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HOUSE BILL 774

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR A TEN-YEAR LICENSE REVOCATION FOR A SECOND OFFENSE COMMITTED WITHIN FIVE YEARS OF CONVICTION FOR A FIRST OFFENSE; PROVIDING FOR A LIFETIME LICENSE REVOCATION FOR A THIRD OR SUBSEQUENT OFFENSE COMMITTED WITHIN FIVE YEARS OF CONVICTION FOR A PRIOR OFFENSE; ELIMINATING THE IGNITION INTERLOCK OPTION FOR CERTAIN OFFENDERS; PROVIDING COURTS THE DISCRETION TO IMPOSE AN ALCOHOL OR DRUG SCREENING PROGRAM ON SECOND AND SUBSEQUENT OFFENDERS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2005.

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

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended by Laws 2005, Chapter 241, Section 1 and by Laws 2005, Chapter 269, Section 1) is amended

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1 to read:

2 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
3 not issue a driver's license under the Motor Vehicle Code to
4 any person:

5 A. who is under the age of eighteen years, except
6 the division may, in its discretion, issue:

7 (1) an instruction permit to a person fifteen
8 years of age or over who is enrolled in and attending or has
9 completed a driver education course that includes a DWI
10 education and prevention component approved by the bureau or
11 offered by a public school;

12 (2) a provisional license to any person
13 fifteen years and six months of age or older:

14 (a) who has completed a driver education
15 course approved by the bureau or offered by a public school
16 that includes a DWI education and prevention component and has
17 had an instruction permit for at least six months; and

18 (b) who has successfully completed a
19 practice driving component;

20 (3) a driver's license to any person sixteen
21 years and six months of age or older:

22 (a) who has had a provisional license
23 for the twelve-month period immediately preceding the date of
24 the application for the driver's license;

25 (b) who has complied with restrictions

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1 on that license;

2 (c) who has not been convicted of a
3 traffic violation that was committed during the ninety days
4 prior to applying for a driver's license; and

5 (d) who has not been adjudicated for an
6 offense involving the use of alcohol or drugs during that
7 period and who has no pending adjudications alleging an offense
8 involving the use of alcohol or drugs at the time of
9 application; and

10 (4) to any person thirteen years of age or
11 older who passes an examination prescribed by the division, a
12 license restricted to the operation of a motorcycle, provided:

13 (a) the motorcycle is not in excess of
14 one hundred cubic centimeters displacement;

15 (b) no holder of an initial license may
16 carry any other passenger while driving a motorcycle; and

17 (c) the director approves and certifies
18 motorcycles as not in excess of one hundred cubic centimeters
19 displacement and by rule provides for a method of
20 identification of such motorcycles by all law enforcement
21 officers;

22 B. whose license or driving privilege has been
23 suspended or denied, during the period of suspension or denial,
24 or to any person whose license has been revoked, except as
25 provided in Section 66-5-32 NMSA 1978 and the Ignition

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1 Interlock Licensing Act;

2 C. who is an habitual user of narcotic drugs or
3 alcohol or an habitual user of any drug to a degree that
4 renders the person incapable of safely driving a motor vehicle;

5 D. who is four or more times convicted of driving a
6 motor vehicle while under the influence of intoxicating liquor
7 or narcotic drug regardless of whether the convictions are
8 under the laws or ordinances of this state or any municipality
9 or county of this state or under the laws or ordinances of any
10 other state, the District of Columbia or any governmental
11 subdivision thereof, except as provided in the Ignition
12 Interlock Licensing Act. Five years from the date of the
13 fourth conviction and every five years thereafter, the person
14 may apply to any district court of this state for restoration
15 of the license, and the court, upon good cause being shown, may
16 order restoration of the license applied for; provided that the
17 person has not been subsequently convicted of driving a motor
18 vehicle while under the influence of intoxicating liquor or
19 drugs. Upon issuance of the order of restoration, a certified
20 copy shall immediately be forwarded to the division, and if the
21 person is otherwise qualified for the license applied for, the
22 four previous convictions shall not prohibit issuance of the
23 license;

24 E. who is three or more times convicted of driving
25 a motor vehicle under the influence of intoxicating liquor or

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1 drugs, regardless of whether the convictions are under the laws
2 or ordinances of this state or a political subdivision of this
3 state or under the laws or ordinances of any other state,
4 jurisdiction or territory of the United States or of a tribe,
5 and the third or subsequent conviction was based upon a
6 violation committed within five years of the date of a prior
7 conviction for driving a motor vehicle under the influence of
8 intoxicating liquor or drugs. There shall be no application to
9 any court for restoration of a driver's license and the
10 division shall not issue an ignition interlock license to a
11 person who is not to be licensed pursuant to this subsection;

12 ~~[E.]~~ F. who has previously been afflicted with or
13 who is suffering from any mental disability or disease that
14 would render ~~[him]~~ the person unable to drive a motor vehicle
15 with safety upon the highways and who has not, at the time of
16 application, been restored to health;

17 ~~[F.]~~ G. who is required by the Motor Vehicle Code
18 to take an examination, unless the person has successfully
19 passed the examination;

20 ~~[G.]~~ H. who is required under the laws of this
21 state to deposit proof of financial responsibility and who has
22 not deposited the proof;

23 ~~[H.]~~ I. when the director has good cause to believe
24 that the operation of a motor vehicle on the highways by the
25 person would be inimical to public safety or welfare; or

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1 ~~[F.]~~ J. as a motorcycle driver who is less than
2 eighteen years of age and who has not presented a certificate
3 or other evidence of having successfully completed a motorcycle
4 driver education program licensed or offered in conformance
5 with rules of the bureau."

6 Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 251, as amended by Laws 2005, Chapter 241,
8 Section 2 and by Laws 2005, Chapter 269, Section 2) is amended
9 to read:

10 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

11 A. The division shall immediately revoke the
12 instruction permit, driver's license or provisional license of
13 a driver upon receiving a record of the driver's adjudication
14 as a delinquent for or conviction of any of the following
15 offenses, whether the offense is under any state law or local
16 ordinance, when the conviction or adjudication has become
17 final:

18 (1) manslaughter or negligent homicide
19 resulting from the operation of a motor vehicle;

20 (2) any offense rendering a person a "first
21 offender" as defined in the Motor Vehicle Code;

22 (3) any offense rendering a person a
23 "subsequent offender" as defined in the Motor Vehicle Code;

24 (4) any felony in the commission of which a
25 motor vehicle is used;

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1 (5) failure to stop and render aid as required
2 under the laws of this state in the event of a motor vehicle
3 accident resulting in the death or personal injury of another;

4 (6) perjury or the making of a false affidavit
5 or statement under oath to the division under the Motor Vehicle
6 Code or under any other law relating to the ownership or
7 operation of motor vehicles; or

8 (7) conviction or forfeiture of bail not
9 vacated upon three charges of reckless driving committed within
10 a period of twelve months.

11 B. Except as provided in the Ignition Interlock
12 Licensing Act and in Subsection C, D or E of this section, a
13 person whose license has been revoked under this section shall
14 not be entitled to apply for or receive a new license until one
15 year from the date that the conviction is final and all rights
16 to an appeal have been exhausted.

17 C. A person who upon adjudication as a delinquent
18 for driving while under the influence of intoxicating liquor or
19 drugs or conviction pursuant to Section 66-8-102 NMSA 1978 is
20 subject to license revocation under this section for an offense
21 pursuant to which the person was also subject to license
22 revocation pursuant to Section 66-8-111 NMSA 1978 shall have
23 [his] the person's license revoked for that offense for a
24 combined period of time equal to:

25 (1) one year for a first offender; or

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(2) for a subsequent offender:

(a) two years for a second conviction;

(b) ten years for a second conviction if the second conviction is based upon a violation committed within five years of the date of a first conviction for driving a motor vehicle under the influence of intoxicating liquor or drugs;

~~[(b)]~~ (c) three years for a third conviction; ~~[or~~

~~(c)]~~ (d) the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978; or

(e) the remainder of the offender's life, and not subject to review, for a third or subsequent conviction if the third or subsequent conviction is based upon a violation committed within five years of the date of a prior conviction for driving a motor vehicle under the influence of intoxicating liquor or drugs.

D. Upon receipt of an order from a court pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record

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1 of conviction for the offense of shooting at or from a motor
2 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
3 of a conviction for a conspiracy or an attempt to commit that
4 offense, the division shall revoke the driver's license or
5 driving privileges of the convicted person. A person whose
6 license or privilege has been revoked pursuant to the
7 provisions of this subsection shall not be entitled to apply
8 for or receive any new license or privilege until one year from
9 the date that the conviction is final and all rights to an
10 appeal have been exhausted."

11 Section 3. Section 66-5-503 NMSA 1978 (being Laws 2003,
12 Chapter 239, Section 3) is amended to read:

13 "66-5-503. IGNITION INTERLOCK LICENSE--REQUIREMENTS--
14 EXCLUSIONS.--

15 A. A person whose instructor's permit, driver's
16 license or provisional license has been revoked or denied may
17 apply for an ignition interlock license from the division.

18 B. An applicant for an ignition interlock license
19 shall:

20 (1) provide proof of installation of the
21 ignition interlock device by a traffic safety bureau-approved
22 ignition interlock installer on any vehicle the applicant
23 drives; and

24 (2) sign an affidavit acknowledging that:

25 (a) operation by the applicant of any

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1 vehicle that is not equipped with an ignition interlock device
2 is subject to penalties for driving with a revoked license; and

3 (b) the applicant shall maintain the
4 ignition interlock device and keep up-to-date records in the
5 motor vehicle showing required service and calibrations and be
6 able to provide the records upon request.

7 C. A person who has been convicted of homicide by
8 vehicle or great bodily injury by vehicle while under the
9 influence of intoxicating liquor or drugs, as provided in
10 Section 66-8-101 NMSA 1978, shall not be issued an ignition
11 interlock license.

12 D. A person who has two or more convictions for
13 driving under the influence of intoxicating liquor or drugs
14 shall not be issued an ignition interlock license for the
15 period of time that the person's driver's license is revoked
16 pursuant to the second or subsequent conviction if the second
17 or subsequent conviction is based upon a violation committed
18 within five years of the date of a prior conviction for driving
19 under the influence of intoxicating liquor or drugs."

20 Section 4. Section 66-8-102 NMSA 1978 (being Laws 1953,
21 Chapter 139, Section 54, as amended by Laws 2005, Chapter 241,
22 Section 5 and by Laws 2005, Chapter 269, Section 5) is amended
23 to read:

24 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
25 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE

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1 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

9 C. It is unlawful for:

10 (1) a person who has an alcohol concentration
11 of eight one hundredths or more in [~~his~~] the person's blood or
12 breath to drive a vehicle within this state; or

13 (2) a person who has an alcohol concentration
14 of four one hundredths or more in [~~his~~] the person's blood or
15 breath to drive a commercial motor vehicle within this state.

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

18 (1) has an alcohol concentration of sixteen
19 one hundredths or more in [~~his~~] the person's blood or breath
20 while driving a vehicle within this state;

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

24 (3) refused to submit to chemical testing, as
25 provided for in the Implied Consent Act, and in the judgment of

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1 the court, based upon evidence of intoxication presented to the
2 court, was under the influence of intoxicating liquor or drugs.

3 E. A person under first conviction pursuant to this
4 section shall be punished, notwithstanding the provisions of
5 Section 31-18-13 NMSA 1978, by imprisonment for not more than
6 ninety days or by a fine of not more than five hundred dollars
7 (\$500), or both; provided that if the sentence is suspended in
8 whole or in part or deferred, the period of probation may
9 extend beyond ninety days but shall not exceed one year. Upon
10 a first conviction pursuant to this section, an offender shall
11 be sentenced to not less than twenty-four hours and not more
12 than forty-eight hours of community service. In addition, the
13 offender may be required to pay a fine of three hundred dollars
14 (\$300). The offender shall be ordered by the court to
15 participate in and complete a screening program described in
16 Subsection K of this section and to attend a driver
17 rehabilitation program for alcohol or drugs, also known as a
18 "DWI school", approved by the bureau and also may be required
19 to participate in other rehabilitative services as the court
20 shall determine to be necessary. In addition to those
21 penalties, when an offender commits aggravated driving while
22 under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to not less than forty-eight
24 consecutive hours in jail. If an offender fails to complete,
25 within a time specified by the court, any community service,

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1 screening program, treatment program or DWI school ordered by
2 the court or fails to comply with any other condition of
3 probation, the offender shall be sentenced to not less than an
4 additional forty-eight consecutive hours in jail. Any jail
5 sentence imposed pursuant to this subsection for failure to
6 complete, within a time specified by the court, any community
7 service, screening program, treatment program or DWI school
8 ordered by the court or for aggravated driving while under the
9 influence of intoxicating liquor or drugs shall not be
10 suspended, deferred or taken under advisement. On a first
11 conviction pursuant to this section, any time spent in jail for
12 the offense prior to the conviction for that offense shall be
13 credited to any term of imprisonment fixed by the court. A
14 deferred sentence pursuant to this subsection shall be
15 considered a first conviction for the purpose of determining
16 subsequent convictions.

17 F. A second or third conviction pursuant to this
18 section shall be punished, notwithstanding the provisions of
19 Section 31-18-13 NMSA 1978, by imprisonment for not more than
20 three hundred sixty-four days or by a fine of not more than one
21 thousand dollars (\$1,000), or both; provided that if the
22 sentence is suspended in whole or in part, the period of
23 probation may extend beyond one year but shall not exceed five
24 years. Notwithstanding any provision of law to the contrary
25 for suspension or deferment of execution of a sentence:

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

15 (2) upon a third conviction, an offender shall
16 be sentenced to a jail term of not less than thirty consecutive
17 days, ninety-six hours of community service and a fine of seven
18 hundred fifty dollars (\$750). In addition to those penalties,
19 when an offender commits aggravated driving while under the
20 influence of intoxicating liquor or drugs, the offender shall
21 be sentenced to a jail term of not less than sixty consecutive
22 days. If an offender fails to complete, within a time
23 specified by the court, any community service, screening
24 program or treatment program ordered by the court, the offender
25 shall be sentenced to not less than an additional sixty

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1 consecutive days in jail. A penalty imposed pursuant to this
2 paragraph shall not be suspended or deferred or taken under
3 advisement.

4 G. Upon a fourth conviction pursuant to this
5 section, an offender is guilty of a fourth degree felony and,
6 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
7 shall be sentenced to a term of imprisonment of eighteen
8 months, six months of which shall not be suspended, deferred or
9 taken under advisement.

10 H. Upon a fifth conviction pursuant to this
11 section, an offender is guilty of a fourth degree felony and,
12 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
13 shall be sentenced to a term of imprisonment of two years, one
14 year of which shall not be suspended, deferred or taken under
15 advisement.

16 I. Upon a sixth conviction pursuant to this
17 section, an offender is guilty of a third degree felony and,
18 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
19 shall be sentenced to a term of imprisonment of thirty months,
20 eighteen months of which shall not be suspended, deferred or
21 taken under advisement.

22 J. Upon a seventh or subsequent conviction pursuant
23 to this section, an offender is guilty of a third degree felony
24 and, notwithstanding the provisions of Section 31-18-15 NMSA
25 1978, shall be sentenced to a term of imprisonment of three

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1 years, two years of which shall not be suspended, deferred or
2 taken under advisement.

3 K. Upon ~~[any]~~ a second or subsequent conviction
4 pursuant to this section, an offender ~~[shall]~~ may be required
5 to participate in and complete, within a time specified by the
6 court, an alcohol or drug abuse screening program approved by
7 the department of finance and administration and, if necessary,
8 a treatment program approved by the court. ~~[The requirement~~
9 ~~imposed pursuant to this subsection shall not be suspended,~~
10 ~~deferred or taken under advisement.]~~

11 L. Upon a second or third conviction pursuant to
12 this section, an offender shall be required to participate in
13 and complete, within a time specified by the court:

14 (1) not less than a twenty-eight-day
15 inpatient, residential or in-custody substance abuse treatment
16 program approved by the court;

17 (2) not less than a ninety-day outpatient
18 treatment program approved by the court;

19 (3) a drug court program approved by the
20 court; or

21 (4) any other substance abuse treatment
22 program approved by the court.

23 The requirement imposed pursuant to this subsection shall
24 not be suspended, deferred or taken under advisement.

25 M. Upon a felony conviction pursuant to this

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1 section, the corrections department shall provide substance
2 abuse counseling and treatment to the offender in its custody.
3 While the offender is on probation or parole under its
4 supervision, the corrections department shall also provide
5 substance abuse counseling and treatment to the offender or
6 shall require the offender to obtain substance abuse counseling
7 and treatment.

8 N. Except as provided in Subsection P of this
9 section, upon a conviction pursuant to this section, an
10 offender shall be required to obtain an ignition interlock
11 license and have an ignition interlock device installed and
12 operating on all motor vehicles driven by the offender,
13 pursuant to rules adopted by the bureau. Unless determined by
14 the sentencing court to be indigent, the offender shall pay all
15 costs associated with having an ignition interlock device
16 installed on the appropriate motor vehicles. The offender
17 shall operate only those vehicles equipped with ignition
18 interlock devices for:

- 19 (1) a period of one year, for a first
20 offender;
- 21 (2) a period of two years, for a second
22 conviction pursuant to this section;
- 23 (3) a period of three years, for a third
24 conviction pursuant to this section; or
- 25 (4) the remainder of the offender's life, for

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1 a fourth or subsequent conviction pursuant to this section.

2 O. Five years from the date of conviction and every
3 five years thereafter, a fourth or subsequent offender may
4 apply to a district court for removal of the ignition interlock
5 device requirement provided in this section and for restoration
6 of a driver's license. A district court may, for good cause
7 shown, remove the ignition interlock device requirement and
8 order restoration of the license; provided that the offender
9 has not been subsequently convicted of driving a motor vehicle
10 while under the influence of intoxicating liquor or drugs.
11 Good cause may include an alcohol screening and proof from the
12 interlock vendor that the person has not had violations of the
13 interlock device.

14 P. A person convicted for a violation of this
15 section that was committed less than five years after a prior
16 conviction pursuant to this section shall not obtain nor be
17 required to obtain an ignition interlock license or device.

18 [~~P.~~] Q. In the case of a first, second or third
19 offense under this section, the magistrate court has concurrent
20 jurisdiction with district courts to try the offender.

21 [~~Q.~~] R. A conviction pursuant to a municipal or
22 county ordinance in New Mexico or a law of any other
23 jurisdiction, territory or possession of the United States or
24 of a tribe, when that ordinance or law is equivalent to New
25 Mexico law for driving while under the influence of

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1 intoxicating liquor or drugs, and prescribes penalties for
2 driving while under the influence of intoxicating liquor or
3 drugs, shall be deemed to be a conviction pursuant to this
4 section for purposes of determining whether a conviction is a
5 second or subsequent conviction.

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

11 ~~[S.]~~ T. With respect to this section and
12 notwithstanding any provision of law to the contrary, if an
13 offender's sentence was suspended or deferred in whole or in
14 part and the offender violates any condition of probation, the
15 court may impose any sentence that the court could have
16 originally imposed and credit shall not be given for time
17 served by the offender on probation.

18 ~~[F.]~~ U. As used in this section:

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

24 (2) "commercial motor vehicle" means a motor
25 vehicle or combination of motor vehicles used in commerce to

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1 transport passengers or property if the motor vehicle:

2 (a) has a gross combination weight
3 rating of more than twenty-six thousand pounds inclusive of a
4 towed unit with a gross vehicle weight rating of more than ten
5 thousand pounds;

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

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

10 (d) is of any size and is used in the
11 transportation of hazardous materials, which requires the motor
12 vehicle to be placarded under applicable law; and

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

15 Section 5. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2007.