

HOUSE BILL 119

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Eliseo Lee Alcon

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TRAFFIC CITATIONS; PROVIDING FOR REMITTANCE OF PENALTY ASSESSMENTS TO THE COURTS; REMOVING A CONDITION ALLOWING THE TAXATION AND REVENUE DEPARTMENT TO PERFORM AN ADMINISTRATIVE SUSPENSION OF CERTAIN PERMITS OR LICENSES; ALLOWING A PERSON CHARGED WITH A TRAFFIC CITATION TO PAY THE PENALTY ASSESSMENT ANY TIME BEFORE APPEARANCE IN COURT; PROVIDING THAT A UNIFORM TRAFFIC CITATION IS A SUMMONS; REQUIRING THAT A TRAFFIC CITATION BE SUBMITTED TO THE

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APPROPRIATE COURT WITHIN FIVE DAYS OF ISSUANCE; REPEALING SECTION 66-8-117 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 525, AS AMENDED).

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

SECTION 1. Section 29-5-1.1 NMSA 1978 (being Laws 1981, Chapter 304, Section 1, as amended) is amended to read:

"29-5-1.1. EDUCATIONAL INSTITUTIONS--CAMPUS TRAFFIC REGULATIONS.--

A. The board of regents of each state educational institution designated in Article 12, Section 11 of the constitution of New Mexico that is located within a county having a population in excess of ninety-five thousand according to the most recent federal decennial census may promulgate regulations governing the operation and parking of vehicles on any area within the exterior boundaries of lands under its control ~~[which]~~ that is not a municipal street or highway, including ~~[but not limited to]~~:

- (1) limiting the rates of speed;
- (2) assigning parking spaces, designating parking areas and their uses and collecting rent for them;
- (3) prohibiting parking;
- (4) removing vehicles parked in violation of campus traffic regulations at the expense of the violator, who shall pay the expense before the vehicle is released; and
- (5) instituting a system of vehicle

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registration for the identification and regulation of vehicles regularly using institutional premises, including a reasonable charge to defray costs of providing parking and traffic enforcement services and campus parking.

B. Areas subject to campus traffic regulations shall be marked with signs conforming with standards used by the ~~[state highway and]~~ department of transportation ~~[department]~~.

C. Regulations of a board of regents promulgated pursuant to this section shall include a specific penalty for each type of violation, which shall not exceed one hundred dollars (\$100). In addition, the board of regents may impose an administrative cost assessment not exceeding five dollars (\$5.00) for each parking citation issued as costs of administration of a campus traffic program.

D. Except as provided by Subsection J of this section, unless a warning notice or a parking citation is given, at the time of making an arrest for ~~[any]~~ a violation of this section, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment or appearing in the metropolitan, municipal or magistrate court within five days after issuance of the citation. The violator's signature on the penalty assessment notice constitutes ~~[as]~~ an acknowledgment of guilt of the offense stated in the notice.

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E. Payment of ~~any~~ a parking violation penalty assessment shall be made by mailing the payment within five days from the date the citation was issued to the university police office for processing in the manner prescribed by the board of regents.

F. Payment of ~~any~~ a moving violation penalty assessment shall be made by mailing the payment within thirty days from the date of issuance of the citation to the ~~motor vehicle division of the taxation and revenue department, Santa Fe~~ magistrate, metropolitan or municipal court whose address appears on the citation. Payments of penalty assessments are timely if postmarked within thirty days from the date of issuance of the citation. When a penalty assessment is paid by currency, a receipt may be immediately mailed to the violator. When a penalty assessment is paid by check, the canceled check is a sufficient receipt.

G. No record of ~~any~~ a penalty assessment payment is admissible as evidence in ~~any~~ a court in ~~any~~ a civil action.

H. If a penalty assessment is not paid within thirty days from the date of issuance of the citation, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued.

I. ~~Any~~ A penalty assessment collected by the

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~~[motor vehicle division of the taxation and revenue department]~~
magistrate or metropolitan court whose address appears on the citation pursuant to Subsection F of this section shall be remitted to the state treasurer for deposit into the current school fund. ~~[Any]~~ An administrative cost assessment collected by the ~~[division]~~ court pursuant to this section shall be remitted within thirty days to the state educational institution ~~[which]~~ that issued the citation for administering parking and traffic regulations on that campus. ~~[Any]~~ A penalty assessment or administrative cost assessment collected by the university police office pursuant to Subsection E of this section shall be retained by the state educational institution as reimbursement for its expenses.

J. No penalty assessment citation shall be issued for:

- (1) speeding in excess of twenty-five miles an hour in excess of the speed limit;
- (2) operating a vehicle while under the influence of alcohol or drugs; or
- (3) an offense ~~[which]~~ that has caused or contributed to the cause of an accident resulting in injury or death to ~~[any]~~ a person.

K. The uniform traffic citation form approved by the director of the motor vehicle division of the taxation and revenue department shall be used as the complaint for

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violations of regulations promulgated pursuant to the provisions of this section. Citations for moving violations shall be issued in the manner set forth in Sections 66-8-123 through 66-8-127 NMSA 1978."

SECTION 2. 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 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;

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(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 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

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tribe; or

~~[(2) pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or~~

~~(3)]~~ (2) 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.

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

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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 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."

SECTION 3. Section 66-8-119 NMSA 1978 (being Laws 1968, Chapter 62, Section 159, as amended) is amended to read:

"66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

A. The ~~[division]~~ administrative office of the courts shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through ~~[F]~~ H of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund.

B. The ~~[division]~~ administrative office of the courts shall remit all penalty assessment fee receipts collected pursuant to:

(1) Subsection A of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the local government corrections fund;

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(2) Subsection B of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court automation fund;

(3) Subsection C of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the traffic safety education and enforcement fund;

(4) Subsection D of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the judicial education fund;

(5) Subsection E of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the jury and witness fee fund;

(6) Subsection F of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the juvenile adjudication fund;

(7) Subsection G of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the brain injury services fund; and

(8) Subsection H of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court facilities fund [~~and~~

~~(9) Subsection I of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the magistrate courts operations fund]."~~

SECTION 4. Section 66-8-123 NMSA 1978 (being Laws 1978, .218264.1SAAIC February 16, 2021 (9:40am)

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Chapter 35, Section 531, as amended) is amended to read:

"66-8-123. CONDUCT OF ARRESTING OFFICER--NOTICES BY CITATION.--

A. Except as provided in Section 66-8-122 NMSA 1978, unless a penalty assessment or warning notice is given, whenever a person is arrested for ~~[any]~~ a violation of the Motor Vehicle Code or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release the person from custody.

B. Whenever a person is arrested for violation of a penalty assessment misdemeanor, ~~[and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the motor vehicle division in Santa Fe to the arrested person and release the person from custody. No officer shall accept custody or payment of any penalty~~

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~~assessment. If the arrested person declines to accept a penalty assessment notice, the officer shall issue a notice to appear]~~ the arresting officer shall advise the person of the option either to accept the penalty assessment and pay the penalty assessment to the court or to appear in court. The arresting officer, using the uniform traffic citation, shall complete the information section, prepare the penalty assessment notice indicating the amount of the penalty assessment and prepare a notice to appear in court specifying the time and place to appear in the event that the penalty assessment is not remitted to the court prior to the date of appearance. The arresting officer shall have the person sign the citation as a promise either to pay the penalty assessment as prescribed or to appear in court as specified, give a copy of the citation to the person and release the person from custody. An officer shall not accept custody or payment of a penalty assessment.

C. The arresting officer may issue a warning notice, but shall fill in the information section of the uniform traffic citation in paper or electronic form and give a copy to the arrested person after requiring the person's signature on the warning notice as an acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.

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D. In order to secure release, the arrested person must give the person's written promise to appear in court or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

E. A penalty assessment citation issued by HJC→~~at law enforcement~~←HJC HJC→an arresting←HJC officer shall be submitted to the appropriate magistrate or metropolitan court within five business days of issuance. If the citation is not submitted within five business days, it may be dismissed with prejudice.

[E.—Any] F. An officer violating this section is guilty of a misconduct in office and is subject to removal.

[F.—] G. A law enforcement officer who arrests a person without a warrant for a misdemeanor violation of the Motor Carrier Act, the Criminal Code, the Liquor Control Act or other New Mexico law may use the uniform traffic citation in paper or electronic form, issued pursuant to procedures outlined in Subsections B through [F] E of Section 31-1-6 NMSA 1978, in lieu of taking the person to jail.

[G.—] H. An electronic traffic citation, prescribed by Section 66-8-128 NMSA 1978, is an electronic version of the uniform traffic citation. For the purposes of this section, an electronic citation may be completed instead of a uniform traffic citation; provided, however, that where this section requires a copy of a citation to be given to an arrested

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person, a physical copy of the citation shall be provided whether a uniform traffic citation or an electronic form of the uniform traffic citation was used. An electronic form of the uniform traffic citation may be signed electronically."

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

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

A. It is a penalty assessment misdemeanor for a person to violate [~~that person's~~] a written promise to pay the penalty assessment or 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 uniform traffic citation with a written promise to appear in court or to pay the penalty assessment is a summons. If a person fails to appear or to pay the penalty assessment by the appearance date, a warrant for failure to appear may be issued.

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

SECTION 6. Section 66-8-128 NMSA 1978 (being Laws 1978, Chapter 35, Section 536, as amended) is amended to read:

"66-8-128. UNIFORM TRAFFIC CITATION.--

A. The department shall prepare a uniform traffic citation containing at least the following information:

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(1) an information section, serially numbered and containing spaces for the name, email address, telephone number, physical address [~~and~~], mailing address, city and state of the individual charged; the individual's physical description, age and sex; the registration number, year and state of the vehicle involved and its make and type; the state and number of the individual's driver's license; the specific section number and common name of the offense charged under the NMSA 1978 or local law; the date and time of arrest; the arresting officer's signature and identification number; and the conditions existing at the time of the violation; and

(2) a notice to appear [~~and (3)~~] in court or to pay a penalty assessment [~~notice~~] with a place for the signature of the violator agreeing to appear in court or to pay the penalty assessment prescribed.

B. The department shall prescribe how the uniform traffic citation form may be used as a warning notice.

C. The department shall prescribe the size and number of copies of the paper version of the uniform traffic citation and the disposition of each copy. The department may also prescribe one or more electronic versions of the uniform traffic citation, which may be used in the issuance of citations instead of or with paper uniform traffic citations.

D. [~~Any~~] An entity that wishes to submit electronic traffic citations instead of or with paper uniform traffic

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citations required to be submitted to the department shall secure the prior permission of the department.

E. An electronic version of a uniform traffic citation shall include the same information required to be included in a uniform traffic citation. An electronic version of a uniform traffic citation may be signed electronically, and a law enforcement officer may submit or file with a court an electronic version of a uniform traffic citation if prior permission of the department has been secured. Where the law requires a law enforcement officer to provide a copy of a citation to a person cited or arrested, a physical copy of the citation shall be provided regardless of whether a paper uniform traffic citation or an electronic version of a uniform traffic citation was used."

SECTION 7. Section 66-8-131 NMSA 1978 (being Laws 1961, Chapter 213, Section 10, as amended) is amended to read:

"66-8-131. UNIFORM TRAFFIC CITATION IS SUMMONS AND COMPLAINT.--The uniform traffic citation used as a notice to appear is a summons and a valid complaint, though not verified."

SECTION 8. REPEAL.--Section 66-8-117 NMSA 1978 (being Laws 1978, Chapter 35, Section 525, as amended) is repealed.

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.