

FORTY-SIXTH LEGISLATURE
FIRST SESSION, 2003

February 13, 2003

Mr. Speaker:

Your TRANSPORTATION COMMITTEE, to whom has been referred

HOUSE BILL 278

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, line 11, strike "COOPERATIVE" and insert in lieu thereof "INTERGOVERNMENTAL".

2. On page 10, between lines 2 and 3, insert the following new sections:

"Section 4. A new section of the Motor Vehicle Code, Section 66-5-1.2 NMSA 1978, is enacted to read:

"66-5-1.2. [NEW MATERIAL] DEFINITION--TRIBE.--As used in Sections 66-5-25, 66-5-26, 66-5-30 and 66-8-102 NMSA 1978, "tribe" means an Indian nation, tribe or pueblo that is located wholly or partially in New Mexico and that has executed an intergovernmental agreement with the state pursuant to Section 66-5-27.1 NMSA 1978."

Section 5. Section 66-5-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 245, as amended) is amended to read:

"66-5-23. RECORDS TO BE KEPT BY THE DIVISION.--

A. The division shall file every application for a driver's license or a commercial driver's license pursuant to the provisions of the New Mexico Commercial Driver's License Act received by it and shall maintain suitable indexes containing:

(1) all applications denied and, on each, note the reasons for denial;

(2) all applications granted;

(3) the name of every licensee whose license has been suspended or revoked by the division and, after each, note the reasons for the action; and

(4) the name of every licensee who has violated

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his written promise to appear in court.

B. The division shall also file all abstracts of court records of conviction or reports that it receives from the trial courts of this state [~~received by it~~] or from a tribal court, which show either that a driver is a first offender or a subsequent offender and whether that offender was represented by counsel or waived the right to counsel, [~~received by it under the laws of this state~~] with attention to Article III of the Driver License Compact, and in connection therewith maintain convenient records or make suitable notations in order that the individual record of each licensee showing the convictions of the licensee in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times. "

Section 6. Section 66-5-25 NMSA 1978 (being Laws 1978, Chapter 35, Section 247, as amended) is amended to read:

"66-5-25. SUSPENDING PRIVILEGES OF NONRESIDENTS--REPORTING CONVICTIONS--FAILURES TO APPEAR--FAILURES TO PAY.--

A. The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the division in like manner and for like cause as a driver's license may be suspended or revoked.

B. The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, or of notice of failure to appear or upon determination by the division of failure to pay a penalty assessment, to forward the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

C. Upon a request by a tribe, the division is authorized to forward to a tribal court or other authority, as specified in an applicable intergovernmental agreement, the record of the conviction in this state of a resident driver of a motor vehicle, who is subject to the jurisdiction of the tribe, of any offense under the Motor Vehicle Code or of notice of failure to appear or upon determination by the division of a failure to pay a penalty assessment. "

Section 7. Section 66-5-26 NMSA 1978 (being Laws 1978, Chapter 35, Section 248, as amended) is amended to read:

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"66-5-26. SUSPENDING RESIDENT'S LICENSE--CONVICTION FAILURE TO APPEAR, FAILURE TO PAY IN ANOTHER STATE OR TRIBAL JURISDICTION. --

A. The division is authorized to suspend or revoke the license of [~~any~~] a resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state or by a tribe of an offense [~~therein which~~] that if committed [~~in~~] within the jurisdiction of this state, would be grounds for the suspension or revocation of the license of a driver.

B. In addition, the division is authorized to suspend the license of [~~any~~] a resident of this state, or the privilege of a nonresident to drive a motor vehicle in this state, upon receiving notice of failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state [~~which~~] that is a signatory of the Nonresident Violator Compact with New Mexico. "".

3. Renumber the succeeding sections accordingly.

4. On page 10, line 6, strike "COOPERATIVE" and insert in lieu thereof "INTERGOVERNMENTAL".

5. On page 10, line 9, strike "cooperative" and insert in lieu thereof "intergovernmental".

6. On page 10, line 19, strike "cooperative" and insert in lieu thereof "intergovernmental".

7. On page 10, line 23, after "court" insert ", or other authority as provided in the intergovernmental agreement,".

8. On page 11, between lines 1 and 2, insert the following new sections:

"Section 9. 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 is authorized to 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

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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 [~~any~~] 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 [~~regulations~~] 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 [~~which~~] or tribal jurisdiction that if committed [~~in~~] within this [~~state~~] 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;

(9) has failed to 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 [~~any~~] 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) 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. Upon suspending the license of [~~any~~] a person as authorized in this section, the division shall immediately notify

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the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division 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 director may, in his discretion, extend the twenty-day period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license."

Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

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(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. ~~Every~~ A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year

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but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, [each] an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction pursuant to this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the

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provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

J. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

K. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

L. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

M. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe that has entered into an intergovernmental agreement with New Mexico pursuant

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to Section 66-5-27.1 NMSA 1978 where that ordinance or law that is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and that prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

N. In addition to any other fine or fee [~~which~~] that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

0. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."".

9. Renumber the succeeding section accordingly.,
and thence referred to the TAXATION AND REVENUE
COMMI TTEE.

Respectfully submitted,

Daniel P. Silva, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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The roll call vote was 10 For 0 Against

Yes: 10

Excused: Saavedra, Taylor, J. G.

Absent: None

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