

HOUSE TRANSPORTATION AND PUBLIC WORKS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 43

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING MESSAGING WHILE  
DRIVING; PROHIBITING USE OF PERSONAL WIRELESS COMMUNICATIONS  
DEVICES FOR THOSE UNDER EIGHTEEN; CHANGING DRIVER'S LICENSE  
TESTING REQUIREMENTS; PROVIDING EXCEPTIONS; ESTABLISHING  
PENALTY ASSESSMENTS.

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

SECTION 1. A new Section 66-7-374 NMSA 1978 is enacted to  
read:

"66-7-374. [NEW MATERIAL] MESSAGING WHILE DRIVING.--

A. A person shall not read, view, manually type or  
manually send a message on a personal wireless communications  
device while driving a motor vehicle, except:

(1) to summon medical or other emergency help;

or

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1 (2) in the operation of an authorized law  
2 enforcement or emergency vehicle as required by the driver's  
3 official duties.

4 B. A person under the age of eighteen shall not use  
5 a personal wireless communications device while driving.

6 C. Messaging while driving shall be a primary  
7 offense.

8 D. As used in this section:

9 (1) "driving" means operating a motor vehicle  
10 on a public road, including while the vehicle is temporarily  
11 stationary because of traffic, a traffic light or stop sign or  
12 otherwise; "driving" does not include operating a motor vehicle  
13 when the vehicle has been pulled over to the side of, or off,  
14 an active roadway and has stopped in a location where it can  
15 safely remain stationary;

16 (2) "message" means a digital communication  
17 transmitted or intended to be transmitted to a personal  
18 wireless communications device and includes electronic mail, an  
19 instant message, a text or image communication or any command  
20 or request to an internet site or any other form of electronic  
21 data retrieval or electronic data communication if the  
22 transmission, command or request is performed manually; a  
23 voice-activated command is not considered a message for the  
24 purposes of this section;

25 (3) "personal wireless communications device"

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1 means a device through which personal wireless services, as  
2 defined in Section 332(c)(7)(C)(i) of the federal  
3 Communications Act of 1934, 47 U.S.C. 332(c)(7)(C)(i), are  
4 transmitted; "personal wireless communications device" does not  
5 include a global navigation satellite system receiver used for  
6 positioning, emergency notification or navigation purposes; and

7 (4) "primary offense" means an offense for  
8 which a law enforcement officer may stop a vehicle solely for  
9 the purpose of issuing a citation in the absence of another  
10 offense."

11 SECTION 2. Section 66-5-14 NMSA 1978 (being Laws 1978,  
12 Chapter 35, Section 236, as amended by Laws 2010, Chapter 42,  
13 Section 1 and by Laws 2010, Chapter 70, Section 1) is amended  
14 to read:

15 "66-5-14. EXAMINATION OF APPLICANTS.--

16 A. The department shall examine every first-time  
17 applicant for a driver's license or a motorcycle endorsement  
18 and may examine other applicants for a driver's license or  
19 motorcycle endorsement. The examination shall include a test  
20 of the applicant's ability to read and understand highway signs  
21 regulating, warning and directing traffic, the applicant's  
22 knowledge of the traffic laws of this state, the applicant's  
23 knowledge of and ability to handle distracted driving  
24 circumstances and an actual demonstration of ability to  
25 exercise ordinary and reasonable control in the operation of a

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1 motor vehicle except as provided in Section 66-5-7 NMSA 1978  
2 and any further physical and mental examination as the  
3 department finds necessary to determine the applicant's fitness  
4 to operate a motor vehicle or motorcycle safely upon the  
5 highways.

6 B. Regardless of whether an applicant is examined  
7 under Subsection A of this section, the department shall test  
8 the eyesight of every applicant for a driver's license or  
9 motorcycle endorsement unless the application is for renewal of  
10 a license or endorsement and is made by mail or telephonic or  
11 electronic means.

12 C. The department is authorized to contract with  
13 other persons for conduct of tests of the applicant's ability  
14 to exercise ordinary and reasonable control of a motor vehicle.  
15 Any such contract may be terminated by the secretary upon  
16 written notice for failure of the contractor to perform the  
17 contractor's duties to the secretary's satisfaction. Contracts  
18 under this subsection may provide for the form of notice and  
19 the length of the period, if any, between the notice and the  
20 effective date of the termination.

21 D. For purposes of this section, a "first-time  
22 applicant" means an applicant other than a person who:

23 (1) holds a currently valid driver's license  
24 issued by New Mexico or any other jurisdiction at the time of  
25 application; or

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1 (2) does not hold a currently valid driver's  
 2 license issued by New Mexico or any other jurisdiction at the  
 3 time of application but who held a valid driver's license  
 4 issued by New Mexico or any other jurisdiction within one year  
 5 prior to the date of application if that driver's license was  
 6 not revoked under any provision of the Motor Vehicle Code or  
 7 suspended, canceled or revoked under the laws of any other  
 8 jurisdiction for reasons similar to those for which revocation  
 9 is authorized under the Motor Vehicle Code."

10 SECTION 3. Section 66-8-116 NMSA 1978 (being Laws 1978,  
 11 Chapter 35, Section 524, as amended) is amended to read:

12 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--  
 13 DEFINITION--SCHEDULE OF ASSESSMENTS.--

14 A. As used in the Motor Vehicle Code, "penalty  
 15 assessment misdemeanor" means violation of any of the following  
 16 listed sections of the NMSA 1978 for which, except as provided  
 17 in Subsections D and E of this section, the listed penalty  
 18 assessment is established:

19 COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
		ASSESSMENT
21 Permitting unlicensed		
22 minor to drive	66-5-40	\$ 10.00
23 Failure to obey sign	66-7-104	10.00
24 Failure to obey signal	66-7-105	10.00
25 Speeding	66-7-301	

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

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1	speed limit		200.00
2	Unfastened safety belt	66-7-372	25.00
3	Child not in restraint device		
4	or seat belt	66-7-369	25.00
5	Minimum speed	66-7-305	10.00
6	Speeding	66-7-306	15.00
7	Improper starting	66-7-324	10.00
8	Improper backing	66-7-354	10.00
9	Improper lane	66-7-308	10.00
10	Improper lane	66-7-313	10.00
11	Improper lane	66-7-316	10.00
12	Improper lane	66-7-317	10.00
13	Improper lane	66-7-319	10.00
14	Improper passing	66-7-309 through 66-7-312	10.00
15	Improper passing	66-7-315	10.00
16	Controlled access		
17	violation	66-7-320	10.00
18	Controlled access		
19	violation	66-7-321	10.00
20	Improper turning	66-7-322	10.00
21	Improper turning	66-7-323	10.00
22	Improper turning	66-7-325	10.00
23	Following too closely	66-7-318	10.00
24	Failure to yield	66-7-328 through 66-7-331	10.00
25	Failure to yield	66-7-332	50.00

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1	Failure to yield	66-7-332.1	25.00
2	Pedestrian violation	66-7-333	10.00
3	Pedestrian violation	66-7-340	10.00
4	Failure to stop	66-7-342 and 66-7-344	
5		through 66-7-346	10.00
6	Railroad-highway grade		
7	crossing violation	66-7-341 and 66-7-343	150.00
8	Passing school bus	66-7-347	100.00
9	Failure to signal	66-7-325 through 66-7-327	10.00
10	Failure to secure load	66-7-407	100.00
11	Operation without oversize-		
12	overweight permit	66-7-413	50.00
13	Transport of reducible		
14	load with special		
15	permit more than six miles		
16	from a border crossing	66-7-413	100.00
17	Improper equipment	66-3-801	10.00
18	Improper equipment	66-3-901	20.00
19	Improper emergency		
20	signal	66-3-853 through 66-3-857	10.00
21	Operation interference	66-7-357	5.00
22	Littering	66-7-364	300.00
23	Improper parking	66-7-349 through 66-7-352	
24		and 66-7-353	5.00
25	Improper parking	66-3-852	5.00

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1	Failure to dim lights	66-3-831	10.00
2	Riding in or towing		
3	occupied house trailer	66-7-366	5.00
4	Improper opening of doors	66-7-367	5.00
5	No slow-moving vehicle		
6	emblem or flashing		
7	amber light	66-3-887	5.00
8	Open container - first		
9	violation	66-8-138	25.00
10	<u>Messaging while driving</u>	<u>66-7-374</u>	<u>25.00</u>
11	<u>Wireless communication</u>		
12	<u>use under eighteen</u>	<u>66-7-374</u>	<u>25.00.</u>

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

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

23           D. The penalty assessment for speeding in violation  
 24 of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978  
 25 is twice the penalty assessment established in Subsection A of

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1 this section for the equivalent miles per hour over the speed  
2 limit.

3 E. Upon a second conviction for operation without a  
4 permit for excessive size or weight pursuant to Section  
5 66-7-413 NMSA 1978, the penalty assessment shall be two hundred  
6 fifty dollars (\$250). Upon a third or subsequent conviction,  
7 the penalty assessment shall be five hundred dollars (\$500).

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

15 G. Upon a second or subsequent conviction for  
16 messaging while driving, the penalty assessment shall be fifty  
17 dollars (\$50.00). A violation that occurs within five years of  
18 the previous offense is considered a repeat offense.

19 H. Upon a second or subsequent conviction for use of  
20 a personal wireless communications device when under the age of  
21 eighteen while driving, the penalty assessment shall be fifty  
22 dollars (\$50.00). A violation that occurs within five years of  
23 the previous offense is considered a repeat offense."

24 SECTION 4. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2013.

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