

HOUSE BILL 427

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

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and Antonio "Moe" Maestas

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CRIME; REVISING PENALTIES FOR CERTAIN MOTOR VEHICLE  
CODE OFFENSES.

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

**SECTION 1.** Section 66-5-30 NMSA 1978 (being Laws 1978,  
Chapter 35, Section 252, as amended) is amended to read:

"66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE  
LICENSE.--

A. The division may suspend the instruction permit,  
driver's license or provisional license of a driver without  
preliminary hearing upon a showing by its records or other

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sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

(1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;

(2) has been convicted as a driver in an accident resulting in the death or personal injury of another or serious property damage;

(3) has been convicted with such frequency of offenses against traffic laws or rules governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) is an habitually reckless or negligent driver of a motor vehicle;

(5) is incompetent to drive a motor vehicle;

(6) has permitted an unlawful or fraudulent use of the license;

(7) has been convicted of an offense in another state or tribal jurisdiction that if committed within this state's jurisdiction would be grounds for suspension or revocation of the license;

(8) has violated provisions stipulated by a district court in limitation of certain driving privileges; or

~~[(9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from~~

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~~a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code or pursuant to the laws of the tribe;~~

~~(10) has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or~~

~~(11)]~~ (9) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. The division may issue an administrative suspension of the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee has failed to:

(1) fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code or pursuant to the laws of the tribe;

(2) pay a penalty assessment within thirty

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days of the date of issuance by the state or a tribe; or

(3) comply with the terms of a citation issued in a foreign jurisdiction that is a party to the Nonresident Violator Compact and that has notified the department of the failure in accordance with the Nonresident Violator Compact.

C. If a person whose license was issued by a jurisdiction outside New Mexico that is a party to the Nonresident Violator Compact fails to comply with the terms of a citation issued in New Mexico, the department shall notify that other jurisdiction of the failure and that jurisdiction shall initiate a license suspension action in accordance with the provisions of Article IV of the Nonresident Violator Compact.

[B-] D. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing of the licensee's right to a hearing before the administrative hearings office and, upon the licensee's request, shall notify the administrative hearings office. The administrative hearings office shall schedule the hearing to take place as early as practicable, but within no more than twenty days, not counting Saturdays, Sundays and legal holidays after receipt of the request. The hearing shall be held in the county in which the licensee resides unless the hearing officer and the licensee agree that the hearing may be held in some other county; provided that the hearing request is

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received within twenty days from the date that the suspension was deposited in the United States mail. The hearing officer may, in the hearing officer's discretion, extend the twenty-day period. The hearing shall be held as provided in the Administrative Hearings Office Act. After the hearing, the hearing officer shall either rescind the order of suspension or continue, modify or extend the suspension of the license or revoke the license."

HJC → ~~SECTION 2. Section 66-5-39 NMSA 1978 (being Laws 1978, Chapter 35, Section 261, as amended) is amended to read:~~

~~"66-5-39. DRIVING WHILE LICENSE SUSPENDED--PENALTIES.--~~

~~A. [Any] A person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended and who knows or should have known that the person's license was suspended is guilty of a misdemeanor and [shall be charged with a violation of this section. Upon conviction, the person shall] may be punished, notwithstanding the provisions of Section [31-18-13] 31-19-1 NMSA 1978, by imprisonment for not [less than four days or] more than [three hundred sixty-four] ninety days or participation for an equivalent period of time in a certified alternative sentencing program, [and there may be imposed in addition] or by payment of a fine of not more than [one thousand dollars (\$1,000)] three hundred dollars (\$300), or both. When a person pays any or all of the cost of~~

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~~participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Any municipal ordinance prohibiting driving with a suspended license shall provide penalties no less stringent than provided in this section.~~

~~B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a suspended license, the motor vehicle the person was driving may be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.~~

~~{C. The division, upon receiving a record of the conviction of any person under this section, shall extend the period of suspension for an additional like period.}~~ ← HJC

HJC → SECTION 2. Section 66-5-39 NMSA 1978 (being Laws 1978, Chapter 35, Section 261, as amended) is amended to read:

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privilege to do so is suspended and who knows or should have known that the person's license was suspended is guilty of a misdemeanor and ~~[shall be charged with a violation of this section. Upon conviction, the person shall]~~ may be punished ~~[notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than three hundred sixty-four days or participation for an equivalent period of time]~~ pursuant to Subsection B of Section 66-8-7 NMSA 1978 or for no more than ninety days of participation in a certified alternative sentencing program ~~[and there may be imposed in addition a fine of not more than one thousand dollars (\$1,000)]~~. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Any municipal ordinance prohibiting driving with a suspended license shall provide penalties no less stringent than provided in this section.

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a suspended license, the motor vehicle the person was driving may be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to

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the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.

~~[G.—The division, upon receiving a record of the conviction of any person under this section, shall extend the period of suspension for an additional like period.]~~"←HJC

SECTION 3. A new Section 66-5-39.2 NMSA 1978 is enacted to read:

"66-5-39.2. [NEW MATERIAL] DRIVING WHILE LICENSE ADMINISTRATIVELY SUSPENDED.--A person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is administratively suspended is guilty of a penalty assessment misdemeanor and may be punished in accordance with the provisions of Section 66-8-116 NMSA 1978."

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

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

A. As used in the Motor Vehicle Code and the Boat Act, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsections D through F of this section, the listed penalty assessment is established:

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COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
HJC→Vehicles subject to registration←HJC	66-3-1	\$50.00
Improper display of registration plate	66-3-18	25.00
Failure to notify of change of name or address	66-3-23	25.00
Lost or damaged registration, plate or title	66-3-24	25.00
Horseless carriage registration	66-3-27	25.00
Transfer of registration and title	66-3-103	25.00
Expiration of dealer plates	66-3-403	25.00
Special registration plates	66-3-409, 66-3-412.1, 66-3-413, 66-3-415, 66-3-417, 66-3-419, 66-3-421, 66-3-422, 66-3-424.4, 66-3-424.5, 66-3-424.7, 66-3-424.9, 66-3-424.13, 66-3-424.16	
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	and 66-3-424.28	75.00
Bicycle laws	66-3-701	
	through	
	66-3-707	50.00
No license display	66-5-16	25.00
Failure to change		
address or name on		
license	66-5-22	25.00
Permitting unauthorized		
minor to drive	66-5-40	50.00
Permitting unauthorized		
person to drive	66-5-41	25.00
Failure to obey sign	66-7-104	25.00
Failure to obey signal	66-7-105	25.00
Pedestrian signs and		
signals	66-7-106	
	through	
	66-7-108	25.00
Speeding	66-7-301	
(1) up to and including		
ten miles an hour		
over the speed limit		25.00
(2) from eleven up to		
and including fifteen		
miles an hour		

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over the speed limit		30.00
(3) from sixteen up to and including twenty miles an hour over the speed limit		65.00
(4) from twenty-one up to and including twenty-five miles an hour over the speed limit		100.00
(5) from twenty-six up to and including thirty miles an hour over the speed limit		125.00
(6) from thirty-one up to and including thirty-five miles an hour over the speed limit		150.00
(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device or seat belt	66-7-369	25.00
Minimum speed	66-7-305	25.00
Speeding	66-7-306	25.00
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Improper starting	66-7-324	25.00
Improper backing	66-7-354	25.00
Improper lane	66-7-308	25.00
Improper lane	66-7-313	25.00
Improper lane	66-7-316	25.00
Improper lane	66-7-317	25.00
Improper lane	66-7-319	25.00
Improper passing	66-7-309 through 66-7-312	25.00
Improper passing	66-7-315	25.00
Controlled access violation	66-7-320	25.00
Controlled access violation	66-7-321	25.00
Improper turning	66-7-322	25.00
Improper turning	66-7-323	25.00
Improper turning	66-7-325	25.00
Following too closely	66-7-318	25.00
Failure to yield	66-7-328 through 66-7-331	25.00
Failure to yield	66-7-332	50.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	
	through	
	66-7-340	25.00
Failure to stop	66-7-342 and 66-7-344	
	through 66-7-346	25.00

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Railroad-highway grade		
crossing violation	66-7-341 and 66-7-343	150.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	25.00
Riding on motorcycles	66-7-355	100.00
Video screens in		
automobiles	66-7-358	25.00
Driving on mountain		
highways	66-7-359	25.00
Coasting prohibited	66-7-360	25.00
Animals on highway at		
night	66-7-363	50.00
Failure to secure load	66-7-407	100.00
Operation without oversize-		
overweight permit	66-7-413	50.00
Transport of reducible		
load with special		
permit more than six miles		
from a border crossing	66-7-413	100.00
<u>Driving while license</u>		
<u>administratively</u>		
<u>suspended</u>	<u>66-5-39.2</u>	<u>25.00</u>
Improper equipment	66-3-801 through	
	66-3-840 and 66-3-842	
	through 66-3-851	50.00
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Improper equipment	66-3-901	50.00
Improper emergency signal	66-3-853 through 66-3-857	25.00
Minor on motorcycle without helmet	66-7-356	300.00
Operation interference	66-7-357	50.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353	25.00
Improper parking	66-3-852	25.00
Riding in or towing occupied house trailer	66-7-366	25.00
Improper opening of doors	66-7-367	25.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	25.00
<del>SJC→Failure to appear</del>	<del>66-8-126</del>	<del>50.00←SJC</del>
Open container-first violation	66-8-138	25.00
Texting while driving- (1) first violation	66-7-374	25.00
(2) second and subsequent violation		50.00
Using a handheld mobile communication device		
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while driving a

commercial motor vehicle 66-7-375

(1) first violation 25.00

(2) second and subsequent

violation 50.00.

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.

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

D. The penalty assessment for speeding in violation of Paragraph (5) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit.

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

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

SECTION 5. Section 66-8-126 NMSA 1978 (being Laws 1978, Chapter 35, Section 534) is amended to read:

"66-8-126. FAILURE TO OBEY NOTICE TO APPEAR.--

A. It is a penalty assessment misdemeanor for [~~any~~] a person to violate [~~his~~] that person's written promise to appear in court given to an officer upon issuance of a uniform traffic citation regardless of the disposition of the charge for which the citation was issued.

B. A written promise to appear in court may be complied with by appearance of counsel."

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is Hf1→July October←Hf1 1, 2019.