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SENATE BILL 171

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Cliff R. Pirtle

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:

"[NEW MATERIAL] USE OF A HANDHELD MOBILE COMMUNICATION DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE.--

A. A person shall not use a handheld mobile

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1 communication device for any purpose while driving a commercial
2 motor vehicle except to summon medical or other emergency help
3 or unless that device is an amateur radio and the driver holds
4 a valid amateur radio operator license issued by the federal
5 communications commission. This prohibition is a separate
6 prohibition from the prohibition on texting while driving
7 pursuant to Section 66-7-374 NMSA 1978.

8 B. The provisions of this section shall not be
9 construed as authorizing the seizure or forfeiture of a
10 handheld mobile communication device. Unless otherwise
11 provided by law, the handheld mobile communication device used
12 in the violation of the provisions of this section is not
13 subject to search by a law enforcement officer during a traffic
14 stop made pursuant to the provisions of this section.

15 C. As used in this section:

16 (1) "commercial motor vehicle" means a motor
17 vehicle or combination of motor vehicles used in commerce to
18 transport passengers or property if the motor vehicle:

19 (a) has a gross combination weight
20 rating of more than twenty-six thousand pounds inclusive of a
21 towed unit with a gross vehicle weight rating of more than ten
22 thousand pounds;

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

25 (c) is designed to transport sixteen or

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1 more passengers, including the driver; or

2 (d) is of any size and is used in the
3 transportation of hazardous materials as provided in 49 CFR
4 Part 383.5;

5 (2) "driving" means being in actual physical
6 control of a commercial motor vehicle on a highway or street and
7 includes being temporarily stopped because of traffic, a traffic
8 light or stop sign or otherwise; but "driving" excludes a
9 commercial motor vehicle when the vehicle has pulled over to the
10 side of or off of an active roadway and has stopped at a
11 location in which it can safely remain stationary;

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

23 (4) "text message" means a digital
24 communication transmitted or intended to be transmitted between
25 communication devices and includes electronic mail, an instant

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1 message, a text or image communication and a command or request
2 to an internet site; but "text message" excludes communications
3 through the use of a computer-aided dispatch service by law
4 enforcement or rescue personnel."

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

7 "66-5-54. DEFINITIONS.--As used in the New Mexico
8 Commercial Driver's License Act:

9 A. "commerce" means:

10 (1) trade, traffic or transportation within
11 the jurisdiction of the United States between a place in New
12 Mexico and a place outside of New Mexico, including a place
13 outside of the United States; and

14 (2) trade, traffic or transportation in the
15 United States that affects any trade, traffic or transportation
16 described in Paragraph (1) of this subsection;

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

22 C. "commercial driver's license information system"
23 means the information system created pursuant to the federal
24 Commercial Motor Vehicle Safety Act of 1986 that contains
25 information pertaining to operators of commercial motor

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1 vehicles;

2 D. "commercial motor vehicle" means a motor vehicle
3 or combination of motor vehicles used in commerce to transport
4 passengers or property if the motor vehicle:

5 (1) has a gross combination weight rating of
6 more than twenty-six thousand pounds inclusive of a towed unit
7 with a gross vehicle weight rating of more than ten thousand
8 pounds;

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

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

13 (4) is of any size and is used in the
14 transportation of hazardous materials, as [~~hazardous materials~~
15 ~~are defined~~] provided in 49 CFR Part 383.5;

16 E. "conviction" means:

17 (1) an unvacated adjudication of guilt or a
18 determination that a person has violated or failed to comply
19 with the law by:

20 (a) a court of original jurisdiction; or

21 (b) an authorized administrative
22 tribunal;

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

25 (3) a plea of guilty or nolo contendere

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1 accepted by the court;

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

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

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

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

10 F. "director" means the director of the motor
11 vehicle division of the department;

12 G. "disqualification" means:

13 (1) a suspension, revocation or cancellation
14 of a commercial driver's license by the state or jurisdiction
15 that issued the commercial driver's license;

16 (2) a withdrawal of a person's privileges to
17 drive a commercial motor vehicle by a state or other
18 jurisdiction as the result of a violation of state or local law
19 relating to motor vehicle control other than a parking, vehicle
20 weight or vehicle defect violation; and

21 (3) a determination by the federal motor
22 carrier safety administration that a person is not qualified to
23 operate a motor vehicle;

24 H. "division" means the motor vehicle division of
25 the department;

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

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

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

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

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

16 K. "employer" means a person, including the United
17 States, a state and a political subdivision of a state or their
18 agencies or instrumentalities, that owns or leases a commercial
19 motor vehicle or assigns employees to operate such a vehicle;

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

22 M. "gross combination weight rating" means the value
23 specified by the manufacturer as the loaded weight of a
24 combination vehicle. In the absence of a value specified by the
25 manufacturer, gross combination weight rating shall be

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1 determined by adding the gross vehicle weight rating of the
2 power unit and the total weight of the towed unit or units and
3 any load thereon;

4 N. "gross vehicle weight rating" means the value
5 specified by the manufacturer as the loaded weight of a single
6 vehicle;

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

13 P. "noncommercial motor vehicle" means a motor
14 vehicle or combination of motor vehicles that is not a
15 commercial motor vehicle;

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

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

25 S. "railroad-highway grade crossing violation" means

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1 a violation of a provision of Section 66-7-341 or 66-7-343 NMSA
2 1978 or a violation of federal or local law, ordinance or rule
3 pertaining to stopping at or crossing a railroad-highway grade
4 crossing;

5 T. "serious traffic violation" means conviction of
6 any of the following if committed when operating a motor
7 vehicle:

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

10 (2) reckless driving as defined by Section
11 66-8-113 NMSA 1978 or a municipal ordinance or the law of
12 another state;

13 (3) homicide by vehicle, as defined in Section
14 66-8-101 NMSA 1978;

15 (4) injury to pregnant woman by vehicle as
16 defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance
17 or the law of another state;

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

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

25 (7) following another vehicle too closely in

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1 violation of Section 66-7-318 NMSA 1978;

2 (8) texting while driving in violation of
3 Section 66-7-374 NMSA 1978 or a municipal ordinance;

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

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

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

14 [~~10~~] (12) driving a commercial motor vehicle
15 without the proper class of commercial driver's license and
16 endorsements pursuant to Section 66-5-65 NMSA 1978 and the Motor
17 Carrier Safety Act for the specific vehicle group operated or
18 for the passengers or type of cargo transported; or

19 [~~11~~] (13) driving a commercial motor vehicle
20 without obtaining a commercial driver's license in violation of
21 Section 66-5-59 NMSA 1978; and

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

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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 if
6 the federal motor carrier safety administration reports to the
7 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 hold a
10 commercial driver's license from driving a commercial motor
11 vehicle for a period of not less than one year, which shall run
12 concurrently with any revocation or suspension action for the
13 same offense, if the person:

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

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

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

24 (4) is less than twenty-one years of age and
25 submits to chemical testing pursuant to the Implied Consent Act

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1 and the test results indicate an alcohol concentration of two
2 one hundredths or more; or

3 (5) is convicted of a violation of:

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

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

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

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

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

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

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

11 E. The department shall disqualify a person from
12 driving a commercial motor vehicle for life if the person [~~uses~~
13 ~~a commercial~~] is convicted of using a motor vehicle in the
14 commission of any felony involving the manufacture, distribution
15 or dispensing of a controlled substance [~~or the possession with~~
16 ~~intent to manufacture, distribute or dispense a controlled~~
17 ~~substance~~].

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

25 G. The department shall disqualify a person from

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1 driving a commercial motor vehicle for a period of:

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

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

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

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

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

23 (2) the second conviction results in
24 revocation, cancellation or suspension of the person's
25 commercial driver's license or noncommercial motor vehicle

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1 driving privileges for sixty days.

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

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

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

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

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

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

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

24 (3) one year if, during any three-year period,
25 the person is convicted of a third or subsequent railroad-

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1 highway grade crossing violation in a separate incident.

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

9 M. When disqualifying, suspending, revoking or
10 canceling a commercial driver's license, the department shall
11 treat a conviction received in another state in the same manner
12 as if it was received in this state.

13 N. The department shall post and enforce any
14 disqualification sent by the federal motor carrier safety
15 administration to the department that indicates that a
16 commercial motor vehicle driver poses an imminent hazard.

17 O. The federal transportation security
18 administration of the department of homeland security shall
19 provide for an appeal of a disqualification for a commercial
20 driver's license hazardous materials endorsement on the basis of
21 a background check, and the department shall provide to a
22 hazardous materials applicant a copy of the procedures
23 established by the transportation security administration, on
24 request, at the time of application.

25 P. New Mexico shall conform to the federal

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1 transportation security administration of the department of
2 homeland security rules and shall "look back" or review a
3 maximum of seven years for a background check."

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

6 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--
7 DEFINITION--SCHEDULE OF ASSESSMENTS.--

8 A. As used in the Motor Vehicle Code, "penalty
9 assessment misdemeanor" means violation of any of the following
10 listed sections of the NMSA 1978 for which, except as provided
11 in Subsections D and E of this section, the listed penalty
12 assessment is established:

13	COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
14			ASSESSMENT
15	Improper display of		
16	registration plate	66-3-18	\$ 25.00
17	Failure to notify of		
18	change of name or address	66-3-23	25.00
19	Lost or damaged registration,		
20	plate or title	66-3-24	20.00
21	Permitting unauthorized		
22	minor to drive	66-5-40	50.00
23	Permitting unauthorized		
24	person to drive	66-5-41	25.00
25	Failure to obey sign	66-7-104	10.00

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1	Failure to obey signal	66-7-105	10.00
2	Speeding	66-7-301	
3	(1) up to and including		
4	ten miles an hour		
5	over the speed limit		15.00
6	(2) from eleven up to		
7	and including fifteen		
8	miles an hour		
9	over the speed limit		30.00
10	(3) from sixteen up to		
11	and including twenty		
12	miles an hour over the		
13	speed limit		65.00
14	(4) from twenty-one up to		
15	and including twenty-five		
16	miles an hour		
17	over the speed limit		100.00
18	(5) from twenty-six up to		
19	and including thirty		
20	miles an hour over the		
21	speed limit		125.00
22	(6) from thirty-one up to		
23	and including thirty-five		
24	miles an hour over the		
25	speed limit		150.00

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1	(7) more than thirty-five		
2	miles an hour over the		
3	speed limit		200.00
4	Unfastened safety belt	66-7-372	25.00
5	Child not in restraint device		
6	or seat belt	66-7-369	25.00
7	Minimum speed	66-7-305	10.00
8	Speeding	66-7-306	15.00
9	Improper starting	66-7-324	10.00
10	Improper backing	66-7-354	10.00
11	Improper lane	66-7-308	10.00
12	Improper lane	66-7-313	10.00
13	Improper lane	66-7-316	10.00
14	Improper lane	66-7-317	10.00
15	Improper lane	66-7-319	10.00
16	Improper passing	66-7-309 through 66-7-312	10.00
17	Improper passing	66-7-315	10.00
18	Controlled access		
19	violation	66-7-320	10.00
20	Controlled access		
21	violation	66-7-321	10.00
22	Improper turning	66-7-322	10.00
23	Improper turning	66-7-323	10.00
24	Improper turning	66-7-325	10.00
25	Following too closely	66-7-318	10.00

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1	Failure to yield	66-7-328 through 66-7-331	10.00
2	Failure to yield	66-7-332	50.00
3	Failure to yield	66-7-332.1	25.00
4	Pedestrian violation	66-7-333	10.00
5	Pedestrian violation	66-7-340	10.00
6	Failure to stop	66-7-342 and 66-7-344	
7		through 66-7-346	10.00
8	Railroad-highway grade		
9	crossing violation	66-7-341 and 66-7-343	150.00
10	Passing school bus	66-7-347	100.00
11	Failure to signal	66-7-325 through 66-7-327	10.00
12	Failure to secure load	66-7-407	100.00
13	Operation without oversize-		
14	overweight permit	66-7-413	50.00
15	Transport of reducible		
16	load with special		
17	permit more than six miles		
18	from a border crossing	66-7-413	100.00
19	Improper equipment	66-3-801	
20		through 66-3-851	25.00
21	Improper equipment	66-3-901	20.00
22	Improper emergency		
23	signal	66-3-853 through 66-3-857	10.00
24	Minor on motorcycle		
25	without helmet	66-7-356	300.00

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1	Operation interference	66-7-357	50.00
2	Littering	66-7-364	300.00
3	Improper parking	66-7-349 through 66-7-352	
4		and 66-7-353	5.00
5	Improper parking	66-3-852	5.00
6	Failure to dim lights	66-3-831	10.00
7	Riding in or towing		
8	occupied house trailer	66-7-366	5.00
9	Improper opening of doors	66-7-367	5.00
10	No slow-moving vehicle		
11	emblem or flashing		
12	amber light	66-3-887	5.00
13	Open container - first		
14	violation	66-8-138	25.00
15	Texting while driving -	[Section 1 of this	
16	first violation	2014 act] <u>66-7-374</u>	25.00
17	Texting while driving -	[Section 1 of this	
18	subsequent violation	2014 act] <u>66-7-374</u>	50.00
19	<u>Using a handheld mobile</u>		
20	<u>communication device</u>		
21	<u>while driving a</u>		
22	<u>commercial motor</u>	<u>Section 1 of this</u>	
23	<u>vehicle</u>	<u>2016 act</u>	<u>25.00</u>
24	<u>Using a handheld mobile</u>		
25	<u>communication device</u>		

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1 while driving a
2 commercial motor
3 vehicle - subsequent Section 1 of this
4 violation 2016 act 50.00.

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

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

15 D. The penalty assessment for speeding in violation
16 of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978
17 is twice the penalty assessment established in Subsection A of
18 this section for the equivalent miles per hour over the speed
19 limit.

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

25 F. Upon a second conviction for transport of a

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

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