speeding	66-7-301	
8	(1) up to and including		
9	ten miles an hour		
10	over the speed limit		15.00
11	(2) from eleven up to		
12	and including fifteen		
13	miles an hour		
14	over the speed limit		30.00
15	(3) from sixteen up to		
16	and including twenty		
17	miles an hour over the		
18	speed limit		65.00
19	(4) from twenty-one up to		
20	and including twenty-five		
21	miles an hour		
22	over the speed limit		100.00
23	(5) from twenty-six up to		
24	and including thirty		
25	miles an hour over the		

1	speed limit		125.00
2	(6) from thirty-one up to		
3	and including thirty-five		
4	miles an hour over the		
5	speed limit		150.00
6	(7) more than thirty-five		
7	miles an hour over the		
8	speed limit		200.00
9	Unfastened safety belt	66-7-372	25.00
10	Child not in restraint device		
11	or seat belt	66-7-369	25.00
12	Minimum speed	66-7-305	10.00
13	Speeding	66-7-306	15.00
14	Improper starting	66-7-324	10.00
15	Improper backing	66-7-354	10.00
16	Improper lane	66-7-308	10.00
17	Improper lane	66-7-313	10.00
18	Improper lane	66-7-316	10.00
19	Improper lane	66-7-317	10.00
20	Improper lane	66-7-319	10.00
21	Improper passing	66-7-309 through 66-7-312	10.00
22	Improper passing	66-7-315	10.00
23	Controlled access		
24	violation	66-7-320	10.00
25	Controlled access		

1	violation	66-7-321	10.00
2	Improper turning	66-7-322	10.00
3	Improper turning	66-7-323	10.00
4	Improper turning	66-7-325	10.00
5	Following too closely	66-7-318	10.00
6	Failure to yield	66-7-328 through 66-7-331	10.00
7	Failure to yield	66-7-332	50.00
8	Failure to yield	66-7-332.1	25.00
9	Pedestrian violation	66-7-333	10.00
10	Pedestrian violation	66-7-340	10.00
11	Failure to stop	66-7-342 and 66-7-344	
12		through 66-7-346	10.00
13	Railroad-highway grade		
14	crossing violation	66-7-341 and 66-7-343	150.00
15	Passing school bus	66-7-347	100.00
16	Failure to signal	66-7-325 through 66-7-327	10.00
17	Failure to secure load	66-7-407	100.00
18	Operation without oversize-		
19	overweight permit	66-7-413	50.00
20	Transport of reducible		
21	load with special		
22	permit more than six miles		
23	from a border crossing	66-7-413	100.00
24	Improper equipment	66-3-801	
25		through 66-3-851	25.00

1	Improper equipment	66-3-901	20.00
2	Improper emergency		
3	signal	66-3-853 through 66-3-857	10.00
4	Minor on motorcycle		
5	without helmet	66-7-356	300.00
6	Operation interference	66-7-357	50.00
7	Littering	66-7-364	300.00
8	Improper parking	66-7-349 through 66-7-352	
9		and 66-7-353	5.00
10	Improper parking	66-3-852	5.00
11	Failure to dim lights	66-3-831	10.00
12	Riding in or towing		
13	occupied house trailer	66-7-366	5.00
14	Improper opening of doors	66-7-367	5.00
15	No slow-moving vehicle		
16	emblem or flashing		
17	amber light	66-3-887	5.00
18	Open container - first		
19	violation	66-8-138	25.00
20	Texting while driving -		
21	first violation	66-7-374	25.00
22	Texting while driving -		
23	subsequent violation	66-7-374	50.00
24	Using a handheld mobile		
25	communication device		

1 while driving a
2 commercial motor Section 1 of this
3 vehicle 2016 act 25.00

4 Using a handheld mobile
5 communication device
6 while driving a
7 commercial motor
8 vehicle - subsequent Section 1 of this
9 violation 2016 act 50.00.

10 B. The term "penalty assessment misdemeanor" does
11 not include a violation that has caused or contributed to the
12 cause of an accident resulting in injury or death to a
13 person.

14 C. When an alleged violator of a penalty
15 assessment misdemeanor elects to accept a notice to appear in
16 lieu of a notice of penalty assessment, a fine imposed upon
17 later conviction shall not exceed the penalty assessment
18 established for the particular penalty assessment misdemeanor
19 and probation imposed upon a suspended or deferred sentence
20 shall not exceed ninety days.

21 D. The penalty assessment for speeding in
22 violation of Paragraph (4) of Subsection A of Section
23 66-7-301 NMSA 1978 is twice the penalty assessment
24 established in Subsection A of this section for the
25 equivalent miles per hour over the speed limit.

1 E. Upon a second conviction for operation without
2 a permit for excessive size or weight pursuant to Section
3 66-7-413 NMSA 1978, the penalty assessment shall be two
4 hundred fifty dollars (\$250). Upon a third or subsequent
5 conviction, the penalty assessment shall be five hundred
6 dollars (\$500).

7 F. Upon a second conviction for transport of a
8 reducible load with a permit for excessive size or weight
9 pursuant to Subsection N of Section 66-7-413 NMSA 1978 more
10 than six miles from a port-of-entry facility on the border
11 with Mexico, the penalty assessment shall be five hundred
12 dollars (\$500). Upon a third or subsequent conviction,
13 the penalty assessment shall be one thousand dollars
14 (\$1,000)."
